

ILLINOIS POLLUTION CONTROL BOARD

November 5, 1998

IN THE MATTER OF: )  
 )  
LIVESTOCK WASTE REGULATIONS: ) R97-15(B)  
35 ILL. ADM. CODE 506 ) (Rulemaking - Land)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

In 1996, the Illinois General Assembly enacted the Livestock Management Facilities Act (LMFA) (510 ILCS 77/1 *et seq.*) to address concerns arising from changes sweeping the livestock industry, including larger concentrations of animals at livestock facilities and the resulting impact on surrounding areas. See 510 ILCS 77/5(5), (6). Section 17 of the LMFA (510 ILCS 77/17) requires owners of new or modified livestock waste lagoons to provide evidence of financial responsibility for lagoon closure. The Board today adopts rules to implement Section 17 of the LMFA.

PROCEDURAL HISTORY

On July 22, 1997, the Illinois Department of Agriculture (Department) filed a rulemaking proposal with the Board, proposing rules to implement Section 17. The Board held three public hearings, at which representatives of the Department, the Illinois Environmental Protection Agency (Agency), and the Illinois Beef Association, Illinois Pork Producers Association (Pork Producers), and the Illinois Farm Bureau (collectively, Farm Groups) testified. On May 21, 1998, the Board sent to first notice proposed rules to implement Section 17. In its order at first notice, the Board adopted proposed rules based upon the Department's proposal, with a number of changes. The Board received comments on its proposal from the Department, the Agency, and the Farm Groups. On September 17, 1998, the Board sent its proposed rules, with amendments based on comments received, to second notice. The General Assembly's Joint Committee on Administrative Rules considered the proposal at its meeting on October 20, 1998, and issued a "Notice of No Objection." The Board today adopts the proposed rules without substantive change from second notice.

STATUTES IMPLEMENTED BY RULES

Section 17 of the LMFA provides:

Owners of new or modified lagoons registered under the provisions of this Act shall establish and maintain evidence of financial responsibility to provide for the closure of the lagoons and the proper disposal of their contents within the time provisions outlined in this Act. Financial responsibility may be evidenced by any combination of the following:

- 1) Commercial or private insurance;
- 2) Guarantee;
- 3) Surety bond;
- 4) Letter of credit;
- 5) Certificate of Deposit or designated savings account;
- 6) Participation in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority.

The level of surety required shall be determined by rule and be based upon the volumetric capacity of the lagoon. Surety instruments required under this Section shall be required after the effective date of rules adopted for the implementation of this Act.

The “closure of the lagoons and the proper disposal of their contents within the time provisions outlined in this Act” is governed by Section 15(e) of the LMFA (510 ILCS 77/15(e)), which provides:

When any earthen livestock waste lagoon is removed from service, it shall be completely emptied. Appropriate closure procedures shall be followed as determined by rule. The remaining hole must be filled. The closure requirements shall be completed within two years from the date of cessation of operation unless the lagoon is maintained or serviced. The Department may grant a waiver to the before-stated closure requirements that will permit the lagoon to be used for an alternative purpose.

Upon a change in ownership of a registered earthen livestock lagoon, the owner shall notify the Department of the change within 30 working days of the closing of the transaction.

#### SUMMARY OF RULES

The rules adopted today require lagoon owners to have financial assurance in place either by June 1, 1999, or before the lagoon is placed in service. Section 506.601. The proposed rules set forth criteria for each of the six surety instruments, as well as the procedures by which such instruments are called upon. The initial term of the surety instrument must be at least three years, and the term of coverage may never be less than two years. Section 506.602. This requirement is to ensure that the lagoon can be closed within the statutory time period. Under Section 15(e) of the LMFA, a lagoon must be closed within

two years of being removed from service. The proposed rules also establish that the level of surety required is equal to the volumetric capacity of the lagoon multiplied by a cost factor, plus an engineering contingency factor. The initial cost factor is ten cents per cubic foot of lagoon volume. The engineering contingency factor is ten percent. Section 506.603.

The proposed rules include conditions under which a lagoon is considered removed from service. Removal from service triggers the lagoon owner's obligation under Section 506.209 to submit a closure plan to the Department. Additionally, the Department sends a notice to the financial institution when it determines that a lagoon has been removed from service. If the owner does not file a plan, and cannot be found or fails to cure the omission within 30 days after notice from the Department, then surety liability is triggered. If the owner files a plan, then the Department approves the plan, rejects the plan, or requests more information. If no plan is approved within eight months, then again surety liability is triggered. Finally, surety liability is triggered if an owner fails to follow an approved closure plan and does not cure noncompliance within 30 days after notice from the Department. Section 506.606(a).

Once surety liability has been triggered, the Department sends a notice to the financial institution. The financial institution must then deposit the proceeds of the surety instrument into an account upon which the Department is authorized to draw for lagoon closure. The Department then proceeds to close the lagoon. Alternatively, the financial institution may assume liability for lagoon closure itself. Section 506.606(c). In that case, the financial institution does not deposit the funds in an account accessible by the Department. Instead, the financial institution is obligated to close the lagoon in accordance with the closure regulations. Should it fail to do so, the financial institution is still obligated to deposit the proceeds from surety instrument in an account accessible by the Department so that it can close the lagoon.

### CONCLUSION

Based upon the record in this proceeding, the Board finds that adoption of the proposed rules is warranted. The Board also finds that these rules will not have an adverse economic impact on the people of the State of Illinois. See 415 ILCS 5/27(b) (1996).

### ORDER

The Board hereby adopts the following amendments to 35 Ill. Adm. Code 506. The Clerk of the Board is directed cause the following amendments to be published in the *Illinois Register*:

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE E: AGRICULTURE RELATED POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD

PART 506  
LIVESTOCK WASTE REGULATIONS

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APPENDIX A	<u>Surety Instruments</u>
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	<u>ILLUSTRATION B Irrevocable Standby Letter of Credit</u>

AUTHORITY: Authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/27] and Section 55 of the Livestock Management Facilities Act and implementing the Livestock Management Facilities Act [510 ILCS 77].

SOURCE: Adopted in R97-15(A) at 21 Ill. Reg. 6851, effective May 20, 1997; amended in R97-15(B) at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 506.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5] or the Livestock Management Facilities Act [510 ILCS 77]. For the purposes of this Part, the terms included herein shall have the following meanings~~their associated meanings as follows~~:

“AGENCY” MEANS THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY. [510 ILCS 77/10.5]

“ANIMAL FEEDING OPERATION” MEANS A FEEDING OPERATION AS DEFINED IN THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND THE RULES PROMULGATED UNDER THAT ACT CONCERNING AGRICULTURE RELATED POLLUTION. [510 ILCS 77/10.7]

“ANIMAL UNIT” MEANS A UNIT OF MEASUREMENT FOR ANY ANIMAL FEEDING OPERATION CALCULATED AS FOLLOWS:

BROOD COWS AND SLAUGHTER AND FEEDER CATTLE  
MULTIPLIED BY 1.0.

MILKING DAIRY COWS MULTIPLIED BY 1.4.

YOUNG DAIRY STOCK MULTIPLIED BY 0.6.

SWINE WEIGHING OVER 55 POUNDS MULTIPLIED BY 0.4.

SWINE WEIGHING UNDER 55 POUNDS MULTIPLIED BY 0.03.

SHEEP, LAMBS, OR GOATS MULTIPLIED BY 0.1.

HORSES MULTIPLIED BY 2.0.

TURKEYS MULTIPLIED BY 0.02.

LAYING HENS OR BROILERS MULTIPLIED BY 0.01 (IF THE FACILITY HAS CONTINUOUS OVERFLOW WATERING).

LAYING HENS OR BROILERS MULTIPLIED BY 0.03 (IF THE FACILITY HAS A LIQUID MANURE HANDLING SYSTEM).

DUCKS MULTIPLIED BY 0.02. [510 ILCS 77/10.10]

“Aquifer material” means sandstone ~~that~~which is five feet or more in thickness, or fractured carbonate ~~that~~which is ten feet or more in thickness; or, sand, gravel, or sand and gravel, as defined herein, such that there is at least two feet or more present within any five foot section of a soil boring performed in accordance with Section 506.202 of this Part.

“CERTIFIED LIVESTOCK MANAGER” MEANS A PERSON THAT HAS BEEN DULY CERTIFIED BY THE DEPARTMENT AS AN OPERATOR OF A LIVESTOCK WASTE HANDLING FACILITY. [510 ILCS 77/10.15]

“DEPARTMENT” MEANS THE ILLINOIS DEPARTMENT OF AGRICULTURE. [510 ILCS 77/10.20]

“FARM RESIDENCE” MEANS ANY RESIDENCE ON A FARM OWNED OR OCCUPIED BY THE FARM OWNERS, OPERATORS, TENANTS, OR SEASONAL OR YEAR-ROUND HIRED WORKERS. FOR PURPOSES OF THIS DEFINITION, A “FARM” IS THE LAND, BUILDINGS, AND MACHINERY USED IN THE COMMERCIAL PRODUCTION OF FARM PRODUCTS, AND “FARM PRODUCTS” ARE THOSE PLANTS AND ANIMALS AND THEIR PRODUCTS WHICH ARE PRODUCED OR RAISED FOR COMMERCIAL PURPOSES AND INCLUDE BUT ARE NOT LIMITED TO FORAGES AND SOD CROPS, GRAINS AND FEED CROPS, DAIRY AND DAIRY PRODUCTS, POULTRY AND POULTRY PRODUCTS, LIVESTOCK, FRUITS, VEGETABLES, FLOWERS, SEEDS, GRASSES, TREES, FISH, HONEY AND OTHER SIMILAR PRODUCTS, OR ANY OTHER PLANT, ANIMAL, OR PLANT OR ANIMAL PRODUCT WHICH SUPPLIES PEOPLE WITH FOOD, FEED, FIBER, OR FUR. [510 ILCS 77/10.23]

“Gravel” or “Sand and gravel” means unconsolidated materials that contain a matrix (particles of two millimeters or less) that is consistent with the definition of “sand” and particles larger than two millimeters in size.

“LAGOON” or “Earthen livestock waste lagoon” MEANS ANY EXCAVATED, DIKED, OR WALLED STRUCTURE OR COMBINATION OF STRUCTURES DESIGNED FOR BIOLOGICAL STABILIZATION AND STORAGE OF LIVESTOCK WASTES. A LAGOON DOES NOT INCLUDE STRUCTURES SUCH AS MANUFACTURED SLURRY STORAGE STRUCTURES OR PITS UNDER BUILDINGS AS DEFINED IN RULES UNDER THE ENVIRONMENTAL PROTECTION ACT CONCERNING AGRICULTURE RELATED POLLUTION. [510 ILCS 77/10.25]

“LICENSED PROFESSIONAL ENGINEER” MEANS A PERSON, CORPORATION OR PARTNERSHIP LICENSED UNDER THE LAWS OF THE STATE OF ILLINOIS TO PRACTICE PROFESSIONAL ENGINEERING. [415 ILCS 5/57.2]

“LICENSED PROFESSIONAL GEOLOGIST” MEANS AN INDIVIDUAL WHO IS LICENSED UNDER the laws of the State of Illinois TO ENGAGE IN THE PRACTICE OF PROFESSIONAL GEOLOGY IN ILLINOIS. [225 ILCS 745/15]

“LIVESTOCK MANAGEMENT FACILITY” MEANS ANY ANIMAL FEEDING OPERATION, LIVESTOCK SHELTER, OR ON-FARM MILKING AND ACCOMPANYING MILK-HANDLING AREA. TWO OR MORE LIVESTOCK MANAGEMENT FACILITIES UNDER COMMON OWNERSHIP, WHERE THE FACILITIES ARE NOT SEPARATED BY A MINIMUM DISTANCE OF 1/4 MILE, AND THAT SHARE A COMMON LIVESTOCK WASTE HANDLING FACILITY SHALL BE CONSIDERED A SINGLE LIVESTOCK MANAGEMENT FACILITY. LIVESTOCK MANAGEMENT Facilities AT EDUCATIONAL INSTITUTIONS, LIVESTOCK PASTURE OPERATIONS, facilities WHERE ANIMALS ARE HOUSED ON A TEMPORARY BASIS SUCH AS COUNTY AND STATE FAIRS, LIVESTOCK SHOWS, RACE TRACKS, AND HORSE BREEDING AND FOALING FARMS, AND MARKET HOLDING FACILITIES ARE NOT SUBJECT TO THE Livestock Management Facilities Act or the requirements of this Part. [510 ILCS 77/10.30]

“LIVESTOCK WASTE” MEANS LIVESTOCK EXCRETA AND ASSOCIATED LOSSES, BEDDING, WASH WATERS, SPRINKLING WATERS FROM LIVESTOCK COOLING, PRECIPITATION POLLUTED BY FALLING ON OR FLOWING ONTO AN ANIMAL FEEDING OPERATION, AND OTHER MATERIALS POLLUTED BY LIVESTOCK. [510 ILCS 77/10.35]

“LIVESTOCK WASTE HANDLING FACILITY” MEANS INDIVIDUALLY OR COLLECTIVELY THOSE IMMOVABLE CONSTRUCTIONS OR DEVICES, EXCEPT SEWERS, USED FOR COLLECTING, PUMPING, TREATING, OR DISPOSING OF LIVESTOCK WASTE OR FOR THE RECOVERY OF BY-PRODUCTS FROM THE LIVESTOCK WASTE. TWO OR MORE LIVESTOCK WASTE HANDLING FACILITIES UNDER COMMON OWNERSHIP AND WHERE THE FACILITIES ARE NOT SEPARATED BY A MINIMUM DISTANCE OF 1/4 MILE SHALL BE CONSIDERED A SINGLE LIVESTOCK WASTE HANDLING FACILITY. [510 ILCS 77/10.40]

“Maintained” means, with reference to a livestock waste lagoon, that the livestock waste lagoon is inspected (including but not limited to inspection for burrow holes, trees and woody vegetation, proper freeboard, erosion, settling of berm, berm top integrity, leaks, and seepage) and preventive action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances.

“MODIFIED” MEANS STRUCTURAL CHANGES TO A LAGOON THAT INCREASE ITS VOLUMETRIC CAPACITY. [510 ILCS 77/10.43]



“NEW FACILITY” MEANS A LIVESTOCK MANAGEMENT FACILITY OR A LIVESTOCK WASTE HANDLING FACILITY THE CONSTRUCTION OR EXPANSION OF WHICH IS COMMENCED ON OR AFTER May 21, 1996 (THE EFFECTIVE DATE OF THE Livestock Management Facilities ACT). EXPANDING A FACILITY WHERE THE FIXED CAPITAL COST OF THE NEW COMPONENTS CONSTRUCTED WITHIN A 2-YEAR PERIOD DOES NOT EXCEED 50% OF THE FIXED CAPITAL COST OF A COMPARABLE ENTIRELY NEW FACILITY SHALL NOT BE DEEMED A NEW FACILITY AS USED IN THE Livestock Management Facilities ACT. [510 ILCS 77/10.45]

“NON-FARM RESIDENCE” MEANS ANY RESIDENCE WHICH IS NOT A FARM RESIDENCE. [510 ILCS 77/10.47]

“Occupied residence” means a house or other type of shelter that is intended or used for human occupancy and has been occupied by humans for more than a total of six months in the last two years at that location. For the purposes of this definition, “intended or used for human occupancy” means running water and sanitation are provided within the residence.

“OWNER OR OPERATOR” MEANS ANY PERSON WHO OWNS, LEASES, CONTROLS, OR SUPERVISES A LIVESTOCK MANAGEMENT FACILITY OR LIVESTOCK WASTE-HANDLING FACILITY. [510 ILCS 77/10.50]

“PERSON” MEANS ANY INDIVIDUAL, PARTNERSHIP, CO-PARTNERSHIP, FIRM, COMPANY, CORPORATION, ASSOCIATION, JOINT STOCK COMPANY, TRUST, ESTATE, POLITICAL SUBDIVISION, STATE AGENCY, OR ANY OTHER LEGAL ENTITY OR THEIR LEGAL REPRESENTATIVE, AGENT, OR ASSIGNS. [510 ILCS 77/10.55]

“Placed in service” means the placement of livestock waste in a livestock waste lagoon upon the completion of construction or modification in accordance with the requirements of this Part.

“POPULATED AREA” MEANS ANY AREA WHERE AT LEAST 10 INHABITED NON-FARM RESIDENCES ARE LOCATED OR WHERE AT LEAST 50 PERSONS FREQUENT A COMMON PLACE OF ASSEMBLY OR A NON-FARM BUSINESS AT LEAST ONCE PER WEEK. [510 ILCS 77/10.60] The existence of a populated area shall be determined by identifying the area around the livestock management or livestock waste handling facility delineated by a distance equal to the applicable setback distance and identifying the number of residences or the existence of a non-farm business or the existence of a common place of assembly within that area. For the purpose of setback requirements, common places of assembly or non-farm businesses include but are not limited to churches, hospitals, schools, day care centers, manufacturing companies, land managed for recreational or conservation purposes, museums, camps, parks, retail and wholesale facilities, and shopping centers. A

common place of assembly or a non-farm business includes places that operate less than 52 weeks per year, such as schools with seasonal vacation periods and businesses or other places which experience seasonal shutdowns, and parks, camps, and recreational areas which experience seasonal shutdowns or reduced attendance during a portion of the calendar year, provided that such places are frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur.

“Residence” means a house or other structure, including all attachments to the house or structure, which is used as a place of human habitation.

“Sand” means unconsolidated materials, where 70% or more of the particles are of size 0.06 millimeters to 2.00 millimeters, and which according to the USDA soil texture classification scheme includes soil textures of sand, and loamy sand, and portions of sandy loam and sandy clay loam.

“Serviced” means, with reference to a livestock waste lagoon, that corrective action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances, including but not limited to removal or repair of burrow holes, trees and woody vegetation, freeboard level, erosion, settling of berm, berm top maintenance, leaks, and seepage.

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: STANDARDS FOR LIVESTOCK WASTE LAGOONS

### Section 506.209 Lagoon Closure and Ownership Transfer

- a) WHEN ANY EARTHEN LIVESTOCK WASTE LAGOON IS REMOVED FROM SERVICE, IT SHALL BE COMPLETELY EMPTIED. APPROPRIATE CLOSURE PROCEDURES SHALL BE FOLLOWED AS DETERMINED BY the requirements of this Part. [510 ILCS 77/15(e)]
  - 1) In the event that any earthen livestock waste lagoon is ~~to be~~ removed from service, the requirements contained in Section 15(e) of the Livestock Management Facilities Act [510 ILCS 77/15(e)] shall be met. The owner or operator shall notify the Department in writing when a lagoon is removed from service. Within 60 days after removal of the lagoon from service, and the owner or operator shall submit a lagoon closure plan to the Department for review and approval. If no lagoon closure plan is received by the Department within 60 days, the Department shall send the lagoon owner a notice of default.
  - 2) The lagoon closure plan shall provide for the following:

- A) The sampling, analysis and reporting of results of all remaining livestock waste, sludge and minimum six-inch thickness of soil from throughout the lagoon interior consistent with the requirements of Section 506.312 of this Part;
  - B) The removal of all remaining livestock waste including sludge, the removal of a minimum 6 inch thickness of soil from throughout the lagoon interior, and the application of these materials to crop land at agronomic rates consistent with the provisions of the site livestock waste management plan or their otherwise proper disposal;
  - C) The removal of all associated appurtenances, including but not limited to transfer lines, ramps, pumping ports and other waste conveyance structures;
  - D) The proper management of any impounded precipitation in the remaining excavation if it is not immediately filled and the area immediately returned to its pre-construction condition;
  - E) The proper abandonment of any monitoring wells installed pursuant to Section 506.206 of this Part, which shall be conducted pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120; and
  - F) A proposed time frame for the completion of the closure activities ~~which will be~~ no greater than two years from the cessation of operation date unless the lagoon is maintained or serviced.
- 23) The Department shall review and approve, reject, or request additional information relative to the lagoon closure plan. THE DEPARTMENT MAY also GRANT A WAIVER TO any of THE BEFORE-STATED CLOSURE REQUIREMENTS THAT WILL PERMIT THE LAGOON TO BE USED FOR AN ALTERNATIVE PURPOSE. [510 ILCS 77/15(e)]
- 34) Upon completion of the lagoon closure activities as prescribed by the Department-approved closure plan, the owner or operator shall notify the Department ~~to allow for post closure inspection~~. The Department shall conduct a site inspection and issue a written notification of closure completion or inform the owner or operator of any unresolved closure issues.

b) A lagoon is considered removed from service when:

- 1) The Department has ordered the lagoon removed from service under Section 506.620 of this Part;
  - 2) A tribunal of competent jurisdiction has ordered the lagoon closed or ordered the owner or operator to cease operations;
  - 3) The lagoon no longer receives livestock waste and the lagoon is not being serviced or maintained;
  - 4) The owner fails to extend the term for which evidence of financial responsibility is shown as required in Section 506.602(b) of this Part; or
  - 5) The owner or operator informs the Department in accordance with subsection (a)(1) of this Section that the lagoon has been removed from service.
- b~~c~~) UPON A CHANGE IN THE OWNERSHIP OF A REGISTERED EARTHEN LIVESTOCK WASTE LAGOON, THE new OWNER SHALL NOTIFY, in writing, THE DEPARTMENT OF THE CHANGE WITHIN 30 WORKING DAYS OF THE CLOSING OF THE TRANSACTION. [510 ILCS 77/15(e)]

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART F: FINANCIAL RESPONSIBILITY

##### Section 506.601 Scope, Applicability, and Definitions

- a) ~~OWNERS OF NEW OR MODIFIED LAGOONS REGISTERED UNDER THE PROVISIONS OF the Livestock Management Facilities Act [510 ILCS 77] SHALL ESTABLISH AND MAINTAIN EVIDENCE OF FINANCIAL RESPONSIBILITY TO PROVIDE FOR THE CLOSURE OF THE LAGOONS AND THE PROPER DISPOSAL OF THEIR CONTENTS WITHIN THE TIME PROVISIONS OUTLINED IN Section 17 of the Livestock Management Facilities Act. [510 ILCS 77/17]~~
- a) This Subpart provides procedures by which the owner of a new or modified livestock waste lagoon registered under the Livestock Management Facilities Act provides evidence of financial responsibility satisfying the requirements of Section 17 of the Livestock Management Facilities Act.
  - b) Owners of lagoons must comply with the financial responsibility requirements of this Part either:
    - 1) on or before June 1, 1999; or

- 2) before the lagoon is placed in service.
- c) For the purposes of this Subpart, the following terms have the following meanings:
- 1) “Financial institution” means:
- A) An insurer providing commercial or private insurance to evidence financial responsibility for lagoon closure in accordance with Section 506.610 of this Part;
- B) A guarantor providing a guarantee as evidence of financial responsibility for lagoon closure in accordance with Section 506.611 of this Part;
- C) The issuer of a surety bond as evidence of financial responsibility for lagoon closure in accordance with Section 506.612 of this Part;
- D) The issuer of a letter of credit as evidence of financial responsibility for lagoon closure in accordance with Section 506.613 of this Part; or
- E) The livestock waste lagoon closure fund managed by the Illinois Farm Development Authority that evidences financial responsibility for lagoon closure in accordance with Section 506.615 of this Part.
- 2) “Level of surety” means the level, calculated in accordance with Section 506.603 of this Part, at which evidence of financial responsibility must be provided.
- 3) “Surety instrument” means any of the devices listed in Section 506.602 of this Part by which a lagoon owner evidences financial responsibility for lagoon closure. Unless the context requires otherwise, “surety instrument” includes a combination of surety instruments.

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.602 Mechanisms for Providing Evidence of Financial Responsibility

- a) FINANCIAL RESPONSIBILITY MAY BE EVIDENCED BY ANY COMBINATION OF THE FOLLOWING:

- 1) COMMERCIAL OR PRIVATE INSURANCE;
- 2) GUARANTEE;
- 3) SURETY BOND;
- 4) LETTER OF CREDIT; ~~or~~
- 5) CERTIFICATE OF DEPOSIT OR DESIGNATED SAVINGS ACCOUNT; or-
- 6) PARTICIPATION IN A LIVESTOCK WASTE LAGOON CLOSURE FUND MANAGED BY THE ILLINOIS FARM DEVELOPMENT AUTHORITY. [510 ILCS 77/17]

b) The lagoon owner must provide continuous coverage from the time the lagoon is placed in service until such time as the owner is released from the financial responsibility requirements pursuant to Section 506.605(a) of this Part. The initial term of any surety instrument (other than a certificate of deposit or designated savings account) utilized to fulfill the requirements of this Part must be at least three years. At least two years prior to the expiration date of such instrument, the owner must provide the Department with proof that the term of coverage has been extended for at least one additional year.

cb) Upon a change in the ownership of a livestock management facility or livestock waste handling facility involving a lagoon that is subject to the financial responsibility requirements of this Subpart, the new owner ~~must~~ shall establish and maintain evidence of financial responsibility at the same level of surety as the previous owner.

d) The lagoon owner must ensure that the terms and conditions of the surety instrument(s) listed in subsection (a) of this Section upon which the owner relies are legally valid, binding, and enforceable under State and federal law.

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.603 Level of Surety

~~THE LEVEL OF SURETY REQUIRED SHALL BE DETERMINED BY RULE AND BE BASED UPON THE VOLUMETRIC CAPACITY OF THE LAGOON. [510 ILCS 77/17]~~

a) The level of surety is determined by the following formula:

$$\underline{\text{Level of Surety} = (V \times CF) + EC}$$

where:

V = Volume of the lagoon as constructed or modified in cubic feet, including the freeboard volume;

CF = Cost factor determined pursuant to subsection (b) of this Section; and

EC = Engineering contingency determined under subsection (c) of this Section.

b) The cost factor is obtained from the following:

- 1) Until December 31, 2002, the cost factor is 10¢ per cubic foot of lagoon volume.
- 2) From January 1, 2003 through December 31, 2007, the cost factor is 12¢ per cubic foot of lagoon volume.
- 3) After January 1, 2008, the cost factor is 15¢ per cubic foot of lagoon volume.

c) The engineering contingency is equal to 10% of (V x CF).

(Source: Amended at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.604 Upgrading Surety Instrument

a) The owner of a lagoon must increase the total amount of surety in place so as to equal the level of surety as calculated within 90 days after:

- 1) a modification resulting in an increase in the volume of the lagoon; or
- 2) an increase in the cost factor under Section 506.603(b) of this Part.

b) If modification of a lagoon results in a decrease in volumetric capacity, the owner or operator may provide the Department with documentation of the reduction in volumetric capacity and request a recalculation of the level of surety. Within 90 days after a request by the owner or operator under this subsection, the Department must either:

- 1) release any surety amount above the level of surety as recalculated based upon the owner's documentation of reduction of volumetric capacity; or

- 2) conduct an inspection and determine the amount by which volumetric capacity has been decreased.
- c) If the Department conducts an inspection under subsection (b), then the Department must release any surety amount above the level of surety as recalculated based upon the results of the inspection.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.605 Release of Lagoon Owner and Financial Institution

- a) The Department must release a lagoon owner from the requirements of this Subpart when:
- 1) The lagoon has been properly closed and a notification of closure completion pursuant to Section 506.209 of this Part has been issued to the lagoon owner by the Department; or
  - 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose; or
  - 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part.
- b) The Department must release a financial institution when:
- 1) A lagoon owner offers an authorized alternative surety that meets the requirements of Section 506.607(c) of this Part; or
  - 2) The Department releases the lagoon owner from the requirements of this Subpart under subsection (a) of this Section.
- c) The Department must notify the lagoon owner and financial institution in writing within 60 days after a release under this Section. If a release is based upon proper closure of a lagoon, notification under this subsection should occur at the same time as notice of proper closure under Section 506.209(a)(4).

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.606 Financial Responsibility Proceeds

- a) A financial institution issuing a surety instrument evidencing financial responsibility for closure of a livestock waste lagoon becomes liable on the surety instrument when a lagoon is removed from service and:



- 1) The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and:
    - A) cannot be found; or
    - B) fails to cure such failure within 30 days after notice from the Department;
  - 2) The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or
  - 3) The owner fails to comply with an approved lagoon closure plan and:
    - A) cannot be found; or
    - B) fails to cure such noncompliance within 30 days after notice from the Department.
- b) The Department must provide notice to the financial institution providing surety for a lagoon:
- 1) when it determines that the lagoon has been removed from service; and
  - 2) when it determines that one of the criteria for liability set forth in subsection (a) of this Section has been met.
- c) Within 30 days after notice of liability from the Department, the financial institution must either assume liability for closure of the lagoon and notify the Department of its election to assume liability, or deposit the amount for which it is liable in connection with the lagoon into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon.
- 1) If the financial institution assumes liability for closure of the lagoon, it must submit a lagoon closure plan that meets the requirements of Section 506.209 of this Part within 60 days after notifying the Department of its election. Notwithstanding the financial institution's assumption of liability for closure of the lagoon, the Department may require the financial institution to deposit funds up to the amount for which the financial institution is liable under the surety instrument into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon if:

- A) The financial institution does not submit the lagoon closure plan as required and fails to cure such omission within 30 days after notice from the Department;
- B) The financial institution fails to obtain Department approval of a lagoon closure plan within eight months after the date that it elects to assume liability for closure of the lagoon, unless the lagoon is maintained or serviced; or
- C) The financial institution fails to comply with an approved lagoon closure plan and fails to cure such noncompliance within 30 days after notice from the Department.
- 2) A financial institution which assumes liability for closure of a lagoon under this Section remains liable for the full amount of the surety instrument until the Department issues written notification of completion of closure in accordance with Section 506.209, notwithstanding the expiration of the instrument utilized to evidence financial responsibility by the owner.
- 3) Any amounts that a financial institution may expend for service or maintenance of the lagoon pending closure or for partial closure of the lagoon do not reduce the amount of the financial institution's obligation under this subsection(c).
- 4) If the financial institution elects, or is required under subsection(c)(1) of this Section, to deposit the funds required by the Department into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon, then the Department shall close the lagoon within the time frame established under Section 15(e) of the LMFA or as soon as practicable, to the extent possible utilizing the funds deposited by the financial institution. The Department may use any interest earned on deposited funds to close the lagoon. The Department must release any funds remaining in the account, including any remaining interest earned on funds in the account, to the financial institution upon completion of closure.
- d) The Department may sue in any court of competent jurisdiction to enforce its rights under any surety instrument.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

- a) The lagoon owner may use any combination of the surety instruments listed in Section 17 of the Livestock Management Facilities Act [510 ILCS 77/17] and this Subpart to evidence the required level of financial responsibility.
- b) A lagoon owner is not limited to maintaining financial responsibility with the original surety instrument or combination of instruments. The owner must notify the Department before making any change in surety instruments.
- c) If a lagoon owner makes any change in surety instruments, the lagoon owner must maintain the total financial responsibility for the lagoon at a level not less (without counting the amounts to be released) than the level of surety.
- d) A replacement surety instrument or instruments must provide evidence of financial responsibility for a period at least equal to the existing instrument or instruments. This provision does not relieve an owner of the obligation under Section 506.602(b) to provide proof at least two years prior to expiration of a surety instrument that the term for which financial responsibility has been demonstrated has been extended for at least an additional year.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.608 Use of a Single Surety Instrument for Multiple Lagoons

- a) An owner may use a surety instrument specified in this Subpart to provide evidence of financial responsibility for more than one lagoon.
- b) Whenever a single surety instrument is used for multiple lagoons, the owner must submit an itemization to the Department identifying all lagoons covered by the surety instrument and the amount allocated to each lagoon.
- c) The amount of funds available through the surety instrument must be no less than the sum of funds that would be available if a separate surety instrument had been established and maintained for each lagoon.
- d) In directing funds available through a single surety instrument for the closure of any single lagoon covered by that surety instrument, the Department shall direct only the amount of funds designated for that lagoon, unless the owner agrees to allow the Department to use additional funds available under that surety instrument. Such an agreement does not affect the owner's obligation to provide evidence of financial responsibility up to the level of surety for all other lagoons.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.610 Commercial or Private Insurance

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining closure insurance that conforms to the requirements of this Subpart and submitting an executed duplicate original of such insurance policy to the Department.
- b) The insurer must be licensed to transact the business of insurance by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5].
- c) The policy must be on forms approved by the Illinois Department of Insurance.
- d) The closure insurance policy must guarantee that funds will be available to close the lagoon. The policy must also guarantee that, upon a notice of liability from the Department, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, in accordance with Section 506.606(c) of this Part.
- e) The policy must provide that the insurer may not cancel or terminate the policy.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.611      Guarantee

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a guarantee that conforms to the requirements of this Subpart.
- b) A guarantor must submit a financial statement to the Department from the guarantor's most recent fiscal year.
- c) The Department will review the financial statement, determine if adequate resources exist to guarantee the closure costs, and notify the lagoon owner of acceptance or denial within 30 days after receipt of the financial statement by the Department.
- d) The guarantor shall guarantee to pay the amount specified in the guarantee upon notice from the Department as provided in Section 506.606(c) of this Part.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 506.612      Surety Bond

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a surety bond that conforms to the requirements of this Subpart and submitting the bond to the Department.

- b) The surety company issuing the bond must be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5] and approved by the U.S. Department of the Treasury as an acceptable surety. Acceptable sureties are listed in Circular 570 from the U.S. Department of the Treasury.
- c) The bond must guarantee that the lagoon owner will provide lagoon closure and content removal in accordance with Section 506.209 of this Part.
- d) The surety bond must be in substantially the form specified in Appendix A, Illustration A of this Part.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.613 Letter of Credit

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subpart and submitting the letter to the Department.
- b) The issuing institution must be an entity that has the authority to issue letters of credit and:
  - 1) whose letter of credit operations are regulated by the Illinois Commissioner of Banks and Real Estate; or
  - 2) whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) The letter of credit made out to the Department must be accompanied by a letter from the lagoon owner referring to the letter of credit by number, issuing institution, and date and providing the following information: name and address of the lagoon site and the amount of funds assured for closure of the lagoon by the letter of credit.
- d) The letter of credit must be substantially in the form specified in Appendix A, Illustration B of this Part.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.614 Certificate of Deposit or Designated Savings Account

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by designating certificate(s) of deposit or savings account(s) for use as financial responsibility.
- b) The issuing or depository financial institution must be an entity whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) The Department may draw on the certificate(s) of deposit or savings account(s) to pay the costs of closing a lagoon in accordance with this subsection. The Department shall close a lagoon when the lagoon is removed from service and:
  - 1) The owner fails to submit the lagoon closure plan required by Section 506.209 of this Part and:
    - A) cannot be found; or
    - B) fails to cure such failure within 30 days after notice from the Department;
  - 2) The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or
  - 3) The owner fails to comply with an approved lagoon closure plan and:
    - A) cannot be found; or
    - B) fails to cure such noncompliance within 30 days after notice from the Department.
- d) The Director of the Department shall be listed as trustee of the certificate(s) of deposit or savings account(s) for the lagoon owner.
- e) At maturity of any certificate of deposit designated as financial responsibility for lagoon closure, the certificate shall be renewed or the proceeds deposited into a designated savings account that meets the requirements of this Section.
- f) The Department shall relinquish trusteeship of the certificate(s) of deposit or savings account(s) when:
  - 1) The lagoon has been properly closed and a notification of closure completeness pursuant to Section 506.209 of this Part has been issued to the lagoon owner by the Department;

- 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose pursuant to Section 506.209 of this Part;
- 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 506.602(c) of this Part; or
- 4) A lagoon owner offers an authorized alternative surety which meets the requirements of Section 506.607(c) of this Part.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.615 Participation in a Livestock Waste Lagoon Closure Fund

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by participating in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. An owner electing to provide evidence of financial responsibility under this Section must submit a certificate of participation in such a lagoon closure fund to the Department.
- b) The certificate of participation submitted pursuant to subsection (a) of this Section must include:
  - 1) the level of surety for the lagoon;
  - 2) the dollar amount of coverage provided by the lagoon closure fund;
  - 3) the dates for which coverage is provided; and
  - 4) a financial statement of the lagoon closure fund establishing the lagoon closure fund's compliance with the requirements of this Section.
- c) The lagoon closure fund must maintain minimum reserves equal to the greater of:
  - 1) the level of surety of the largest lagoon covered by the lagoon closure fund; or
  - 2) twice the average level of surety of lagoons covered by the fund.
- d) The lagoon closure fund must guarantee that funds will be available to close the lagoon. Upon a notice of liability from the Department, the lagoon closure fund must comply with the requirements of Section 506.606(c) of this Part.

e) If the reserves of the lagoon closure fund are reduced to less than the minimum amount required under subsection (b) due to expenditures of funds in order to comply with Section 506.606(c), then within 120 days of such reduction the lagoon closure fund must demonstrate to the Department that the minimum reserve level has been restored.

f) The lagoon closure fund may not cancel or terminate coverage prior to the date set forth in the certification pursuant to subsection (b)(3) of this Section.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.620 Penalties

The Department may order a lagoon removed from service if the owner fails to provide evidence of financial responsibility to the Department or fails to maintain financial responsibility in the amount required pursuant to Section 506.603 of this Subpart.

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 506.Appendix A Surety Instruments

Section 506.Illustration A Surety Bond

SURETY 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 Department of Agriculture ("Department") the above penal sum unless the Principal provides closure for each site in accordance with 510 ILCS 77/15(e) and 35 Ill. Adm. Code 506.209. 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 Section 15(b) of the Livestock Management Facilities Act ("LMFA") to register at least one livestock waste lagoon with the Department; and

Whereas the Principal is required, under Section 17 of the LMFA to evidence financial responsibility for closure of each registered lagoon; and

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

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 Department if, during the term of the bond, the Department issues a notice of liability to the Surety.

The Surety shall pay the penal sum of the bond to the Department within 30 days after the Department mails the notice of liability to the Surety unless the Surety assumes responsibility to provide closure and so notifies the Department. Payment shall be made by deposit of funds into a designated account upon which the Department is authorized to draw.

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. If the Surety assumes responsibility to provide closure, expenditures made by the Surety for

that purpose may exceed the amount of the penal sum, but the amount of the Surety's obligation under this bond is not affected.

This bond shall expire on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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 Department.

In Witness Whereof, the Principal and Surety have executed this Surety 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

Signature Name \_\_\_\_\_

Typed Name \_\_\_\_\_

Address \_\_\_\_\_

Title \_\_\_\_\_

State of Incorporation \_\_\_\_\_

Date \_\_\_\_\_

Corporate seal

CORPORATE SURETY

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

Corporate seal

Bond premium: \$ \_\_\_\_\_

Section 506.Illustration B Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director  
Illinois Department of Agriculture  
P.O. Box 19281  
Springfield IL 62794-9281

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 Real Estate or our deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. (Omit language that 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 Livestock Management Facilities Act [510 ILCS 77] and 35 Ill. Adm. Code 506.606(a) or 506.606(c)."

This letter of credit is effective as of \_\_\_\_\_ and shall expire on \_\_\_\_\_.

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 draft directly into a designated account in accordance with your instructions.

This letter of credit is governed by the Uniform Commercial Code [810 ILCS 5].

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

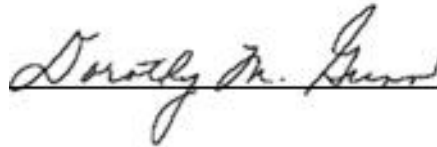
Name and address of issuing institution \_\_\_\_\_

This credit is subject to \_\_\_\_\_

(Source: Added at \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 5th day of November 1998 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board