

ILLINOIS POLLUTION CONTROL BOARD
July 19, 1984

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

PROPOSED RULE. FIRST NOTICE

ORDER OF THE BOARD (by J. Anderson):

On June 8, 1984 the Board opened this Docket for the purpose of promulgating regulations implementing Section 21.1 of the Act, which was adopted in P.A. 83-775, effective September 24, 1983. Section 21.1(a) prohibits waste disposal operations after March 1, 1985 without 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. Section 21(b) requires the Board to adopt by January 1, 1985 rules which specify the type and amount of the bonds or other securities.


The Board hereby proposes to amend 35 Ill. Adm. Code 807 to implement the bond requirement. The proposal has four basic aspects:

1. The definitions and permit requirement are to be amended to reflect the terminology of §21(d) of the Act, specifically to define "disposal", and to be consistent with the terminology used in the hazardous waste rules.
2. The prohibition on operating a disposal site without a bond is stated.
3. All sites are required to prepare a closure plan. This will allow a determination as to whether they are disposal sites, and will form the basis of a cost estimate to set the amount of any financial assurance.
4. Disposal sites are required to make a cost estimate for closure and post-closure care, and to provide financial assurance in that amount. This may take the form of a trust fund, bond or insurance policy, or some combination.

The proposal will be published for first notice in the Illinois Register. Public hearings will be conducted on the proposal.

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 19th day of July, 1984 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER h: 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; amended at 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.

"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 ~~facility-within-the-meaning-of-these-terms-used-in-Section-39-of-the-Act-~~ 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.

"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.

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

"Hazardous waste" means-solid-waste-with-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. is as defined in 35 Ill. Adm. Code 721.

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

"Operator" means a person who owns, leases or manages a solid waste management ~~facility~~ site.

"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 ~~garbage-or-other-discarded-materials~~ waste.

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

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

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

"Solid waste" means ~~refuse~~ waste.

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

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

"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 (68 Stat. 921) 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 or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

"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 refuse waste is being disposed.

SUBPART B: SOLID WASTE PERMITS

Section 807.201 Development Permits

~~Subject to such exemption as expressly provided in Section 21(e) of the Environmental Protection Act as to the requirement of obtaining a permit, no person shall cause or allow the development of any new solid waste management site or cause or allow the modification of an existing solid waste management site without a development permit issued by the Agency of any site required to have an operating permit pursuant to Section 21(d) of the Act or Section 807.202.~~

(Source: Amended at 8 Ill. Reg. _____, effective _____.)

Section 807.202 Operating Permits; Prohibitions

a) ~~New Solid Waste Management Sites.~~

~~Subject to such exemption as expressly provided in Section 21(e) of the Environmental Protection Act as to the requirement of obtaining a permit, no person shall cause or allow the use or operation of any solid waste management site for which a Development Permit is required under Section 807.201 without an Operating Permit issued by the Agency, except for such testing operations as may be authorized by the Development Permit.~~

b) Existing Solid Waste Management Sites.

1) ~~Subject to such exemption as expressly provided in Section 21(e) of the Environmental Protection Act as to the requirement of obtaining a permit, no person shall cause or allow the use or operation of any existing solid waste management site without an Operating Permit issued by the Agency not less than one year after the effective date of these Regulations.~~

2) ~~All applications for Operating Permits shall be submitted to the Agency at least 90 days prior to the date on which such permit is required, however, the Agency may waive such provision when appropriate.~~

3) ~~The Agency may, if necessary to prevent an unmanageable workload, extend the date by which Operating Permits are required for a~~

~~period-not-to-exceed-180-days.--The-Agency shall-notify-the-persons-affected-and-the Board,-in-writing,-of-such-extension-at-least ninety-days-in-advance-of-the-date-set-ferth in-Section-202(b)(1)-.~~

a) No person shall conduct any waste-storage, waste-treatment or waste disposal operation:

- 1) Without a permit granted by the Agency; or,
- 2) In violation of any conditions imposed by such permit.

b) On-site permit exemption: no permit shall be required pursuant to paragraph (a)(1) for any person conducting a waste-storage, waste-treatment or waste-disposal operation for wastes generated by such person's own activities which are stored, treated or disposed within the site where such wastes are generated;

c) After final authorization of the RCRA hazardous waste permit program of 35 Ill. Adm. Code 702 and 703, the owner or operator of a hazardous waste management facility for which an actual RCRA permit has been issued must obtain a permit pursuant to this Section only for treatment, storage and disposal units which accept non-hazardous waste. The on-site permit exemption of paragraph (b) continues to apply.

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

- 1) This paragraph does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government.
- 2) This paragraph is applicable on or after March 1, 1985.

e)e) Duration of Operating Permits

All operating permits shall remain valid until the site is completed or closed, or until revoked, as provided herein.

(Source: Amended at 8 Ill. Reg. _____, effective _____.)

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 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) ~~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.~~ All applications shall include a closure plan and a post-closure care plan showing how the operator will close each unit and provide post-closure care in accordance with all applicable regulations.
- k) Applications shall include financial assurance when required pursuant to Subpart F.
- k)1) 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 facility is located and the clerk of each municipality any portion of which is within 3 miles of the facility.

(Source: Amended at 8 Ill. Reg. _____, effective _____.)

Section 807.206 Permit Conditions

- a) 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 shall include the following conditions:
- 1) A closure plan;
 - 2) A post-closure care plan if required;
 - 3) A requirement that execution of the closure plan commence within 90 days after the unit receives its final volume of waste;
 - 4) A requirement that any application to modify a closure plan be filed at least 180 days prior to receipt of the final volume of waste;
 - 5) 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;
 - 6) A requirement that the operator update cost estimates for closure and post-closure care annually in accordance with Subpart E.

(Source: Amended at 8 Ill. Reg. _____, effective _____.)

Section 807.207 Standards for Issuance

- a) The Agency shall ~~not grant any permit, except an Experimental Permit under Section 807.203 unless~~ issue a permit if the applicant submits adequate proof that the solid waste management site:
- a1) will be developed, modified or operated so as not to cause a violation of the Act or ~~the Rules, or has been granted a variance pursuant to Title IX of the Act~~ this Part; and
 - b2) conforms to the design criteria promulgated by the Agency under Section 807.213, or conforms to such other criteria which the applicant demonstrates will achieve consistently satisfactory results; and
 - e) ~~in the case of operating permits only, conforms to all conditions contained in the development permit.~~
- b) Experimental permits under Section 807.203 are not subject to paragraph (a).

- c) The Board may grant variances from the requirements of this Part pursuant to Title IX of the Act and 35 Ill. Adm. Code 104.

(Source: Amended at 8 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 an application reflecting the modification requested.
- c) The owner or operator of each permitted site which accepts waste after the effective date of this Section, or which has not completed closure as provided by Section 807.318(c) before the effective date of this Section, must file an application for modification of the permit to include a closure plan pursuant to Subpart E within 60 days after the effective date of this Section. If the site includes a disposal unit, such application for modification shall include a post-closure care plan and financial assurance as required by Subpart F.

(Source: Amended at 8 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. This Subpart applies to the owner and operator of a waste management site required to have a permit pursuant to Section 21(d) of the Act or Section 807.202. These general provisions may be supplemented by more specific closure 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.

- c) The closure plan 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, which must provide financial assurance.
- d) Existing sites are required to file applications for permit modification pursuant to Section 807.209(c).

(Source: Added at 8 Ill. Reg. _____, effective _____).

Section 807.502 Closure Performance Standard

In addition to the specific requirements of this Part, an owner or 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, to the extent necessary to prevent threats to human health or the environment, post-closure release of waste, waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater or surface waters or to the atmosphere.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.503 Closure Plan

- a) An owner or operator of a waste management site shall have a written closure plan which shall be a condition of the site permit.
- b) An owner or operator of a waste management site shall keep and maintain a copy of the closure plan and all revisions to the plan at the site until closure is completed and certified.
- c) The closure plan shall include as a minimum:
 - 1) Steps necessary for the partial closure or the final closure of a site at any point during its intended operating life;
 - 2) Steps necessary for the final closure of a site at the end of its intended operating life;

- 3) A description of how and when the site will begin partial closure, if applicable, and final closure;
- 4) A description of the steps necessary to decontaminate equipment during closure;
- 5) An estimate of the expected year of closure;
- 6) A schedule for the partial closure, if applicable, and the 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
- 7) 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.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.504 Amendment of Closure Plan

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

- a) Modifications of operating plans or site design affecting the closure; or
- b) Modifications of the operations of the site which affect the closure of the site or any portion of the site which include, but are not limited to:
 - 1) A temporary suspension of waste acceptance at the site; or
 - 2) A reduction in the volume or rate of waste acceptance at the site; or
- c) Change in the expected year of closure.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.505

Notice of Closure and Final Amendment
to Plan

- a) An owner or operator of a waste management site shall send to the Agency a notice of closure at least 30 days before:
 - 1) The date of cessation of waste acceptance when the final volume of waste is received at a waste management site for treatment, storage or disposal; or
 - 2) Expiration of an operating permit issued pursuant to Section 807.202.

- b) The owner or operator of a waste management site shall file any application to modify the closure plan at least 180 days before closure of the site. 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 8 Ill. Reg. _____, effective _____.)

Section 807.506

Implementation of Closure

Except as provided in paragraph (b), an owner or operator of a waste management site shall begin the treatment, removal from the site or disposal of all wastes:

- a) Within 90 days after the date of cessation of waste acceptance at the site; and

- b) In accordance with the closure plan required under Section 807.503.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.507

Disposal or Decontamination of Equipment

Before closure has been completed, an owner or operator of a waste management site shall have:

- a) Disposed of all wastes and residues; and

- b) Decontaminated all equipment and structures.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.508 Certification of Closure

- a) When closure is completed, the owner or operator of a waste management site shall submit to the Agency:
 - 1) Plan sheets for the closed site;
 - 2) Certification by the owner or operator and by a professional engineer that the site has been closed in accordance with the closure plan; and
 - 3) Operating records which designate the locations and quantities of any special wastes received at the site.

- b) If the Agency finds that the facility has been closed in accordance with the specification of the closure plan, and the closure requirements of this Part, the Agency shall:
 - 1) Notify the owner or operator of a waste management facility in writing that any applicable post-closure period has begun; and
 - 2) Provide the date the post-closure care period begins.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.523 Post-Closure Care Plan

- a) An owner or operator of a disposal site shall have a written post-closure care plan which shall be a condition of the site permit.

- b) The owner or operator of the disposal site shall keep and maintain a copy of the post-closure care plan at the site until closure is completed and certified.

- c) 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.

- d) The post-closure care plan shall be included in the permit application pursuant to Section 807.205.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.524 Implementation and Completion of Post-Closure Care Plan

- a) The owner and 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 Agency shall terminate the site permit 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 8 Ill. Reg. _____, effective _____.)

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

Section 807.601 Purpose, Scope and Applicability

- a) This Part provides procedures by which an operator of a disposal unit 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 unit must also file a post-closure care plan (Section 807.523). The operator of a disposal unit must prepare a cost estimate of closure and post-closure care, and provide financial assurance in this amount. Financial assurance may be given through a combination of a trust agreement, bond guaranteeing payment, bond guaranteeing payment or performance, letter of credit or insurance. The cost estimate and amount of financial assurance is to be updated on an annual basis.
- c) This Subpart applies only to the operators of disposal units. Whether a unit is a disposal unit or, alternatively, a treatment or storage unit, depends on whether the closure plan provides for removal of all wastes and waste residues from the unit prior to completion of closure.

- d) The owner or operator of an existing site is required to provide financial assurance as provided by Section 807.209.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.602 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 unless the regulations or terms of the instrument so provide.
- b) 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 (35 Ill. Adm. Code 103 or 104). The Board may also 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 are deemed permit denials and may be appealed to the Board pursuant to 35 Ill. Adm. Code 105:
- 1) Refusal to release the owner or operator from the requirement to maintain financial assurance for closure (§807.603).
 - 2) Refusal to release excess funds from a trust [§§807.661(f) and 807.661(g)].
 - 3) Refusal to agree to termination of a trust [§807.661(j)].
 - 4) Refusal to reduce the amount of a bond [§§807.662(g) and 807.663(g)].
 - 5) Refusal to reduce the amount of a letter of credit [§807.664(g)].

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.603 Release of the Owner or Operator

Within 60 days after receiving certifications from the owner or operator and an independent registered professional

engineer that closure has been accomplished in accordance with the closure plan, the Agency will notify the owner or operator in writing that it is no longer required by this Subpart to maintain financial assurance for closure of the particular facility, unless the Agency has reason to believe that closure has not been in accordance with the closure plan.

(Source: Added at 8 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 8 Ill. Reg. _____, effective _____.)

Section 807.621 Cost Estimate for Closure

- a) The owner or operator must have a written estimate, in current dollars, of the cost of closing the site in accordance with the requirements of this Part. The estimate must equal the cost of closure at the point in the site's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.
- b) The owner or operator must adjust the closure cost estimate for inflation within 30 days after each anniversary of the date on which the first closure cost estimate was prepared. The adjustment must be made as specified in paragraphs (b)(1) and (b)(2) using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
 - 1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

- 2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.
- c) The owner or operator must revise the closure cost estimate whenever a change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in paragraph (b).
- d) Until a certificate of closure has been issued, the owner or operator must keep the following at the site: the latest closure cost estimate prepared in accordance with paragraphs (a) and (c) and, when this estimate has been adjusted in accordance with paragraph (b), the latest adjusted closure cost estimate.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.622 Cost Estimate for Post-closure Care

- a) The owner or operator of a disposal site must have a written estimate, in current dollars, of the annual 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 cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required by this Part.
- b) Until the Agency issues a certificate of closure for the site, the owner or operator must adjust the post-closure cost estimate for inflation within 30 days after each anniversary of the date on which the first post-closure cost estimate was prepared. The adjustment must be made as specified in paragraphs (b)(1) and (b)(2) using an inflation factor derived from the Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published Deflator by the Deflator for the previous year.
 - 1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

- 2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.
- c) Until the Agency has issued a certificate of closure for the site, the owner or operator must revise the post-closure cost estimate whenever a change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in paragraph (b).
- d) Until the Agency has issued a certificate of closure, the owner or operator must keep the following at the site: the latest post-closure cost estimate prepared in accordance with paragraphs (a) and (c) and, when this estimate has been adjusted in accordance with paragraph (b), the latest adjusted post-closure cost estimate.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.640 Mechanisms for Financial Assurance

The owner or 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 Into Trust Fund (Section 807.662);
- c) Surety Bond Guaranteeing Performance (Section 807.663);
- d) Letter of Credit (Section 807.664); or,
- e) Closure Insurance (Section 807.665).

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.641 Use of Multiple Financial Mechanisms

An owner or operator may satisfy the requirements of this Subpart by establishing more than one financial mechanism per site. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, 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. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure and post-closure care of the facility.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.642 Use of a Financial Mechanism for Multiple Sites

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

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.661 Trust Fund

- a) An owner or operator may satisfy the requirements of this Subpart by establishing a trust fund which conforms to the requirements of this Section and submitting an originally signed duplicate of the trust agreement to the Agency. An owner or operator of a new facility must submit the originally signed duplicate of the trust agreement to the Agency at least 60 days before the date on which waste is first received for disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

- b) The trust agreement must be on forms provided by the Agency and the trust agreement must be accompanied by a formal certification of acknowledgment. The trust agreement must be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.
- c) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the site as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the trust fund must be made as follows: For a new site the first payment must be made before the initial receipt of waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Agency before this initial receipt of waste. The first payment must be at least equal to the current cost estimate, except as provided in paragraph (g), divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:
- Next payment = (CE - CV)/Y
where CE is the current cost estimate,
CV is the current value of the trust fund
and Y is the number of years remaining
in the pay-in period.
- d) The owner or operator may accelerate payments into the trust fund or it may deposit the full amount of the current cost estimate at the time the fund is established. However, it must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (c).
- e) After the pay-in period is completed, whenever the current cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain

other financial assurance as specified in this section to cover the difference.

- f) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate.
- g) If an owner or operator substitutes other financial assurance as specified in this Subpart for all or part of the trust fund, it may submit a written request to the Agency for release of the amount in excess of the current cost estimate covered by the trust fund.
- h) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (f) or (g), the Agency will instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.
- i) After beginning closure, an owner or 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. 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 or otherwise justified, and if so, it will instruct the trustee 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 value of the trust fund, it may withhold reimbursement of such amounts as it deems prudent until it determines that the owner or operator is no longer required to maintain financial assurance for closure and post-closure care.
- j) The Agency will agree to termination of the trust when:
 - 1) An owner or operator substitutes alternate financial assurance as specified in this section; or
 - 2) The Agency releases the owner or operator from the requirements of this Subpart.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.662 Surety Bond Guaranteeing Payment Into Trust Fund

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this Section and submitting the bond to the Agency. An owner or operator of a new site must submit the bond to the Agency at least 60 days before the date on which waste is first received for disposal. The bond must be effective before this initial receipt of waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

- b) The surety bond must be on forms provided by the Agency.

- c) The owner or operator who uses a surety bond to satisfy the requirements of this Subpart must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in Section 807.661 except that:
 - 1) An originally signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

 - 2) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:
 - A) Payments into the trust fund;

 - B) Updating of the trust agreement to show current closure cost estimates;

 - C) Annual valuations as required by the trust agreement; and

 - D) Notices of nonpayment as required by the trust agreement.

- d) The bond must guarantee that the owner or operator will:
- 1) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of closure of the site; or
 - 2) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or
 - 3) Provide alternate financial assurance as specified in this section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt of a notice of cancellation of the bond from the surety.
- e) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- f) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in paragraph (g).
- g) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this Subpart to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency.
- h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

- i) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this Subpart.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.663 Surety Bond Guaranteeing Performance

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining a surety bond which conforms to the requirements of this section and submitting the bond to the Agency. An owner or operator of a new site must submit the bond to the Agency at least 60 days before the date on which waste is first received for disposal. The bond must be effective before this initial receipt of waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

- b) The bond must be on forms provided by the Agency.

- c) The owner or operator who uses a surety bond to satisfy the requirements of this Subpart must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust must meet the requirements specified in Section 807.661, except that:

- 1) An originally signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

- 2) Unless the standby trust fund is funded pursuant to the requirements of this Subpart, the following are not required by these regulations:

- A) Payments into the trust fund as specified in paragraph (a);

- B) Updating of the trust agreement to show current cost estimates;

- C) Annual valuations as required by the trust agreement; and
 - D) Notices of nonpayment as required by the trust agreement.
- d) The bond must guarantee that the owner or operator will:
- 1) Perform closure and post-closure care in accordance with the closure plan and post-closure plan and other requirements of the permit for the site whenever required to do so; or
 - 2) Provide alternate financial assurance as specified in this Subpart, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.
- e) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform closure and post-closure care as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.
- f) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
- g) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this Subpart. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Agency.

- h) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
- i) The owner or operator may cancel the bond if the Agency has given prior written consent. The Agency will provide such written consent when:
- 1) An owner or operator substitutes alternate financial assurance as specified in this Subpart; or
 - 2) The Agency releases the owner or operator from the requirements of this Subpart.
- j) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the Agency releases the owner or operator from the requirements of this Subpart.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.664 Letter of Credit

- a) An owner or operator may satisfy the requirements of this Subpart by obtaining an irrevocable standby letter of credit which conforms to the requirements of this section and submitting the letter to the Agency. An owner or operator of a new site must submit the letter of credit to the Agency at least 60 days before the date on which waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- b) The letter of credit must be on forms provided by the Agency.
- c) An owner or operator which uses a letter of credit to satisfy the requirements of this Subpart must also establish a standby trust fund. Under the

terms of the letter of credit, all amounts paid pursuant to a draft by the Agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in Section 807.661, except that:

- 1) An originally signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and
- 2) Unless the standby trust fund is funded pursuant to the requirements of this Subpart, the following are not required by these regulations:
 - A) Payments into the trust fund as specified in Section 807.661;
 - B) Updating of the trust agreement to show current cost estimates;
 - C) Annual valuations as required by the trust agreement; and
 - D) Notices of nonpayment as required by the trust agreement.
- d) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: name and address of the site and the amount of funds assured for closure of the site by the letter of credit.
- e) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

- f) The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in Section 807.641.
- g) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Subpart to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Agency.
- h) Following a determination pursuant to Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform closure in accordance with the closure plan and other permit requirements when required to do so, the Agency may draw on the letter of credit.
- i) If the owner or operator does not establish alternate financial assurance as specified in this Subpart and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency will draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Subpart and obtain written approval of such assurance from the Agency.
- j) The Agency will return the letter of credit to the issuing institution for termination when:
 - 1) An owner or operator substitutes alternate financial assurance as specified in this Subpart; or
 - 2) The Agency releases the owner or operator from the requirements of this Subpart in accordance with Section 807.603.

(Source: Added at 8 Ill. Reg. _____, effective _____.)

Section 807.665 Closure Insurance

- a) An owner or 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 a certificate of such insurance to the Agency. An owner or operator of a new site must submit the certificate of insurance to the Agency at least 60 days before the date on which waste is first received for disposal. The insurance must be effective before this initial receipt of waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

- b) The certificate of insurance must be on forms supplied by the Agency.

- c) The closure and post-closure care insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in Section 807.641. 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.

- d) The closure and post-closure care insurance policy must guarantee that funds will be available to close the site whenever closure occurs 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.

- e) After beginning closure, an owner or 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 and post-closure care activities, the Agency will determine whether the expenditures are in accordance with

the closure plan or post-closure care plan or otherwise justified, 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, in accordance with Section 807.603, that the owner or operator is no longer required to maintain financial assurance.

- f) The owner or operator must maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in paragraph (j). Failure to pay the premium, without substitution of alternate financial assurance as specified in this Subpart, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- g) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.
- h) 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 owner or 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 owner or 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:

- 1) The Agency deems the facility abandoned; or
- 2) The permit is terminated or revoked or a new permit is denied; or
- 3) Closure is ordered by the Board or a U.S. district court or other court of competent jurisdiction; or
- 4) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy); or
- 5) The premium due is paid.

i) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Subpart to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Agency.

j) The Agency will give written consent to the owner or operator that it may terminate the insurance policy when:

- 1) An owner or operator substitutes alternate financial assurance as specified in this Subpart; or
- 2) The Agency releases the owner or operator from the requirements of this Subpart.

(Source: Added at 8 Ill. Reg. _____, effective _____.)