

ILLINOIS POLLUTION CONTROL BOARD
October 10, 1985

IN THE MATTER OF:)
)
FINANCIAL ASSURANCE FOR CLOSURE) R84-22D
AND POST-CLOSURE CARE OF WASTE)
DISPOSAL SITES [REVISION OF)
R84-22(B) AND (C) REGULATIONS])

Proposed Rule, First Notice.

ORDER OF THE BOARD (by J. Anderson):

On April 18, 1985 the Board opened dockets R84-22(C) and (D). On September 5, 1985, following completion of economic impact hearings, the Board adopted for second notice as final rules the temporary rules adopted April 4, 1985 in R84-22(B). In this Order, the Board is proposing to amend these regulations.

The proposed amendments are initiated in response to comments received from the Joint Committee on Administrative Rules staff, in connection with R84-22B (Orders of April 4 and April 18, 1985). The public is invited to submit proposals for additional changes, which the Board will consider consolidating with this proposal.

The Clerk is directed to cause first notice publication in the Illinois Register of the following proposed changes. Striking and underlining refer to the rules as adopted in the Board's Order of April 4, 1985.

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

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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 July 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. 6722, effective April 29, 1985, amended in R84-22C at 9 Ill. Reg. , effective ; amended in R84-22D at 10 Ill. Reg. , effective .

NOTE: Capitalization is used to indicate that the language quotes or paraphrases a statute.

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."

"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".

"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.

"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; it is not indefinite storage. As used in this definition, "high costs" means that the cost of removing wastes or waste residues from the unit would exceed the cost of closing the unit as a landfill, or that the costs of removal would exceed the foreseeable profits from operation of the unit which the operator could accumulate to provide a fund for removal. As used in this definition, "technical difficulties" means that no method has been shown to be successful in removing similar wastes and residues from a similar storage unit.

"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. For purposes of permits issued pursuant to this Part, the Agency may specify conditions under which a solid waste management unit may be operated without causing a modification as herein defined; the process by which the conditions of a permit are changed.

"Non-hazardous special waste" is a "special waste" which is not a "hazardous waste".

"Operator" means a person who conducts a waste treatment, waste storage or waste disposal operation.

"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.

"Revised cost estimate" is a type of permit modification application allowed under Section 807.214.

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

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

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

"Solid waste" means waste.

"Solid waste management" means "waste management".

"Special waste" is as defined in 35 Ill. Adm. Code 809.103.

"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.A. 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.

"Wastestream permit" is an authorization to the operator to accept a non-hazardous special waste or a hazardous waste. The wastestream permit is often issued as a separate document from the other site permit(s), pursuant to a wastestream permit application.

"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 is being disposed.

(Source: Amended at 10 Ill. Reg. _____, effective _____)

SUBPART B: SOLID WASTE PERMITS

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 17 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.
 - 8) A requirement that the operator accept non-hazardous special waste or hazardous waste only as authorized by a wastestream permit.
- d) No person shall cause or allow any physical change in a waste management unit or any change in the method of operation of such unit unless the change is authorized by a permit modification.

(Source: Amended at 10 Ill. Reg. _____, effective _____)

Section 807.209 Permit Revision Modification

- a) Development, operating, experimental and wastestream permits may be modified in a subsequent permit issued by the Agency.
- b) After giving the operator the opportunity to file an application to modify a permit, the Agency shall revise modify any permit issued by it to make the permit compatible with any relevant new regulations adopted by the Board.
- c) 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 10 Ill. Reg. _____, effective _____)

Section 807.210 Supplemental Wastestream Permits

- a) No person shall cause or allow modification of any solid waste management site, or accept any type of waste except under conditions specified in a permit issued by the Agency. Development, operating and experimental permits may be modified by a supplemental permit issued by the Agency to allow such modifications. non-hazardous special waste or hazardous waste unless acceptance of the waste is allowed by a wastestream permit.
- b) The Agency may issue a wastestream permit in the form of conditions to an operating permit, or as a separate document.
- c) All wastestream permits shall remain valid until revoked, or until the site is completed or closed.

(Source: Amended at 10 Ill. Reg. _____, effective _____)

SUBPART C: SANITARY LANDFILLS

807.310 Special Wastes

- a) Hot Waste - except in an emergency, no person shall cause or allow the deposit at a sanitary landfill site of burning material.. When such material is accepted, it shall be deposited at a specific location at the site designated by permit for such purpose, and the fire shall be immediately extinguished.
- b) Hazardous, and liquid and non-hazardous special wastes - hazardous wastes or liquid wastes and sludges may be accepted at a sanitary landfill only if authorized by wastestream permit issued pursuant to 35 Ill. Adm. Code 807.210, and accompanied by a manifest pursuant to 35 Ill. Adm. Code 724, 725 or 809.

(Source: Amended at 10 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.
- d) 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 or to comply with any other requirements in this subpart, except as noted in this paragraph. However, closure must be effected in accordance with Section 807.502 and in accordance with any more specific requirements, including the requirements for sanitary landfills contained in Subpart C.

(Source: Amended at 10 Ill. Reg. _____, effective _____)

Section 807.502 Closure Performance Standard

- a) This section specifies the standard which is to be met in closure of a site. Section 807.503 requires the operator to prepare a plan which must meet this standard. Pursuant to Section 39(a) of the Act, the Agency shall either approve the plan through the permit issuance process, or give specific, detailed statements to the operator as to the reasons the plan was not approved.
- b) 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 1) Minimizes the need for further maintenance; and
 - b 2) 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: Amended at 10 Ill. Reg. _____, effective _____)

Section 807.504 Amendment Modification of Closure Plan

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

- a) ~~Modification~~ Change of operating plans or site design affecting the closure other than ~~modifications~~ changes authorized in the permit; or
- b) ~~Modification~~ Change of the operations of the site which affect the closure of the site or any portion of the site, other than ~~modifications~~ changes 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: Amended at 10 Ill. Reg. _____, effective _____)

Section 807.505 Notice of Closure and Final Amendment Modification of 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: Amended at 10 Ill. Reg. _____, effective _____)

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

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. withhold payment pursuant to Section 807.645.

(Source: Amended at 10 Ill. Reg. _____, effective _____).

Section 807.645 Withholding of Payments

- a) The Agency shall provide payments from a trust or insurance policy unless it determines that one of the following conditions exists, in which case it shall approve payments only in accordance with paragraph (b):
 - 1) The actual cost of the portion of the work which has been completed exceeds the estimated cost of that portion determined from the schedules and cost estimates of Sections 807.503, 807.621 and 807.622; or,
 - 2) The operator is required to file an application to modify the closure or post-closure care plans; or,
 - 3) The work is not in accordance with the closure or post-closure care plans, or with any contract between the operator and the person requesting payment.
- b)
 - 1) The Agency shall approve payments to persons with whom it has a contract in accordance with the terms of the contract. For purposes of this paragraph, the permit and conditions are not a "contract" between the operator and the Agency.
 - 2) The Agency shall approve payments to persons with whom it has no contract, and shall contract with

persons to provide closure and post-closure care in accordance with this subparagraph.

A. The Agency shall approve payments and contract in such a manner as to bring about the completion of closure and initiation of post-closure care as quickly as possible. Toward this end the Agency shall give priority in the following order to:

i) Contracting for work which has not been done;

ii) Payment, or partial payment, to persons, other than the operator, who have done work contributing to closure or post-closure care of the site, but who do not have a contract with the Agency;

iii) Payment to the operator.

B. If partial payments are made pursuant to subparagraph (A) (ii), the payments shall be in proportion to the value of the work done contributing to closure or post-closure care of the site, reduced by the same percentage for all claimants.

(Source: Added at 10 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 subject to Section 807.645.
 - 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: Amended at 10 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.

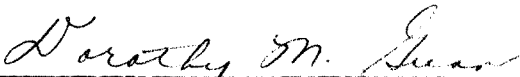
- 2) The Agency shall approve a reduction in the amount of the policy whenever the current cost estimate decreases.
- e) The closure and post-closure care insurance policy must guarantee that funds will be available to close the site and to provide post-closure care thereafter. The policy must also guarantee 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 shall 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. subject to Section 807.645.
- 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: Amended at 10 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10th day of October, 1985, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board