

ILLINOIS POLLUTION CONTROL BOARD
April 4, 1985

IN THE MATTER OF:)
)
FINANCIAL ASSURANCE FOR CLOSURE) R84-22B
AND POST-CLOSURE CARE OF WASTE)
DISPOSAL SITES (TEMPORARY RULES))

FINAL ORDER. ADOPTED RULE (R84-22B)

On July 19, 1984 the Board proposed amendments to 35 Ill. Adm. Code 807 in order to implement the requirement of Section 21.1 of the Environmental Protection Act that certain persons conducting waste disposal operations provide a performance bond or other security insuring closure of the site and post-closure care in accordance with the Act and Board rules. The proposal appeared at 8 Ill. Reg. 14145, August 10, 1984. The Board conducted hearings and received written comment as described in the Opinion.

Section 21.1 of the Act required the Board to adopt regulations by January 1, 1985; yet, the Department of Energy and Natural Resources was unable to prepare an economic impact study. On December 27, 1984 the Board therefore adopted emergency regulations R84-22A and sent temporary rules (R84-22B) to second notice in accordance with Sections 27(b) and 27(c) of the Act. The emergency rules appeared at 9 Ill. Reg. 1162, January 25, 1985.

As is described in the Opinion, the Board has revised the temporary rules pursuant to comments from the staff of the Joint Committee on Administrative Rules (JCAR). The Board will separately respond to a recommendation that the Board seek legislative clarification. The Board therefore adopts the temporary rules, the text of which is attached to this Order. Striking and underlining refer to the text of Part 807 prior to adoption of the emergency rules. When filed with the Secretary of State the temporary rules will replace the emergency rules.

The Board adopted a separate Opinion on April 4, 1985.

IT IS SO ORDERED.

J. Theodore Meyer concurred and B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Order was adopted on the 4th day of April, 1985 by a vote of 4-1.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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

PART 807
SOLID WASTE

SUBPART A: GENERAL PROVISIONS

Section
807.101 Authority, Policy and Purposes
807.102 Repeals
807.103 Severability
807.104 Definitions

SUBPART B: SOLID WASTE PERMITS

Section
807.201 Development Permits
807.202 Operating Permits
807.203 Experimental Permits
807.204 Former Authorization
807.205 Applications for Permit
807.206 Permit Conditions
807.207 Standards for Issuance
807.208 Permit No Defense
807.209 Permit Revision
807.210 Supplemental Permits
807.211 Transfer of Permits
807.212 Permit Revocation
807.213 Design, Operation and Maintenance Criteria
807.214 Revised Cost Estimates

SUBPART C: SANITARY LANDFILLS

Section
807.301 Prohibition
807.302 Compliance with Permit
807.303 Methods of Operation
807.304 Equipment, Personnel and Supervision
807.305 Cover
807.306 Litter
807.307 Salvaging
807.308 Scavenging
807.309 Animal Feeding
807.310 Special Wastes
807.311 Open Burning
807.312 Air Pollution
807.313 Water Pollution
807.314 Standard Requirements
807.315 Protection of Waters of the State

- 807.316 Application
- 807.317 Operating Records
- 807.318 Completion or Closure Requirements

SUBPART E: CLOSURE AND POST-CLOSURE CARE

- Section
- 807.501 Purpose, Scope and Applicability
- 807.502 Closure Performance Standard
- 807.503 Closure Plan
- 807.504 Amendment of Closure Plan
- 807.505 Notice of Closure and Final Amendment to Plan
- 807.506 Initiation of Closure
- 807.507 Partial Closure
- 807.508 Certification of Closure
- 807.509 Use of Waste Following Closure
- 807.523 Post-Closure Care Plan
- 807.524 Implementation and Completion of Post-Closure Care Plan

SUBPART F: FINANCIAL ASSURANCE FOR CLOSURE
AND POST-CLOSURE CARE

- Section
- 807.600 Purpose, Scope and Applicability
- 807.601 Requirement to Obtain Financial Assurance
- 807.602 Time for Submission of Financial Assurance
- 807.603 Upgrading Financial Assurance
- 807.604 Release of Financial Institution
- 807.605 Application of Proceeds and Appeal
- 807.606 Release of the Operator
- 807.620 Current Cost Estimate
- 807.621 Cost Estimate for Closure
- 807.622 Cost Estimate for Post-closure Care
- 807.623 Biennial Revision of Cost Estimate
- 807.624 Interim Formula for Cost Estimate
- 807.640 Mechanisms for Financial Assurance
- 807.641 Use of Multiple Financial Mechanisms
- 807.642 Use of Financial Mechanism for Multiple Sites
- 807.643 Trust Fund for Unrelated Sites
- 807.644 RCRA Financial Assurance
- 807.661 Trust Fund
- 807.662 Surety Bond Guaranteeing Payment
- 807.663 Surety Bond Guaranteeing Performance
- 807.664 Letter of Credit
- 807.665 Closure Insurance
- 807.666 Self-insurance for Non-commercial Sites

- | | |
|-----------------------------------|--|
| <u>Appendix A, Illustration A</u> | <u>Trust Agreement</u> |
| <u>Appendix A, Illustration B</u> | <u>Certificate of Acknowledgment</u> |
| <u>Appendix A, Illustration C</u> | <u>Forfeiture Bond</u> |
| <u>Appendix A, Illustration D</u> | <u>Performance Bond</u> |
| <u>Appendix A, Illustration E</u> | <u>Irrevocable Standby Letter of Credit</u> |
| <u>Appendix A, Illustration F</u> | <u>Certificate of Insurance for
Closure and/or Post-Closure Care</u> |

Appendix A, Illustration G
Appendix A, Illustration H
Appendix A, Illustration I
Appendix A B:

Operator's Bond Without Surety
Operator's Bond With Parent Surety
Letter from Chief Financial Officer
Old Rule Numbers Referenced

AUTHORITY: Implementing Sections 5, 21.1 and 22 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1005, 1021.1, 1022 and 1027).

SOURCE: Adopted as an emergency rule and filed with the Secretary of State Jul, 27, 1973; amended at 2 Ill. Reg. 16, p. 3, effective April 10, 1978; codified at 7 Ill. Reg. 13636; recodified from Subchapter h to Subchapter i at 8 Ill. Reg. 13198, emergency amendment in R84-22A at 9 Ill. Reg. 741, effective January 3, 1985 for a maximum of 150 days; amended in R84-22B at 9 Ill. Reg. _____ effective _____.

SUBPART A: GENERAL PROVISIONS

Section 807.104 Definitions

Except as hereinafter stated, and unless a different meaning of a word or term is clear from its context, the definitions of words or terms as are used in this Part shall be the same as those used in the Environmental Protection Act.

"Abandonment" means the failure to initiate closure within 30 days after receipt of the "final volume of waste".

"Bedrock" means the solid rock exposed at the surface of the earth or overlain by unconsolidated material

"Cell" means compacted refuse completely enclosed by cover material.

"Compaction" means the reduction of volume of material under load. Compaction is a "treatment".

"Cover material" means soil or other material that is used to cover compacted solid waste in a sanitary landfill and that is free of objects that would hinder compaction and free of content that would be conducive to vector harborage, feeding or breeding.

"Development" means construction or installation of a "unit."facility within the meaning of those terms used in Section 39 of the Act.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water or into any well so that such waste or any

constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater. As used in this Part, "disposal" includes methods of storage or treatment in which there is no certain plan to remove wastes or waste residues from the storage or treatment unit to another unit for ultimate disposal.

"Facility", as used in this Part, means the same thing as "unit". means any device, mechanism, equipment or area used for storage, transfer, processing, incineration or deposit of solid waste.

"Final volume of waste" means the last quantity of waste received by the operator at the site. A quantity of waste is assumed to be the final volume if the operator receives no additional waste within 30 days after receiving that quantity, unless the operator demonstrates that the operator expects additional waste. Waste arriving at the site for disposal in a manner which is not controlled by the operator does not affect the determination of when the final volume of waste was received by the operator.

"Groundwater" means water occurring in the zone of saturation in any aquifer or soil.

"Hazardous waste" is as defined in 35 Ill. Adm. Code 721. means solid waste at inherent properties which make such waste difficult or dangerous to manage by normal means including but not limited to chemicals, explosives, pathological wastes, radioactive materials, and wastes likely to cause fire.

"Indefinite storage" means "treatment" or "storage" in such a manner that a person would face technical difficulties or high costs in removing the wastes or waste residues from the treatment or storage unit to a disposal unit, so that it may become necessary to close the treatment or storage unit as a disposal unit. A treatment or storage unit in which wastes or waste residues remain for more than one year is assumed to be "indefinite storage" unless the operator demonstrates that it will be technically feasible and economically reasonable to remove the waste for ultimate disposal prior to or upon closure.

"Leachate" means liquid containing materials removed from solid waste.

"Lift" means an accumulation of refuse which is compacted into a cell and over which compacted cover is placed.

"Modification" means any physical change, or change in the method of operation, of a solid waste management unit. facility For purposes of permits issued pursuant to this Part, the Agency may specify conditions under which a solid

waste management unit facility may be operated without causing a modification as herein defined.

"Operator" means a person who conducts a waste treatment, waste storage or waste disposal operation. owns, leases or manages a solid waste management facility.

"Owner" means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person conducts a waste treatment, waste storage or waste disposal operation. The "owner" is the "operator" if there is no other person who is conducting a waste treatment, waste storage or waste disposal operation.

"Permeability" means the capability of a material to pass a fluid.

"Professional Engineer" means an engineer registered to practice engineering in the State of Illinois.

"Refuse" means waste, garbage or other discarded materials.

"Salvaging" means the return of solid waste materials to beneficial use.

"Scavenging" means the removal of materials from a solid waste management unit facility in a manner not in conformity with the regulations governing salvaging.

"Site" means any location, place or tract of land used and facilities for solid waste management. A site may include one or more units.

"Solid waste" means waste, refuse.

Solid waste disposal means disposition of solid waste by means acceptable under regulations adopted by the Board.

"Solid waste management" means "waste management". the process of storage, processing or disposal of solid waste, not including hauling or transport.

"Storage" means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such waste.

"Surface water" means all water the surface of which is exposed to the atmosphere.

"Treatment" means any method, technique or process designed to change the physical, chemical or biological character or composition of any waste so as to neutralize such waste or so as to render such waste safer for transport, amenable for storage or reduced in volume.

"Unit" means any device, mechanism, equipment or area used for storage, treatment or disposal of waste.

"Vector" means any living agent, other than human, capable of transmitting, directly or indirectly, an infectious disease.

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, or from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under 35 Ill. Adm. Code 309.102 or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder (Ill. Rev. Stat. 1983 ch. 96 1/2, par. 7901.01 et seq. and 62 Ill. Adm. Code 1700 through 1845) (Section 3 (11) of the Act).

"Waste management" means the process of storage, treatment or disposal of waste, not including hauling or transport.

"Water table" means that surface in unconfined water at which the pressure is atmospheric and is defined by the levels at which water stands in wells that penetrate the water just far enough to hold standing water.

"Working face" means any part of a sanitary landfill where waste refuse is being disposed.

(Source: Amended at 9 Ill. Reg. _____, effective _____)

SUBPART B: SOLID WASTE PERMITS

Section 807.205 Applications for Permit

- a) All applications for permit required under these regulations shall contain all data and information specified in those rules governing the type of unit or site facility for which the permit is required.
- b) The Agency may adopt procedures requiring such additional information as is reasonably necessary to determine whether the ~~solid~~ waste management site will meet the requirements of the Act and regulations.

- c) The Agency may prescribe the form in which all information required under these regulations shall be submitted.
- d) All permit applications shall be signed by the owner and operator of the solid waste management site or their duly authorized agents, shall be accompanied by evidence of authority to sign the application and shall be certified as to all engineering features by a professional engineer.
- e) All permit applications shall be mailed or delivered to the appropriate address designated by the Agency, and shall be sent by registered or certified mail, return receipt requested or delivered in person. Applications which are hand-delivered shall be delivered to and receipted for by the Manager of the Agency's Division of Land Pollution Control or his designee.
- f) An application for permit shall not be deemed filed until the Agency has received, at the designated address, all information, documents, and authorization in the form and with the content required by these rules and related Agency procedures. However, if the Agency fails to notify the applicant within 45 days after the receipt of an application for development permit and 30 days after the receipt of an application for an operating permit, that the application is incomplete, and of the reasons, the application shall be deemed to have been filed on the date received by the Agency. An applicant may deem the Agency's notification that the application is incomplete as a denial of the permit for purposes of review pursuant to Section 40 of the Act.
- g) If the Agency fails to take final action on the application for development permit within 90 days from the filing thereof, or on the application for operating permit within 45 days from the filing thereof, the applicant may deem the permit granted on the 91st day or the 46th day after the application was filed.
- h) Any applicant for a permit may waive the requirement that the Agency shall take final action within 90 days or 45 days from the filing of the application.
- i) The Agency shall send all notices of final action by registered or certified mail, return receipt requested. Final action shall be deemed to have taken place on the date that such notice is mailed.
- j) If specifically authorized by statute, any person adversely affected by the issuance of a permit may petition the Board for a hearing before the Board to contest the issuance by the Agency. (Title X of the Act)

k) Upon receipt of a request for a permit required by these regulations, the Agency shall notify the State's Attorney and the Chairman of the County Board of the county in which the subject facility is located and each member of the General Assembly from the legislative district in which that site facility is located and the clerk of each municipality any portion of which is within three miles of the site.

l) All applications filed after March 1, 1985, shall include, if required by Subparts E and F, a closure plan, a post-closure care plan, a closure cost estimate and a post-closure care cost estimate showing how the operator will close each unit and provide post-closure care in accordance with all applicable Board regulations.

(Source: Amended at 9 Ill. Reg. _____, effective _____)

Section 807.206 Permit Conditions

a) As provided by Sections 39(a) and 21(d) of the Act, the Agency may impose such conditions in a permit as may be necessary to accomplish the purposes of the Act, and as are not inconsistent with regulations promulgated by the Board thereunder, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder;

b) The applicant may deem any condition imposed by the Agency as a denial of the permit for purposes of review pursuant to Section 40 of the Act.

c) All permits issued after March 1, 1985 shall include the following conditions:

1) A closure plan;

2) A post-closure care plan if required;

3) A requirement that the operator notify the Agency within 30 days after receiving the final volume of waste;

4) A requirement that the operator initiate implementation of the closure plan within 30 days after the site receives its final volume of waste;

5) A requirement that the operator not file any application to modify a closure plan less than 180 days prior to receipt of the final volume of waste;

- 6) A requirement that the operator provide financial assurance in accordance with Subpart F, in an amount equal to the current cost estimate for closure and post-closure care;
- 7) A requirement that the operator file revised cost estimates for closure and post-closure care at least every two years in accordance with Subpart F.

(Source: Amended at 9 Ill. Reg. _____, effective _____)

Section 807.209 Permit Revision

- a) The Agency shall revise any permit issued by it to make the permit compatible with any relevant new regulations adopted by the Board.
- b) The permittee may request modification of a permit at any time by filing pursuant to Section 807.205 an application reflecting the modification requested.

(Source: Amended at 9 Ill. Reg. _____, effective _____)

Section 807.214 Revised Cost Estimates

- a) A revised cost estimate is any cost estimate other than one which results from modification of a closure or post-closure care plan.
- b) A revised cost estimate shall identify the operator, site and closure or post-closure care plan to which it relates, but need not include any additional information required pursuant to Section 807.205.
- c) A revised cost estimate is a permit modification application. The revised cost estimate shall be deemed incorporated into the permit unless the Agency takes final action on the revised cost estimate within 90 days after its receipt as provided by Section 39(a) of the Act.

(Source: Added at 9 Ill. Reg. _____, effective _____)

SUBPART E: CLOSURE AND POST-CLOSURE CARE

Section 807.501 Purpose, Scope and Applicability

- a) This Subpart contains general provisions governing closure and post-closure care of waste management sites. These general provisions may be supplemented by more specific closure and post-closure care requirements for certain types of waste management sites,

specifically the closure and post-closure care requirements for sanitary landfills contained in Subpart C.

- b) This Subpart requires a closure plan and, for some sites, a post-closure care plan. These will become permit conditions pursuant to Section 807.206. Sites which are not required to have a permit pursuant to Section 21(d) of the Act are not required to prepare a closure or post-closure care plan.
- c) The closure and post-closure care plan form the basis of the cost estimates and financial assurance required by Subpart F for disposal sites. The closure plan is also used for making the determination as to whether a unit is a disposal unit or indefinite storage unit, which must provide financial assurance.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.502 Closure Performance Standard

In addition to the specific requirements of this Part, an operator of a waste management site shall close the site in a manner which:

- a) Minimizes the need for further maintenance; and
- b) Controls, minimizes or eliminates post-closure release of waste, waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater or surface waters or to the atmosphere to the extent necessary to prevent threats to human health or the environment

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.503 Closure Plan

- a) An operator of a waste management site shall have prepared a written closure plan which shall be a condition of the site permit.
- b) The operator of an indefinite storage unit shall have prepared a written contingent closure plan which shall be a condition of the site permit. The contingent closure plan shall be the same as a closure plan, except as otherwise specifically provided.
- c) The closure plan shall include as a minimum:
 - 1) Steps necessary for the premature final closure of the site at the time during its intended operating life when the cost of closure will be the greatest;

- 2) Steps necessary for the final closure of the site at the end of its intended operating life;
 - 3) Steps necessary to prevent damage to the environment during temporary suspension of waste acceptance if the operator wants a permit which would allow temporary suspension of waste acceptance at the site without initiating final closure;
 - 4) A description of the steps necessary to decontaminate equipment during closure;
 - 5) An estimate of the year in which the cost of premature closure will be the greatest;
 - 6) An estimate of the expected year of closure;
 - 7) Schedules for the premature and final closure which shall include at a minimum:
 - A) Total time required to close the site; and
 - B) Time required for closure activities which will allow tracking of the progress of closure; and
 - 8) A description of methods for compliance with all closure requirements of this Part.
- d) The closure plan shall be included in the permit application pursuant to Section 807.205.
 - e) Until closure has been completed, the operator shall maintain a copy of the closure plan at the site or at a definite location, specified in the permit, so as to be available during inspection of the site.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.504 Amendment of Closure Plan

An operator of a waste management site shall file a permit application including a revised closure plan upon:

- a) Modification of operating plans or site design affecting the closure other than modifications authorized in the permit; or
- b) Modification of the operations of the site which affect the closure of the site or any portion of the site, other than modifications authorized in the permit, which include, but are not limited to:

- 1) A temporary suspension of waste acceptance at the site; or
- 2) A reduction or increase in the rate of waste acceptance at the site; or
- c) Change in the expected year of closure or the year in which the cost of premature closure will be the greatest.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.505 Notice of Closure and Final Amendment to Plan

- a) An operator of a waste management site shall send to the Agency a notice of closure within 30 days after the date the final volume of waste is received at a waste management site for treatment, storage or disposal.
- b) The operator of a waste management site shall not file an application to modify the closure plan less than 180 days before receipt of the final volume of waste. Failure to timely file shall not constitute a bar to consideration of such an application, but may be alleged in an enforcement action pursuant to Title VIII of the Act.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.506 Initiation of Closure

- a) An operator of a waste management site shall initiate the treatment, removal from the site or disposal of all wastes and waste residues other than those from indefinite storage units:
 - 1) Within 30 days after receipt of the final volume of waste; and
 - 2) In accordance with the closure plan.
- b) The operator of an indefinite storage unit shall, within 30 days after receipt of a final volume of waste, either initiate:
 - 1) Removal of all wastes and waste residues from the unit; or,
 - 2) Closure of the unit in accordance with the contingent closure plan.
- c) The operator must notify the Agency within 30 days after a temporary suspension of waste acceptance. The

operator must comply with the requirements of any temporary suspension plan in the permit.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.507 Partial Closure

- a) The requirements of Subparts E and F apply to the entire site unless the permit divides the site into definite areas which include one or more units, in which case the operator may provide separate closure and post-closure care plans and cost estimates for each area. In such a case the Agency shall treat each area as a separate site for purposes of financial assurance.
- b) If a site includes a disposal unit, then the operator must provide financial assurance for closure of associated treatment and storage units, even if the site is divided into areas as provided in paragraph (a).
- c) Post-closure care of areas formed by dividing a site shall continue until post-closure care of the entire site is completed.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.508 Certification of Closure

- a) When closure is completed, the operator of a waste management site shall submit to the Agency:
 - 1) Plan sheets for the closed site; and
 - 2) An affidavit by the operator and by a professional engineer that the site has been closed in accordance with the closure plan.
- b) If the Agency finds that the site has been closed in accordance with the specifications of the closure plan, and the closure requirements of this Part, the Agency shall:
 - 1) Issue a certificate of closure for the site;
 - 2) Notify the operator in writing that any applicable post-closure period has begun; and
 - 3) Provide the date the post-closure care period begins.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.509 Use of Waste Following Closure

After an operator initiates closure of a site the operator may accept waste for disposal or for use in closure and post-closure care only as authorized in the closure and post-closure care plans.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.523 Post-Closure Care Plan

- a) An operator of a disposal site shall have a written post-closure care plan which shall be a condition of the site permit.
- b) The post-closure care plan shall include as a minimum a description of methods for compliance with all post-closure care requirements of this Part.
- c) An operator of an indefinite storage unit shall have a written contingent post-closure care plan which shall include as a minimum a description of methods of compliance with all post-closure care requirements of this Part assuming the unit will be closed as a disposal unit without removal of all wastes and waste residues. The contingent post-closure care plan shall be the same as a post-closure care plan, except as otherwise specifically provided.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.524 Implementation and Completion of Post-Closure Care Plan

- a) The operator of a waste disposal site shall implement the post-closure care plan commencing with receipt of a certification of closure pursuant to Section 807.508.
- b) The operator of an indefinite storage unit shall implement the contingent post-closure care plan commencing with receipt of certification of closure pursuant to the contingent closure plan. The operator is not required to implement the contingent post-closure care plan if the Agency determines that the operator has removed all wastes and waste residues from the indefinite storage unit.
- c) The Agency shall certify that the post-closure care period has ended when it determines:
 - 1) That the post-closure care plan has been completed; and,
 - 2) That the site will not cause future violations of the Act or this Part.

(Source: Added at 9 Ill. Reg. _____, effective _____)

SUBPART F: FINANCIAL ASSURANCE FOR CLOSURE
AND POST-CLOSURE CARE

Section 807.600 Purpose, Scope and Applicability

- a) This Subpart provides procedures by which an operator of a waste disposal site can give "financial assurance" satisfying the requirement of Section 21.1(a) of the Act that such operator post with the Agency a performance bond or other security for the purpose of insuring closure of the site and post-closure care in accordance with the Act and Board rules.

- b) Each operator must file a closure plan as part of a permit application. The operator of a disposal site or indefinite storage unit must also file a post-closure care plan (Sections 807.205, 807.503 and 807.523). The operator of a disposal site or indefinite storage unit must prepare a cost estimate of closure and post-closure care, and provide financial assurance in this amount (Sections 807.601 and 807.620). Financial assurance may be given through a combination of a trust agreement, bond guaranteeing payment, bond guaranteeing payment or performance, letter of credit, insurance or self-insurance (Section 807.640). The cost estimate and amount of financial assurance is to be updated at least on a biennial basis (Section 807.623).

- c) This Subpart applies only to the non-governmental operators of disposal sites or indefinite storage units (Section 807.601). Whether a site is a disposal site or, alternatively, a treatment or storage site, depends on whether the closure plan provides for removal of all wastes and waste residues from the site prior to completion of closure. Whether a unit is an indefinite storage unit depends on the technical feasibility and economic reasonableness of removal of all wastes and waste residues prior to closure (Section 807.104).

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.601 Requirement to Obtain Financial Assurance

No person shall conduct a waste disposal operation or indefinite storage operation which requires a permit under Section 21(d) of the Act unless such person has provided financial assurance in accordance with this Subpart.

- a) The financial assurance requirement does not apply to the State of Illinois, its agencies and institutions, or

to any unit of local government; provided, however, that any other persons who conduct such a waste disposal operation on a site which may be owned or operated by such a government entity must provide financial assurance for closure and post-closure care of the site.

- b) Financial assurance is required of all sites which, on or after March 1, 1985, accept waste for disposal or for indefinite storage.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.602 Time for Submission of Financial Assurance

- a) For sites first receiving waste for disposal after March 1, 1985, the owner or operator must provide financial assurance before receipt of waste for disposal.
- b) For sites which are required to obtain financial assurance as of March 1, 1985, as provided in Section 807.601, financial assurance must be tendered to the Agency before March 1, 1985 in an amount equal to the cost estimate, which may be based on closure and post-closure care plans or on the formula of Section 807.624.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.603 Upgrading Financial Assurance

- a) The operator must maintain financial assurance equal to or greater than the current cost estimate at all times except as provided in this Section.
- b) The operator must increase the total amount of financial assurance so as to equal the current cost estimate within 90 days after any of the following:
- 1) An increase in the current cost estimate;
 - 2) A decrease in the value of a trust fund.
 - 3) A determination by the Agency that an operator no longer meets the gross revenue or financial test;
or,
 - 4) Notification by the operator that the operator intends to substitute alternate financial assurance for self-insurance.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.604 Release of Financial Institution

The Agency will agree to release a trustee, surety, insurer or

other financial institution when:

- a) An operator substitutes alternate financial assurance such that the total financial assurance for the site is equal to or greater than the current cost estimate without counting the amounts to be released; or,
- b) The Agency releases the operator from the requirements of this Subpart.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.605 Application of Proceeds and Appeal

- a) The Agency may sue in any court of competent jurisdiction to enforce its rights under financial instruments. The filing of an enforcement action before the Board is not a condition precedent except when this Subpart or the terms of the instrument so provide.
- b) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 107 and 104, the Board may order modifications in permits to change the type or amount of financial assurance pursuant to an enforcement action or a variance petition. Also, the Board may order a closure or post-closure care plan modified, and order proceeds from financial assurance applied to execution of a closure or post-closure care plan.
- c) The following Agency actions may be appealed as a permit denial to the Board pursuant to 35 Ill. Adm. Code 105 and Section 21.1(e) of the Act:
 - 1) Refusal to accept financial assurance tendered by the operator.
 - 2) Refusal to release the operator from the requirement to maintain financial assurance.
 - 3) Refusal to release excess funds from a trust.
 - 4) Refusal to approve a reduction in the penal sum of a bond.
 - 5) Refusal to approve a reduction in the amount of a letter of credit.
 - 6) Refusal to approve a reduction in the face amount of an insurance policy.
 - 7) Determination that an operator no longer meets the gross revenue test or financial test.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.606 Release of the Operator

- a) Within 60 days after receiving affidavits from the operator and a professional engineer that closure has been accomplished in accordance with the closure plan, the Agency will notify the operator in writing that it is no longer required by this Subpart to maintain financial assurance for closure of the particular site, unless the Agency has reason to believe that closure has not been in accordance with the closure plan.

- b) Within 60 days after receiving affidavits from the operator and a professional engineer that post-closure care has been completed in accordance with the post-closure care plan and the requirements this Part, the Agency will notify the operator in writing that it is no longer required to maintain financial assurance for post-closure care of the site, unless the Agency has reason to believe that continued post-closure care is required pursuant to the post-closure care plan and this Part.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.620 Current Cost Estimate

The current cost estimate equals:

- a) The current closure cost estimate, plus
- b) The current post-closure care cost estimate.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.621 Cost Estimate for Closure

- a) The operator must have a written estimate of the current cost of closing the site in accordance with the closure plan. The cost estimate shall be a condition of the permit.

- b) The operator must revise the closure cost estimate whenever a change in the closure plan increases the closure cost estimate.

- c) The closure cost estimate must be based on the steps necessary for the premature final closure of the site at the time during its intended operating life when the cost of closure will be greatest, or on the steps necessary for the final closure of the site at the end of its intended operating life, whichever is the most expensive.

d) Assumptions:

- 1) The closure cost estimate must be based on the assumption that the Agency will contract with a third party to implement the closure plan.
- 2) The closure cost estimate may not be reduced by allowance for salvage value of equipment or waste, or for resale value of land.

e) The closure cost estimate must, at a minimum, include the following elements, if required in the site permit for closure of the site:

- 1) The area which is to receive final cover;
- 2) The source of the cover material;
- 3) The cost of obtaining, moving and placing the cover material;
- 4) The cost of final grading of the cover material;
- 5) The cost of moving and placing topsoil on the final cover;
- 6) The cost of:
 - A) Fertilizing;
 - B) Seeding;
 - C) Mulching.
- 7) The cost of installation of gas control equipment;

f) This Section does not grant authority to the Agency to require the operator to perform any of the indicated activities; however, if the site permit requires a closure activity, the operator must include the cost in the cost estimate. Once the operator has completed an activity, the operator may file a permit application indicating that the activity has been completed, and zeroing that element of the cost estimate.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.622 Cost Estimate for Post-closure Care

- a) The operator of a disposal site must have a written estimate of the annual current cost of post-closure monitoring and maintenance of the site in accordance with the applicable post-closure care regulations of

this Part. The post-closure care cost estimate is calculated by multiplying the annual cost estimate by the number of years of post-closure care required by this Part. The post-closure care cost estimate shall be a condition of the permit.

b) Until the Agency has issued a certificate of closure for the site, the operator must revise the post-closure care cost estimate whenever a change in the post-closure care plan increases the cost estimate.

c) Assumptions:

1) The post-closure cost estimate must be based on the assumption that the Agency will contract with a third party to implement the post-closure care plan;

2) The post-closure cost estimate may not be reduced by allowance for salvage value of equipment or waste, or for resale value of land.

d) The post-closure care cost estimate must, at a minimum, include the following elements if required in the site permit for post-closure care of the site:

1) Number of years of post-closure care required.

2) Groundwater monitoring:

A) Number of monitoring points;

B) Parameters to be monitored;

C) Frequency of sampling;

D) Cost per parameter per sampling.

3) Cover stabilization:

A) Estimate of the area which is expected annually to require residual settlement or erosion control work;

B) Annual cost of residual settlement and erosion control work;

C) Annual cost of mowing.

e) This Section does not grant authority to the Agency to require the operator to perform any of the indicated activities; however, if the site permit requires a closure activity, the operator must include the cost in the cost estimate. Once the operator has completed an

activity, the operator may file a permit application indicating that the activity has been completed, and zeroing that element of the cost estimate.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.623 Biennial Revision of Cost Estimates

- a) The operator must revise the current cost estimate at least once every two years. The revised current cost estimate must be filed on or before the second anniversary of the filing or last revision of the current cost estimate.
- b) The operator must review the closure and post-closure care plans prior to filing a revised cost estimate in order to determine whether they are consistent with current operations and regulations. The operator must either certify that the plans are consistent, or must file an application reflecting new plans.
- c) The operator must prepare new closure and post-closure cost estimates reflecting current prices for the items included in the estimates. The operator must file revised estimates even if the operator determines that there are no changes in the prices.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.624 Interim Formula for Cost Estimate

- a) An operator may temporarily utilize the formula of this Section for preparing a cost estimate instead of preparing a cost estimate based on closure and post-closure care plans. No permit application filed after March 1, 1985 may utilize this formula. Each operator must file an application to modify the site permit to include closure and post-closure care plans and cost estimates by March 1, 1988.
- b) References to closure and post-closure care plans in financial assurance instruments shall be construed to refer to the closure and post-closure care requirements of this Part and the permit for the site.
- c) This formula may not be utilized in lieu of the plans and cost estimates required under 35 Ill. Adm. Code 724 and 725.
- d) The following abbreviations and symbols are used in the formula:
 - 1) AWR: Annual waste received at the site in cubic yards.
 - 2) AD: Average depth of the landfill in feet.

- 3) Y: Years expected to lapse between cessation of application of cover by the operator and implementation of site clean-up by the Agency. Y is assumed to be three years.
- 4) CPA: Cost per acre of placing final cover, grading, seeding and venting. CPA is assumed to be \$5000/acre.
- 5) A: Area requiring final cover in acres.
- 6) P: Fraction of final cover expected to require subsidence or erosion control each year. P is assumed to be 0.05.
- 7) M: Number of monitoring wells existing or required in the permit. M cannot be less than three.
- 8) CE: Cost estimate in dollars.

e) Area requiring final cover

- 1) A(1) is the total area which has received waste but which has not received final cover in accordance with Section 807.305(c) as of January 1, 1985.
- 2) A(2) is the total area which would require final cover after Y years of uncontrolled operation according to the following formula:

$$\underline{A(2)} = \frac{(Y)(AWR)}{3200(AD)} = \frac{3 AWR}{3200 AD}$$

- 3) A(3) = A(1) + A(2)
- 4) A(4) is the total permitted area which has not received final cover in accordance with Section 807.305(c) as of January 1, 1985
- 5) Area requiring final cover (A) is the smaller of A(3) or A(4)

f) Cost estimate (dollars)

$$\underline{CE = (CPA)(A) + 3((CPA)(P)(A) + 600(M))}$$

$$\underline{= 5750A + 1800M}$$

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.640 Mechanisms for Financial Assurance

The operator of a waste disposal site may utilize any of the following mechanisms to give financial assurance for closure and post-closure care:

- a) Trust Fund (Section 807.661);
- b) Surety Bond Guaranteeing Payment (Section 807.662);
- c) Surety Bond Guaranteeing Performance (Section 807.663);
- d) Letter of Credit (Section 807.664);
- e) Closure Insurance (Section 807.665); or,
- f) Self-insurance (Section 807.666).

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.641 Use of Multiple Financial Mechanisms

An operator may satisfy the requirements of this Subpart by establishing more than one financial mechanism per site. These mechanisms are limited to trust funds, surety bonds guaranteeing payment, letters of credit and insurance. The mechanisms must be as specified in Sections 807.661, 807.662, 807.664 and 807.665, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. The operator may use any or all of the mechanisms to provide for closure and post-closure care of the site.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.642 Use of a Financial Mechanism for Multiple Sites

An operator may use a financial assurance mechanism specified in this Subpart to meet the requirements of this Subpart for more than one site. Evidence of financial assurance submitted to the Agency must include a list showing, for each site, the name, address and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each site. The amount of funds available to the Agency must be sufficient to close and provide post-closure care for all of the operator's sites. In directing funds available through the mechanism for closure and post-closure care for any of the sites covered by the mechanism, the Agency may direct only the amount of funds designated for that site, unless the operator agrees to the use of additional funds available under the mechanism.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.643 Trust Fund for Unrelated Sites

Any person may establish a trust fund for the benefit of the Agency which may receive funds from more than one operator for closure of different sites. Such a trust fund shall operate like

the trust fund specified in Section 807.661, except as follows:

- a) The trustee shall maintain a separate account for each site and shall evaluate such annually as of the day of creation of the trust;
- b) The trustee shall annually notify each operator and the Agency of the evaluation of each operator's account;
- c) The trustee shall release excess funds as required from the account for each site;
- d) The trustee shall reimburse the operator or other person authorized to perform closure or post-closure care only from the account for that site.
- e) The Agency may direct the trustee to withhold payments only from the account for the site for which it has reason to believe the cost of closure and post-closure care will be significantly greater than the value of the account for that site.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.644 RCRA Financial Assurance

The operator is not required to give financial assurance pursuant to this Subpart if the operator demonstrates:

- a) That closure and post-closure care plans filed pursuant to 35 Ill. Adm. Code 724 or 725 will result in closure and post-closure care of the site in accordance with the requirements of this Part; and,
- b) That the operator has provided financial assurance adequate to provide for such closure and post-closure care pursuant to 35 Ill. Adm. Code 724 or 725.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.661 Trust Fund

- a) An operator may satisfy the requirements of this Subpart by establishing a trust fund which conforms to the requirements of this Section and submitting an original, signed duplicate of the trust agreement to the Agency.
- b) The trustee must be an entity which has the authority to act as a trustee and:
 - 1) Whose trust operations are regulated by the Illinois Commissioner of Banks and Trust Companies; or,
 - 2) Who complies with the Foreign Corporations as Fiduciaries Act, (Ill. Rev. Stat. 1983, ch. 17,

par. 2801 et seq.).

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

d) Payments into the trust:

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

2) The pay-in period is the number of years remaining until the site reaches the stage in its expected operating life at which the cost of premature closure would be the greatest, as indicated by its closure plan. Provided, however, that the pay-in period shall not be less than three years nor greater than ten years.

3) Annual payments are determined by the following formula:

$$\text{Annual payment} = (CE - CV) / Y$$

where:

CE = Current cost estimate

CV = Current value of the trust fund

Y = Number of years remaining in the pay in period.

4) The operator must make the first annual payment prior to the initial receipt of waste for disposal, or prior to March 1, 1985 for sites receiving waste for disposal prior to that date. The operator must also, prior to such initial receipt of waste, submit to the Agency a receipt from the trustee for the first annual payment.

5) Subsequent annual payments must be made no later than 30 days after each anniversary of the first payment.

6) The operator may accelerate payments into the trust fund, or may deposit the full amount of the current cost estimate at the time the fund is established.

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

f) Release of excess funds:

1) If the value of the financial assurance is greater

than the total amount of the current cost estimate, the operator may submit a written request to the Agency for release from the trust fund of the amount in excess of the current cost estimate.

2) Within 60 days after receiving a request from the operator for release of funds, the Agency will instruct the trustee to release to the operator such funds as the Agency specifies in writing.

g) Reimbursement for closure and post-closure care expenses:

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

2) Within 60 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure or post-closure care plan and if so, it will instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing.

3) If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the value of the trust fund, it may withhold reimbursement of such amounts as it deems prudent until it determines that the operator is no longer required to maintain financial assurance for closure and post-closure care.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.662 Surety Bond Guaranteeing Payment

a) An operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency.

b) The surety company issuing the bond must be licensed by the Illinois Department of Insurance.

c) The surety bond must be on forms specified in Appendix A.

d) Any payments made under the bond will be placed in the landfill closure and post-closure fund within the State Treasury.

e) Conditions:

- 1) The bond must guarantee that the operator will provide closure and post-closure care in accordance with the closure and post-closure care plans in the permit.
 - 2) The surety will become liable on the bond obligation when, during the term of the bond, the operator fails to perform as guaranteed by the bond. The operator fails to perform when the operator:
 - A) Abandons the site;
 - B) Is adjudicated bankrupt;
 - C) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; or,
 - D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans.
- f) Penal sum:
- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
 - 2) The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.
- g) Term:
- 1) The bond shall be issued for a term of at least four years and shall not be cancelable during that term.
 - 2) If the operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.
- h) Cure of default and refunds:
- 1) The Agency shall release the surety if, after the surety becomes liable on the bond, the operator or another person provides financial assurance for

closure and post-closure care of the site, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and post-closure care as required by this Part.

- 2) After closure and post-closure care have been completed in accordance with the plans and requirements of this Part, the Agency shall refund any unspent money which was paid to the Agency by the surety.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.663 Surety Bond Guaranteeing Performance

- a) An operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency.
- b) The surety company issuing the bond must be licensed by the Illinois Department of Insurance.
- c) The surety bond must be on forms specified in Appendix A.
- d) Any payments made under the bond will be placed in the landfill closure and post-closure fund within the State Treasury.
- e) Conditions:
- 1) The bond must guarantee that the operator will provide closure and post-closure care in accordance with the closure and post-closure care plans in the permit. The surety shall have the option of providing closure and post-closure care in accordance with the closure and post-closure care plans, or of paying the penal sum.
- 2) The surety will become liable on the bond obligation when, during the term of the bond, the operator fails to perform as guaranteed by the bond. The operator fails to perform when the operator:
- A) Abandons the site;
- B) Is adjudicated bankrupt;
- C) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction;
or,

D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans.

f) Penal sum:

1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.

2) The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.

g) Term:

1) The bond shall be issued for a term of at least four years and shall not be cancelable during that term.

2) If the operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond. During such extension the bond will not serve as financial assurance satisfying the requirements of this Part, and will not excuse the operator from the duty to provide substitute financial assurance.

h) Cure of default and refunds:

1) The Agency shall release the surety if, after the surety becomes liable on the bond, the operator or another person provides financial assurance for closure and post-closure care of the site, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and post-closure care as required by this Part.

2) After closure and post-closure care have been completed in accordance with the plans and requirements of this Part, the Agency shall refund any unspent money which was paid to the Agency by the surety.

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

Section 807.664 Letter of Credit

a) An operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit.

which conforms to the requirements of this Section and submitting the letter to the Agency.

b) The issuing institution must be an entity which has the authority to issue letters of credit and:

1) Whose letter-of-credit operations are regulated by the Illinois Commissioner of Banks and Trust Companies; or,

2) Whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

c) Forms:

1) The letter of credit must be on forms specified in Appendix A.

2) The letter of credit must be accompanied by a letter from the operator referring to the letter of credit by number, issuing institution and date and providing the following information: name and address of the site and the amount of funds assured for closure of the site by the letter of credit.

d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the landfill closure and post-closure fund within the State Treasury.

e) Conditions on which the Agency may draw on the letter of credit:

1) The Agency may draw on the letter of credit if the operator fails to perform closure or post-closure care in accordance with the closure and post-closure care plans.

2) The Agency may draw on the letter of credit when the operator:

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure or post-closure care of the site when ordered to do so by the Board or a court of competent jurisdiction; or

D) Notifies the Agency that it has initiated closure, or initiates closure, but fails to provide closure and post-closure care in accordance with the closure and post-closure care plans.

f) Amount:

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

g) Term:

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

h) Cure of default and refunds:

- 1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the operator or another person provides financial assurance for closure and post-closure care of the site, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and post-closure care as required by this Part.
- 2) After closure and post-closure care have been completed in accordance with the plans and requirements of this Part, the Agency shall refund any unspent money which was paid to the Agency by the financial institution.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.665 Closure Insurance

- a) An operator may satisfy the requirements of this Subpart by obtaining closure and post-closure care insurance which conforms to the requirements of this Section and submitting an executed duplicate original of such insurance policy to the Agency.
- b) The insurer must be licensed to transact the business of insurance by the Illinois Department of Insurance.
- c) The policy must be on forms approved by the Illinois Department of Insurance.

d) Face amount:

- 1) The closure and post-closure care insurance policy must be issued for a face amount at least equal to the current cost estimate. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- 2) The Agency shall approve a reduction in the amount of the policy whenever the current cost estimate decreases.

e) The closure and post-closure care insurance policy must guarantee that funds will be available to close the site and to provide post-closure care thereafter. The policy must also guarantee that, once closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Agency to such party or parties as the Agency specifies. The insurer will be liable when:

- 1) The operator abandons the site;
- 2) The operator is adjudicated bankrupt;
- 3) The Board or a court of competent jurisdiction orders the site closed;
- 4) The operator notifies the Agency that it is initiating closure; or
- 5) Any person initiates closure with approval of the Agency.

f) After initiating closure, an operator or any other person authorized to perform closure or post-closure care may request reimbursement for closure and post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for closure or post-closure care activities, the Agency will determine whether the expenditures are in accordance with the closure plan or post-closure care plan, and if so, will instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing. If the Agency has reason to believe that the cost of closure and post-closure care will be significantly greater than the face amount of the policy, it may withhold reimbursement of such amounts as it deems prudent until it determines that the operator is no longer required to maintain financial assurance.

g) Cancellation:

- 1) The operator shall maintain the policy in full force and effect until the Agency consents to termination of the policy.
 - 2) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the operator and the Agency. Cancellation, termination or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Agency and the operator, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration the premium due is paid.
- h) Each policy must contain a provision allowing assignment of the policy to a successor operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(Source: Added at 9 Ill. Reg. _____, effective _____)

Section 807.666 Self-insurance for Non-commercial Sites

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

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

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

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

"Generally accepted accounting principles" means Accounting Standards, Financial Accounting Standards Board, June, 1984, which is hereby incorporated by reference. This incorporation includes no later amendments or editions.

"Gross Revenue" means total receipts less returns and allowances.

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

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

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

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

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

b) An operator may satisfy the financial assurance requirements of this Part by providing the following:

- 1) Bond without surety promising to pay the cost estimate (paragraph (c)).
- 2) Proof that the operator meets the gross revenue test (paragraph (d)).
- 3) Proof that the operator meets the financial test (paragraph (e)).

c) Bond without surety. An operator utilizing self-insurance must provide a bond without surety on forms provided in Appendix A. The operator must promise to pay the current cost estimate to the Agency unless the operator provides closure and post-closure care in accordance with the closure and post-closure care plans.

d) Gross revenue test. The operator must demonstrate that less than one-half of its gross revenues are derived from waste disposal operations.

e) Financial test:

1) To pass the financial test the operator must meet the criteria of either paragraph (e)(1)(A) or (e)(1)(B):

A) The operator must have:

- i) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5; and
- ii) Net working capital and tangible net worth each at least six times the current cost estimate; and
- iii) Tangible net worth of at least \$10 million; and
- iv) Assets in the United States amounting to at least 90 percent of the operator's total assets and at least six times the current cost estimate.

B) The operator must have:

- i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii) Tangible net worth at least six times the current cost estimate; and
- iii) Tangible net worth of at least \$10 million; and
- iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.

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

A) A letter signed by the operator's chief financial officer and worded as specified in Appendix A; and

- B) A copy of the independent certified public accountant's report on examination of the operator's financial statements for the latest completed fiscal year; and
- C) A special report from the operator's independent certified public accountant to the operator stating that:
 - i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and
 - ii) In connection with that procedure, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

f) Updated information:

- 1) After the initial submission of items specified in paragraphs (d) and (e), the operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year.
- 2) If the operator no longer meets the requirements of paragraphs (d) and (e), the operator must send notice to the Agency of intent to establish alternate financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the operator no longer meets the requirements.

g) Qualified opinions. If the opinion required in paragraphs (e)(2)(B) and (e)(2)(C) includes an adverse opinion or a disclaimer of opinion, the Agency shall disallow the use of self-insurance. If the opinion includes other qualifications, the Agency shall disallow the use of self-insurance if:

- 1) The qualifications relate to the numbers which are used in the gross revenue test or the financial test; and,
- 2) In light of the qualifications, the operator has failed to demonstrate that it meets the gross revenue test or financial test.

h) Parent corporation. An operator may satisfy the financial assurance requirements of this Part by demonstrating that a corporation which owns an interest in the operator meets the gross revenue and financial tests. The operator must also provide a bond with the parent as surety (Appendix A).

(Source: Added at 9 Ill. Reg. _____, effective _____)

APPENDIX A
ILLUSTRATION A

TRUST AGREEMENT

Trust Fund Number

Trust Agreement, the "Agreement," entered into as of the
day of _____, by and between
_____, a _____,
the "Grantor," and _____,
_____, the "Trustee."

Whereas, Section 21.1 of the Environmental Protection Act, "Act",
prohibits any person from conducting any waste disposal operation
unless such person has posted with the Illinois Environmental
Protection Agency, "IEPA", a performance bond or other security
for the purpose of insuring closure of the site and post-closure
care in accordance with the Act and Illinois Pollution Control
Board, "IPCB", rules.

Whereas, the IPCB has established certain regulations applicable
to the Grantor, requiring that an operator of a waste disposal
site provide assurance that funds will be available when needed
for closure and/or post-closure care of the site.

Whereas, the Grantor has elected to establish a trust to provide
all or part of such financial assurance for the sites identified
in this agreement.

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

Whereas, Trustee is an entity which has authority to act as a
trustee and whose trust operations are regulated by the Illinois
Commissioner of Banks & Trust Companies or who complies with the
Foreign Corporations as Fiduciaries Act (Ill. Rev. Stat. 1983,
ch. 17, par. 2801, et seq.) (Line through any condition which
does not apply.)

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

Section 1. Definitions. As used in this Agreement:

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

Section 2. Identification of Sites and Cost Estimates. This
Agreement pertains to the sites and cost estimates identified on

attached Schedule A (on Schedule A, list the name and address and initial cost estimate of each site for which financial assurance is demonstrated by this agreement).

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

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the IEPA shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the sites covered by this agreement. The Trustee shall reimburse the Grantor or other persons as specified by the IEPA from the Fund for closure and post-closure expenditures in such amounts as the IEPA shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the IEPA specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund.

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

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

- a) Securities or other obligations of the Grantor, or any other owner or operator of the site, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15

U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal government or the State of Illinois;

- b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by the Federal Deposit Insurance Corporation or Federal Savings & Loan Insurance Corporation.
- c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

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

- a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

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

- a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;
- b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this agreement;
- c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of

the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.

- d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by the Federal Deposit Insurance Corporation or Federal Savings & Loan Insurance Corporation; and
- e) To compromise or otherwise adjust all claims in favor of or against the Fund.

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

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

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

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

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

the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the IEPA and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

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

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the IEPA, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

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

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

Section 18. Immunity and Indemnification. The Trustee shall

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

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

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

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

Attest: Signature of Grantor

Typed Name

Title

Seal

Attest: Signature of Trustee

Typed Name

Title

Seal

(Source: Added at 9 Ill. Reg. _____, effective _____)

APPENDIX A
ILLUSTRATION C

FORFEITURE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites: _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: _____ \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond _____ \$ _____

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

Total penal sum of bond: _____ \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal provides closure and post-closure care for each site in accordance with the closure and post-closure care plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under the Environmental Protection Act, Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021(d) to have a permit to conduct a waste disposal operation;

Whereas the Principal is required, under Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021.1, to provide financial assurance for closure and post-closure care; and

Whereas the Surety is licensed by the Illinois Department of Insurance;

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

The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Principal fails to provide closure and post-closure care for any site in accordance with the closure and post-closure care plans for that site as guaranteed by this bond. The Principal fails to so provide when the Principal:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; or
- d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Principal has failed to so provide closure and post-closure care. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-closure Fund. The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ day of _____, provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA.

In Witness Whereof, the Principal and Surety have executed this Forfeiture Bond and have affixed their seals on the date set forth above.

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

Principal

Corporate Surety

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

Bond premium: \$

(Source: Added at 9 Ill. Reg. _____, effective _____)

APPENDIX A
ILLUSTRATION D
PERFORMANCE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites: _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond \$ _____

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal or Surety provides closure and post-closure care for each site in accordance with the closure and post-closure care plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under the Environmental Protection Act, Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021(d) to have a permit to conduct a waste disposal operation;

Whereas the Principal is required, under Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021.1, to provide financial assurance for closure and post-closure care; and

Whereas the Surety is licensed by the Illinois Department of Insurance;

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

The Surety shall pay the penal sum to the IEPA or provide closure and post-closure care in accordance with the closure and post-closure care plans for the site if, during the term of the bond, the Principal fails to provide closure and post-closure care for any site in accordance with the closure and post-closure care plans for that site as guaranteed by this bond. The Principal fails to so provide when the Principal:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; or
- d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans.

The Surety shall pay the penal sum of the bond to the IEPA or notify the IEPA that it intends to provide closure and post-closure care in accordance with the closure and post-closure care plans for the site within 30 days after the IEPA mails notice to the Surety that the Principal has failed to so provide closure and post-closure care. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-closure Fund.

If the Surety notifies the Agency that it intends to provide closure and post-closure care, then the Surety must initiate closure and post-closure care within 60 days after the IEPA mailed notice to the Surety that the Principal failed to provide closure and post-closure care. The Surety must complete closure and post-closure care in accordance with the closure and post-closure care plans, or pay the penal sum.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment

or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ day of _____, _____; provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA.

In Witness Whereof, the Principal and Surety have executed this Forfeiture Bond and have affixed their seals on the date set forth above.

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

Principal

Corporate Surety

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

Bond premium: \$ _____

(Source: Added at 9 Ill. Reg. _____, effective _____)

APPENDIX A
ILLUSTRATION E

IRREVOCABLE STANDBY LETTER OF CREDIT

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

Dear Sir or Madam:

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

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of _____ up to the aggregate amount of _____ U. S. dollars (\$ _____), available upon presentation of

1. your sight draft, bearing reference to this letter of credit No. _____; and,
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act, Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1001 et seq. and 35 Ill. Adm. Code 807.664(e).

This letter of credit is effective as of _____ and shall expire on _____; but, such expiration date shall be automatically extended for one period of twelve months starting with the expiration date if the operator fails to substitute alternate financial assurance prior to the expiration of this letter of credit and you notify us of such failure within 30 days after the above expiration date.

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

This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. Stat. 1983, ch. 26, pars. 1-101 et seq.).

Signature

Typed Name

Title

Date

Name and address of issuing institution

This credit is subject to

(Source: Added at 9 Ill. Reg. _____, effective _____)

APPENDIX A
ILLUSTRATION F

CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-CLOSURE CARE

Name and Address of Insurer ("Insurer"):

Name and Address of Insured ("Insured"):

Sites Covered:

Name

Address

City

Amount insured for this site: \$ _____

Name

Address

City

Amount insured for this site: \$ _____

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

Face Amount

Policy Number

Effective Date

The Insurer hereby certifies that it is licensed to transact the business of insurance by the Illinois Department of Insurance.

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure and post-closure care for the sites identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 35 Ill. Adm. Code 807.665, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed

that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Name (Authorized signature for Insurer)

Typed Name

Title

Date

(Source: Added at 9 Ill. Reg. _____, effective _____)

APPENDIX A
ILLUSTRATION G

OPERATOR'S BOND WITHOUT SURETY

Date bond executed: _____

Effective date: _____

Operator: _____

Operator's address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

The operator promises to pay the penal sum to the Illinois Environmental Protection Agency unless the Operator provides closure and post-closure care of the site in accordance with the closure and post-closure care plans for the site.

Operator

Signature

Typed Name

Title

Date

Corporate seal

(Source: Added at 9 Ill. Reg. _____, effective _____)

APPENDIX A
ILLUSTRATION H

OPERATOR'S BOND WITH PARENT SURETY

Date bond executed: _____

Effective Date: _____

Surety: _____

Surety's address: _____

Operator: _____

Operator's address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

The Operator and Surety promise to pay the above penal sum to the Illinois Environmental Protection Agency ("IEPA") unless the Operator provides closure and post-closure care of the site in accordance with the closure and post-closure care plans for the site. To the payment of this obligation the Operator and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Operator is required under the Environmental Protection Act, Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021(d) to have a permit to conduct a waste disposal operation; and

Whereas the Operator is required, under Ill. Rev. Stat. 1983, ch. 111 1/2, par. 1021.1, to provide financial assurance for closure and post-closure care; and

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

Whereas the Surety is a corporation which owns an interest in the Operator;

The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Operator fails to provide closure and post-closure care for any site in accordance with the closure and post-closure care plans for that site as guaranteed by this bond. The Operator fails to so provide when the Operator:

- a) Abandons the site;
- b) Is adjudicated bankrupt;

- c) Fails to initiate closure of the site or post-closure care when ordered to do so by the Board or a court of competent jurisdiction; or
- d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide post-closure care in accordance with the closure and post-closure care plans.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Operator has failed to so provide closure and post-closure care. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-closure Fund.

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

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

Operator

Surety

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Title

Corporate seal

Corporate seal

(Source: Added at 9 Ill. Reg. _____, effective _____)

APPENDIX A
ILLUSTRATION I

LETTER FROM CHIEF FINANCIAL OFFICER

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

Dear Sir or Madam:

I am the chief financial officer of _____ .

This letter is in support of this firm's use of the gross revenue test and financial test to demonstrate financial assurance pursuant to 35 Ill. Adm. Code 807.666.

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

Operator: _____

Name: _____

Address: _____

City: _____

Current cost estimate: \$ _____

Operator: _____

Name: _____

Address: _____

City: _____

Current cost estimate: \$ _____

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

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

Gross Revenue Test

1. Gross revenue of the firm \$ _____

2. Gross revenue from waste disposal operations \$ _____

3. Line 2 divided by line 3 _____

Financial Test
Alternative I

- 1. Sum of current cost estimates (total of all cost estimates shown in paragraphs above) \$ _____
- 2. Total liabilities (if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$ _____
- 3. Tangible net worth \$ _____
- 4. Net worth \$ _____
- 5. Current assets \$ _____
- 6. Current liabilities \$ _____
- 7. Net working capital (line 5 minus line 6) \$ _____
- 8. The sum of net income plus depreciation, depletion, and amortization \$ _____
- 9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____

Yes No

- 10. Is line 3 at least \$10 million? _____
- 11. Is line 3 at least 6 times line 1? _____
- 12. Is line 7 at least 6 times line 1? _____
- 13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14. _____
- 14. Is line 9 at least 6 times line 1? _____
- 15. Is line 2 divided by line 4 less than 2.0? _____
- 16. Is line 8 divided by line 2 greater than 0.1? _____
- 17. Is line 5 divided by line 6 greater than 1.5? _____

Signature

Typed Name

Title

Date

Financial Test
Alternative II

- 1. Sum of current cost estimates (total of all cost estimates shown in paragraphs above) \$ _____
 - 2. Current bond rating of most recent issuance of this firm and name of rating service _____
 - 3. Date of issuance of bond _____
 - 4. Date of maturity of bond _____
 - 5. Tangible net worth (if any portion of the closure and post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) \$ _____
 - 6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____
- | | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| 7. <u>Is line 5 at least \$10 million?</u> | _____ | _____ |
| 8. <u>Is line 5 at least 6 times line 1?</u> | _____ | _____ |
| 9. <u>Are at least 90% of firm's assets located in the U.S.? If not complete line 10.</u> | _____ | _____ |
| 10. <u>Is line 6 at least 6 times line 1?</u> | _____ | _____ |

Signature

Typed name

Title

Date

(Source: Added at 9 Ill. Reg. _____, effective _____)

Appendix BA Old Rule Numbers Referenced

The following table is provided to aid in referencing old Board rule numbers to section numbers pursuant to codification.

Chapter 7: Solid Waste 35 Ill. Adm. Code 807

Rule 101	Section 807.101
Rule 102	Section 807.102
Rule 103	Section 807.103
Rule 104	Section 807.104
Rule 201	Section 807.201
Rule 202	Section 807.202
Rule 203	Section 807.203
Rule 204	Section 807.204
Rule 205	Section 807.205
Rule 206	Section 807.206
Rule 207	Section 807.207
Rule 208	Section 807.208
Rule 209	Section 807.209
Rule 210	Section 807.210
Rule 211	Section 807.211
Rule 212	Section 807.212
Rule 213	Section 807.213
Rule 301	Section 807.301
Rule 302	Section 807.302
Rule 303	Section 807.303
Rule 304	Section 807.304
Rule 305	Section 807.305
Rule 306	Section 807.306
Rule 307	Section 807.307
Rule 308	Section 807.308
Rule 309	Section 807.309
Rule 310	Section 807.310
Rule 311	Section 807.311
Rule 312	Section 807.312
Rule 313	Section 807.313
Rule 314	Section 807.314
Rule 315	Section 807.315
Rule 316	Section 807.316
Rule 317	Section 807.317
Rule 318	Section 807.318

(Source: Appendix B renumbered from Appendix A at 9 Ill. Reg. _____, effective _____)