

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Standards For New Solid Waste Landfills

2) Code Citation: 35 Ill. Adm. Code 811

<u>Section Numbers:</u>	<u>Proposed Action:</u>
811.309	Amend
811.700	Amend
811.703	Amend
811.704	Amend
811.706	Amend
811.710	Amend
811.711	Amend
811.712	Amend
811.713	Amend
811.714	Amend
811.715	Amend
811.716	Amend
811.718	Amend
811.719	Amend
811.ILLUSTRATION A	Amend
811.ILLUSTRATION C	Amend
811.ILLUSTRATION D	Amend
811.ILLUSTRATION E	Amend
811.ILLUSTRATION F	Amend
811.ILLUSTRATION G	Amend
811.ILLUSTRATION H	Amend
811.ILLUSTRATION I	Amend

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4) Statutory Authority: Implementing Section 22 of the Environmental Protection Act [415 ILCS 5/22] and Section 8 of the Illinois Groundwater Protection Act [415 ILCS 55/8], and authorized by Sections 22, 27, and 28 of the Illinois Environmental Protection Act [415 ILCS 5/10, 27, 28] and Section 8 of the Illinois Groundwater Protection Act [415 ICLS 55/8]

5) A Complete Description of the Subjects and Issues Involved: The proposal updates specific segments of the Board's non-hazardous solid waste landfill regulations. The segments relate to financial assurance. The purpose of the financial assurance rules is to establish requirements for performance bonds and other securities insuring closure and postclosure care and corrective action at non-hazardous waste disposal sites and to

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prescribe the conditions under which the State of Illinois is entitled to collect monies from these instruments.

- 6) Published studies or reports and sources of underlying data, used to compose this rulemaking: No published study or research report was used in developing the proposed amendments to 35 Ill. Adm. Code 811.
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These proposed amendments do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of 45 days after the date of publication in the *Illinois Register*. Comments should refer to docket R10-09 and be addressed to:

John Therriault
Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Interested persons may request copies of the Board's opinion and order in R10-09 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us. For more information, contact hearing officer Daniel Robertson at 312/814-6931 or e-mail robertsd@ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: Affected sources and facilities would include those sources and

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facilities required to obtain financial assurance for the closure and post closure care of waste disposal sites and any sources and facilities that provide financial assurance services for waste disposal sites.

- B) Reporting, bookkeeping or other procedures required for compliance: Are detailed in the rule and include submitting to the Illinois Environmental Protection Agency.
 - C) Types of Professional skills necessary for compliance: Professional skills held by financial advisors/planners such as accountants, bookkeepers.
- 14) Regulatory Agenda in which this rulemaking was summarized: January 2011

The full text of the Proposed Amendments begins on the next page:

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

PART 811
STANDARDS FOR NEW SOLID WASTE LANDFILLS

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811.101 Scope and Applicability
811.102 Location Standards
811.103 Surface Water Drainage
811.104 Survey Controls
811.105 Compaction
811.106 Daily Cover
811.107 Operating Standards
811.108 Salvaging
811.109 Boundary Control
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811.113 Electronic Reporting

SUBPART B: INERT WASTE LANDFILLS

Section
811.201 Scope and Applicability
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811.203 Design Period
811.204 Final Cover
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811.206 Leachate Sampling
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811.303 Design Period
811.304 Foundation and Mass Stability Analysis
811.305 Foundation Construction
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811.307 Leachate Drainage System
811.308 Leachate Collection System
811.309 Leachate Treatment and Disposal System
811.310 Landfill Gas Monitoring
811.311 Landfill Gas Management System
811.312 Landfill Gas Processing and Disposal System
811.313 Intermediate Cover
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811.315 Hydrogeologic Site Investigations
811.316 Plugging and Sealing of Drill Holes
811.317 Groundwater Impact Assessment

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811.318 Design, Construction, and Operation of Groundwater Monitoring
Systems
811.319 Groundwater Monitoring Programs
811.320 Groundwater Quality Standards
811.321 Waste Placement
811.322 Final Slope and Stabilization
811.323 Load Checking Program
811.324 Corrective Action Measures for MSWLF Units
811.325 Selection of remedy for MSWLF Units
811.326 Implementation of the corrective action program at MSWLF Units

SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

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811.401 Scope and Applicability
811.402 Notice to Generators and Transporters
811.403 Special Waste Manifests
811.404 Identification Record
811.405 Recordkeeping Requirements
811.406 Procedures for Excluding Regulated Hazardous Wastes

SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

Section

811.501 Scope and Applicability
811.502 Duties and Qualifications of Key Personnel
811.503 Inspection Activities
811.504 Sampling Requirements
811.505 Documentation
811.506 Foundations and Subbases
811.507 Compacted Earth Liners
811.508 Geomembranes
811.509 Leachate Collection Systems

SUBPART G: FINANCIAL ASSURANCE

Section

811.700 Scope, Applicability and Definitions
811.701 Upgrading Financial Assurance
811.702 Release of Financial Institution
811.703 Application of Proceeds and Appeals
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811.705 Revision of Cost Estimate
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811.APPENDIX A Financial Assurance Forms

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811. ~~Illustration B~~ Certificate ILLUSTRATION B Certificate of Acknowledgment
811. ~~Illustration C~~ Forfeiture ILLUSTRATION C Forfeiture Bond
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811. ~~Illustration H~~ Owner ILLUSTRATION H Owner's or Operator's Bond With Parent Surety
811. ~~Illustration I~~ Letter ILLUSTRATION I Letter from Chief Financial Officer

811.APPENDIX B Section-by- Section correlation between the Standards of the RCRA Subtitle D MSWLF regulations and the Board's nonhazardous waste landfill regulations.

811.APPENDIX C List of Leachate Monitoring Parameters

AUTHORITY: Implementing Sections 7.2, 21, 21.1, 22, 22.17, and 22.40 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 21, 21.1, 22, 22.17, 22.40, and 27].

SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in R92-19 at 17 Ill. Reg. 12413, effective July 19, 1993; amended in R93-10 at 18 Ill. Reg. 1308, effective January 13, 1994; expedited correction at 18 Ill. Reg. 7504, effective July 19, 1993; amended in R90-26 at 18 Ill. Reg. 12481, effective August 1, 1994; amended in R95-13 at 19 Ill. Reg. 12257, effective August 15, 1995; amended in R96-1 at 20 Ill. Reg. 12000, effective August 15, 1996; amended in R97-20 at 21 Ill. Reg. 15831, effective November 25, 1997; amended in R98-9 at 22 Ill. Reg. 11491, effective June 23, 1998; amended in R99-1 at 23 Ill. Reg. 2794, effective February 17, 1999; amended in R98-29 at 23 Ill. Reg. 6880, effective July 1, 1999; amended in R04-5/R04-15 at 28 Ill. Reg. 9107, effective June 18, 2004; amended in R05-1 at 29 Ill. Reg. 5044, effective March 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill. Reg. 4136, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1435, effective December 20, 2006; amended in R07-8 at 31 Ill. Reg. 16172, effective November 27, ~~2007~~, 2007; amended in R10-9 at 35 Ill. Reg. _____, effective _____.

SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS

Section 811.309 Leachate Treatment and Disposal Systems

a) Leachate shall be allowed to flow freely from the drainage and collection system. The operator is responsible for the operation of a leachate management system designed to handle all leachate as it drains from the collection system. The leachate management system shall consist of any combination of storage, treatment, pretreatment, and disposal options designed and constructed in compliance with the requirements of this Section.

b) The leachate management system shall consist of any combination of multiple treatment and storage structures, to allow the management and disposal of leachate during routine maintenance and repairs.

c) Standards for Onsite Treatment and Pretreatment

- 1) All onsite treatment or pretreatment systems shall be considered part of the facility.
- 2) The onsite treatment or pretreatment system shall be designed in accordance with the expected characteristics of the leachate. The design may include modifications to the system necessary to accommodate changing leachate characteristics.
- 3) The onsite treatment or pretreatment system shall be designed to function for the entire design period.
- 4) All of the facility's unit operations, tanks, ponds, lagoons and basins shall be designed and constructed with liners or containment structures to control seepage to groundwater.
- 5) All treated effluent discharged to waters of the State shall meet the requirements of 35 Ill. Adm. Code 309.
- 6) The treatment system shall be operated by an operator certified under the requirements of 35 Ill. Adm. Code 312.

d) Standards for Leachate Storage Systems

- 1) Except as otherwise provided in subsection (d)(6) of this Section, the leachate storage facility must be able to store a minimum of at least five days' worth of accumulated leachate at the maximum generation rate used in designing the leachate drainage system in accordance with Section 811.307. The minimum storage capacity may be built up over time and in stages, so long as the capacity for five consecutive days of accumulated leachate is available at any time during the design period of the facility.
- 2) All leachate storage tanks shall be equipped with secondary containment systems equivalent to the protection provided by a clay liner 0.61 meter (2 feet thick) having a permeability no greater than 10^{-7} centimeters per second.
- 3) Leachate storage systems shall be fabricated from material compatible with the leachate expected to be generated and resistant to temperature extremes.
- 4) The leachate storage system shall not cause or contribute to a malodor.
- 5) The leachate drainage and collection system shall not be used for the purpose of storing leachate.
- 6) A facility may have less than five days' worth of storage capacity for accumulated leachate as required by subsection (d)(1) of this Section, if the owner or operator of the facility demonstrates that multiple treatment, storage and disposal options in the facility's approved leachate management system developed in accordance with subsection (b) of this Section will achieve equivalent performance. Such options shall consist of not less than one day's worth of storage capacity for accumulated leachate plus at least two alternative means of managing accumulated leachate through treatment or disposal, or both treatment and disposal, each of which means is capable of treating or disposing of all leachate generated at the maximum generation rate on a daily basis.

e) Standards for Discharge to an Offsite Treatment Works

1) Leachate may be discharged to an offsite treatment works that meets the following requirements:

A) All discharges of effluent from the treatment works shall meet the requirements of 35 Ill. Adm. Code 309.

B) The treatment systems shall be operated by an operator certified under the requirements of 35 Ill. Adm. Code 312.

C) No more than 50 percent of the average daily influent flow can be attributable to leachate from the solid waste disposal facility. Otherwise, the treatment works shall be considered a part of the solid waste disposal facility.

2) The operator is responsible for securing permission from the offsite treatment works for authority to discharge to the treatment works.

3) All discharges to a treatment works shall meet the requirements of 35 Ill. Adm. Code 310.

4) Pumps, meters, valves and monitoring stations that control and monitor the flow of leachate from the unit and which are under the control of the operator shall be considered part of the facility and shall be accessible to the operator at all times.

5) Leachate shall be allowed to flow into the sewage system at all times; however, if access to the treatment works is restricted or anticipated to be restricted for longer than five days, then an alternative leachate management system shall be constructed in accordance with subsection (c).

6) Where leachate is not directly discharged into a sewage system, the operator shall provide storage capacity sufficient to transfer all leachate to an offsite treatment works. The storage system shall meet the requirements of subsection (d).

f) Standards for Leachate Recycling Systems

1) Leachate recycling systems may be utilized only at permitted waste disposal units that meet the following requirements:

A) The unit must have a liner designed, constructed and maintained to meet the minimum standards of Section 811.306.

B) The unit must have a leachate collection system in place and operating in accordance with Section 811.307.

C) A gas management system, equipped with a mechanical device such as a compressor to withdraw gas, must be implemented to control odors and prevent migration of methane in accordance with Section 811.311.

D) The topography must be such that any accidental leachate runoff can be controlled by ditches, berms or other equivalent control means.

2) Leachate shall not be recycled during precipitation events or in volumes large enough to cause runoff or surface seeps.

3) The amount of leachate added to the unit shall not exceed the ability of the waste and cover soils to transmit leachate flow downward. All other leachate shall be considered excess leachate, and a leachate management system capable of disposing of all excess leachate must be available.

4) The leachate storage and distribution system shall be designed to avoid exposure of leachate to air unless aeration or functionally equivalent devices are utilized.

5) The distribution system shall be designed to allow leachate to be evenly distributed beneath the surface over the recycle area.

6) Daily and intermediate cover shall be permeable to the extent necessary to prevent the accumulation of water and formation of perched watertables and gas buildup; alternatively cover shall be removed prior to additional waste placement.

7) Daily and intermediate cover shall slope away from the perimeter of the site to minimize surface discharges.

g) Leachate Monitoring

1) Representative samples of leachate shall be collected from each established leachate monitoring location in accordance with subsection (g)(5) and tested for the parameters referenced in subsections (g)(2)(G) and (g)(3)(D). The Agency may, by permit condition, require additional, or allow less, leachate sampling and testing as necessary to ensure compliance with this Section and Sections 811.312, 811.317, and 811.319.

2) Discharges of leachate from units that dispose of putrescible wastes shall be tested for the following constituents prior to treatment or pretreatment:

A) Five day biochemical oxygen demand (BOD5);

B) Chemical oxygen demand;

C) Total Suspended Solids;

D) Total Iron;

E) pH;

F) Any other constituents listed in the operator's National Pollution Discharge Elimination System (NPDES) discharge permit, pursuant to 35 Ill. Adm. Code 304, or required by a publicly owned treatment works, pursuant to 35 Ill. Adm. Code 310; and

G) All the monitoring parameters listed in Section 811.Appendix C, unless an alternate monitoring list has been approved by the Agency.

3) Discharges of leachate from units which dispose only chemical wastes shall be monitored for constituents determined by the characteristics of the chemical waste to be disposed of in the unit. They shall include, as a minimum:

A) pH;

B) Total Dissolved Solids;

C) Any other constituents listed in the operator's NPDES discharge permit, pursuant to 35 Ill. Adm. Code 304, or required by a publicly owned treatment works, pursuant to 35 Ill. Adm. Code 310; and

D) All the monitoring parameters listed in Section 811. Appendix C, unless an alternate monitoring list has been approved by the Agency.

4) A network of leachate monitoring locations shall be established, capable of characterizing the leachate produced by the unit. Unless an alternate network has been approved by the Agency, the network of leachate monitoring locations shall include:

A) At least four leachate monitoring locations; and

B) At least one leachate monitoring location for every 25 acres within the unit's waste boundaries.

5) Leachate monitoring shall be performed at least once every six months and each established leachate monitoring location shall be monitored at least once every two years.

h) Time of Operation of the Leachate Management System

1) The operator shall collect and dispose of leachate for a minimum of five years after closure and thereafter until treatment is no longer necessary.

2) Treatment is no longer necessary if the leachate constituents do not exceed the wastewater effluent standards in 35 Ill. Adm. Code 304.124, 304.125, 304.126 and do not contain a BOD5 concentration greater than 30 mg/L for six consecutive months.

3) Leachate collection at a MSWLF unit shall be continued for a minimum period of 30 years after closure, except as otherwise provided by subsections (h)(4) and (h)(5).

4) The Agency may reduce the leachate collection period at a MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

5) The owner or operator of a MSWLF unit shall petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the postclosure care monitoring period for all of the following requirements:

i) Inspection and maintenance (Section 811.111);

ii) Leachate collection (Section 811.309);

iii) Gas monitoring (Section 811.310 ~~Section 811.130~~); and

iv) Groundwater monitoring (Section 811.319).

BOARD NOTE: Subsection (h) is derived from 40 CFR 258.61 (1992).

(Source: Amended at 35 Ill. Reg. _____, effective _____)

SUBPART G: FINANCIAL ASSURANCE

Section 811.700 Scope, Applicability and Definitions

a) This Subpart provides procedures by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of Section 21.1(a) of the Act.

b) Financial assurance ~~shall may~~ shall be provided, as specified in Section 811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance or self-insurance. The owner ~~or~~ operator shall provide financial assurance to the Agency before the receipt of the waste.

c) Except as provided in subsection (f), this Subpart does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government; provided, however, that any other persons who conduct such a waste disposal operation on a site that is owned or operated by such a governmental entity shall provide financial assurance for closure and postclosure care of the site.

d) The owner or operator is not required to provide financial assurance pursuant to this Subpart if the owner or operator demonstrates:

1) That closure and postclosure care plans filed pursuant to 35 Ill. Adm. Code 724 or 725 will result in closure and postclosure care of the site in accordance with the requirements of this Part; and

2) That the owner or operator has provided financial assurance adequate to provide for such closure and postclosure care pursuant to 35 Ill. Adm. Code 724 or 725.

e) Definition: "Assumed closure date" means the ~~point date during the next permit term~~ point in time when the extent and manner of the facility's development, as permitted for operation in accordance with Section 35 Ill. Adm. Code 813.203 ~~where~~ when applicable, would make closure ~~on which the costs of premature final closure of the facility, in accordance with the standards of this Part, the most expensive will be greatest.~~ the most expensive.

f) On or after April 9, 1997, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at an MSWLF unit that requires a permit under ~~subsection (d) of Section 21~~ section 21.1(d) of the Act, unless that person complies with the financial assurance requirements of this Part.

g) The Board will grant a variance pursuant to Sections 35 through 38 of the Act and 35 Ill. Adm. Code 104 that allows a facility to operate not in compliance with the otherwise applicable requirements of this Section for up to one year, until April 9, 1998, for good cause, if it determines that an owner or operator has demonstrated that the prior April 9, 1997 effective date for the requirements of this Section did not provide sufficient time to comply and that operating not in compliance with the otherwise applicable provisions of this Section would not adversely affect human health or the environment.

BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance requirements to units of local government, since the Subtitle D regulations exempt only federal and state governments from financial assurance

requirements. (See 40 CFR 258.70 (1996).) P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as subsection (g), to allow states to waive the compliance deadline until April 9, 1998.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.703 Application of Proceeds and Appeals

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 to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise.

b) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104, the Board may order modifications in permits to change the type or amount of financial assurance pursuant to an enforcement action or a variance petition. Also, the Board may order that an owner or operator modify a closure or postclosure care plan or order that proceeds from financial assurance be applied to the execution of a closure or postclosure care plan.

c) The following Agency actions may be appealed to the Board as a permit denial pursuant to 35 Ill. Adm. Code 105 and Section 21.1(e) ~~Section 21.5(e)~~ of the Act:

- 1) A refusal to accept financial assurance tendered by the owner or operator;
- 2) A refusal to release the owner or operator from the requirement to maintain financial assurance;
- 3) A refusal to release excess funds from a trust;
- 4) A refusal to approve a reduction in the penal sum of a bond;
- 5) A refusal to approve a reduction in the amount of a letter of credit;
- 6) A refusal to approve a reduction in the face amount of an insurance policy; or
- 7) A determination that an owner or operator no longer meets the gross revenue test or financial test.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.704 Closure and Postclosure Care and Corrective Action Cost Estimates

a) Written cost estimate. The owner or operator shall have a written estimate of the cost of closure of all parts of the facility where wastes have been deposited in accordance with the requirements of this Part; the written closure plan, required by Section 811.110 and 35 Ill. Adm. Code 812.114; and the cost of postclosure care and plans, required by this Part and the written postclosure care plans required by 35 Ill. Adm. Code 812.115. The cost estimate is the total cost for closure and postclosure care.

b) The owner or operator shall revise the cost estimate whenever a change in the closure plan or postclosure care plan increases the cost estimate.

c) The cost estimate must be based on the steps necessary for the premature final closure of the facility on the assumed closure date.

d) The cost estimate must be based on the assumption that the Agency will contract with a third party to implement the closure plan.

e) The cost estimate may not be reduced by allowance for the salvage value of equipment or waste, for the resale value of land, or for the sale of landfill gas.

f) The cost estimate must, at a minimum, include all costs for all activities necessary to close the facility in accordance with all requirements of this Part.

g) (Blank) ~~Except for a MSWLF unit, the postclosure monitoring and maintenance cost estimate must be prepared:~~

~~1) On the basis of the design period for each unit at a facility, assuming operations will cease on the assumed closure date; and~~

~~2) Reduced to present value, as follows:~~

~~A) Based on a 4 percent discount rate;~~

~~B) Without allowing for inflation;~~

~~C) Over a period including the time remaining until the assumed closure date, plus the postclosure care period;~~

h) The postclosure care cost estimate must, at a minimum, be based on the following elements in the postclosure care plan:

1) Groundwater monitoring, based on the number of monitoring points and parameters and the frequency of sampling specified in the permit.

2) The annual Cost of Cover Placement and Stabilization, including an estimate of the annual residual settlement and erosion control and the cost of mowing.

3) Alternative Landfill Gas Disposal. If landfill gas is transported to an off-site processing system, then the owner or operator shall include in the cost estimate the costs necessary to operate an onsite gas disposal system, should access to the off-site facility become unavailable. The cost estimate must include the following information: installation, operation, maintenance and monitoring of an on-site gas disposal system.

4) Cost Estimates Beyond the Design Period. When a facility must extend the postclosure care period beyond the applicable design period, the cost estimate must be based upon such additional time and the care activities occurring during that time.

i) This Section does not authorize the Agency to require the owner or operator to perform any of the indicated activities upon which cost estimates are to be based; however, if the site permit requires a closure activity, the owner or operator shall include the cost of that activity in the cost estimate.

j) Once the owner or operator has completed an activity, the owner or operator may file an application for significant permit modification pursuant to 35 Ill. Adm. Code 813.201 indicating that the activity has been completed, and zeroing that element of the cost estimate.

k) Cost estimate for corrective action at MSWLF units.

1) An owner or operator of a MSWLF unit required to undertake a corrective action program pursuant to Section 811.326 shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the Section 811.326. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator shall notify the Agency that the estimate has been placed in the operating record.

2) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with Section 811.326(f).

3) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided pursuant to subsections (k)(5) and (k)(6) ~~under paragraph (b)~~ of this ~~section~~ Section if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.

4) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided pursuant to subsections (k)(5) and (k)(6) of this ~~section~~ Section if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator shall notify the Agency that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

5) The owner or operator of each MSWLF unit required to undertake a corrective action program under Section 811.326 shall establish, in accordance with Section 811.706, financial assurance for the most recent corrective action program.

6) The owner or operator shall provide continuous coverage for corrective action until released from the financial assurance requirements for corrective action by demonstrating compliance with Section 811.326 (f) and (g).

BOARD NOTE: Subsection (k) is derived from 40 CFR 258.73 (1992).

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.706 Mechanisms for Financial Assurance

a) The owner or operator of a waste disposal site ~~shall~~ may ~~shall~~ utilize any of the mechanisms listed in subsections (a)(1) through (a)(10) to provide financial assurance for closure and postclosure care, and for corrective action

at an MSWLF unit. An owner or operator of an MSWLF unit shall also meet the requirements of subsections (b), (c), and (d). The mechanisms are as follows:

- 1) A trust fund (see Section 811.710);
- 2) A surety bond guaranteeing payment (see Section 811.711);
- 3) A surety bond guaranteeing performance (see Section 811.712);
- 4) A letter of credit (see Section 811.713);
- 5) Closure insurance (see Section 811.714);
- 6) Self-insurance (see Section 811.715);
- 7) Local government financial test (see Section 811.716);
- 8) Local government guarantee (see Section 811.717);
- 9) Corporate financial test (see Section 811.719); or
- 10) Corporate guarantee (see Section 811.720).

b) The owner or operator of an MSWLF unit shall ensure that the language of the mechanisms listed in subsection (a), when used for providing financial assurance for closure, postclosure, and corrective action, satisfies the following:

- 1) The amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action; and
- 2) The funds will be available in a timely fashion when needed.

c) The owner or operator of an MSWLF unit shall provide financial assurance utilizing one or more of the mechanisms listed in subsection (a) within the following dates:

- 1) By April 9, 1997, or such later date granted pursuant to Section 811.700(g), or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care; or
- 2) No later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325, in the case of corrective action.

d) The owner or operator shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code 813.403(b) or Section 811.326.

BOARD NOTE: Subsections (b) and (c) are derived from 40 CFR 258.74(~~1~~1) (1996). Amendments prompted by amendments to 40 CFR 258.74(a)(5) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.710 Trust Fund

a) An owner or operator may satisfy the requirements of this Subpart G by establishing a trust fund ~~which~~that conforms to the requirements of this Section and submitting an original signed duplicate of the trust agreement to the Agency.

b) The trustee ~~shall~~must be an entity ~~which~~that has the authority to act as a trustee and ~~of whom either of the following is true:~~

1) ~~Whose~~It is an entity whose trust operations are examined by the Illinois Department of Financial and Professional ~~Regulation~~Commissioner of Banks and Trust Companies Regulation pursuant to the Illinois Banking Act ~~(Ill. Rev. Stat. 1991, ch. 17, pars. 301 et seq. [205 ILCS 5/1 et seq.]~~); or

2) ~~Who~~It is an entity that complies with the Corporate Fiduciary Act ~~(Ill. Rev. Stat. 1991, ch. 17, pars. 1551-1 et seq. [205 ILCS 620/1-1 et seq.]~~).

c) The trust agreement must be on the forms specified in Appendix A, Illustration A of this Part, and the trust agreement must be accompanied by a formal certification of acknowledgement, on the form specified in Appendix A, Illustration B. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure, post-closure, and corrective action cost estimates covered by the agreement.

d) Payments into the trust ~~of:~~

1) For closure and post-closure care ~~of:~~

A) The owner or operator ~~shall~~must make a payment into the trust fund each year during the pay-in period.

B) The pay-in period is the initial permit term or the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter. ~~number of years remaining until the assumed closure date.~~

C) Annual payments are determined by the following formula:

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

~~where:~~

Where:

CE = Current cost ~~estimate~~CV estimate
CV = Current value of the trust ~~fund~~Y
fund
Y = Number of years remaining in the pay in period.

D) The owner or operator ~~shall~~must make the first annual payment prior to the initial receipt of waste for disposal. The owner or operator ~~shall~~must also, prior to ~~such~~ initial receipt of waste, submit to the Agency a receipt from the trustee for the first annual payment.

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

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

G) An owner or operator required to provide additional financial assurance for an increase in the cost estimate because of an amendment to this Subchapter i may provide such additional financial assurance pursuant to this subsection (d)(1)(G). The owner or operator may provide the increase by contributing to a new or existing trust fund pursuant to this Section. Subsection (d)(2) of this Section notwithstanding, the pay-in period for such additional financial assurance ~~shall~~must be not less than three years.

2) For corrective action at MSWLF units+.

A) The owner or operator ~~shall~~must make payments into the trust fund annually over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

B) The owner or operator ~~shall~~must make the first payment into the trust fund equal to at least one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period, as defined in subsection (d)(2)(A) of this ~~section~~Section. The amount of subsequent payments must be determined by the following formula:

Next ~~payment~~ = ~~(Payment=~~RB-CV)/YCVY

~~where:~~

Where:

RB = Most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period); ~~CV = Current value of the trust fund; and~~Y = fund; and Y = fund
Y = Number of years remaining in the pay-in period.

C) The owner or operator ~~shall~~must make the initial payment into the trust fund no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

~~Board Note. Changes to subsection (d) are~~BOARD NOTE: Subsection (d) of this Section is partly derived from 40 CFR 258.74 (a)(2), (a)(4), and (a)(5) (19922005).

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

f) If the owner or operator of a MSWLF unit establishes a trust fund after having used one or more alternative mechanisms specified in this Subpart G, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.

~~Board Note.~~ BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 258.74 (a)(6) (19922005).

g) Release of excess funds+.

1) If the value of the financial assurance is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Agency for a release of the amount in excess of the current cost estimate.

2) Within 60 days after receiving a request from the owner or operator for a release of funds, the Agency ~~shall~~must instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing to be in excess of the current cost estimate.

h) Reimbursement for closure, postclosure care, and corrective action expenses~~+~~.

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

2) Within 60 days after receiving the itemized bills for closure~~or~~, postclosure care~~activities~~, or correction action~~activities~~, the Agency ~~shall~~must determine whether the expenditures are in accordance with the closure~~or~~, postclosure care, or corrective action plan. The Agency ~~shall~~must instruct the trustee to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure~~or~~, postclosure care, or corrective action plan.

3) If the Agency determines, based on such information as is available to it, that the cost of closure and postclosure care or corrective action will be greater than the value of the trust fund, it ~~shall~~must withhold reimbursement of such amounts as it determines are necessary to preserve the fund in order to accomplish closure and postclosure care or corrective action until it determines that the owner or operator is no longer required to maintain financial assurance for closure and postclosure care or corrective action. In the event the fund is inadequate to pay all claims, the Agency ~~shall~~must pay claims according to the following priorities:

A) Persons with whom the Agency has contracted to perform closure~~or~~, postclosure care, or corrective action activities (first priority);

B) Persons who have completed closure~~or~~, postclosure care, or corrective action authorized by the Agency (second priority);

C) Persons who have completed work ~~which~~that furthered the closure~~or~~, postclosure care, or corrective action (third priority);

D) The owner or operator and related business entities (last priority).

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.711 Surety Bond Guaranteeing Payment

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. A surety bond obtained by an owner or operator of an MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997 (the effective date of the financial assurance

requirements under RCRA Subtitle D regulations), or such later date granted pursuant to Section 811.700(g), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

b) The surety company issuing the bond shall be licensed to transact the business of insurance by the Department of ~~Financial and Professional Regulation~~LICENSED TO TRANSACT THE BUSINESS OF INSURANCE BY THE DEPARTMENT OF INSURANCEInsurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a minimum the insurer must be licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more ~~states~~OR AT A MINIMUM THE INSURER MUST BE LICENSED TO TRANSACT THE BUSINESS OF INSURANCE OR APPROVED TO PROVIDE INSURANCE AS AN EXCESS OR SURPLUS LINES INSURER BY THE INSURANCE DEPARTMENT IN ONE OR MORE STATESstates, and approved by the U.S. Department of the Treasury as an acceptable surety. ~~Section 21.1(a.5) of the Act~~ [415 ILCS 5/21.1(a.5)]

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

c) The surety bond must be on the forms specified in Appendix A, Illustration C, ~~D, or H.~~

d) Any payments made under the bond will be placed in the ~~Landfill Closure and Post-Closure Fund~~Landfill Closure and Post-Closure fund within the State Treasury.

e) Conditions:

1) The bond must guarantee that the owner or operator will:

A) ~~P provide~~Provide closure and postclosure care in accordance with the approved closure and postclosure care plans and, if the bond is a corrective action bond, provide. ~~If the facility is an MSWLF unit, then the corrective action bond must guarantee that the owner or operator will implement~~ corrective action in accordance with Section 811.326; and

B) Provide alternative 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 from the surety that the bond will not be renewed for another term.

2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title ~~VIII~~VIII of the Act, or when ordered to do so by a court of competent jurisdiction;

D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close the site or provide

postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; ~~or~~

E) For a corrective action bond, fails to implement corrective action at an MSWLF unit in accordance with Section 811.326; or

F) Fails to provide alternative 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 from the surety that the bond will not be renewed for another term.

f) Penal sum:

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

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

3) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 90 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 that~~ such increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of ~~such the~~ such alternative financial assurance to the Agency.

g) Term:

1) The bond must be issued for a term of at least one ~~year five years~~ year and must not be cancelable during that term.

2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the owner and operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, 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. ~~If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve month period starting with the date of expiration of the bond. During such extension the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.~~

3) The Agency shall release the surety by providing written authorization for termination of the bond to the owner or operator and the surety when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or

B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).

~~The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at an MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action program at an MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action in compliance with this Part.~~

h) Cure of default and refunds:

1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at an MSWLF unit, unless the Agency determines that the closure or postclosure care plan, corrective action at an MSWLF unit or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action in compliance with this Part.

2) After closure and postclosure care have been completed in accordance with the plans and requirements of this Part or after the completion of corrective action at an MSWLF unit in accordance Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Post-~~Closure~~Closure Fund" by the surety, subject to appropriation of funds by the Illinois General Assembly.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74(b)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.712 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. A surety bond obtained by an owner or operator of an MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), or such later date granted pursuant to Section 811.700(g), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

b) The surety company issuing the bond shall be licensed to transact the business of insurance by the Department of ~~Financial and Professional Regulation~~LICENSED TO TRANSACT THE BUSINESS OF INSURANCE BY THE DEPARTMENT OF ~~INSURANCE~~Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a minimum the insurer must be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more ~~states~~OR AT A MINIMUM THE INSURER MUST BE

~~LICENSED TO TRANSACT THE BUSINESS OF INSURANCE OR APPROVED TO PROVIDE INSURANCE AS AN EXCESS OR SURPLUS LINES INSURER BY THE INSURANCE DEPARTMENT IN ONE OR MORE STATES~~states, and approved by the U.S. Department of the Treasury as an acceptable surety. ~~Section 21.1(a.5) of the Act~~ [415 ILCS 5/21.1(a.5)]

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

c) The surety bond must be on the forms ~~as~~ specified in Appendix A, Illustration ~~C, D, or H~~.

d) Any payments made under the bond will be placed in the ~~Landfill Closure and Post-Closure Fund~~Landfill Closure and Post-Closure Fund within the State Treasury.

e) Conditions:

1) The bond must guarantee that the owner or operator will:

A) ~~P~~Provide closure and postclosure care in accordance with the closure and postclosure care plans in the permit and, if the bond is a corrective action bond, provide. ~~If the facility is an MSWLF unit, then a corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326; and. The surety shall have the option of providing closure and postclosure care or carrying out corrective action, or of paying the penal sum~~

B) Provide alternative 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 from the surety that the bond will not be renewed for another term.

2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title ~~VIII~~VIII of the Act, or when ordered to do so by a court of competent jurisdiction; ~~or~~

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

E) For a corrective action bond, fails to implement corrective action at an MSWLF unit in accordance with Section 811.326; or

F) Fails to provide alternative 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 from the surety that the bond will not be renewed for another term.

3) Upon failure of the owner or operator to perform as guaranteed by the bond, the surety shall have the option of providing closure and postclosure care ~~or~~, carrying out corrective action, or ~~of~~ paying the penal sum.

f) Penal sum:

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

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

3) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 90 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~~that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of ~~such~~the alternative financial assurance to the Agency.

g) Term:

1) The bond must be issued for a term of at least one ~~year~~five years~~year~~ and must not be cancelable during that term.

2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the owner or operator and the Agency by certified mail of a decision not to renew the bond. Under the terms of the surety bond, 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. ~~If the owner or operator fails to provide substitute financial assurance prior to expiration of a bond, the term of the bond must be automatically extended for one twelve month period starting with the date of expiration of the bond. During such extension, the bond will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.~~

3) The Agency shall release the surety by providing written authorization for termination of the bond to the owner or operator and the surety when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or

B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).

h) Cure of default and refunds:

1) The Agency shall release the surety if, after the surety becomes liable on the bond, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at an MSWLF unit, unless the Agency determines that the closure or postclosure care plan,

corrective action at an MSWLF unit, or the amount of substituted financial assurance is inadequate to provide closure and postclosure care or implement corrective action at an MSWLF unit in compliance with this Part.

2) After closure and postclosure care have been completed in accordance with the closure and postclosure care plans and the requirements of this Part or after the completion of corrective action at an MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Post-Closure Fund" by the surety, subject to appropriation of funds by the Illinois General Assembly.

i) 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.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74 (b)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.713 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. A letter of credit obtained by an owner or operator of an MSWLF unit must be effective before the initial receipt of waste or before April 9, 1997 (the effective date of the financial assurance requirements under RCRA Subtitle D regulations), or such later date granted pursuant to Section 811.700(g), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the remedy has been selected in accordance with the requirements of Section 811.325.

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

1) Whose letter-of-credit operations are regulated by the Illinois Department of Financial and Professional ~~Regulation Commissioner of Banks and Trust Companies~~Regulation pursuant to the Illinois Banking Act [205 ILCS 5]; or

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

c) Forms:

1) The letter of credit must be on the forms specified in Appendix A, Illustration E.

2) The letter of credit must be accompanied by a letter from the owner or operator, referring to the letter of credit by number, the name and address of

the issuing institution, and the effective date of the letter, and providing the following information: the name and address of the site and the amount of funds assured for closure and postclosure care of the site, or for corrective action at an MSWLF unit by the letter of credit.

d) Any amounts drawn by the Agency pursuant to the letter of credit will be deposited in the ~~Landfill Closure and Post-Closure Fund~~ Landfill Closure and Post-Closure Fund within the State Treasury.

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

1) The Agency shall draw on the letter of credit if the owner or operator fails to perform closure or postclosure care in accordance with the closure and postclosure care plans, or fails to implement corrective action at an MSWLF unit in accordance with Section 811.326.

2) The Agency shall draw on the letter of credit when the owner or operator:

- A) Abandons the site;
- B) Is adjudicated bankrupt;

C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title ~~VIII~~VIII of the Act, or when ordered to do so by a court of competent jurisdiction;

D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to Provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; ~~or~~

E) For a corrective action bond, fails to implement corrective action at an MSWLF unit in accordance with Section 811.326; or

F) Fails to provide alternative 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 from the issuing institution that the letter of credit will not be extended for another term.

f) Amount:

1) The letter of credit must be issued in an amount at least equal to the current cost estimate.

2) Whenever the current cost estimate decreases, the amount of credit may be reduced to the amount of the current cost estimate following written approval by the Agency. ~~The Agency shall approve a reduction in the amount whenever the current cost estimate decreases.~~

3) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 90 days after the increase, must either cause the amount of the credit to be increased to an amount at least equal to the current cost estimate and submit evidence of ~~such~~that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of ~~such~~the alternative financial assurance to the Agency.

g) Term:

1) The letter of credit must be issued for a term of at least one ~~year~~~~five-~~~~years~~year and must be irrevocable during that term.

2) The letter of credit must provide that, on the current expiration date and on each successive expiration date, the letter of credit 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 letter of credit for another term. 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. ~~If the owner or operator fails to substitute alternative financial assurance prior to expiration of a letter of credit, the term of the letter of credit must be automatically extended for one twelve month period starting with the date of expiration. During such extension, the letter of credit will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.~~

3) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or

B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with Ill. Adm. Code 813.403(b).

h) Cure of default and refunds:

1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the owner or operator or another person provides financial assurance for closure and postclosure care of the site or corrective action at an MSWLF unit, unless the Agency determines that a plan or the amount of substituted financial assurance is inadequate to provide closure and postclosure care, or implement corrective action at an MSWLF unit, as required by this Part.

2) After closure and postclosure care have been completed in accordance with the closure and postclosure care plans and the requirements of this Part or after the completion of corrective action at an MSWLF unit in accordance with Section 811.326, the Agency shall refund any unspent money which was paid into the "Landfill Closure and Post-~~Celosure~~Closure Fund" by the financial institution, subject to appropriation of funds by the Illinois General Assembly.

BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40 CFR 258.74 (c)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance requirements for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to allow states to waive the compliance deadline until April 9, 1998. The other clarifying changes reflect the inclusion of financial assurance requirements for implementing corrective action at MSWLF units under this Section.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.714 Closure Insurance

a) An owner or operator may satisfy the requirements of this Subpart by obtaining closure and postclosure care insurance which conforms to the requirements of this Section and submitting to the Agency an executed duplicate original of ~~such~~the insurance policy and the certificate of insurance for closure and/or ~~post-closure~~postclosure care specified in Appendix A, Illustration ~~F to the Agency. F.~~

b) The insurer shall be licensed to transact the business of insurance by the Department of ~~Financial and Professional Regulation~~LICENSED TO TRANSACT THE BUSINESS OF INSURANCE BY THE DEPARTMENT OF INSURANCEInsurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a minimum, the insurer must be licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more states. ~~OR AT A MINIMUM THE INSURER MUST BE LICENSED TO TRANSACT THE BUSINESS OF INSURANCE OR APPROVED TO PROVIDE INSURANCE AS AN EXCESS OR SURPLUS LINES INSURER BY THE INSURANCE DEPARTMENT IN ONE OR MORE STATES. Section 21.1(a.5) of the Act~~ [415 ILCS 5/21.1(a.5)]

c) The policy must be on forms filed with the Illinois Department of ~~Financial and Professional Regulation — Division of Insurance~~approved by the Illinois Department of Insurance, pursuant to 50 Ill. Adm. Code 753 and Section 143(2) of the Illinois Insurance Code [215 ILCS 5/143(2)] or on forms approved by the insurance department of one or more states.

d) Face amount:

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

2) 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. ~~The Agency shall approve a reduction in the amount of the policy whenever the current cost estimate decreases.~~

3) Whenever the current cost estimate increases to an amount greater than the face amount, the owner or operator, within 90 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~~that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of ~~such~~the alternative financial assurance to the Agency.

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

1) The owner or operator abandons the site;

- 2) The owner or operator is adjudicated bankrupt;
- 3) The Board, pursuant to Title VIII of the Act, or a court of competent jurisdiction orders the site closed;
- 4) The owner or operator notifies the Agency that it is initiating closure;
or
- 5) Any person initiates closure with approval of the Agency.

f) Reimbursement for closure and postclosure care expenses:

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

2) Within 60 days after receiving bills for closure or postclosure care activities, the Agency shall determine whether the expenditures are in accordance with the closure or postclosure care plan. The Agency shall direct the insurer to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure and postclosure care plans.

3) If the Agency determines based on such information as is available to it that the cost of closure and postclosure care will be greater than the face amount of the policy, it shall 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. In the event the face amount of the policy is inadequate to pay all claims, the Agency shall pay claims according to the following priorities:

A) Persons with whom the Agency has contracted to perform closure or postclosure care activities (first priority);

B) Persons who have completed closure or postclosure care authorized by the Agency (second priority);

C) Persons who have completed work which furthered the closure or postclosure care (third priority);

D) The owner or operator and related business entities (last priority).

g) Cancellation:

1) The owner or operator shall maintain the policy in full force and effect until the Agency releases the insurer pursuant to Section 811.702.

2) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy, except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the 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 the premium due is paid.

h) 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.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.715 Self-Insurance for Non-~~Commercial~~Commercial Sites

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

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

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

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

"Generally accepted accounting principles" means the accounting and auditing standards incorporated by reference at 35 Ill. Adm. Code 810.104(a)(2).

~~"Generally accepted accounting principles" means Auditing Standards—Current Text, incorporated by reference at 35 Ill. Adm. Code 810.104.~~

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

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

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

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

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

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

b) Information to be filed-

An owner or operator may satisfy the financial assurance requirements of this Part by providing the following:

1) Bond without surety promising to pay the cost estimate (subsection (c) of this Section).

2) Proof that the owner or operator meets the gross revenue test (subsection (d) of this Section).

3) Proof that the owner or operator meets the financial test (subsection (e) of this Section).

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

d) Gross revenue test. The owner or operator must demonstrate that less than one-half of its gross revenues are derived from waste disposal operations. Revenue is "from waste disposal operations" if it would stop upon cessation of the owner or operator's waste disposal operations.

e) Financial test.

1) To pass the financial test, the owner or operator must meet the criteria of either subsection (e) (1) (A) or (e) (1) (B) of this Section:

A) The owner or operator must have:

i) Two of the following three ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities of greater than 0.1; or a ratio of current assets to current liabilities of greater than 1.5; and

ii) Net working capital and tangible net worth each at least six times the current cost estimate; and

iii) Tangible net worth of at least \$10 million; and

iv) Assets in the United States amounting to at least 90 percent of the owner's or operator's total assets and at least six times the current cost estimate.

B) The owner or operator must have:

i) A current rating of AAA, AA, A, or BBB for its most recent bond issuance as issued by Standard and Poor, or a rating of Aaa, Aa, A, or Baa, as issued by Moody; and

ii) Tangible net worth at least six times the current cost estimate; and

iii) Tangible net worth of at least \$10 million; and

iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.

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

A) A letter signed by the owner or operator's chief financial officer and worded as specified in Appendix A, Illustration I; and

B) A copy of the independent certified public accountant's report on examination of the owner or operator's financial statements for the latest completed fiscal year; and

C) A special report from the owner or operator's independent certified public accountant to the owner or operator stating that:

i) The accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

ii) In connection with that procedure, no matters came to the accountant's attention that caused the accountant to believe that the specified data should be adjusted.

f) Updated Information.

1) After the initial submission of items specified in subsections (d) and (e) of this Section, the owner or operator must send updated information to the Agency within 90 days after the close of each succeeding fiscal year.

2) If the owner or operator no longer meets the requirements of subsections (d) and (e) of this Section, the owner or operator must send notice to the Agency of intent to establish alternative financial assurance. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the operator no longer meets the requirements.

g) Qualified Opinions. If the opinion required by subsections (e)(2)(B) and (e)(2)(C) of this Section includes an adverse opinion or a disclaimer of opinion, the Agency must disallow the use of self-insurance. If the opinion includes other qualifications, the Agency must disallow the use of self-insurance if:

1) The qualifications relate to the numbers that are used in the gross revenue test or the financial test; and,

2) In light of the qualifications, the owner or operator has failed to demonstrate that it meets the gross revenue test or financial test.

h) Parent Corporation. An owner or operator may satisfy the financial assurance requirements of this Part by:

1) ~~D-demonstrating~~Demonstrating that a corporation that owns an interest in the owner or operator meets the requirements of this Section; and ~~gross revenue and financial tests.~~

2) Providing a bond to the Agency with the parent corporation as surety on a form specified in Appendix A, Illustration H in accordance with ~~subsections~~Section 811.711(d), (e), (f), and (g) of ~~Section 811.711 of this Part. The owner~~

~~or operator must also provide a bond with the parent as surety (Appendix A, Illustration H)-this Part.~~

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.716 Local Government Financial Test

A unit of local government owner or operator that satisfies the requirements of subsections (a) through (c) of this Section may demonstrate financial assurance up to the amount specified in subsection (d) of this Section.

a) Financial component.

1) The unit of local government owner or operator must satisfy subsection (a)(1)(A) or (a)(1)(B) of this Section, as applicable:

A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's, on all such general obligation bonds; or

B) The owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:

i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.

2) The unit of local government owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310].

3) A unit of local government is not eligible to assure its obligations pursuant to this Section if any of the following is true:

A) It is currently in default on any outstanding general obligation bonds;

B) It has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;

C) It operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or

D) It receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310] auditing its financial statement as required pursuant to subsection (a)(2) of this Section. However, the Agency must evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems the qualification insufficient to warrant disallowance of use of the test.

4) Terms used in this Section are defined as follows:

"Cash plus marketable securities" is all the cash plus marketable securities held by the unit of local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

"Debt service" is the amount of principal and interest due on a loan in a given time period, typically the current year.

"Deficit" equals total annual revenues minus total annual expenditures.

"Total revenues" include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by a unit of local government on behalf of a specific third party.

"Total expenditures" include all expenditures excluding capital outlays and debt repayment.

b) Public notice component.

1) The unit of local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR), or prior to the initial receipt of waste at the facility, whichever is later.

2) Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years.

3) A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Sections 811.319(d) and 811.325.

4) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.

5) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18, incorporated by reference in 35 Ill. Adm. Code 810.104, assures compliance with this public notice component.

c) Recordkeeping and reporting requirements.

1) The unit of local government owner or operator must place the following items in the facility's operating record:

A) A letter signed by the unit of local government's chief financial officer that provides the following information:

i) It lists all the current cost estimates covered by a financial test, as described in subsection (d) of this Section;

ii) It provides evidence and certifies that the unit of local government meets the conditions of subsections (a)(1), (a)(2), and (a)(3) of this Section; and

iii) It certifies that the unit of local government meets the conditions of subsections (b) and (d) of this Section.

B) The unit of local government's independently audited year-end financial statements for the latest fiscal year (except for a unit of local government where audits are required every two years, where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent certified public accountant (CPA) or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310].

C) A report to the unit of local government from the unit of local government's independent CPA or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310] based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B) of this Section, if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D) of this Section. The CPA or Comptroller's report should state the procedures performed and the CPA or Comptroller's findings, ~~and.~~

D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) of this Section or certification that the requirements of General Accounting Standards Board Statement 18, incorporated by reference in Section 810.104, have been met.

2) The items required in subsection (c)(1) of this Section must be placed in the facility operating record as follows:

A) In the case of closure and post-closure care, before November 27, 1997 or prior to the initial receipt of waste at the facility, whichever is later; or

B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of Sections 811.319(d) and 811.325.

3) After the initial placement of the items in the facility operating record, the unit of local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

4) The unit of local government owner or operator is no longer required to meet the requirements of subsection (c) of this Section when either of the following occurs:

A) The owner or operator substitutes alternative financial assurance as specified in this Section; or

B) The owner or operator is released from the requirements of this Section in accordance with Section 811.326(g), 811.702(b), or 811.704(j) or (k)(6).

5) A unit of local government must satisfy the requirements of the financial test at the close of each fiscal year. If the unit of local government owner or operator no longer meets the requirements of the local government financial test it must, within ~~120~~120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Subpart, place the required submissions for that assurance in the

operating record, ~~and~~ notify the Agency that the owner or operator no longer meets the criteria of the financial test and that alternative assurance has been obtained, and submit evidence of ~~such~~the alternative financial assurance to the Agency.

6) The Agency, based on a reasonable belief that the unit of local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the unit of local government at any time. If the Agency determines, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the unit of local government must provide alternative financial assurance in accordance with this Subpart.

d) Calculation of Costs to Be Assured. The portion of the closure, post-closure, and corrective action costs that an owner or operator may assure pursuant to this Section is determined as follows:

1) If the unit of local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the unit of local government's total annual revenue.

2) If the unit of local government assures other environmental obligations through a financial test, including those associated with UIC facilities pursuant to 35 Ill. Adm. Code 704.213, petroleum underground storage tank facilities pursuant to 40 CFR 280, PCB storage facilities pursuant to 40 CFR 761, and hazardous waste treatment, storage, and disposal facilities pursuant to 35 Ill. Adm. Code 724 and 725, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure pursuant to this Section. The total that may be assured must not exceed 43 percent of the unit of local government's total annual revenue.

3) The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in subsections (d)(1) and (d)(2) of this Section.

BOARD NOTE: Derived from 40 CFR 258.74(f) (2005).

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.718 Discounting

For facilities providing financial assurance solely through a trust fund, ~~The~~the Agency shall allow discounting of closure cost estimates, post-closure cost estimates, and corrective action cost estimates in Section 811.704 up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

a) The Agency determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer, as defined in Section 810.103, so stating;

b) The Agency finds the facility in compliance with applicable and appropriate permit conditions; ~~and~~

c) The Agency determines that the closure date is certain, and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life-; and

d) Discounted cost estimates ~~must beare~~ adjusted annually to reflect inflation and the anticipated years of remaining life.

BOARD NOTE: Derived from 40 CFR 258.75, added at 61 Fed. Reg. 60327 (Nov. 27, 1996).

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.719 Corporate Financial Test

An MSWLF owner or operator that satisfies the requirements of this Section may demonstrate financial assurance up to the amount specified in this Section as follows:

a) Financial component.

1) The owner or operator must satisfy one of the following three conditions:

A) A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

B) A ratio of less than 1.5 comparing total liabilities to net worth; or

C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

2) The tangible net worth of the owner or operator must be greater than:

A) The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million except as provided in subsection (a)(2)(B) of this Section.

B) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Agency.

3) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates- and any other environmental obligations covered by a financial test, as described in subsection (c) of this Section.

b) Recordkeeping and reporting requirements.

1) The owner or operator must place the following items into the facility's operating record:

A) A letter signed by the owner's or operator's chief financial officer that includes the following:

i) All the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities pursuant to this Part; cost estimates required for UIC facilities pursuant to 35 Ill. Adm. Code 730, if applicable; cost estimates required for petroleum underground storage tank facilities pursuant to 40 CFR 280, if applicable; cost estimates required for PCB storage facilities pursuant to 40 CFR 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities pursuant to 35 Ill. Adm. Code 724 or 725, if applicable; and

ii) Evidence demonstrating that the firm meets the conditions of subsection (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Section and subsection (a)(2) and (a)(3) of this Section.

B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency must evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternative financial assurance that meets the requirements of this Section.

C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsection (a)(1)(B) or (a)(1)(C) of this Section that are different from data in the audited financial statements referred to in subsection (b)(1)(B) of this Section or any other audited financial statement or data filed with the federal Security Exchange Commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and must describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations, as provided in subsection (a)(2)(B) of this Section, then the letter must include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

2) An owner or operator must place the items specified in subsection (b)(1) of this Section in the operating record and notify the Agency in writing that these items have been placed in the operating record before the initial receipt of waste or before February 17, 1999, whichever is later, in the case of closure

and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Section 811.324.

BOARD NOTE: Corresponding 40 CFR 258.74(e)(2)(ii) provides that this requirement is effective "before the initial receipt of waste or before the effective date of the requirements of this Section (April 9, 1997 or October 9, 1997 for MSWLF units meeting the conditions of Sec. 258.1(f)(1)), whichever is later." The Board has instead inserted the date on which these amendments are to be filed and become effective in Illinois.

3) After the initial placement of items specified in subsection (b)(1) of this Section in the operating record, the owner or operator must annually update the information and place updated information in the operating record within 90 days following the close of the owner's or operator's fiscal year. The Agency must provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (b)(1) of this Section.

4) The owner or operator is no longer required to submit the items specified in this subsection (b) or comply with the requirements of this Section when either of the following occurs:

A) It substitutes alternative financial assurance, as specified in this Subpart G, that is not subject to these recordkeeping and reporting requirements; or

B) It is released from the requirements of this Subpart G in accordance with Sections 811.700 and 811.706.

5) If the owner or operator no longer meets the requirements of subsection (a) of this Section, the owner or operator must obtain alternative financial assurance that meets the requirements of this Subpart G within 120 days following the close of the facility's fiscal year. The owner or operator must also place the required submissions for the alternative financial assurance in the facility operating record and notify the Agency that it no longer meets the criteria of the financial test and that it has obtained alternative financial assurance, ~~and~~. The owner or operator must submit evidence of ~~such~~the alternative financial assurance to the Agency.

6) The Agency may require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation specified in subsection (b) of this Section at any time it has a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a) of this Section. If the Agency finds that the owner or operator no longer meets the requirements of subsection (a) of this Section, the owner or operator must provide alternative financial assurance that meets the requirements of this Subpart G.

c) Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, corrective action, the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this Section, the owner or operator must include cost estimates required for municipal solid waste management facilities pursuant to this Part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with UIC facilities pursuant to 35 Ill. Adm. Code

730; petroleum underground storage tank facilities pursuant to 40 CFR 280; PCB storage facilities pursuant to 40 CFR 761; and hazardous waste treatment, storage, and disposal facilities pursuant to 35 Ill. Adm. Code 724 or 725.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811. APPENDIX A Financial Assurance Forms

Section 811. ILLUSTRATION A Trust Agreement

TRUST AGREEMENT

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

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

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

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

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

Whereas, Trustee is an entity ~~which~~ that has authority to act as a trustee and whose trust operations are regulated by the Illinois Department of Financial and Professional ~~Regulation~~ Commissioner of Banks & Trust Companies Regulation or who complies with the Corporate Fiduciary Act ~~(Ill. Rev. Stat. 1991, ch. 17, par. 1551-1 et seq. [205 ILCS 5/1])~~. (Line through any condition ~~that~~ which that does not apply.)

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

Section 1. Definitions.

As used in this Agreement:

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

Section 2. Identification of Sites and Cost Estimates.

This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on Schedule A, list the name and address and ~~current~~ initial current

cost estimate of each site for which financial assurance is demonstrated by this agreement).

Section 3. Establishment of Fund.

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

Section 4. Payment for Closure and Postclosure care or Corrective Action.

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

Section 5. Payments Comprising the Fund.

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

Section 6. Trust Management.

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

a) Securities or other obligations of the Grantor, or any other owner or operator of the site, or any of their affiliates as defined in Section 80a-2(a)(2) of the Investment Company Act of 1940, as amended (15 ~~U.S.C.~~ USC 80a-~~2-2~~(a)(2) shall not be acquired or held, unless they are securities or other obligations of the Federal government or the State of Illinois;

b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by the Federal Deposit Insurance Corporation.

c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other ~~trust~~trusts participating therein; and

b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 ~~U.S.C.~~ USC 80a-1 et seq.) including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

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

a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

~~b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this agreement;~~

~~c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund.~~

~~d) To deposit any cash in the Fund in interest bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by the Federal Deposit Insurance Corporation; and~~

~~e) To compromise or otherwise adjust all claims in favor of or against the Fund.~~

Section 9. Taxes and Expenses.

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

Section 10. Annual Valuation.

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

Section 11. Advice of counsel.

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

Section 12. Trustee Compensation.

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

Section 13. Successor Trustee.

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

Section 14. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the IEPA to the Trustee shall be in writing, signed by the IEPA

Director or his/her designee~~(s)~~, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or IEPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or IEPA, except as provided in this agreement.

Section 15. Notice of Nonpayment.

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

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the IEPA Director or his/her designee~~(s)~~, or by the Trustee and the IEPA Director or his/her designee~~(s)~~ if ~~is~~ the Grantor ceases to exist.

Section 17. Irrevocability and Termination.

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

Section 18. Immunity and Indemnification.

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

Section 19. Choice of Law.

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

Section 20. Interpretation.

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

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 35 Ill. Adm. Code ~~Part~~ 811. Appendix A, Illustration A as ~~such~~ those regulations were constituted on the date ~~first above written~~ this Agreement was entered.

Attest: Signature of ~~Grantor~~ _____

- ~~Typed Name~~ _____

- ~~Title~~ _____

~~Seal~~ ~~Attest~~ ~~Grantor~~ ~~Typed Name~~ ~~Title~~ ~~Seal~~ ~~Attest:~~ Signature of ~~Trustee~~
_____ ~~Trustee~~ ~~Typed Name~~ ~~Title~~ ~~Seal~~

- ~~Typed Name~~ _____

- ~~Title~~ _____

~~Seal~~

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811. APPENDIX A Financial Assurance Forms

~~811. ILLUSTRATION B Certificate of Acknowledgment~~

~~CERTIFICATE OF ACKNOWLEDGMENT~~

~~State of _____))~~ ~~SS~~ ~~County of _____)~~

~~On _____ this _____ day of _____, _____ before me personally came _____ (operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at _____ (address), that she/he is _____ (title) of _____ (corporation), the corporation described in and which executed the above instrument, that she/he knows the seal of said corporation, that the seal affixed to such instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.~~

Notary Public

My Commission Expires _____

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section ~~811. APPENDIX A~~ ~~Financial Assurance Forms~~
Forfeiture Bond

811. ILLUSTRATION C

FORFEITURE BOND

Date bond executed:-

Effective date:-
Principal:-
Type of organization:- State of incorporation:-
Surety:-
Sites:

Name

Address

City

Amount guaranteed by this bond: \$

Name

Address

City

Amount guaranteed by this bond: \$

Please attach a separate page if more space is needed for all sites. Total penal sum of bond: \$

Surety's bond number:-

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

Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415 ILCS 5/21(d)], to have a permit to conduct a waste disposal operation, and

Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415 ILCS 5/21.1], to provide financial assurance for closure and postclosure care or corrective action, and

Whereas the Surety is licensed by the Illinois Department of ~~Financial and Professional Regulation~~ Department of Insurance or is licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states, and

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

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

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board or a court of competent jurisdiction;
- d) Notifies the ~~IEPA~~Agency IEPA that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; ~~or~~
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or ~~7~~
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of ~~an etieea notice~~ from the Surety that the bond will not be renewed for another term.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Principal has failed to fulfill one or more of the conditions described ~~above failed to so provide closure and postclosure care or corrective action in this document.~~ Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure Closure Fund.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ [date] day of _____ [month], _____ [year], ~~but such that~~ expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the Principal by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts. ~~provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve month period starting with the date of expiration of the bond.~~

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code 811.702.

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

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to the wording specified in 35 Ill.

Adm. Code ~~Part~~ 811. Appendix A, Illustration C as ~~such~~that regulation was constituted on the date this bond was executed.

PRINCIPAL	SURETY
Signature	Name
Typed Name	Address
Title	State of Incorporation
Date	Signature
	Typed Name
	Title
Corporate Seal	Corporate Seal
	Bond Premium: \$

~~PRINCIPAL~~

~~Signature~~ ~~Name~~ _____

~~Typed Name~~ _____

~~Address~~ _____

~~Title~~ _____

~~State of Incorporation~~ _____

~~Date~~ _____

~~Corporate seal~~

~~CORPORATE SURETY~~

~~Signature~~ _____

~~Typed Name~~ _____

~~Title~~ _____

~~Corporate seal~~

~~Bond premium: \$~~ _____

PRINCIPALSURETYSignatureNameTyped NameAddressTitleState of
IncorporationDateSignatureCorporate SealTyped NameTitleCorporate SealBond
Premium: \$

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811. ILLUSTRATION D Performance Bond

PERFORMANCE BOND

Date bond executed:-

_____ Effective date:-
_____ Principal:-
_____ Type of
organization: _____ State of
incorporation: _____ Surety:-
_____ Sites:

Name _____

Address _____

City _____ Amount Name Add

ressCityAmount guaranteed by this bond:—

\$ _____

Name _____

Address _____

City _____ Amount \$ Name Ad

dressCityAmount guaranteed by this bond:—

\$ _____ \$Please attach a separate page if
more space is needed for all sites. Total penal sum of bond:—

\$ _____ \$Surety's bond number:—

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

Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415 ILCS 5/21(d)], to have a permit to conduct a waste disposal operation, ~~and~~

Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415 ILCS 5/21.1], to provide financial assurance for closure and postclosure care or corrective action, ~~and~~

Whereas the Surety is licensed by the Illinois Department of ~~Financial and Professional Regulation~~ Department of Insurance or is licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states, ~~and~~

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

The Surety shall pay the penal sum to the IEPA ~~or provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans for the site~~ if, during the term of

the bond, the Principal fails to provide closure ~~or~~ postclosure care or corrective action for any site in accordance with the closure and postclosure care or corrective action plans for that site as guaranteed by this bond. The Principal fails to so provide when the Principal:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board or a court of competent jurisdiction;
- d) Notifies the ~~IEPA Agency~~ IEPA that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; ~~or~~
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; ~~or~~
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by both the Principal and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

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

If the Surety notifies the ~~IEPA Agency~~ IEPA that it intends to provide closure and postclosure care or corrective action, then the Surety must initiate closure and postclosure care or corrective action within 60 days after the IEPA mailed notice to the Surety that the Principal failed to fulfill one or more of the conditions described ~~above failed to provide closure and postclosure care or corrective action in~~ this document. The Surety must complete closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans, or pay the penal sum.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ [date] day of _____ [month], _____ ~~f~~ [year], ~~but such~~ but that expiration date shall be automatically ~~extend~~ extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the Principal by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts. ~~provided, however, that if the Principal fails~~

~~to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve month period starting with the date of expiration of the bond.~~

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code 811.702.

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

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code ~~Part~~ 811. Appendix A, Illustration D as ~~such~~ that regulation was constituted on the date this bond was executed.

~~PRINCIPAL~~

~~SURETY~~

~~Signature~~

~~Name~~

~~Typed Name~~

~~Address~~

~~Title~~

~~State of Incorporation~~

~~Date~~

~~Signature~~

~~Typed Name~~

~~Title~~

~~Corporate Seal~~

~~Corporate Seal~~

~~Bond Premium:--\$~~

~~PRINCIPAL~~

~~Signature~~ _____ ~~Name~~ _____

~~Typed Name~~ _____

~~Address~~ _____

~~Title~~ _____

~~State of Incorporation~~ _____

~~Date~~ _____

~~Corporate seal~~

~~CORPORATE SURETY~~

Signature _____

Typed Name _____

Title _____

~~Corporate seal~~

PRINCIPALSURETYSignatureNameTyped NameAddressTitleState of
IncorporationDateSignatureCorporate SealTyped NameTitleCorporate SealBond
Premium: \$

Bond premium: \$ _____

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811. APPENDIX A Financial Assurance Forms

Section 811.ILLUSTRATION E Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director
Illinois Environmental Protection Agency
C/O Bureau of Land #24
Financial Assurance Program
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
~~2200 Churchill Road
Springfield, Illinois 62706~~

Dear Sir or Madam:

We have authority to issue letters of credit. Our letter-of-credit operations are regulated by the Illinois Department of Financial and Professional ~~Regulation~~Commissioner of Banks and TrustsRegulation or our deposits are insured by the Federal Deposit Insurance Corporation. (Omit language ~~thatwhichthat~~ 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 of up to the aggregate~~ amount of _____ U of U.S. dollars (\$ _____), ~~available upon presentation of:~~ 1. your sight draft, bearing ~~reference~~references to this letter of credit No. _____; and, 2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act ~~(Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq. [415 ILCS 5/1 et seq.])~~ and 35 Ill. Adm. Code 811.713(e)."This letter of credit is effective as of _____ [date] and shall expire on _____ [date]at least +one year later]; but suchthat expiration date shall be automatically extended for a period of _____ [at least +one year] on _____ [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and _____ [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit

beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and _____ [owner's or operator's name], as shown on the signed return receipts. ~~but, such expiration date shall be automatically extended for one period of twelve months starting with the expiration date if the operator fails to substitute alternative financial assurance prior to the expiration of this letter of credit and you notify us of such failure within 30 days after the above expiration date.~~
at

Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor ~~such that~~ draft upon presentation to us, and we shall deposit the amount of the draft directly into the State of Illinois Landfill Closure and Post-Closure ~~Closure~~ or Corrective Action Fund in accordance with your instructions.

~~This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. Stat. 1991, ch. 26, pars. 1-101 et seq. [810 ILCS 5/1-101 et seq.]).~~

We certify that the wording of this letter of credit is identical to the wording specified in 35 Ill. Adm. Code, ~~Part~~ 811. Appendix A, Illustration E as ~~such regulations were~~ that regulation was constituted on the date shown ~~immediately~~ below.

Signature _____

Typed Name _____

Title _____

Date _____

Name Signature Typed Name Title Date Name and address of issuing institution _____ ~~This institution~~ This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811. APPENDIX A Financial Assurance Forms

Section 811. ILLUSTRATION F Certificate of Insurance for Closure and/or Postclosure Care or Corrective Action

CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POSTCLOSURE CARE OR CORRECTIVE ACTION

Name and Address of Insurer ("Insurer"): _____

Name and Address of Insured ("Insured"): _____

Sites Covered:

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

Name _____

Address _____

City _____

Amount insured for this site: \$ _____

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

Face Amount _____

Policy Number _____

Effective Date _____

The Insurer hereby certifies that it is licensed to transact the business of insurance by the Illinois Department of ~~Financial and Professional Regulation~~ Insurance or that it is licensed to transact the business of insurance, or approved to provide insurance as an excess or surplus lines insurer, by the insurance department in one or more ~~states~~ Department of Insurance states.

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure and postclosure care for the sites identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 35 Ill. Adm. Code 811.714, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Illinois Environmental Protection Agency ("IEPA"), the Insurer agrees to furnish to the IEPA a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 35 Ill. Adm. Code ~~Part~~ 811.Appendix A, Illustration F as ~~such regulations were~~ that regulation was constituted on the date shown ~~immediately~~ below.

Name (Authorized ~~signature~~ Signature for Insurer) -

Typed

Name _____ Name Title Date

Title _____

Date _____

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.ILLUSTRATION G Owner's or Operator's Bond Without Surety

OWNER'S OR OPERATOR'S BOND WITHOUT SURETY

Date bond executed: _____ Effective date:--
_____ Owner or Operator:--
_____ Owner's or Operator's address:--
_____ Site: _____ Site
address: _____ Penal sum:--
\$ _____ Sum \$

The owner or operator promises to pay the penal sum to the Illinois
Environmental Protection Agency unless the owner or ~~eOperatoroperator~~ provides
closure and postclosure care or corrective action for ~~of~~ the site in accordance
with the closure and postclosure care or corrective action plans for the site.

Owner or ~~Operator~~ _____

Signature _____

Typed Name _____

Title _____

Date _____ Operator Signature Typed
Name Title Date

Corporate seal (Source: Amended at 35 Ill. Reg. _____,
effective _____)

Section 811. APPENDIX A Financial Assurance Forms

Section 811.ILLUSTRATION H Owner's or Operator's Bond With Parent Surety

OWNER'S OR OPERATOR'S BOND WITH PARENT SURETY

Date bond executed: _____

Effective Date: _____

Surety: _____

Surety's address: _____

Owner or Operator: _____

Owner's or Operator's address: _____

Site: _____

Site address: _____

Penal sum: \$ _____

The Owner or Operator and Surety promise to pay the above penal sum to the
Illinois Environmental Protection Agency ("IEPA") unless the Owner or Operator
provides closure and postclosure care of the site in accordance with the closure
and postclosure care plans for the site. To the payment of this obligation the

Owner or Operator and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Owner or Operator is required under Section 21(d) of the Environmental Protection Act [415 ILCS 5/21(d)], ~~Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1021(d)~~ to have a permit to conduct a waste disposal operation; ~~and~~

Whereas the Owner or Operator is required under Section 21.1 of the Environmental Protection Act [415 ILCS 5/21.1] to provide financial assurance for closure and postclosure care; ~~and~~

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

Whereas the Surety is a corporation ~~which~~that owns an interest in the Owner or Operator; ~~and~~

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

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care when ordered to do so by the Illinois Pollution Control Board or a court of competent jurisdiction; or
- d) Notifies the ~~IEPA Agency~~IEPA that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care in accordance with the closure and postclosure care plans;
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or ~~and~~
- f) Fails to provide alternative financial assurance and obtain the IEPA written approval of the assurance provided within 90 days after receipt by the Owner or Operator and the IEPA of a notice from the Surety that the bond will not be renewed for another term.

The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails notice to the Surety that the Owner or Operator has failed to fulfill one or more of the conditions described ~~above failed to so provide closure and postclosure care in this document~~. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-~~Closure~~Closure Fund.

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

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until ~~such~~the payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the _____ [date] day of _____ [month], _____ [year], but ~~such that~~ expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, the Surety notifies both the IEPA and the Owner or Operator by certified mail that the Surety has decided not to extend the term of this surety bond beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts.

The Owner or Operator may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code 811.702.

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Owner or Operator and Surety and that the wording of this surety bond is identical to the wording specified in 35 Ill. Adm. Code ~~Part~~ 811.Appendix A, Illustration H as ~~such that~~ regulation was constituted on the date this bond was executed.

~~OWNER OR OPERATOR~~

~~SURETY~~

~~Signature~~

~~Name~~

~~Typed Name~~

~~Address~~

~~Title~~

~~State of Incorporation~~

~~Date~~

~~Signature~~

~~Typed Name~~

~~Title~~

~~Corporate Seal~~

~~Corporate Seal~~

Operator _____

Surety _____

Signature _____

Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Signature _____

Typed Name _____

Title _____

~~Corporate seal Corporate seal~~

OWNER OR OPERATORSURETYSignatureNameTyped NameAddressTitleState of
IncorporationDateSignatureTyped NameCorporate SealTitleCorporate Seal

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811. APPENDIX A Financial Assurance Forms

Section 811. ILLUSTRATION I Letter from Chief Financial Officer

LETTER FROM CHIEF FINANCIAL OFFICER

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

Dear Sir or Madam:

I am the chief financial officer of _____

This letter is in support of this firm's use of the gross revenue test and financial test to demonstrate financial assurance pursuant to 35 Ill. Adm. Code 811.715.

Operator: _____

Name: _____

Address: _____

City: _____

Current cost estimate:
\$ _____

Operator: _____

Name: _____

Address: _____

City: _____

Current cost estimate: \$ _____

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

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

Gross Revenue Test

1. Gross revenue of the firm \$ _____
2. Gross revenue from waste disposal operation \$ _____
3. Line 2 divided by line 3 _____
4. ~~Net worth \$ _____~~

Financial Test Alternative I

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

Yes/No

10. Is line 3 at least \$10 million? _____
11. Is line 3 at least 6 times line 1? _____
12. Is line 7 at least 6 times line 1? _____
13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14. _____

- ~~13.~~ _____
14. Is line 9 at least 6 times line 1? _____
15. Is line 2 divided by line 4 less than 2.0? _____
16. Is line 8 divided by line 2 greater than 0.1? _____

17. Is line 5 divided by line 6 greater than 1.5? _____

Signature _____

Typed Name _____

Title _____

Date _____

Financial Test Alternative II

1. Sum of current cost estimates (total of all cost estimates shown in paragraphs above) \$ _____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

5. Tangible net worth (if any portion of the closure and postclosure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) \$ _____

6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) \$ _____

Yes/No

7. Is line 5 at least \$10 million? _____

8. Is line 5 at least 6 times line 1? _____

9. Are at least 90 percent of firm's assets located in the U.S.? If not complete line 10. _____

10. Is line 6 at least 6 times line 1? _____

Signature _____

Typed name _____

Title _____

Date _____

(Source: Amended at 35 Ill. Reg. _____, effective _____)

JCAR350811-1103257r01

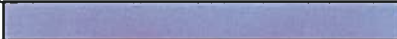
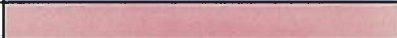
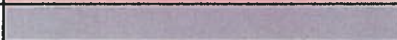
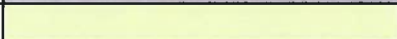

~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

Document comparison done by DeltaView on Friday, February 18, 2011 2:52:13 PM

Input:	
Document 1	file:///I:/Input/35-811-Agency(issue9).doc
Document 2	file:///I:/Input/35-811-r01(issue 9).doc
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	329
Deletions	459
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	792

1ST NOTICE VERSION

JCAR350811-1103257r01

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE G: WASTE DISPOSAL
3 CHAPTER I: POLLUTION CONTROL BOARD
4 SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING
5

6 PART 811
7 STANDARDS FOR NEW SOLID WASTE LANDFILLS
8

9 SUBPART A: GENERAL STANDARDS FOR ALL LANDFILLS
10

11	Section	
12	811.101	Scope and Applicability
13	811.102	Location Standards
14	811.103	Surface Water Drainage
15	811.104	Survey Controls
16	811.105	Compaction
17	811.106	Daily Cover
18	811.107	Operating Standards
19	811.108	Salvaging
20	811.109	Boundary Control
21	811.110	Closure and Written Closure Plan
22	811.111	Postclosure Maintenance
23	811.112	Recordkeeping Requirements for MSWLF Units
24	811.113	Electronic Reporting
25		

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STATE OF ILLINOIS
Pollution Control Board

26 SUBPART B: INERT WASTE LANDFILLS
27

28	Section	
29	811.201	Scope and Applicability
30	811.202	Determination of Contaminated Leachate
31	811.203	Design Period
32	811.204	Final Cover
33	811.205	Final Slope and Stabilization
34	811.206	Leachate Sampling
35	811.207	Load Checking
36		

37 SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS
38

39	Section	
40	811.301	Scope and Applicability
41	811.302	Facility Location
42	811.303	Design Period
43	811.304	Foundation and Mass Stability Analysis

- 44 811.305 Foundation Construction
- 45 811.306 Liner Systems
- 46 811.307 Leachate Drainage System
- 47 811.308 Leachate Collection System
- 48 811.309 Leachate Treatment and Disposal System
- 49 811.310 Landfill Gas Monitoring
- 50 811.311 Landfill Gas Management System
- 51 811.312 Landfill Gas Processing and Disposal System
- 52 811.313 Intermediate Cover
- 53 811.314 Final Cover System
- 54 811.315 Hydrogeologic Site Investigations
- 55 811.316 Plugging and Sealing of Drill Holes
- 56 811.317 Groundwater Impact Assessment
- 57 811.318 Design, Construction, and Operation of Groundwater Monitoring Systems
- 58 811.319 Groundwater Monitoring Programs
- 59 811.320 Groundwater Quality Standards
- 60 811.321 Waste Placement
- 61 811.322 Final Slope and Stabilization
- 62 811.323 Load Checking Program
- 63 811.324 Corrective Action Measures for MSWLF Units
- 64 811.325 Selection of remedy for MSWLF Units
- 65 811.326 Implementation of the corrective action program at MSWLF Units

66

67 SUBPART D: MANAGEMENT OF SPECIAL WASTES AT LANDFILLS

- 68
- 69 Section
- 70 811.401 Scope and Applicability
 - 71 811.402 Notice to Generators and Transporters
 - 72 811.403 Special Waste Manifests
 - 73 811.404 Identification Record
 - 74 811.405 Recordkeeping Requirements
 - 75 811.406 Procedures for Excluding Regulated Hazardous Wastes

76

77 SUBPART E: CONSTRUCTION QUALITY ASSURANCE PROGRAMS

- 78
- 79 Section
- 80 811.501 Scope and Applicability
 - 81 811.502 Duties and Qualifications of Key Personnel
 - 82 811.503 Inspection Activities
 - 83 811.504 Sampling Requirements
 - 84 811.505 Documentation
 - 85 811.506 Foundations and Subbases
 - 86 811.507 Compacted Earth Liners

87	811.508	Geomembranes
88	811.509	Leachate Collection Systems
89		
90		SUBPART G: FINANCIAL ASSURANCE
91		
92	Section	
93	811.700	Scope, Applicability and Definitions
94	811.701	Upgrading Financial Assurance
95	811.702	Release of Financial Institution
96	811.703	Application of Proceeds and Appeals
97	811.704	Closure and Postclosure Care Cost Estimates
98	811.705	Revision of Cost Estimate
99	811.706	Mechanisms for Financial Assurance
100	811.707	Use of Multiple Financial Mechanisms
101	811.708	Use of a Financial Mechanism for Multiple Sites
102	811.709	Trust Fund for Unrelated Sites
103	811.710	Trust Fund
104	811.711	Surety Bond Guaranteeing Payment
105	811.712	Surety Bond Guaranteeing Performance
106	811.713	Letter of Credit
107	811.714	Closure Insurance
108	811.715	Self-Insurance for Non- Commercial commercial Sites
109	811.716	Local Government Financial Test
110	811.717	Local Government Guarantee
111	811.718	Discounting
112	811.719	Corporate Financial Test
113	811.720	Corporate Guarantee
114		
115	811.APPENDIX A	Financial Assurance Forms
116	811.ILLUSTRATION A	Trust Agreement
117	811.ILLUSTRATION B	Certificate of Acknowledgment
118	811.ILLUSTRATION C	Forfeiture Bond
119	811.ILLUSTRATION D	Performance Bond
120	811.ILLUSTRATION E	Irrevocable Standby Letter of Credit
121	811.ILLUSTRATION F	Certificate of Insurance for Closure and/or Postclosure Care <u>or Corrective Action</u>
122		
123	811.ILLUSTRATION G	<u>Owner's or Operator's Bond Without Surety</u>
124	811.ILLUSTRATION H	<u>Owner's or Operator's Bond With Parent Surety</u>
125	811.ILLUSTRATION I	Letter from Chief Financial Officer
126	811.APPENDIX B	Section-by-Section correlation between the Standards of the RCRA
127		Subtitle D MSWLF regulations and the Board's nonhazardous waste
128		landfill regulations.
129	811.APPENDIX C	List of Leachate Monitoring Parameters

130
 131 AUTHORITY: Implementing Sections 7.2, 21, 21.1, 22, 22.17, and 22.40 and authorized by
 132 Section 27 of the Environmental Protection Act [415 ILCS 5/7.2, 21, 21.1, 22, 22.17, 22.40, and
 133 27].
 134
 135 SOURCE: Adopted in R88-7 at 14 Ill. Reg. 15861, effective September 18, 1990; amended in
 136 R92-19 at 17 Ill. Reg. 12413, effective July 19, 1993; amended in R93-10 at 18 Ill. Reg. 1308,
 137 effective January 13, 1994; expedited correction at 18 Ill. Reg. 7504, effective July 19, 1993;
 138 amended in R90-26 at 18 Ill. Reg. 12481, effective August 1, 1994; amended in R95-13 at 19 Ill.
 139 Reg. 12257, effective August 15, 1995; amended in R96-1 at 20 Ill. Reg. 12000, effective
 140 August 15, 1996; amended in R97-20 at 21 Ill. Reg. 15831, effective November 25, 1997;
 141 amended in R98-9 at 22 Ill. Reg. 11491, effective June 23, 1998; amended in R99-1 at 23 Ill.
 142 Reg. 2794, effective February 17, 1999; amended in R98-29 at 23 Ill. Reg. 6880, effective July
 143 1, 1999; amended in R04-5/R04-15 at 28 Ill. Reg. 9107, effective June 18, 2004; amended in
 144 R05-1 at 29 Ill. Reg. 5044, effective March 22, 2005; amended in R06-5/R06-6/R06-7 at 30 Ill.
 145 Reg. 4136, effective February 23, 2006; amended in R06-16/R06-17/R06-18 at 31 Ill. Reg. 1435,
 146 effective December 20, 2006; amended in R07-8 at 31 Ill. Reg. 16172, effective November 27,
 147 2007; amended in R10-9 at 35 Ill. Reg. _____, effective _____.

148
 149 **SUBPART C: PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS**

150
 151 **Section 811.309 Leachate Treatment and Disposal Systems**

- 152
 153 a) Leachate shall be allowed to flow freely from the drainage and collection system.
 154 The operator is responsible for the operation of a leachate management system
 155 designed to handle all leachate as it drains from the collection system. The
 156 leachate management system shall consist of any combination of storage,
 157 treatment, pretreatment, and disposal options designed and constructed in
 158 compliance with the requirements of this Section.
 159
 160 b) The leachate management system shall consist of any combination of multiple
 161 treatment and storage structures, to allow the management and disposal of
 162 leachate during routine maintenance and repairs.
 163
 164 c) Standards for Onsite Treatment and Pretreatment
 165
 166 1) All onsite treatment or pretreatment systems shall be considered part of
 167 the facility.
 168
 169 2) The onsite treatment or pretreatment system shall be designed in
 170 accordance with the expected characteristics of the leachate. The design
 171 may include modifications to the system necessary to accommodate
 172 changing leachate characteristics.

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- 3) The onsite treatment or pretreatment system shall be designed to function for the entire design period.
 - 4) All of the facility's unit operations, tanks, ponds, lagoons and basins shall be designed and constructed with liners or containment structures to control seepage to groundwater.
 - 5) All treated effluent discharged to waters of the State shall meet the requirements of 35 Ill. Adm. Code 309.
 - 6) The treatment system shall be operated by an operator certified under the requirements of 35 Ill. Adm. Code 312.

187 d) Standards for Leachate Storage Systems

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- 1) Except as otherwise provided in subsection (d)(6) of this Section, the leachate storage facility must be able to store a minimum of at least five days' worth of accumulated leachate at the maximum generation rate used in designing the leachate drainage system in accordance with Section 811.307. The minimum storage capacity may be built up over time and in stages, so long as the capacity for five consecutive days of accumulated leachate is available at any time during the design period of the facility.
 - 2) All leachate storage tanks shall be equipped with secondary containment systems equivalent to the protection provided by a clay liner 0.61 meter (2 feet thick) having a permeability no greater than 10^{-7} centimeters per second.
 - 3) Leachate storage systems shall be fabricated from material compatible with the leachate expected to be generated and resistant to temperature extremes.
 - 4) The leachate storage system shall not cause or contribute to a malodor.
 - 5) The leachate drainage and collection system shall not be used for the purpose of storing leachate.
 - 6) A facility may have less than five days' worth of storage capacity for accumulated leachate as required by subsection (d)(1) of this Section, if the owner or operator of the facility demonstrates that multiple treatment, storage and disposal options in the facility's approved leachate management system developed in accordance with subsection (b) of this

216 Section will achieve equivalent performance. Such options shall consist
217 of not less than one day's worth of storage capacity for accumulated
218 leachate plus at least two alternative means of managing accumulated
219 leachate through treatment or disposal, or both treatment and disposal,
220 each of which means is capable of treating or disposing of all leachate
221 generated at the maximum generation rate on a daily basis.
222

223 e) Standards for Discharge to an Offsite Treatment Works
224

- 225 1) Leachate may be discharged to an offsite treatment works that meets the
226 following requirements:
 - 227
 - 228 A) All discharges of effluent from the treatment works shall meet the
229 requirements of 35 Ill. Adm. Code 309.
230
 - 231 B) The treatment systems shall be operated by an operator certified
232 under the requirements of 35 Ill. Adm. Code 312.
233
 - 234 C) No more than 50 percent of the average daily influent flow can be
235 attributable to leachate from the solid waste disposal facility.
236 Otherwise, the treatment works shall be considered a part of the
237 solid waste disposal facility.
238
- 239 2) The operator is responsible for securing permission from the offsite
240 treatment works for authority to discharge to the treatment works.
241
- 242 3) All discharges to a treatment works shall meet the requirements of 35 Ill.
243 Adm. Code 310.
244
- 245 4) Pumps, meters, valves and monitoring stations that control and monitor
246 the flow of leachate from the unit and which are under the control of the
247 operator shall be considered part of the facility and shall be accessible to
248 the operator at all times.
249
- 250 5) Leachate shall be allowed to flow into the sewage system at all times;
251 however, if access to the treatment works is restricted or anticipated to be
252 restricted for longer than five days, then an alternative leachate
253 management system shall be constructed in accordance with subsection
254 (c).
255
- 256 6) Where leachate is not directly discharged into a sewage system, the
257 operator shall provide storage capacity sufficient to transfer all leachate to
258 an offsite treatment works. The storage system shall meet the

259 requirements of subsection (d).

260
261 f) Standards for Leachate Recycling Systems

- 262
263 1) Leachate recycling systems may be utilized only at permitted waste
264 disposal units that meet the following requirements:
265
266 A) The unit must have a liner designed, constructed and maintained to
267 meet the minimum standards of Section 811.306.
268
269 B) The unit must have a leachate collection system in place and
270 operating in accordance with Section 811.307.
271
272 C) A gas management system, equipped with a mechanical device
273 such as a compressor to withdraw gas, must be implemented to
274 control odors and prevent migration of methane in accordance with
275 Section 811.311.
276
277 D) The topography must be such that any accidental leachate runoff
278 can be controlled by ditches, berms or other equivalent control
279 means.
280
281 2) Leachate shall not be recycled during precipitation events or in volumes
282 large enough to cause runoff or surface seeps.
283
284 3) The amount of leachate added to the unit shall not exceed the ability of the
285 waste and cover soils to transmit leachate flow downward. All other
286 leachate shall be considered excess leachate, and a leachate management
287 system capable of disposing of all excess leachate must be available.
288
289 4) The leachate storage and distribution system shall be designed to avoid
290 exposure of leachate to air unless aeration or functionally equivalent
291 devices are utilized.
292
293 5) The distribution system shall be designed to allow leachate to be evenly
294 distributed beneath the surface over the recycle area.
295
296 6) Daily and intermediate cover shall be permeable to the extent necessary to
297 prevent the accumulation of water and formation of perched watertables
298 and gas buildup; alternatively cover shall be removed prior to additional
299 waste placement.
300
301 7) Daily and intermediate cover shall slope away from the perimeter of the

site to minimize surface discharges.

g) Leachate Monitoring

- 1) Representative samples of leachate shall be collected from each established leachate monitoring location in accordance with subsection (g)(5) and tested for the parameters referenced in subsections (g)(2)(G) and (g)(3)(D). The Agency may, by permit condition, require additional, or allow less, leachate sampling and testing as necessary to ensure compliance with this Section and Sections 811.312, 811.317, and 811.319.
- 2) Discharges of leachate from units that dispose of putrescible wastes shall be tested for the following constituents prior to treatment or pretreatment:
 - A) Five day biochemical oxygen demand (BOD₅);
 - B) Chemical oxygen demand;
 - C) Total Suspended Solids;
 - D) Total Iron;
 - E) pH;
 - F) Any other constituents listed in the operator's National Pollution Discharge Elimination System (NPDES) discharge permit, pursuant to 35 Ill. Adm. Code 304, or required by a publicly owned treatment works, pursuant to 35 Ill. Adm. Code 310; and
 - G) All the monitoring parameters listed in Section 811.Appendix C, unless an alternate monitoring list has been approved by the Agency.
- 3) Discharges of leachate from units which dispose only chemical wastes shall be monitored for constituents determined by the characteristics of the chemical waste to be disposed of in the unit. They shall include, as a minimum:
 - A) pH;
 - B) Total Dissolved Solids;

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- C) Any other constituents listed in the operator's NPDES discharge permit, pursuant to 35 Ill. Adm. Code 304, or required by a publicly owned treatment works, pursuant to 35 Ill. Adm. Code 310; and
 - D) All the monitoring parameters listed in Section 811. Appendix C, unless an alternate monitoring list has been approved by the Agency.
- 4) A network of leachate monitoring locations shall be established, capable of characterizing the leachate produced by the unit. Unless an alternate network has been approved by the Agency, the network of leachate monitoring locations shall include:
- A) At least four leachate monitoring locations; and
 - B) At least one leachate monitoring location for every 25 acres within the unit's waste boundaries.
- 5) Leachate monitoring shall be performed at least once every six months and each established leachate monitoring location shall be monitored at least once every two years.
- h) Time of Operation of the Leachate Management System
- 1) The operator shall collect and dispose of leachate for a minimum of five years after closure and thereafter until treatment is no longer necessary.
 - 2) Treatment is no longer necessary if the leachate constituents do not exceed the wastewater effluent standards in 35 Ill. Adm. Code 304.124, 304.125, 304.126 and do not contain a BOD₅ concentration greater than 30 mg/L for six consecutive months.
 - 3) Leachate collection at a MSWLF unit shall be continued for a minimum period of 30 years after closure, except as otherwise provided by subsections (h)(4) and (h)(5).
 - 4) The Agency may reduce the leachate collection period at a MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.
 - 5) The owner or operator of a MSWLF unit shall petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or

388 operator seeks a reduction of the postclosure care monitoring period for all
389 of the following requirements:

- 390
- 391 i) Inspection and maintenance (Section 811.111);
- 392
- 393 ii) Leachate collection (Section 811.309);
- 394
- 395 iii) Gas monitoring (Section ~~811.310~~~~811.130~~); and
- 396
- 397 iv) Groundwater monitoring (Section 811.319).
- 398

399 BOARD NOTE: Subsection (h) is derived from 40 CFR 258.61 (1992).

400 (Source: Amended at 35 Ill. Reg. _____, effective _____)

401

402

403 **SUBPART G: FINANCIAL ASSURANCE**

404

405 **Section 811.700 Scope, Applicability and Definitions**

406

- 407 a) This Subpart provides procedures by which the owner or operator of a permitted
408 waste disposal facility provides financial assurance satisfying the requirements of
409 Section 21.1(a) of the Act.
- 410
- 411 b) Financial assurance ~~shall~~may be provided, as specified in Section 811.706, by a
412 trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or
413 performance, a letter of credit, insurance or self-insurance. The owner operator
414 shall provide financial assurance to the Agency before the receipt of the waste.
- 415
- 416 c) Except as provided in subsection (f), this Subpart does not apply to the State of
417 Illinois, its agencies and institutions, or to any unit of local government; provided,
418 however, that any other persons who conduct such a waste disposal operation on a
419 site that is owned or operated by such a governmental entity shall provide
420 financial assurance for closure and postclosure care of the site.
- 421
- 422 d) The owner or operator is not required to provide financial assurance pursuant to
423 this Subpart if the owner or operator demonstrates:
 - 424
 - 425 1) That closure and postclosure care plans filed pursuant to 35 Ill. Adm.
426 Code 724 or 725 will result in closure and postclosure care of the site in
427 accordance with the requirements of this Part; and
 - 428
 - 429 2) That the owner or operator has provided financial assurance adequate to
430 provide for such closure and postclosure care pursuant to 35 Ill. Adm.

Code 724 or 725.

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- e) Definition: "Assumed closure date" means the point in time when the extent and manner of the facility's development, as permitted for operation in accordance with 35 Ill. Adm. Code 813.203 when applicable, would make closure the most expensivedate during the next permit term on which the costs of premature final elosure of the facility, in accordance with the standards of this Part, will be greatest.
- f) On or after April 9, 1997, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at an MSWLF unit that requires a permit under ~~subsection (d) of Section 21(d)~~21.1 of the Act, unless that person complies with the financial assurance requirements of this Part.
- g) The Board will grant a variance pursuant to Sections 35 through 38 of the Act and 35 Ill. Adm. Code 104 that allows a facility to operate not in compliance with the otherwise applicable requirements of this Section for up to one year, until April 9, 1998, for good cause, if it determines that an owner or operator has demonstrated that the prior April 9, 1997 effective date for the requirements of this Section did not provide sufficient time to comply and that operating not in compliance with the otherwise applicable provisions of this Section would not adversely affect human health or the environment.

BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance requirements to units of local government, since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements. (See 40 CFR 258.70 (1996).) P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as subsection (g), to allow states to waive the compliance deadline until April 9, 1998.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.703 Application of Proceeds and Appeals

- 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 to such an Agency action, except when this Subpart or the terms of the instrument provide otherwise.
- b) As provided in Titles VIII and IX of the Act and 35 Ill. Adm. Code 103 and 104,

474 the Board may order modifications in permits to change the type or amount of
475 financial assurance pursuant to an enforcement action or a variance petition.
476 Also, the Board may order that an owner or operator modify a closure or
477 postclosure care plan or order that proceeds from financial assurance be applied to
478 the execution of a closure or postclosure care plan.

- 479
- 480 c) The following Agency actions may be appealed to the Board as a permit denial
481 pursuant to 35 Ill. Adm. Code 105 and Section 21.1(e)~~Section 21.5(e)~~ of the Act:
482
- 483 1) A refusal to accept financial assurance tendered by the owner or operator;
 - 484
 - 485 2) A refusal to release the owner or operator from the requirement to
486 maintain financial assurance;
 - 487
 - 488 3) A refusal to release excess funds from a trust;
 - 489
 - 490 4) A refusal to approve a reduction in the penal sum of a bond;
 - 491
 - 492 5) A refusal to approve a reduction in the amount of a letter of credit;
 - 493
 - 494 6) A refusal to approve a reduction in the face amount of an insurance policy;
495 or
 - 496
 - 497 7) A determination that an owner or operator no longer meets the gross
498 revenue test or financial test.

499
500 (Source: Amended at 35 Ill. Reg. _____, effective _____)
501

502 **Section 811.704 Closure and Postclosure Care and Corrective Action Cost Estimates**
503

- 504 a) Written cost estimate. The owner or operator shall have a written estimate of the
505 cost of closure of all parts of the facility where wastes have been deposited in
506 accordance with the requirements of this Part; the written closure plan, required
507 by Section 811.110 and 35 Ill. Adm. Code 812.114; and the cost of postclosure
508 care and plans, required by this Part and the written postclosure care plans
509 required by 35 Ill. Adm. Code 812.115. The cost estimate is the total cost for
510 closure and postclosure care.
- 511
- 512 b) The owner or operator shall revise the cost estimate whenever a change in the
513 closure plan or postclosure care plan increases the cost estimate.
- 514
- 515 c) The cost estimate must be based on the steps necessary for the premature final
516 closure of the facility on the assumed closure date.

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- d) The cost estimate must be based on the assumption that the Agency will contract with a third party to implement the closure plan.
 - e) The cost estimate may not be reduced by allowance for the salvage value of equipment or waste, for the resale value of land, or for the sale of landfill gas.
 - f) The cost estimate must, at a minimum, include all costs for all activities necessary to close the facility in accordance with all requirements of this Part.
 - g) ~~(Blank) Except for a MSWLF unit, the postclosure monitoring and maintenance cost estimate must be prepared:~~
 - ~~1) On the basis of the design period for each unit at a facility, assuming operations will cease on the assumed closure date; and~~
 - ~~2) Reduced to present value, as follows:~~
 - ~~A) Based on a 4 percent discount rate;~~
 - ~~B) Without allowing for inflation;~~
 - ~~C) Over a period including the time remaining until the assumed closure date, plus the postclosure care period;~~
 - h) The postclosure care cost estimate must, at a minimum, be based on the following elements in the postclosure care plan:
 - 1) Groundwater monitoring, based on the number of monitoring points and parameters and the frequency of sampling specified in the permit.
 - 2) The annual Cost of Cover Placement and Stabilization, including an estimate of the annual residual settlement and erosion control and the cost of mowing.
 - 3) Alternative Landfill Gas Disposal. If landfill gas is transported to an off-site processing system, then the owner or operator shall include in the cost estimate the costs necessary to operate an onsite gas disposal system, should access to the off-site facility become unavailable. The cost estimate must include the following information: installation, operation, maintenance and monitoring of an on-site gas disposal system.
 - 4) Cost Estimates Beyond the Design Period. When a facility must extend

560 the postclosure care period beyond the applicable design period, the cost
 561 estimate must be based upon such additional time and the care activities
 562 occurring during that time.
 563

564 i) This Section does not authorize the Agency to require the owner or operator to
 565 perform any of the indicated activities upon which cost estimates are to be based;
 566 however, if the site permit requires a closure activity, the owner or operator shall
 567 include the cost of that activity in the cost estimate.
 568

569 j) Once the owner or operator has completed an activity, the owner or operator may
 570 file an application for significant permit modification pursuant to 35 Ill. Adm.
 571 Code 813.201 indicating that the activity has been completed, and zeroing that
 572 element of the cost estimate.
 573

574 k) Cost estimate for corrective action at MSWLF units.
 575

576 1) An owner or operator of a MSWLF unit required to undertake a corrective
 577 action program pursuant to Section 811.326 shall have a detailed written
 578 estimate, in current dollars, of the cost of hiring a third party to perform
 579 the corrective action in accordance with the Section 811.326. The
 580 corrective action cost estimate must account for the total costs of
 581 corrective action activities as described in the corrective action plan for
 582 the entire corrective action period. The owner or operator shall notify the
 583 Agency that the estimate has been placed in the operating record.
 584

585 2) The owner or operator must annually adjust the estimate for inflation until
 586 the corrective action program is completed in accordance with Section
 587 811.326(f).
 588

589 3) The owner or operator must increase the corrective action cost estimate
 590 and the amount of financial assurance provided pursuant to subsections
 591 (k)(5) and (k)(6) ~~under paragraph (b) of this Section~~ section if changes in
 592 the corrective action program or MSWLF unit conditions increase the
 593 maximum costs of corrective action.
 594

595 4) The owner or operator may reduce the amount of the corrective action cost
 596 estimate and the amount of financial assurance provided pursuant to
 597 subsections (k)(5) and (k)(6) of this Section ~~section~~ if the cost estimate
 598 exceeds the maximum remaining costs of corrective action. The owner or
 599 operator shall notify the Agency that the justification for the reduction of
 600 the corrective action cost estimate and the amount of financial assurance
 601 has been placed in the operating record.
 602

- 603 5) The owner or operator of each MSWLF unit required to undertake a
604 corrective action program under Section 811.326 shall establish, in
605 accordance with Section 811.706, financial assurance for the most recent
606 corrective action program.
- 607
- 608 6) The owner or operator shall provide continuous coverage for corrective
609 action until released from the financial assurance requirements for
610 corrective action by demonstrating compliance with Section 811.326 (f)
611 and (g).
- 612

613 BOARD NOTE: Subsection (k) is derived from 40 CFR 258.73 (1992).

614 (Source: Amended at 35 Ill. Reg. _____, effective _____)

615

616

617 **Section 811.706 Mechanisms for Financial Assurance**

- 618
- 619 a) The owner or operator of a waste disposal site ~~shall~~may utilize any of the
620 mechanisms listed in subsections (a)(1) through (a)(10) to provide financial
621 assurance for closure and postclosure care, and for corrective action at an
622 MSWLF unit. An owner or operator of an MSWLF unit shall also meet the
623 requirements of subsections (b), (c), and (d). The mechanisms are as follows:
624
- 625 1) A trust fund (see Section 811.710);
- 626
- 627 2) A surety bond guaranteeing payment (see Section 811.711);
- 628
- 629 3) A surety bond guaranteeing performance (see Section 811.712);
- 630
- 631 4) A letter of credit (see Section 811.713);
- 632
- 633 5) Closure insurance (see Section 811.714);
- 634
- 635 6) Self-insurance (see Section 811.715);
- 636
- 637 7) Local government financial test (see Section 811.716);
- 638
- 639 8) Local government guarantee (see Section 811.717);
- 640
- 641 9) Corporate financial test (see Section 811.719); or
- 642
- 643 10) Corporate guarantee (see Section 811.720).
- 644
- 645 b) The owner or operator of an MSWLF unit shall ensure that the language of the

646 mechanisms listed in subsection (a), when used for providing financial assurance
647 for closure, postclosure, and corrective action, satisfies the following:

- 648
- 649 1) The amount of funds assured is sufficient to cover the costs of closure,
650 post-closure care, and corrective action; and
 - 651
 - 652 2) The funds will be available in a timely fashion when needed.
 - 653
 - 654 c) The owner or operator of an MSWLF unit shall provide financial assurance
655 utilizing one or more of the mechanisms listed in subsection (a) within the
656 following dates:
 - 657
 - 658 1) By April 9, 1997, or such later date granted pursuant to Section
659 811.700(g), or prior to the initial receipt of solid waste, whichever is later,
660 in the case of closure and post-closure care; or
 - 661
 - 662 2) No later than 120 days after the remedy has been selected in accordance
663 with the requirements of Section 811.325, in the case of corrective action.
 - 664
 - 665 d) The owner or operator shall provide continuous coverage until the owner or
666 operator is released from the financial assurance requirements pursuant to 35 Ill.
667 Adm. Code 813.403(b) or Section 811.326.
 - 668

669 BOARD NOTE: Subsections (b) and (c) are derived from 40 CFR 258.74(1) (1996).
670 Amendments prompted by amendments to 40 CFR 258.74(a)(5) (1996). P.A. 89-200,
671 signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the
672 deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the
673 federal financial assurance requirements actually become effective, which was April 9,
674 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c)
675 (1996), codified here as Section 811.700(g), to allow states to waive the compliance
676 deadline until April 9, 1998.

677
678 (Source: Amended at 35 Ill. Reg. _____, effective _____)

679
680 **Section 811.710 Trust Fund**

- 681
- 682 a) An owner or operator may satisfy the requirements of this Subpart G by
683 establishing a trust fund that conforms to the requirements of this Section and
684 submitting an original signed duplicate of the trust agreement to the Agency.
 - 685
 - 686 b) The trustee must be an entity that has the authority to act as a trustee and of whom
687 either of the following is true:
 - 688

- 689 1) It is an entity whose trust operations are examined by the Illinois
 690 Department of Financial and Professional Regulation~~Commissioner of~~
 691 ~~Banks and Trust Companies~~ pursuant to the Illinois Banking Act [205
 692 ILCS 5]; or
 693
 694 2) It is an entity that complies with the Corporate Fiduciary Act [205 ILCS
 695 620].
 696
 697 c) The trust agreement must be on the forms specified in Appendix A, Illustration A
 698 of this Part, and the trust agreement must be accompanied by a formal
 699 certification of acknowledgement, on the form specified in Appendix A,
 700 Illustration B. Schedule A of the trust agreement must be updated within 60 days
 701 after a change in the amount of the current closure, post-closure, and corrective
 702 action cost estimates covered by the agreement. ~~of this Part.~~
 703
 704 d) Payments into the trust.
 705
 706 1) For closure and post-closure care.
 707
 708 A) The owner or operator must make a payment into the trust fund
 709 each year during the pay-in period.
 710
 711 B) The pay-in period is the initial permit term or the remaining
 712 operating life of the facility as estimated in the closure plan,
 713 whichever period is shorter. ~~number of years remaining until the~~
 714 ~~assumed closure date.~~
 715
 716 C) Annual payments are determined by the following formula:
 717

$$\text{Annual payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

 718
 719 ~~Where the variables are defined as follows:~~
 720
 CE = Current cost estimate
 CV = Current value of the trust fund
 Y = Number of years remaining in the pay-in period.
 721
 722 D) The owner or operator must make the first annual payment prior to
 723 the initial receipt of waste for disposal. The owner or operator
 724 must also, prior to such initial receipt of waste, submit to the
 725 Agency a receipt from the trustee for the first annual payment.
 726

- 727 E) Subsequent annual payments must be made no later than 30 days
- 728 after each anniversary of the first payment.
- 729
- 730 F) The owner or operator may accelerate payments into the trust fund,
- 731 or may deposit the full amount of the current cost estimate at the
- 732 time the fund is established.
- 733
- 734 G) An owner or operator required to provide additional financial
- 735 assurance for an increase in the cost estimate because of an
- 736 amendment to this Subchapter i may provide such additional
- 737 financial assurance pursuant to this subsection (d)(1)(G). The
- 738 owner or operator may provide the increase by contributing to a
- 739 new or existing trust fund pursuant to this Section. Subsection
- 740 (d)(2) of this Section notwithstanding, the pay-in period for such
- 741 additional financial assurance must be not less than three years.
- 742
- 743 2) For corrective action at MSWLF units.
- 744
- 745 A) The owner or operator must make payments into the trust fund
- 746 annually over one-half of the estimated length of the corrective
- 747 action program in the case of corrective action for known releases.
- 748 This period is referred to as the pay-in period.
- 749
- 750 B) The owner or operator must make the first payment into the trust
- 751 fund equal to at least one-half of the current cost estimate for
- 752 corrective action divided by the number of years in the corrective
- 753 action pay-in period, as defined in subsection (d)(2)(A) of this
- 754 Section. The amount of subsequent payments must be determined
- 755 by the following formula:
- 756

$$\text{Next Payment} = \frac{\text{RB}-\text{CV}}{\text{Y}}$$

757 Where the variables are defined as follows:

758 RB = Most recent estimate of the required trust fund balance

759 for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period)

CV = Current value of the trust fund

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

- 760
- 761 C) The owner or operator must make the initial payment into the trust

762 fund no later than 120 days after the remedy has been selected in
763 accordance with the requirements of Section 811.325.
764

765 BOARD NOTE: Subsection (d) of this Section is partly derived from 40 CFR
766 258.74(a)(2), (a)(4), and (a)(5) (2005).
767

- 768 e) The trustee must evaluate the trust fund annually, as of the day the trust was
769 created or on such earlier date as may be provided in the agreement. The trustee
770 must notify the owner or operator and the Agency of the value within 30 days
771 after the evaluation date.
772
- 773 f) If the owner or operator of a MSWLF unit establishes a trust fund after having
774 used one or more alternative mechanisms specified in this Subpart G, the initial
775 payment into the trust fund must be at least the amount that the fund would
776 contain if the trust fund were established initially and annual payments made
777 according to the specifications of this Section.
778

779 BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR
780 258.74(a)(6) (2005).
781

- 782 g) Release of excess funds.
783
- 784 1) If the value of the financial assurance is greater than the total amount of
785 the current cost estimate, the owner or operator may submit a written
786 request to the Agency for a release of the amount in excess of the current
787 cost estimate.
788
- 789 2) Within 60 days after receiving a request from the owner or operator for a
790 release of funds, the Agency must instruct the trustee to release to the
791 owner or operator ~~to release~~ such funds as the Agency specifies in writing
792 to be in excess of the current cost estimate.
793
- 794 h) Reimbursement for closure, postclosure care, and corrective action expenses.
795
- 796 1) After initiating closure or corrective action, an owner or operator, or any
797 other person authorized to perform closure, postclosure care, or corrective
798 action, may request reimbursement for closure, postclosure care, or
799 corrective action expenditures, by submitting itemized bills to the Agency.
800
- 801 2) Within 60 days after receiving the itemized bills for closure, postclosure
802 care, or correction action activities, the Agency must determine whether
803 the expenditures are in accordance with the closure, postclosure care, or
804 corrective action plan. The Agency must instruct the trustee to make

- 805 reimbursement in such amounts as the Agency specifies in writing as
806 expenditures in accordance with the closure, postclosure care, or
807 corrective action plan.
808
- 809 3) If the Agency determines, based on such information as is available to it,
810 that the cost of closure and postclosure care or corrective action will be
811 greater than the value of the trust fund, it must withhold reimbursement of
812 such amounts as it determines are necessary to preserve the fund in order
813 to accomplish closure and postclosure care or corrective action until it
814 determines that the owner or operator is no longer required to maintain
815 financial assurance for closure and postclosure care or corrective action. In
816 the event the fund is inadequate to pay all claims, the Agency must pay
817 claims according to the following priorities:
818
- 819 A) Persons with whom the Agency has contracted to perform closure,
820 postclosure care, or corrective action activities (first priority);
821
 - 822 B) Persons who have completed closure, postclosure care, or
823 corrective action authorized by the Agency (second priority);
824
 - 825 C) Persons who have completed work that furthered the closure,
826 postclosure care, or corrective action (third priority);
827
 - 828 D) The owner or operator and related business entities (last priority).
829

830 (Source: Amended at 35 Ill. Reg. _____, effective _____)
831

832 **Section 811.711 Surety Bond Guaranteeing Payment**
833

- 834 a) An owner or operator may satisfy the requirements of this Subpart by obtaining a
835 surety bond which conforms to the requirements of this Section and submitting
836 the bond to the Agency. A surety bond obtained by an owner or operator of an
837 MSWLF unit must be effective before the initial receipt of waste or before April
838 9, 1997 (the effective date of the financial assurance requirements under RCRA
839 Subtitle D regulations), or such later date granted pursuant to Section 811.700(g),
840 whichever is later, in the case of closure and post-closure care, or no later than
841 120 days after the remedy has been selected in accordance with the requirements
842 of Section 811.325.
843
- 844 b) The surety company issuing the bond shall be *licensed to transact the business of*
845 *insurance by the Department of Insurance*, pursuant to the Illinois Insurance Code
846 [215 ILCS 5], *or at a minimum the insurer must be licensed to transact the*
847 *business of insurance or approved to provide insurance as an excess or surplus*

848 *lines insurer by the insurance department in one or more states, and approved by*
849 *the U.S. Department of the Treasury as an acceptable surety. Section 21.1(a.5) of*
850 *the Act [415 ILCS 5/21.1(a.5)]*

851
852 BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in
853 its Circular 570.

- 854
855 c) The surety bond must be on the forms specified in Appendix A, Illustration C, D,
856 or H.
857
858 d) Any payments made under the bond will be placed in the Landfill Closure~~landfill~~
859 ~~closure and~~ Post-Closure~~postclosure~~ fund within the State Treasury.
860
861 e) Conditions:
862
863 1) The bond must guarantee that the owner or operator will:
864
865 A) Provide~~provide~~ closure and postclosure care in accordance with the
866 approved closure and postclosure care plans and, if the bond is a
867 corrective action bond, provide. ~~If the facility is an MSWLF unit,~~
868 ~~then the corrective action bond must guarantee that the owner or~~
869 ~~operator will implement~~ corrective action in accordance with
870 Section 811.326; and
871
872 B) Provide alternative financial assurance, as specified in this Subpart,
873 and obtain the Agency's written approval of the assurance provided
874 within 90 days after receipt by both the owner or operator and the
875 Agency of a notice from the surety that the bond will not be
876 renewed for another term.
877
878 2) The surety will become liable on the bond obligation when, during the
879 term of the bond, the owner or operator fails to perform as guaranteed by
880 the bond. The owner or operator fails to perform when the owner or
881 operator:
882
883 A) Abandons the site;
884
885 B) Is adjudicated bankrupt;
886
887 C) Fails to initiate closure of the site or postclosure care or corrective
888 action when ordered to do so by the Board pursuant to Title
889 ~~VIII~~Title VII of the Act, or when ordered to do so by a court of
890 competent jurisdiction;

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- D) Notifies the Agency that it has initiated closure or corrective action, or initiates closure or corrective action, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or
- E) For a corrective action bond, fails to implement corrective action at an MSWLF unit in accordance with Section 811.326; or
- F) Fails to provide alternative 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 from the surety that the bond will not be renewed for another term.

f) Penal sum:

- 1) The penal sum of the bond must be in an amount at least equal to the current cost estimate.
- 2) 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~~The Agency shall approve a reduction in the penal sum whenever the current cost estimate decreases.~~
- 3) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner of operator, within 90 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 that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency.

g) Term:

- 1) The bond must be issued for a term of at least one year~~five years~~ and must not be cancelable during that term.
- 2) The surety bond must provide that, on the current expiration date and on each successive expiration date, the term of the surety bond will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the surety notifies both the owner and operator and the Agency by certified mail of a decision not to renew

934 the bond. Under the terms of the surety bond, the 120 days will begin on
935 the date when both the owner or operator and the Agency have received
936 the notice, as evidenced by the return receipts. If the owner or operator
937 fails to provide substitute financial assurance prior to expiration of a bond,
938 the term of the bond must be automatically extended for one twelve month
939 period starting with the date of expiration of the bond. During such
940 extension the bond will cease to serve as financial assurance satisfying the
941 requirements of this Part, and will not excuse the owner or operator from
942 the duty to provide substitute financial assurance.

943
944 3) The Agency shall release the surety by providing written authorization for
945 termination of the bond to the owner or operator and the surety when
946 either of the following occurs:

947
948 A) An owner or operator substitutes alternative financial assurance, as
949 specified in this Subpart; or

950
951 B) The Agency releases the owner or operator from the requirements
952 of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).
953 The Agency shall release the surety if, after the surety becomes
954 liable on the bond, the owner or operator or another person
955 provides financial assurance for closure and postclosure care of the
956 site or corrective action program at an MSWLF unit, unless the
957 Agency determines that the closure or postclosure care plan,
958 corrective action at an MSWLF unit, or the amount of substituted
959 financial assurance is inadequate to provide closure and
960 postclosure care or implement corrective action in compliance with
961 this Part.

962
963 h) Cure of default and refunds:

964
965 1) The Agency shall release the surety if, after the surety becomes liable on
966 the bond, the owner or operator or another person provides financial
967 assurance for closure and postclosure care of the site or corrective action
968 at an MSWLF unit, unless the Agency determines that the closure or
969 postclosure care plan, corrective action at an MSWLF unit or the amount
970 of substituted financial assurance is inadequate to provide closure and
971 postclosure care or implement corrective action in compliance with this
972 Part.

973
974 2) After closure and postclosure care have been completed in accordance
975 with the plans and requirements of this Part or after the completion of
976 corrective action at an MSWLF unit in accordance Section 811.326, the

977 Agency shall refund any unspent money which was paid into the "Landfill
978 Closure and ~~Post-Closure~~Postclosure Fund" by the surety, subject to
979 appropriation of funds by the Illinois General Assembly.
980

981 BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40
982 CFR 258.74(b)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and
983 effective January 1, 1996, amended the deadline for financial assurance for MSWLFs
984 from April 9, 1995 to the date that the federal financial assurance requirements actually
985 become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg.
986 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to
987 allow states to waive the compliance deadline until April 9, 1998. The other clarifying
988 changes reflect the inclusion of financial assurance requirements for implementing
989 corrective action at MSWLF units under this Section.
990

991 (Source: Amended at 35 Ill. Reg. _____, effective _____)
992

993 **Section 811.712 Surety Bond Guaranteeing Performance**
994

995 a) An owner or operator may satisfy the requirements of this Subpart by obtaining a
996 surety bond which conforms to the requirements of this Section and submitting
997 the bond to the Agency. A surety bond obtained by an owner or operator of an
998 MSWLF unit must be effective before the initial receipt of waste or before April
999 9, 1997 (the effective date of the financial assurance requirements under RCRA
1000 Subtitle D regulations), or such later date granted pursuant to Section 811.700(g),
1001 whichever is later, in the case of closure and post-closure care, or no later than
1002 120 days after the remedy has been selected in accordance with the requirements
1003 of Section 811.325.
1004

1005 b) The surety company issuing the bond shall be *licensed to transact the business of*
1006 *insurance by the Department of Insurance*, pursuant to the Illinois Insurance Code
1007 [215 ILCS 5], *or at a minimum the insurer must be licensed to transact the*
1008 *business of insurance or approved to provide insurance as an excess or surplus*
1009 *lines insurer by the insurance department in one or more states*, and approved by
1010 the U.S. Department of the Treasury as an acceptable surety. ~~Section 21.1(a.5) of~~
1011 ~~the Act~~ [415 ILCS 5/21.1(a.5)]
1012

1013 BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in
1014 its Circular 570.
1015

1016 c) The surety bond must be on the forms as specified in Appendix A, Illustration C,
1017 D, ~~or~~ H.
1018

1019 d) Any payments made under the bond will be placed in the Landfill Closure~~landfill~~

closure and Post-Closure Fund~~postclosure fund~~ within the State Treasury.

e) Conditions:

1) The bond must guarantee that the owner or operator will:

A) Provide~~provide~~ closure and postclosure care in accordance with the closure and postclosure care plans in the permit and, if the bond is a corrective action bond, provide. ~~If the facility is an MSWLF unit, then a corrective action bond must guarantee that the owner or operator will implement corrective action in accordance with Section 811.326; and. The surety shall have the option of providing closure and postclosure care or carrying out corrective action, or of paying the penal sum~~

B) Provide alternative 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 from the surety that the bond will not be renewed for another term.

2) The surety will become liable on the bond obligation when, during the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator:

A) Abandons the site;

B) Is adjudicated bankrupt;

C) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board pursuant to Title VIII~~Title VII~~ of the Act, or when ordered to do so by a court of competent jurisdiction; ~~or~~

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

E) For a corrective action bond, fails to implement corrective action at an MSWLF unit in accordance with Section 811.326; or

- 1063 F) Fails to provide alternative financial assurance, as specified in this
1064 Subpart, and obtain the Agency's written approval of the assurance
1065 provided within 90 days after receipt by both the owner or operator
1066 and the Agency of a notice from the surety that the bond will not
1067 be renewed for another term.
1068
- 1069 3) Upon failure of the owner or operator to perform as guaranteed by the
1070 bond, the surety shall have the option of providing closure and postclosure
1071 care, carrying out corrective action, or paying the penal sum.
1072
- 1073 f) Penal sum:
1074
- 1075 1) The penal sum of the bond must be in an amount at least equal to the
1076 current cost estimate.
1077
- 1078 2) Whenever the current cost estimate decreases, the penal sum may be
1079 reduced to the amount of the current cost estimate following written
1080 approval by the Agency.~~The Agency shall approve a reduction in the penal~~
1081 ~~sum whenever the current cost estimate decreases.~~
1082
- 1083 3) Whenever the current cost estimate increases to an amount greater than the
1084 penal sum, the owner or operator, within 90 days after the increase, must
1085 either cause the penal sum to be increased to an amount at least equal to
1086 the current cost estimate and submit evidence of that increase to the
1087 Agency or obtain other financial assurance, as specified in this Subpart, to
1088 cover the increase and submit evidence of the alternative financial
1089 assurance to the Agency.
1090
- 1091 g) Term:
1092
- 1093 1) The bond must be issued for a term of at least ~~one year~~^{five years} and must
1094 not be cancelable during that term.
1095
- 1096 2) The surety bond must provide that, on the current expiration date and on
1097 each successive expiration date, the term of the surety bond will be
1098 automatically extended for a period of at least one year unless, at least 120
1099 days before the current expiration date, the surety notifies both the owner
1100 or operator and the Agency by certified mail of a decision not to renew the
1101 bond. Under the terms of the surety bond, the 120 days will begin on the
1102 date when both the owner or operator and the Agency have received the
1103 notice, as evidenced by the return receipts.~~If the owner or operator fails to~~
1104 ~~provide substitute financial assurance prior to expiration of a bond, the~~
1105 ~~term of the bond must be automatically extended for one twelve month~~

1106 ~~period starting with the date of expiration of the bond. During such~~
 1107 ~~extension, the bond will cease to serve as financial assurance satisfying the~~
 1108 ~~requirements of this Part, and will not excuse the owner or operator from~~
 1109 ~~the duty to provide substitute financial assurance.~~

1110
 1111 3) The Agency shall release the surety by providing written authorization for
 1112 termination of the bond to the owner or operator and the surety when
 1113 either of the following occurs:

1114
 1115 A) An owner or operator substitutes alternative financial assurance, as
 1116 specified in this Subpart; or

1117
 1118 B) The Agency releases the owner or operator from the requirements
 1119 of this Subpart in accordance with 35 Ill. Adm. Code 813.403(b).

1120
 1121 h) Cure of default and refunds:

1122
 1123 1) The Agency shall release the surety if, after the surety becomes liable on
 1124 the bond, the owner or operator or another person provides financial
 1125 assurance for closure and postclosure care of the site or corrective action
 1126 at an MSWLF unit, unless the Agency determines that the closure or
 1127 postclosure care plan, corrective action at an MSWLF unit, or the amount
 1128 of substituted financial assurance is inadequate to provide closure and
 1129 postclosure care or implement corrective action at an MSWLF unit in
 1130 compliance with this Part.

1131
 1132 2) After closure and postclosure care have been completed in accordance
 1133 with the closure and postclosure care plans and the requirements of this
 1134 Part or after the completion of corrective action at an MSWLF unit in
 1135 accordance with Section 811.326, the Agency shall refund any unspent
 1136 money which was paid into the "Landfill Closure and ~~Post-Closure~~
 1137 Fund" by the surety, subject to appropriation of funds by the Illinois
 1138 General Assembly.

1139
 1140 i) The surety will not be liable for deficiencies in the performance of closure by the
 1141 owner or operator after the Agency releases the owner or operator from the
 1142 requirements of this Subpart.

1143
 1144 BOARD NOTE: MSWLF corrective action language at subsection (a) is derived from 40
 1145 CFR 258.74(b)(1) (1996). P.A. 89-200, signed by the Governor on July 21, 1995 and
 1146 effective January 1, 1996, amended the deadline for financial assurance for MSWLFs
 1147 from April 9, 1995 to the date that the federal financial assurance requirements actually
 1148 become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg.

1149 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section 811.700(g), to
 1150 allow states to waive the compliance deadline until April 9, 1998. The other clarifying
 1151 changes reflect the inclusion of financial assurance requirements for implementing
 1152 corrective action at MSWLF units under this Section.

1153
 1154 (Source: Amended at 35 Ill. Reg. _____, effective _____)
 1155

1156 **Section 811.713 Letter of Credit**

- 1157
- 1158 a) An owner or operator may satisfy the requirements of this Subpart by obtaining
 1159 an irrevocable standby letter of credit which conforms to the requirements of this
 1160 Section and submitting the letter to the Agency. A letter of credit obtained by an
 1161 owner or operator of an MSWLF unit must be effective before the initial receipt
 1162 of waste or before April 9, 1997 (the effective date of the financial assurance
 1163 requirements under RCRA Subtitle D regulations), or such later date granted
 1164 pursuant to Section 811.700(g), whichever is later, in the case of closure and post-
 1165 closure care, or no later than 120 days after the remedy has been selected in
 1166 accordance with the requirements of Section 811.325.
 - 1167
 - 1168 b) The issuing institution shall be an entity ~~that~~^{which} has the authority to issue
 1169 letters of credit and:
 1170
 - 1171 1) Whose letter-of-credit operations are regulated by the Illinois Department
 1172 of Financial and Professional Regulation ~~Commissioner of Banks and~~
 1173 ~~Trust Companies~~ pursuant to the Illinois Banking Act [205 ILCS 5]; or
 - 1174
 - 1175 2) Whose deposits are insured by the Federal Deposit Insurance Corporation
 1176 ~~or the Federal Savings and Loan Insurance Corporation.~~
 - 1177
 - 1178 c) Forms:
 1179
 - 1180 1) The letter of credit must be on the forms specified in Appendix A,
 1181 Illustration E.
 - 1182
 - 1183 2) The letter of credit must be accompanied by a letter from the owner or
 1184 operator, referring to the letter of credit by number, the name and address
 1185 of the issuing institution, and the effective date of the letter, and providing
 1186 the following information: the name and address of the site and the
 1187 amount of funds assured for closure and postclosure care of the site, or for
 1188 corrective action at an MSWLF unit by the letter of credit.
 - 1189
 - 1190 d) Any amounts drawn by the Agency pursuant to the letter of credit will be
 1191 deposited in the Landfill Closure and Post-Closure Fund ~~landfill closure and~~

1192 ~~postclosure fund~~ within the State Treasury.

1193

1194 e) Conditions on which the Agency ~~shall~~may draw on the letter of credit:

1195

1196 1) The Agency shall draw on the letter of credit if the owner or operator fails
1197 to perform closure or postclosure care in accordance with the closure and
1198 postclosure care plans, or fails to implement corrective action at an
1199 MSWLF unit in accordance with Section 811.326.

1200

1201 2) The Agency shall draw on the letter of credit when the owner or operator:

1202

1203 A) Abandons the site;

1204

1205 B) Is adjudicated bankrupt;

1206

1207 C) Fails to initiate closure of the site or postclosure care or corrective
1208 action when ordered to do so by the Board pursuant to Title
1209 ~~VIII~~Title VII of the Act, or when ordered to do so by a court of
1210 competent jurisdiction;

1211

1212 D) Notifies the Agency that it has initiated closure or corrective
1213 action, or initiates closure or corrective action, but fails to Provide
1214 closure and postclosure care or corrective action in accordance
1215 with the closure and postclosure care or corrective action plans; ~~or~~

1216

1217 E) For a corrective action bond, fails to implement corrective action at
1218 an MSWLF unit in accordance with Section 811.326; or

1219

1220 F) Fails to provide alternative financial assurance, as specified in this
1221 Subpart, and obtain the Agency's written approval of the assurance
1222 provided within 90 days after receipt by both the owner or operator
1223 and the Agency of a notice from the issuing institution that the
1224 letter of credit will not be extended for another term.

1225

1226 f) Amount:

1227

1228 1) The letter of credit must be issued in an amount at least equal to the
1229 current cost estimate.

1230

1231 2) Whenever the current cost estimate decreases, the amount of credit may be
1232 reduced to the amount of the current cost estimate following written
1233 approval by the Agency. ~~The Agency shall approve a reduction in the~~
1234 amount whenever the current cost estimate decreases.

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3) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 90 days after the increase, must either cause the amount of the credit to be increased to an amount at least equal to the current cost estimate and submit evidence of that increase to the Agency or obtain other financial assurance, as specified in this Subpart, to cover the increase and submit evidence of the alternative financial assurance to the Agency.

g) Term:

1) The letter of credit must be issued for a term of at least one year~~five years~~ and must be irrevocable during that term.

2) The letter of credit must provide that, on the current expiration date and on each successive expiration date, the letter of credit 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 letter of credit for another term. 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. If the owner or operator fails to substitute alternative financial assurance prior to expiration of a letter of credit, the term of the letter of credit must be automatically extended for one twelve-month period starting with the date of expiration. During such extension, the letter of credit will cease to serve as financial assurance satisfying the requirements of this Part, and will not excuse the owner or operator from the duty to provide substitute financial assurance.

3) The Agency must return the letter of credit to the issuing institution for termination when either of the following occurs:

A) An owner or operator substitutes alternative financial assurance, as specified in this Subpart; or

B) The Agency releases the owner or operator from the requirements of this Subpart in accordance with Ill. Adm. Code 813.403(b).

h) Cure of default and refunds:

1) The Agency shall release the financial institution if, after the Agency is allowed to draw on the letter of credit, the owner or operator or another

1278 person provides financial assurance for closure and postclosure care of the
1279 site or corrective action at an MSWLF unit, unless the Agency determines
1280 that a plan or the amount of substituted financial assurance is inadequate
1281 to provide closure and postclosure care, or implement corrective action at
1282 an MSWLF unit, as required by this Part.

- 1283
1284 2) After closure and postclosure care have been completed in accordance
1285 with the closure and postclosure care plans and the requirements of this
1286 Part or after the completion of corrective action at an MSWLF unit in
1287 accordance with Section 811.326, the Agency shall refund any unspent
1288 money which was paid into the "Landfill Closure and Post-
1289 ClosurePostclosure Fund" by the financial institution, subject to
1290 appropriation of funds by the Illinois General Assembly.
1291

1292 BOARD NOTE: MSWLF corrective action language at subsection (a) is
1293 derived from 40 CFR 258.74(c)(1) (1996). P.A. 89-200, signed by the
1294 Governor on July 21, 1995 and effective January 1, 1996, amended the
1295 deadline for financial assurance for MSWLFs from April 9, 1995 to the
1296 date that the federal financial assurance requirements actually become
1297 effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg.
1298 60337), USEPA added 40 CFR 258.70(c) (1996), codified here as Section
1299 811.700(g), to allow states to waive the compliance deadline until April 9,
1300 1998. The other clarifying changes reflect the inclusion of financial
1301 assurance requirements for implementing corrective action at MSWLF
1302 units under this Section.

1303
1304 (Source: Amended at 35 Ill. Reg. _____, effective _____)
1305

1306 **Section 811.714 Closure Insurance**
1307

- 1308 a) An owner or operator may satisfy the requirements of this Subpart by obtaining
1309 closure and postclosure care insurance which conforms to the requirements of this
1310 Section and submitting to the Agency an executed duplicate original of ~~the such~~
1311 insurance policy and the certificate of insurance for closure and/or postclosure
1312 care specified in Appendix A, Illustration F to the Agency.
1313
1314 b) The insurer shall be *licensed to transact the business of insurance by the*
1315 *Department of Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5],*
1316 *or at a minimum the insurer must be licensed to transact the business of insurance*
1317 *or approved to provide insurance as an excess or surplus lines insurer by the*
1318 *insurance department in one or more states. Section 21.1(a.5) of the Act [415*
1319 *ILCS 5/21.1(a.5)]*
1320

- 1321 c) The policy must be on forms filed with the Illinois Department of
1322 Insurance, approved by the Illinois Department of Insurance pursuant to 50 Ill.
1323 Adm. Code 753 and Section 143(2) of the Illinois Insurance Code [215 ILCS
1324 5/143(2)] or on forms approved by the insurance department of one or more
1325 states.
- 1326
- 1327 d) Face amount:
- 1328
- 1329 1) The closure and postclosure care insurance policy must be issued for a
1330 face amount at least equal to the current cost estimate. The term "face
1331 amount" means the total amount the insurer is obligated to pay under the
1332 policy. Actual payments by the insurer will not change the face amount,
1333 although the insurer's future liability will be lowered by the amount of the
1334 payments.
- 1335
- 1336 2) Whenever the current cost estimate decreases, the face amount may be
1337 reduced to the amount of the current cost estimate, following written
1338 approval by the Agency. The Agency shall approve a reduction in the
1339 amount of the policy whenever the current cost estimate decreases.
- 1340
- 1341 3) Whenever the current cost estimate increases to an amount greater than the
1342 face amount, the owner or operator, within 90 days after the increase, must
1343 either cause the face amount to be increased to an amount at least equal to
1344 the current cost estimate and submit evidence of that increase to the
1345 Agency or obtain other financial assurance, as specified in this Subpart, to
1346 cover the increase and submit evidence of the alternative financial
1347 assurance to the Agency.
- 1348
- 1349 e) The closure and postclosure care insurance policy must guarantee that funds will
1350 be available to close the site and to provide postclosure care thereafter. The
1351 policy must also guarantee that, once closure begins, the insurer will be
1352 responsible for paying out funds, up to an amount equal to the face amount of the
1353 policy, upon the direction of the Agency to such party or parties as the Agency
1354 specifies. The insurer will be liable when:
- 1355
- 1356 1) The owner or operator abandons the site;
- 1357
- 1358 2) The owner or operator is adjudicated bankrupt;
- 1359
- 1360 3) The Board, pursuant to Title VIII of the Act, or a court of competent
1361 jurisdiction orders the site closed;
- 1362
- 1363 4) The owner or operator notifies the Agency that it is initiating closure; or

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- 5) Any person initiates closure with approval of the Agency.
 - f) Reimbursement for closure and postclosure care expenses:
 - 1) After initiating closure, an owner or operator or any other person authorized to perform closure or postclosure care may request reimbursement for closure and postclosure care expenditures by submitting itemized bills to the Agency.
 - 2) Within 60 days after receiving bills for closure or postclosure care activities, the Agency shall determine whether the expenditures are in accordance with the closure or postclosure care plan. The Agency shall direct the insurer to make reimbursement in such amounts as the Agency specifies in writing as expenditures in accordance with the closure and postclosure care plans.
 - 3) If the Agency determines based on such information as is available to it that the cost of closure and postclosure care will be greater than the face amount of the policy, it shall 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. In the event the face amount of the policy is inadequate to pay all claims, the Agency shall pay claims according to the following priorities:
 - A) Persons with whom the Agency has contracted to perform closure or postclosure care activities (first priority);
 - B) Persons who have completed closure or postclosure care authorized by the Agency (second priority);
 - C) Persons who have completed work which furthered the closure or postclosure care (third priority);
 - D) The owner or operator and related business entities (last priority).
 - g) Cancellation:
 - 1) The owner or operator shall maintain the policy in full force and effect until the Agency releases the insurer pursuant to Section 811.702.
 - 2) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy, except for failure to pay the premium. The automatic

1407 renewal of the policy must, at a minimum, provide the insured with the
1408 option of renewal at the face amount of the expiring policy. If there is a
1409 failure to pay the premium, the insurer may elect to cancel, terminate or
1410 fail to renew the policy by sending notice by certified mail to the owner or
1411 operator and the Agency. Cancellation, termination or failure to renew
1412 may not occur, however, during the 120 days beginning with the date of
1413 receipt of the notice by both the Agency and the owner or operator, as
1414 evidenced by the return receipts. Cancellation, termination or failure to
1415 renew may not occur and the policy will remain in full force and effect in
1416 the event that on or before the date of expiration the premium due is paid.
1417

- 1418 h) Each policy must contain a provision allowing assignment of the policy to a
1419 successor owner or operator. Such assignment may be conditional upon consent
1420 of the insurer, provided such consent is not unreasonably refused.
1421

1422 (Source: Amended at 35 Ill. Reg. _____, effective _____)
1423

1424 **Section 811.715 Self-Insurance for Non-Commercialommercial Sites**
1425

- 1426 a) Definitions. The following definitions are intended to assist in the understanding
1427 of this Part and are not intended to limit the meanings of terms in any way that
1428 conflicts with generally accepted accounting principles:
1429

1430 "Assets" means all existing and all probable future economic benefits obtained or
1431 controlled by a particular entity.
1432

1433 "Current assets" means cash or other assets or resources commonly identified as
1434 those ~~that~~which are reasonably expected to be realized in cash or sold or
1435 consumed during the normal operating cycle of the business.
1436

1437 "Current liabilities" means obligations whose liquidation is reasonably expected
1438 to require the use of existing resources properly classifiable as current assets or
1439 the creation of other current liabilities.
1440

1441 "Generally accepted accounting principles" means the accounting and auditing
1442 standards incorporated by reference at 35 Ill. Adm. Code 810.104(a)(2).
1443

1444 "~~Generally accepted accounting principles~~" means ~~Auditing Standards—Current~~
1445 ~~Text, incorporated by reference at 35 Ill. Adm. Code 810.104.~~
1446

1447 "Gross Revenue" means total receipts less returns and allowances.
1448

1449 "Independently audited" refers to an audit performed by an independent certified

1450 public accountant in accordance with generally accepted auditing standards.

1451
1452 "Liabilities" means probable future sacrifices of economic benefits arising from
1453 present obligations to transfer assets or provide services to other entities in the
1454 future as a result of past transactions or events.

1455
1456 "Net working capital" means current assets minus current liabilities.

1457
1458 "Net worth" means total assets minus total liabilities and is equivalent to owner's
1459 equity.

1460
1461 "Tangible net worth" means tangible assets less liabilities; tangible assets to not
1462 include intangibles such as goodwill and rights to patents or royalties.

1463
1464 b) Information to be filed

1465
1466 An owner or operator may satisfy the financial assurance requirements of this Part
1467 by providing the following:

1468
1469 1) Bond without surety promising to pay the cost estimate (subsection (c) of
1470 this Section).

1471
1472 2) Proof that the owner or operator meets the gross revenue test (subsection
1473 (d) of this Section).

1474
1475 3) Proof that the owner or operator meets the financial test (subsection (e) of
1476 this Section).

1477
1478 c) Bond without surety. An owner or operator utilizing self-insurance must provide
1479 a bond without surety on the forms specified in Appendix A, Illustration G. The
1480 owner or operator must promise to pay the current cost estimate to the Agency
1481 unless the owner or operator provides closure and postclosure care in accordance
1482 with the closure and postclosure care plans.

1483
1484 d) Gross revenue test. The owner or operator must demonstrate that less than one-
1485 half of its gross revenues are derived from waste disposal operations. Revenue is
1486 "from waste disposal operations" if it would stop upon cessation of the owner or
1487 operator's waste disposal operations.

1488
1489 e) Financial test.

1490
1491 1) To pass the financial test, the owner or operator must meet the criteria of
1492 either subsection (e)(1)(A) or (e)(1)(B) of this Section:

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

- B) The owner or operator must have:
 - i) A current rating of AAA, AA, A, or BBB for its most recent bond issuance as issued by Standard and Poor, or a rating of Aaa, Aa, A₁, or Baa, as issued by Moody; and
 - ii) Tangible net worth at least six times the current cost estimate; and
 - iii) Tangible net worth of at least \$10 million; and
 - iv) Assets located in the United States amounting to at least 90 percent of its total assets or at least six times the current cost estimate.

- 2) To demonstrate that it meets this test, the owner or operator must submit the following items to the Agency:
 - A) A letter signed by the owner or operator's chief financial officer and worded as specified in Appendix A, Illustration I; and
 - B) A copy of the independent certified public accountant's report on examination of the owner or operator's financial statements for the latest completed fiscal year; and

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

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

 - g) Qualified Opinions. If the opinion required by subsections (e)(2)(B) and (e)(2)(C) of this Section includes an adverse opinion or a disclaimer of opinion, the Agency must disallow the use of self-insurance. If the opinion includes other qualifications, the Agency must disallow the use of self-insurance if:
 - 1) The qualifications relate to the numbers that are used in the gross revenue test or the financial test; and,
 - 2) In light of the qualifications, the owner or operator has failed to demonstrate that it meets the gross revenue test or financial test.

 - h) Parent Corporation. An owner or operator may satisfy the financial assurance requirements of this Part by:
 - 1) Demonstrating~~demonstrating~~ that a corporation that~~that~~ which owns an interest in the owner or operator meets the requirements of this Section; and~~gross revenue and financial tests.~~

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- 2) Providing a bond to the Agency with the parent corporation as surety on a form specified in Appendix A, Illustration H in accordance with Section 811.711(d), (e), (f), and (g) of this Part. The owner or operator must also provide a bond with the parent as surety (Appendix A, Illustration H).

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 811.716 Local Government Financial Test

A unit of local government owner or operator that satisfies the requirements of subsections (a) through (c) of this Section may demonstrate financial assurance up to the amount specified in subsection (d) of this Section.

- a) Financial component.
 - 1) The unit of local government owner or operator must satisfy subsection (a)(1)(A) or (a)(1)(B) of this Section, as applicable:
 - A) If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's, on all such general obligation bonds; or
 - B) The owner or operator must satisfy each of the following financial ratios based on the owner or operator's most recent audited annual financial statement:
 - i) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
 - ii) A ratio of annual debt service to total expenditures less than or equal to 0.20.
 - 2) The unit of local government owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310].
 - 3) A unit of local government is not eligible to assure its obligations pursuant to this Section if any of the following is true:

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- A) It is currently in default on any outstanding general obligation bonds;
- B) It has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's;
- C) It operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or
- D) It receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310] auditing its financial statement as required pursuant to subsection (a)(2) of this Section. However, the Agency must evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems the qualification insufficient to warrant disallowance of use of the test.

4) Terms used in this Section are defined as follows:

"Cash plus marketable securities" is all the cash plus marketable securities held by the unit of local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

"Debt service" is the amount of principal and interest due on a loan in a given time period, typically the current year.

"Deficit" equals total annual revenues minus total annual expenditures.

"Total revenues" include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by a unit of local government on behalf of a specific third party.

"Total expenditures" include all expenditures excluding capital outlays and debt repayment.

b) Public notice component.

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- 1) The unit of local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR), or prior to the initial receipt of waste at the facility, whichever is later.
 - 2) Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years.
 - 3) A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Sections 811.319(d) and 811.325.
 - 4) For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.
 - 5) For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18, incorporated by reference in 35 Ill. Adm. Code 810.104, assures compliance with this public notice component.
- c) Recordkeeping and reporting requirements.
- 1) The unit of local government owner or operator must place the following items in the facility's operating record:
 - A) A letter signed by the unit of local government's chief financial officer that provides the following information:
 - i) It lists all the current cost estimates covered by a financial test, as described in subsection (d) of this Section;
 - ii) It provides evidence and certifies that the unit of local government meets the conditions of subsections (a)(1), (a)(2), and (a)(3) of this Section; and
 - iii) It certifies that the unit of local government meets the conditions of subsections (b) and (d) of this Section.

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- B) The unit of local government's independently audited year-end financial statements for the latest fiscal year (except for a unit of local government where audits are required every two years, where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent certified public accountant (CPA) or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310].
 - C) A report to the unit of local government from the unit of local government's independent CPA or the Comptroller of the State of Illinois pursuant to the Governmental Account Audit Act [50 ILCS 310] based on performing an agreed upon procedures engagement relative to the financial ratios required by subsection (a)(1)(B) of this Section, if applicable, and the requirements of subsections (a)(2), (a)(3)(C), and (a)(3)(D) of this Section. The CPA or Comptroller's report should state the procedures performed and the CPA or Comptroller's findings; ~~and~~
 - D) A copy of the comprehensive annual financial report (CAFR) used to comply with subsection (b) of this Section or certification that the requirements of General Accounting Standards Board Statement 18, incorporated by reference in Section 810.104, have been met.
- 2) The items required in subsection (c)(1) of this Section must be placed in the facility operating record as follows:
 - A) In the case of closure and post-closure care, before November 27, 1997 or prior to the initial receipt of waste at the facility, whichever is later; or
 - B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of Sections 811.319(d) and 811.325.
 - 3) After the initial placement of the items in the facility operating record, the unit of local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.
 - 4) The unit of local government owner or operator is no longer required to

- 1751 meet the requirements of subsection (c) of this Section when either of the
 1752 following occurs:
- 1753
 - 1754 A) The owner or operator substitutes alternative financial assurance as
 1755 specified in this Section; or
 - 1756
 - 1757 B) The owner or operator is released from the requirements of this
 1758 Section in accordance with Section 811.326(g), 811.702(b), or
 1759 811.704(j) or (k)(6).
 - 1760
 - 1761 5) A unit of local government must satisfy the requirements of the financial
 1762 test at the close of each fiscal year. If the unit of local government owner
 1763 or operator no longer meets the requirements of the local government
 1764 financial test it must, within ~~120~~240 days following the close of the owner
 1765 or operator's fiscal year, obtain alternative financial assurance that meets
 1766 the requirements of this Subpart, place the required submissions for that
 1767 assurance in the operating record, ~~and~~ notify the Agency that the owner or
 1768 operator no longer meets the criteria of the financial test and that
 1769 alternative assurance has been obtained, and submit evidence of the
 1770 alternative financial assurance to the Agency.
 - 1771
 - 1772 6) The Agency, based on a reasonable belief that the unit of local
 1773 government owner or operator may no longer meet the requirements of the
 1774 local government financial test, may require additional reports of financial
 1775 condition from the unit of local government at any time. If the Agency
 1776 determines, on the basis of such reports or other information, that the
 1777 owner or operator no longer meets the requirements of the local
 1778 government financial test, the unit of local government must provide
 1779 alternative financial assurance in accordance with this Subpart.
 - 1780
 - 1781 d) Calculation of Costs to Be Assured. The portion of the closure, post-closure, and
 1782 corrective action costs that an owner or operator may assure pursuant to this
 1783 Section is determined as follows:
 - 1784
 - 1785 1) If the unit of local government owner or operator does not assure other
 1786 environmental obligations through a financial test, it may assure closure,
 1787 post-closure, and corrective action costs that equal up to 43 percent of the
 1788 unit of local government's total annual revenue.
 - 1789
 - 1790 2) If the unit of local government assures other environmental obligations
 1791 through a financial test, including those associated with UIC facilities
 1792 pursuant to 35 Ill. Adm. Code 704.213, petroleum underground storage
 1793 tank facilities pursuant to 40 CFR 280, PCB storage facilities pursuant to

1794 40 CFR 761, and hazardous waste treatment, storage, and disposal
1795 facilities pursuant to 35 Ill. Adm. Code 724 and 725, it must add those
1796 costs to the closure, post-closure, and corrective action costs it seeks to
1797 assure pursuant to this Section. The total that may be assured must not
1798 exceed 43 percent of the unit of local government's total annual revenue.
1799

- 1800 3) The owner or operator must obtain an alternative financial assurance
1801 instrument for those costs that exceed the limits set in subsections (d)(1)
1802 and (d)(2) of this Section.
1803

1804 BOARD NOTE: Derived from 40 CFR 258.74(f) (2005).

1805 (Source: Amended at 35 Ill. Reg. _____, effective _____)
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1807

1808 **Section 811.718 Discounting**
1809

1810 For facilities providing financial assurance solely through a trust fund, theThe Agency shall
1811 allow discounting of closure cost estimates, post-closure cost estimates, and corrective action
1812 cost estimates in Section 811.704 up to the rate of return for essentially risk free investments, net
1813 of inflation, under the following conditions:
1814

- 1815 a) The Agency determines that cost estimates are complete and accurate and the
1816 owner or operator has submitted a statement from a professional engineer, as
1817 defined in Section 810.103, so stating;
1818
- 1819 b) The Agency finds the facility in compliance with applicable and appropriate
1820 permit conditions; ~~and~~
1821
- 1822 c) The Agency determines that the closure date is certain, and the owner or operator
1823 certifies that there are no foreseeable factors that will change the estimate of site
1824 life; ~~and~~:-
1825
- 1826 d) Discounted cost estimates ~~are~~must be adjusted annually to reflect inflation and the
1827 anticipated years of remaining life.
1828

1829 BOARD NOTE: Derived from 40 CFR 258.75, added at 61 Fed. Reg. 60327 (Nov. 27, 1996).

1830 (Source: Amended at 35 Ill. Reg. _____, effective _____)
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1833 **Section 811.719 Corporate Financial Test**
1834

1835 An MSWLF owner or operator that satisfies the requirements of this Section may demonstrate
1836 financial assurance up to the amount specified in this Section as follows:

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- a) Financial component.
 - 1) The owner or operator must satisfy one of the following three conditions:
 - A) A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or
 - B) A ratio of less than 1.5 comparing total liabilities to net worth; or
 - C) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.
 - 2) The tangible net worth of the owner or operator must be greater than:
 - A) The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million except as provided in subsection (a)(2)(B) of this Section.
 - B) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Agency.
 - 3) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test, as described in subsection (c) of this Section.
 - b) Recordkeeping and reporting requirements.
 - 1) The owner or operator must place the following items into the facility's operating record:
 - A) A letter signed by the owner's or operator's chief financial officer that includes the following:

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- i) All the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities pursuant to this Part; cost estimates required for UIC facilities pursuant to 35 Ill. Adm. Code 730, if applicable; cost estimates required for petroleum underground storage tank facilities pursuant to 40 CFR 280, if applicable; cost estimates required for PCB storage facilities pursuant to 40 CFR 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities pursuant to 35 Ill. Adm. Code 724 or 725, if applicable; and
 - ii) Evidence demonstrating that the firm meets the conditions of subsection (a)(1)(A), (a)(1)(B), or (a)(1)(C) of this Section and subsection (a)(2) and (a)(3) of this Section.
- B) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Agency must evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Agency deems that the matters that form the basis for the qualification are insufficient to warrant disallowance of the test. If the Agency does not allow use of the test, the owner or operator must provide alternative financial assurance that meets the requirements of this Section.
- C) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subsection (a)(1)(B) or (a)(1)(C) of this Section that are different from data in the audited financial statements referred to in subsection (b)(1)(B) of this Section or any other audited financial statement or data filed with the federal Security Exchange Commission, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report must be based upon an agreed upon procedures engagement in accordance with professional auditing standards and must describe the procedures

performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

D) If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations, as provided in subsection (a)(2)(B) of this Section, then the letter must include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

2) An owner or operator must place the items specified in subsection (b)(1) of this Section in the operating record and notify the Agency in writing that these items have been placed in the operating record before the initial receipt of waste or before February 17, 1999, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Section 811.324.

BOARD NOTE: Corresponding 40 CFR 258.74(e)(2)(ii) provides that this requirement is effective "before the initial receipt of waste or before the effective date of the requirements of this Section (April 9, 1997 or October 9, 1997 for MSWLF units meeting the conditions of Sec. 258.1(f)(1)), whichever is later." The Board has instead inserted the date on which these amendments are to be filed and become effective in Illinois.

3) After the initial placement of items specified in subsection (b)(1) of this Section in the operating record, the owner or operator must annually update the information and place updated information in the operating record within 90 days following the close of the owner's or operator's fiscal year. The Agency must provide up to an additional 45 days for an owner or operator who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information must consist of all items specified in subsection (b)(1) of this Section.

4) The owner or operator is no longer required to submit the items specified in this subsection (b) or comply with the requirements of this Section

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when either of the following occurs:

- A) It substitutes alternative financial assurance, as specified in this Subpart G, that is not subject to these recordkeeping and reporting requirements; or
 - B) It is released from the requirements of this Subpart G in accordance with Sections 811.700 and 811.706.
- 5) If the owner or operator no longer meets the requirements of subsection (a) of this Section, the owner or operator must obtain alternative financial assurance that meets the requirements of this Subpart G within 120 days following the close of the facility's fiscal year. The owner or operator must also place the required submissions for the alternative financial assurance in the facility operating record and notify the Agency that it no longer meets the criteria of the financial test and that it has obtained alternative financial assurance. The owner or operator must submit evidence of the alternative financial assurance to the Agency.
- 6) The Agency may require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation specified in subsection (b) of this Section at any time it has a reasonable belief that the owner or operator may no longer meet the requirements of subsection (a) of this Section. If the Agency finds that the owner or operator no longer meets the requirements of subsection (a) of this Section, the owner or operator must provide alternative financial assurance that meets the requirements of this Subpart G.
- c) Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, corrective action, the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in this Section, the owner or operator must include cost estimates required for municipal solid waste management facilities pursuant to this Part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with UIC facilities pursuant to 35 Ill. Adm. Code 730; petroleum underground storage tank facilities pursuant to 40 CFR 280; PCB storage facilities pursuant to 40 CFR 761; and hazardous waste treatment, storage, and disposal facilities pursuant to 35 Ill. Adm. Code 724 or 725.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

2007 **Section 811.APPENDIX A Financial Assurance Forms**

2008
2009 **Section 811.ILLUSTRATION A Trust Agreement**

2010
2011 **TRUST AGREEMENT**

2012 Trust Fund Number _____

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

2013
2014 Whereas, Section 21.1 of the Environmental Protection Act, "Act", prohibits any person from
2015 conducting any waste disposal operation unless such person has posted with the Illinois
2016 Environmental Protection Agency, "IEPA", a performance bond or other security for the purpose
2017 of insuring closure of the site and postclosure care or corrective action in accordance with the
2018 Act and Illinois Pollution Control Board, "IPCB", rules.

2019
2020 Whereas, the IPCB has established certain regulations applicable to the Grantor, requiring that an
2021 operator of a waste disposal site provide assurance that funds will be available when needed for
2022 closure and/or postclosure care or corrective action of the site.

2023
2024 Whereas, the Grantor has elected to establish a trust to provide all or part of such financial
2025 assurance for the sites identified in this agreement.

2026
2027 Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be
2028 the trustee under this agreement, and the Trustee is willing to act as trustee.

2029
2030 Whereas, Trustee is an entity ~~that~~which has authority to act as a trustee and whose trust
2031 operations are regulated by the Illinois Department of Financial and Professional
2032 Regulation~~Commissioner of Banks & Trust Companies~~ or who complies with the Corporate
2033 Fiduciary Act (Ill. Rev. Stat. 1991, ch. 17, par. 1551-1 et. seq. [205 ILCS 5/4]). (Line through
2034 any condition ~~that~~which does not apply.)

2035
2036 Now, Therefore, the Grantor and the Trustee agree as follows:

2037
2038 **Section 1. Definitions.**

2039
2040 As used in this Agreement:

- 2041
2042 a) The term "Grantor" means the operator who enters into this Agreement and any
2043 successors or assigns of the operator.

2044
2045 b) The term "Trustee" means the Trustee who enters into this Agreement and any
2046 successor Trustee.
2047

2048 **Section 2. Identification of Sites and Cost Estimates.**
2049

2050 This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on
2051 Schedule A, list the name and address and ~~current~~initial cost estimate of each site for which
2052 financial assurance is demonstrated by this agreement).
2053

2054 **Section 3. Establishment of Fund.**
2055

2056 The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the
2057 IEPA. The Grantor and the Trustee intend that no other third party have access to the Fund
2058 except as provided in this agreement. The Fund is established initially as consisting of the
2059 property, which is acceptable to the Trustee, described in Schedule B attached to this agreement.
2060 Such property and any other property subsequently transferred to the Trustee is referred to as the
2061 Fund, together with all earnings and profits on the Fund, less any payments or distributions made
2062 by the Trustee pursuant to this agreement. The Fund shall be held by the Trustee, in trust, as
2063 provided in this agreement. The Trustee shall not be responsible nor shall it undertake any
2064 responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any
2065 payments necessary to discharge any liabilities of the Grantor.
2066

2067 **Section 4. Payment for Closure and Postclosure care or Corrective Action.**
2068

2069 The Trustee shall make payments from the Fund as the IEPA shall direct, in writing, to provide
2070 for the payment of the costs of closure and/or postclosure care or corrective action of the sites
2071 covered by this agreement. The Trustee shall reimburse the Grantor or other persons as specified
2072 by the IEPA from the Fund for closure and postclosure or corrective action expenditures in such
2073 amounts as the IEPA shall direct in writing. In addition, the Trustee shall refund to the Grantor
2074 such amounts as the IEPA specifies in writing. Upon refund, such funds shall no longer
2075 constitute part of the Fund.
2076

2077 **Section 5. Payments Comprising the Fund.**
2078

2079 Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the
2080 Trustee.
2081

2082 **Section 6. Trust Management.**
2083

2084 The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund
2085 invested as a single fund, without distinction between principal and income, in accordance with
2086 general investment policies and guidelines which the Grantor may communicate in writing to the

2087 Trustee from time to time, subject, however, to the provisions of this Section. In investing,
2088 reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties
2089 with respect to the trust fund solely in the interest of the beneficiary and with the care, skill,
2090 prudence and diligence under the circumstances then prevailing which persons of prudence,
2091 acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise
2092 of a like character and with like aims; except that:

- 2094 a) Securities or other obligations of the Grantor, or any other owner or operator of the site,
2095 or any of their affiliates as defined in Section 80a-2(a)(2) of the Investment Company Act
2096 of 1940, as amended (15 USC 80a-2(a)(2)U.S.C. 80-2(a) shall not be acquired or held,
2097 unless they are securities or other obligations of the Federal government or the State of
2098 Illinois;
- 2100 b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to
2101 the extent insured by the Federal Deposit Insurance Corporation.
- 2103 c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for
2104 a reasonable time and without liability for the payment of interest thereon.

2106 **Section 7. Commingling and Investment.**

2107
2108 The Trustee is expressly authorized in its discretion:

- 2110 a) To transfer from time to time any or all of the assets of the Fund to any common,
2111 commingled or collective trust fund created by the Trustee in which the Fund is eligible
2112 to participate, subject to all of the provisions thereof, to be commingled with the assets of
2113 other trusts participating therein; and
- 2115 b) To purchase shares in any investment company registered under the Investment Company
2116 Act of 1940 (15 USC U.S.C. 80a-1 et. seq.) including one which may be created,
2117 managed, underwritten or to which investment advice is rendered or the shares of which
2118 are sold by the Trustee. The Trustee may vote such shares in its discretion.

2120 **Section 8. Express Powers of Trustee.**

2121
2122 Without in any way limiting the powers and discretions conferred upon the Trustee by the other
2123 provisions of this agreement or by law, the Trustee is expressly authorized and empowered;

- 2125 a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by
2126 public or private sale. No person dealing with the Trustee shall be bound to see to the
2127 application of the purchase money or to inquire into the validity or expedience of any
2128 such sale or other disposition;

2129

2130 **Section 9. Taxes and Expenses.**

2131
2132 All taxes of any kind that may be assessed or levied against or in respect of the Fund and all
2133 brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses
2134 incurred by the Trustee, to the extent not paid directly by the Grantor, and all other proper
2135 charges and disbursements of the Trustee shall be paid from the Fund.
2136

2137 **Section 10. Annual Valuation.**

2138
2139 The Trustee shall annually furnish to the Grantor and to the IEPA a statement confirming the
2140 value of the Trust. The evaluation day shall be each year on the _____ day of _____.
2141 Any securities in the Fund shall be valued at market value as of the evaluation day. The Trustee
2142 shall mail the evaluation statement to the Grantor and the IEPA within 30 days after the
2143 evaluation day. The failure of the Grantor to object in writing to the Trustee within 90 days after
2144 the statement has been furnished to the Grantor and the IEPA shall constitute a conclusively
2145 binding assent by the Grantor, barring the Grantor from asserting any claim or liability against
2146 the Trustee with respect to matters disclosed in the statement.
2147

2148 **Section 11. Advice of counsel.**

2149
2150 The Trustee may from time to time consult with counsel, who may be counsel to the Grantor,
2151 with respect to any question arising as to the construction of this agreement or any action to be
2152 taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting
2153 upon the advice of counsel.
2154

2155 **Section 12. Trustee Compensation.**

2156
2157 The Trustee shall be entitled to reasonable compensation for its services as agreed upon in
2158 writing from time to time with the Grantor.
2159

2160 **Section 13. Successor Trustee.**

2161
2162 The Trustee may resign or the Grantor may replace the Trustee, but such resignation or
2163 replacement shall not be effective until the Grantor has appointed a successor trustee and the
2164 successor accepts the appointment. The successor trustee shall have the same powers and duties
2165 as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the
2166 appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and
2167 properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the
2168 event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction
2169 for the appointment of a successor trustee or for instructions. The successor trustee shall specify
2170 the date on which it assumes administration of the trust in a writing sent to the Grantor, the
2171 IEPA and the present Trustee by certified mail ten days before such change becomes effective.

2172 Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section
 2173 shall be paid as provided in Section 9.
 2174

2175 **Section 14. Instructions to the Trustee.**
 2176

2177 All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by
 2178 such persons as are designated in the attached Exhibit A or such other designees as the Grantor
 2179 may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting
 2180 without inquiry in accordance with the Grantor's orders, requests and instructions. All orders,
 2181 requests and instructions by the IEPA to the Trustee shall be in writing, signed by the IEPA
 2182 Director or his/~~her~~ ~~designee~~-designees, and the Trustee shall act and shall be fully protected in
 2183 acting in accordance with such orders, requests and instructions. The Trustee shall have the right
 2184 to assume, in the absence of written notice to the contrary, that no event constituting a change or
 2185 a termination of the authority of any person to act on behalf of the Grantor or IEPA hereunder
 2186 has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and
 2187 instructions from the Grantor and/or IEPA, except as provided in this agreement.
 2188

2189 **Section 15. Notice of Nonpayment.**
 2190

2191 The Trustee shall notify the Grantor and the IEPA, by certified mail within ten days following
 2192 the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no
 2193 payment is received from the Grantor during that period. After the pay-in period is completed,
 2194 the Trustee shall not be required to send a notice of nonpayment.
 2195

2196 **Section 16. Amendment of Agreement.**
 2197

2198 This Agreement may be amended by an instrument in writing executed by the Grantor, the
 2199 Trustee and the IEPA Director or his/her designee, or by the Trustee and the IEPA Director or
 2200 his/her designee if the Grantor ceases to exist.
 2201

2202 **Section 17. Irrevocability and Termination.**
 2203

2204 Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust
 2205 shall be irrevocable and shall continue until terminated at the written agreement of the Grantor,
 2206 the Trustee and the IEPA Director or his/her designee, or by the Trustee and the IEPA Director
 2207 or his/her designee, if the Grantor ceases to exist. Upon termination of the Trust, all remaining
 2208 trust property, less final trust administration expenses, shall be delivered to the Grantor.
 2209

2210 **Section 18. Immunity and Indemnification.**
 2211

2212 The Trustee shall not incur personal liability of any nature in connection with any act or
 2213 omission, made in good faith, in the administration of this Trust, or in carrying out any directions
 2214 by the Grantor or the IEPA Director or his/her designee issued in accordance with this

2215 Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the
2216 Trust Fund, or both, from and against any personal liability to which the Trustee may be
2217 subjected by reason of any act or conduct in its official capacity, including all expenses
2218 reasonably incurred in its defense in the event the Grantor fails to provide such defense.
2219

2220 **Section 19. Choice of Law.**

2221
2222 This Agreement shall be administered, construed and enforced according to the laws of the State
2223 of Illinois.
2224

2225 **Section 20. Interpretation.**

2226
2227 As used in this Agreement, words in the singular include the plural and words in the plural
2228 include the singular. The descriptive headings for each Section of this Agreement shall not
2229 affect the interpretation or the legal efficacy of this Agreement.
2230

2231 In Witness Whereof the parties have caused this Agreement to be executed by their respective
2232 officers duly authorized and their corporate seals to be hereunto affixed and attested as of the
2233 date first above written. The parties below certify that the wording of this Agreement is identical
2234 to the wording specified in 35 Ill. Adm. Code 811.Appendix A, Illustration A as those
2235 regulations were constituted on the date this Agreement was entered.
2236

Attest: Signature of Grantor _____

Typed Name _____

Title _____

Seal

Attest: Signature of Trustee _____

Typed Name _____

Title _____

Seal

2237

2238

(Source: Amended at 35 Ill. Reg. _____, effective _____)

2239 **Section 811.APPENDIX A Financial Assurance Forms**

2240

2241 **Section 811.ILLUSTRATION C Forfeiture Bond**

2242

2243

FORFEITURE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

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

Total penal sum of bond: _____

Surety's bond number: _____

2244

2245 The Principal and the Surety promise to pay the Illinois Environmental Protection Agency
2246 ("IEPA") the above penal sum unless the Principal provides closure and postclosure care or
2247 corrective action for each site in accordance with the closure and postclosure care or corrective
2248 action plans for that site. To the payment of this obligation the Principal and Surety jointly and
2249 severally bind themselves, their heirs, executors, administrators, successors and assigns.

2250
2251 Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415
2252 ILCS 5/21(d)], to have a permit to conduct a waste disposal operation.;

2253
2254 Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415
2255 ILCS 5/21.1], to provide financial assurance for closure and postclosure care or corrective
2256 action.;

2257
2258 Whereas the Surety is licensed by the Illinois Department of Insurance or is licensed to transact
2259 the business of insurance or approved to provide insurance as an excess or surplus lines insurer
2260 by the insurance department in one or more states.;

2261
2262 Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State
2263 of Illinois.;

2264
2265 The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Principal fails
2266 to provide closure ~~or~~ postclosure care or corrective action for any site in accordance with the
2267 closure and postclosure care or corrective action plans for that site as guaranteed by this bond.
2268 The Principal fails to so provide when the Principal:

- 2269
- 2270 a) Abandons the site;
 - 2271
 - 2272 b) Is adjudicated bankrupt;
 - 2273
 - 2274 c) Fails to initiate closure of the site or postclosure care or corrective action when
2275 ordered to do so by the Board or a court of competent jurisdiction;
 - 2276
 - 2277 d) Notifies the ~~IEPA Agency~~ that it has initiated closure, or initiates closure, but fails
2278 to close the site or provide postclosure care or corrective action in accordance
2279 with the closure and postclosure care or corrective action plans; ~~or~~
 - 2280
 - 2281 e) For corrective action, fails to implement corrective action at a municipal solid
2282 waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or
 - 2283
 - 2284 f) Fails to provide alternative financial assurance and obtain the IEPA written
2285 approval of the assurance provided within 90 days after receipt by both the
2286 Principal and the IEPA of a notice from the Surety that the bond will not be
2287 renewed for another term.

2288
2289 The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails
2290 notice to the Surety that the Principal has failed to fulfill one or more of the conditions described
2291 in this document~~failed to so provide closure and postclosure care or corrective action~~. Payment
2292 shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-
2293 Closure~~Postclosure~~ Fund.

2294
2295 The liability of the Surety shall not be discharged by any payment or succession of payments
2296 unless and until such payment or payments shall amount in the aggregate to the penal sum of the
2297 bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

2298
2299 This bond shall expire on the ____ day of _____ [month], _____ [year,]; but that
2300 expiration date shall be automatically extended for a period of [at least one year] on [date] and
2301 on each successive expiration date, unless, at least 120 days before the current expiration date,
2302 the Surety notifies both the IEPA and the Principal by certified mail that the Surety has decided
2303 not to extend the term of this surety bond beyond the current expiration date. The 120 days will
2304 begin on the date when both the owner or operator and the IEPA have received the notice, as
2305 evidenced by the return receipts. provided, however, that if the Principal fails to provide
2306 substitute financial assurance prior to the expiration date, and the IEPA mails notice of such
2307 failure to the Surety within 30 days after such date, the term of this bond shall be automatically
2308 extended for one twelve month period starting with the date of expiration of the bond.

2309
2310 The Principal may terminate this bond by sending written notice to the Surety; provided,
2311 however, that no such notice shall become effective until the Surety receives written
2312 authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code
2313 811.702.

2314
2315 In Witness Whereof, the Principal and Surety have executed this Forfeiture Bond and have
2316 affixed their seals on the date this bond was executed~~set forth above~~.

2317
2318 The persons whose signatures appear below certify that they are authorized to execute this surety
2319 bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to
2320 the wording specified in 35 Ill. Adm. Code 811. Appendix A, Illustration C as that regulation was
2321 constituted on the date this bond was executed.

PRINCIPAL

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Corporate Seal

Title

Corporate Seal

Bond Premium: \$

2323

PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: \$ _____

2324
2325

(Source: Amended at 35 Ill. Reg. _____, effective _____)

2326 **Section 811.APPENDIX A Financial Assurance Forms**

2327

2328 **Section 811.ILLUSTRATION D Performance Bond**

2329

PERFORMANCE BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

Name _____

Address _____

City _____

Amount guaranteed by this bond: \$ _____

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

2330

2331 The Principal and the Surety promise to pay the Illinois Environmental Protection Agency

2332 ("IEPA") the above penal sum unless the Principal or Surety provides closure and postclosure
2333 care or corrective action for each site in accordance with the closure and postclosure care or
2334 corrective action plans for that site. To the payment of this obligation the Principal and Surety
2335 jointly and severally bind themselves, their heirs, executors, administrators, successors and
2336 assigns.

2337
2338 Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act [415
2339 ILCS 5/21(d)], to have a permit to conduct a waste disposal operation.;

2340
2341 Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act [415
2342 ILCS 5/21.1], to provide financial assurance for closure and postclosure care or corrective
2343 action.;

2344
2345 Whereas the Surety is licensed by the Illinois Department of Insurance or is licensed to transact
2346 the business of insurance or approved to provide insurance as an excess or surplus lines insurer
2347 by the insurance department in one or more states.;

2348
2349 Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State
2350 of Illinois.;

2351
2352 The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Principal fails
2353 to provide closure ~~or~~ postclosure care or corrective action for any site in accordance with the
2354 closure and postclosure care or corrective action plans for that site as guaranteed by this bond.
2355 The Principal fails to so provide when the Principal:

- 2356
- 2357 a) Abandons the site;
 - 2358
 - 2359 b) Is adjudicated bankrupt;
 - 2360
 - 2361 c) Fails to initiate closure of the site or postclosure care or corrective action when
 - 2362 ordered to do so by the Board or a court of competent jurisdiction;
 - 2363
 - 2364 d) Notifies the ~~IEPA Agency~~ that it has initiated closure, or initiates closure, but fails
 - 2365 to close the site or provide postclosure care or corrective action in accordance
 - 2366 with the closure and postclosure care or corrective action plans;
 - 2367
 - 2368 e) For corrective action, fails to implement corrective action at a municipal solid
 - 2369 waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or
 - 2370
 - 2371 f) Fails to provide alternative financial assurance and obtain the IEPA written
 - 2372 approval of the assurance provided within 90 days after receipt by both the
 - 2373 Principal and the IEPA of a notice from the Surety that the bond will not be
 - 2374 renewed for another term.

2375
2376 The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails
2377 notice to the Surety that the Principal has failed to fulfill one or more of the conditions described
2378 in this document~~failed to so provide closure and postclosure care or corrective action~~. Payment
2379 shall be made by check or draft payable to the State of Illinois, Landfill Closure and Post-
2380 Closure~~Postclosure~~ Fund.

2381
2382 If the Surety notifies the ~~IEPA Agency~~ that it intends to provide closure and postclosure care or
2383 corrective action, then the Surety must initiate closure and postclosure care or corrective action
2384 within 60 days after the IEPA mailed notice to the Surety that the Principal failed to fulfill one or
2385 more of the conditions described in this document~~provide closure and postclosure care or~~
2386 ~~corrective action~~. The Surety must complete closure and postclosure care or corrective action in
2387 accordance with the closure and postclosure care or corrective action plans, or pay the penal
2388 sum.

2389
2390 The liability of the Surety shall not be discharged by any payment or succession of payments
2391 unless and until such payment or payments shall amount in the aggregate to the penal sum of the
2392 bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

2393
2394 This bond shall expire on the ____ [date] day of _____ [month], _____ [year],; but
2395 that expiration date shall be automatically extended for a period of [at least one year] on [date]
2396 and on each successive expiration date, unless, at least 120 days before the current expiration
2397 date, the Surety notifies both the IEPA and the Principal by certified mail that the Surety has
2398 decided not to extend the term of this surety bond beyond the current expiration date. The 120
2399 days will begin on the date when both the owner or operator and the IEPA have received the
2400 notice, as evidenced by the return receipts. provided, however, that if the Principal fails to
2401 provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of
2402 such failure to the Surety within 30 days after such date, the term of this bond shall be
2403 automatically extended for one twelve-month period starting with the date of expiration of the
2404 bond.

2405
2406 The Principal may terminate this bond by sending written notice to the Surety; provided,
2407 however, that no such notice shall become effective until the Surety receives written
2408 authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code
2409 811.702.

2410
2411 In Witness Whereof, the Principal and Surety have executed this ~~Performance~~Forfeiture Bond
2412 and have affixed their seals on the date this bond was executed~~set forth above~~.

2413
2414 The persons whose signatures appear below certify that they are authorized to execute this surety
2415 bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to
2416 the wording specified in 35 Ill. Adm. Code 811 Appendix A, Illustration D as that regulation was
2417 constituted on the date this bond was executed.

2418

PRINCIPAL

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Corporate Seal

Title

Corporate Seal

Bond Premium: \$

2419

2420

PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: \$ _____

2421

2422

(Source: Amended at 35 Ill. Reg. _____, effective _____)

2423 **Section 811. APPENDIX A Financial Assurance Forms**

2424

2425 **Section.811.ILLUSTRATION E Irrevocable Standby Letter of Credit**

2426

2427 **IRREVOCABLE STANDBY LETTER OF CREDIT**

2428

2429 Director

2430 Illinois Environmental Protection Agency

2431 C/O Bureau of Land #24

2432 Financial Assurance Program

2433 1021 North Grand Avenue East

2434 Post Office Box 19276

2435 Springfield, Illinois 62794-9276

2436 2200 Churchill Road

2437 Springfield, Illinois 62706

2438

2439 Dear Sir or Madam:

2440

2441 We have authority to issue letters of credit. Our letter-of-credit operations are regulated by the
2442 Illinois Department of Financial and Professional Regulation~~Commissioner of Banks and Trusts~~
2443 or our deposits are insured by the Federal Deposit Insurance Corporation. (Omit language
2444 that~~which~~ does not apply.)

2445

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 references to this letter of credit No. _____ ; and;
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act (~~Ill. Reg. State. 1991, ch. 111½, par. 1001 et seq. [415 ILCS 5/1 et seq.]~~) and 35 Ill. Adm. Code 811.713(e)."

This letter of credit is effective as of _____ [date] and shall expire on _____ [date] at least one year later]; but that expiration date shall be automatically extended for a period of _____ [at least one year] on _____ [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and _____ [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. The 120 days will begin on the date when both the owner or operator and the IEPA have received the notice, as evidenced by the return receipts. In the event you are so notified, any unused portion of the credit shall be available upon

presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

2446 at
and shall expire on _____ ; but such expiration
2447 date shall be automatically extended for one periods of twelve months starting with the expiration
2448 date if the operator fails to substitute alternative financial assurance prior to the expiration of this
2449 letter of credit and you notify us of such failure within 30 days after the above expiration date.
2450

2451 Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit,
2452 we shall duly honor ~~that~~ such draft upon presentation to us, and we shall deposit the amount of
2453 the draft directly into the State of Illinois Landfill Closure and ~~Post-Closure~~ Postclosure or
2454 Corrective Action Fund in accordance with your instructions.
2455

2456 We certify that the wording of this letter of credit is identical to the wording specified in 35 Ill.
2457 Adm. Code 811. Appendix A, Illustration E as that regulation was constituted on the date shown
2458 below. This letter of credit is governed by the Uniform Commercial Code (Ill. Rev. State. 1991,
ch. 26, pars. 1-101 et. seq. [810 ILCS 5/1-101 et. seq.]).

Signature _____

Typed Name _____

Title _____

Date _____

Name and address of issuing institution _____

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice
for Documentary Credits, published and copyrighted by the International Chamber of
Commerce," or "the Uniform Commercial Code"].

2459
2460 (Source: Amended at 35 Ill. Reg. _____, effective _____)

2461 **Section 811.APPENDIX A Financial Assurance Forms**

2462
2463 **Section 811.ILLUSTRATION F Certificate of Insurance for Closure and/or Postclosure**
2464 **Care or Corrective Action**

2465
2466 CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR
2467 POSTCLOSURE CARE OR CORRECTIVE ACTION
2468

2469 Name and Address of Insurer ("Insurer"): _____
2470

2471 Name and Address of Insured ("Insured"): _____
2472

2473 Sites Covered:

2474
2475 Name _____

2476
2477 Address _____

2478
2479 City _____

2480
2481 Amount insured for this site: \$ _____
2482

2483 Name _____

2484
2485 Address _____

2486
2487 City _____

2488
2489 Amount insured for this site: \$ _____
2490

2491 Please attach a separate page if more space is needed for all sites.
2492

2493 Face Amount _____

2494
2495 Policy Number _____

2496
2497 Effective Date _____
2498

2499 The Insurer hereby certifies that it is licensed to transact the business of insurance by the Illinois
2500 Department of Insurance or that it is licensed to transact the business of insurance, or approved
2501 to provide insurance as an excess or surplus lines insurer, by the insurance department in one or
2502 more states.
2503

2504 The insurer hereby certifies that it has issued to the Insured the policy of insurance identified
2505 above to provide financial assurance for closure and postclosure care for the sites identified
2506 above. The Insurer further warrants that such policy conforms in all respects with the
2507 requirements of 35 Ill. Adm. Code 811.714, as applicable and as such regulations were
2508 constituted on the date shown immediately below. It is agreed that any provision of the policy
2509 inconsistent with such regulations is hereby amended to eliminate such inconsistency.

2510
2511 Whenever requested by the Illinois Environmental Protection Agency ("IEPA"), the Insurer
2512 agrees to furnish to the IEPA a duplicate original of the policy listed above, including all
2513 endorsements thereon.

2514
2515 I hereby certify that the wording of this certificate is identical to the wording specified in 35 Ill.
2516 Adm. Code 811.Appendix A, Illustration F as that regulation was constituted on the date shown
2517 below.
2518

Name (Authorized ~~Signature~~signature for Insurer) _____

Typed Name _____

Title _____

Date _____

2519
2520 (Source: Amended at 35 Ill. Reg. _____, effective _____)

2521 **Section 811. APPENDIX A Financial Assurance Forms**

2522

2523 **Section 811. ILLUSTRATION G Owner's or Operator's Bond Without Surety**

2524

2525 **OWNER'S OR OPERATOR'S BOND WITHOUT SURETY**

2526

Date bond executed: _____

Effective date: _____

Owner or Operator: _____

Owner's or Operator's address: _____

Site: _____

Site address: _____

Penal Sum \$ _____

2527

2528

2529

2530

2531

2532

The owner or operator promises to pay the penal sum to the Illinois Environmental Protection Agency unless the owner or operator ~~Operator~~ provides closure and postclosure care or corrective action for ~~of~~ the site in accordance with the closure and postclosure care or corrective action plans for the site.

Owner or Operator _____

Signature _____

Typed Name _____

Title _____

Date: _____

Corporate seal

2533 (Source: Amended at 35 Ill. Reg. _____, effective _____)

2534 **Section 811. APPENDIX A Financial Assurance Forms**

2535
2536 **Section 811. ILLUSTRATION H Owner's or Operator's Bond With Parent Surety**

2537
2538 **OWNER'S OR OPERATOR'S BOND WITH PARENT SURETY**

2539
2540 Date bond executed: _____

2541
2542 Effective Date: _____

2543
2544 Surety: _____

2545
2546 Surety's address: _____

2547
2548 Owner or Operator: _____

2549
2550 Owner's or Operator's address: _____

2551
2552 Site: _____

2553
2554 Site address: _____

2555
2556 Penal sum: \$ _____

2557
2558 The Owner or Operator and Surety promise to pay the above penal sum to the Illinois
2559 Environmental Protection Agency ("IEPA") unless the Owner or Operator provides closure and
2560 postclosure care of the site in accordance with the closure and postclosure care plans for the site.
2561 To the payment of this obligation the Owner or Operator and Surety jointly and severally bind
2562 themselves, their heirs, executors, administrators, successors and assigns.

2563
2564 Whereas the Owner or Operator is required under Section 21(d) of the Environmental Protection
2565 Act [415 ILCS 5/21(d)], Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1021(d) to have a permit to
2566 conduct a waste disposal operation, ~~and~~

2567
2568 Whereas the Owner or Operator is required under Section 21.1 of the Environmental Protection
2569 Act [415 ILCS 5/21.1] to provide financial assurance for closure and postclosure care, ~~and~~

2570
2571 Whereas the Owner or Operator and Surety agree that this bond shall be governed by the laws of
2572 the State of Illinois, ~~and~~

2573
2574 Whereas the Surety is a corporation ~~that~~ which owns an interest in the Owner or Operator, ~~and~~

2575

2576 The Surety shall pay the penal sum to the IEPA if, during the term of the bond, the Owner or
2577 Operator fails to provide closure ~~and~~ postclosure care for any site in accordance with the
2578 closure and postclosure care plans for that site as guaranteed by this bond. The Owner or
2579 Operator fails to so provide when the Owner or Operator:

- 2580
- 2581 a) Abandons the site;
- 2582
- 2583 b) Is adjudicated bankrupt;
- 2584
- 2585 c) Fails to initiate closure of the site or postclosure care when ordered to do so by the
- 2586 Illinois Pollution Control Board or a court of competent jurisdiction; or
- 2587
- 2588 d) Notifies the IEPA Agency that it has initiated closure, or initiates closure, but fails
- 2589 to close the site or provide postclosure care in accordance with the closure and
- 2590 postclosure care plans;-
- 2591
- 2592 e) For corrective action, fails to implement corrective action at a municipal solid
- 2593 waste landfill unit in accordance with 35 Ill. Adm. Code 811.326; or
- 2594
- 2595 f) Fails to provide alternative financial assurance and obtain the IEPA written
- 2596 approval of the assurance provided within 90 days after receipt by the Owner or
- 2597 Operator and the IEPA of a notice from the Surety that the bond will not be
- 2598 renewed for another term.
- 2599

2600 The Surety shall pay the penal sum of the bond to the IEPA within 30 days after the IEPA mails
2601 notice to the Surety that the Owner or Operator has failed to fulfill one or more of the conditions
2602 described in this document failed to so provide closure and postclosure care. Payment shall be
2603 made by check or draft payable to the State of Illinois, Landfill Closure and Post-Closure Post-
2604 closure-Fund.

2606 In Witness Whereof, the Operator and Surety have executed this bond and have affixed their
2607 seals on the date this bond was executed set forth above.

2609 The liability of the Surety shall not be discharged by any payment or succession of payments
2610 unless and until the payment or payments shall amount in the aggregate to the penal sum of the
2611 bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

2613 This bond shall expire on the _____ [date] day of _____ [month], _____ [year],
2614 but that expiration date shall be automatically extended for a period of [at least one year] on
2615 [date] and on each successive expiration date, unless, at least 120 days before the current
2616 expiration date, the Surety notifies both the IEPA and the Owner or Operator by certified mail
2617 that the Surety has decided not to extend the term of this surety bond beyond the current

2618 expiration date. The 120 days will begin on the date when both the owner or operator and the
2619 IEPA have received the notice, as evidenced by the return receipts.

2620
2621 The Owner or Operator may terminate this bond by sending written notice to the Surety;
2622 provided, however, that no such notice shall become effective until the Surety receives written
2623 authorization for termination of the bond from the IEPA in accordance with 35 Ill. Adm. Code
2624 811.702.

2625
2626 The persons whose signatures appear below certify that they are authorized to execute this surety
2627 bond on behalf of the Owner or Operator and Surety and that the wording of this surety bond is
2628 identical to the wording specified in 35 Ill. Adm. Code 811.Appendix A, Illustration H as that
2629 regulation was constituted on the date this bond was executed.

2630
2631

OWNER OR OPERATOR

SURETY

Signature

Name

Typed Name

Address

Title

State of Incorporation

Date

Signature

Typed Name

Corporate Seal

Title

Corporate Seal

2632
2633 Operator _____

2634
2635 Surety _____

2636
2637 Signature _____

2638
2639
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2657
2658

Name _____
Typed Name _____
Address _____
Title _____
State of Incorporation _____
Date _____
Signature _____
Typed Name _____
Title _____
Corporate seal Corporate seal

(Source: Amended at 35 Ill. Reg. _____, effective _____)

2659 **Section 811. APPENDIX A Financial Assurance Forms**

2660

2661 **Section 811.ILLUSTRATION I Letter from Chief Financial Officer**

2662

2663 LETTER FROM CHIEF FINANCIAL OFFICER

2664

2665 Director

2666 Illinois Environmental Protection Agency

2667 2200 Churchill Road

2668 Springfield, Illinois 62706

2669

2670 Dear Sir or Madam:

2671

2672 I am the chief financial officer of _____

2673

2674 This letter is in support of this firm's use of the gross revenue test and financial test to
2675 demonstrate financial assurance pursuant to 35 Ill. Adm. Code 811.715.

2676

2677 Operator: _____

2678

2679 Name: _____

2680

2681 Address: _____

2682

2683 City: _____

2684

2685 Current cost estimate: \$ _____

2686

2687 Operator: _____

2688

2689 Name: _____

2690

2691 Address: _____

2692

2693 City: _____

2694

2695 Current cost estimate: \$ _____

2696

2697 Please attach a separate page if more space is needed for all facilities.

2698

2699 Attached is an Operator's Bond without Surety or an Operator's Bond with Parent Surety for the
2700 current cost estimate for each site. (Strike inapplicable language.)

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Gross Revenue Test

- 1. Gross revenue of the firm \$ _____
- 2. Gross revenue from waste disposal operation \$ _____
- 3. Line 2 divided by line 3 _____

Financial Test Alternative I

- 1. Sum of current cost estimates (total of all cost estimates shown in paragraphs above) \$ _____
- 2. Total liabilities (if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$ _____
- 3. Tangible net worth \$ _____
- 4. Net worth \$ _____
- 5. Current assets \$ _____
- 6. Current liabilities \$ _____
- 7. Net working capital (line 5 minus line 6) \$ _____
- 8. The sum of net income plus depreciation, depletion, and amortization \$ _____
- 9. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) \$ _____
Yes/No
- 10. Is line 3 at least \$10 million? _____
- 11. Is line 3 at least 6 times line 1? _____
- 12. Is line 7 at least 6 times line 1? _____

- 2744 13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line
- 2745 14. _____
- 2746 14. Is line 9 at least 6 times line 1? _____
- 2747
- 2748 15. Is line 2 divided by line 4 less than 2.0? _____
- 2749
- 2750 16. Is line 8 divided by line 2 greater than 0.1? _____
- 2751
- 2752 17. Is line 5 divided by line 6 greater than 1.5? _____
- 2753
- 2754 Signature _____
- 2755
- 2756 Typed Name _____
- 2757
- 2758 Title _____
- 2759
- 2760 Date _____
- 2761

Financial Test Alternative II

- 2762
- 2763
- 2764 1. Sum of current cost estimates (total of all cost estimates shown in paragraphs
- 2765 above) \$ _____
- 2766
- 2767 2. Current bond rating of most recent issuance of this firm and name of rating
- 2768 service _____
- 2769
- 2770 3. Date of issuance of bond _____
- 2771
- 2772 4. Date of maturity of bond _____
- 2773
- 2774 5. Tangible net worth (if any portion of the closure and postclosure cost estimates is
- 2775 included in "total liabilities" on your firm's financial statements, you may add the
- 2776 amount of that portion to this line) \$ _____
- 2777
- 2778 6. Total assets in U.S. (required only if less than 90 percent of firm's assets are
- 2779 located in the U.S.) \$ _____
- 2780
- 2781 Yes/No
- 2782
- 2783 7. Is line 5 at least \$10 million? _____
- 2784
- 2785 8. Is line 5 at least 6 times line 1? _____
- 2786

2787 9. Are at least 90 percent of firm's assets located in the U.S.? If not complete line 10.
2788 _____

2789
2790 10. Is line 6 at least 6 times line 1? _____
2791

2792 Signature _____
2793

2794 Typed name _____
2795

2796 Title _____
2797

2798 Date _____
2799

2800 (Source: Amended at 35 Ill. Reg. _____, effective _____)