

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:)
)
FINANCIAL ASSURANCE) R2010-009
INSTRUMENTS -- RENEWAL AND)
TERMS: AMENDMENTS TO 35 ILL.) (Rulemaking - Land)
ADM. CODE 807 SUBPART F,)
810.104 AND 811 SUBPART G))
)

PC#1

RECEIVED
CLERK'S OFFICE
• APR 11 2011
STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

NOTICE OF FILING

John Therriault, Acting Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Daniel L. Robertson, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

Mitchell Cohen, General Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: *Stephanie Flowers*
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATE: *4-8-11*
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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OF THE STATE OF ILLINOIS**

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**COMMENTS OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

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NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”) and submits the following comments on the First Notice Proposal dated February 3, 2011 and published in the Illinois Register on February 25, 2011.

Comments on Board’s First Notice Proposal

The Illinois EPA supports the rules proposed by the Illinois Pollution Control Board (“Board”) in its First Notice Proposal dated February 3, 2011 (“Board’s Order”) and requests that the Board proceed with adopting the rules. However, the Illinois EPA would like to request some non-substantive changes to the rules.

1. On page 3207 as published in the Illinois Register and page 23 of the Board’s Order, for consistency and clarification Section 807.661(c) should read “The trust agreement must be on the form specified in Appendix A, Illustration A, and the trust agreement must be accompanied by a formal certification of acknowledgment, on the form specified in Appendix A, Illustration B” as it is in Section 811.710(c).

2. On page 3209 as published in the Illinois Register, at Section 807.661(g)(3), since the word “such” was stricken and replaced by “those”, the “as” immediately following should be stricken also, similar to the amendment made at Section 807.661(f)(2).
3. On page 3209 as published in the Illinois Register and page 25 of the Board’s Order, for consistency and clarification Section 807.662(b) should have a Board Note at the end of the subsection, reading “The U.S. Department of the Treasury lists acceptable sureties in is Circular 570”, as it is in Section 811.711(b).
4. On page 3209 as published in the Illinois Register and page 25 of the Board’s Order, for consistency and clarification Section 807.662(c) should read “The surety bond must be on the form specified in Appendix A, Illustration C” as it is in Section 811.711(c).
5. On page 3211 as published in the Illinois Register and page 26 of the Board’s Order, at Section 807.662(g)(1), the four year bond term should be changed to one year as it was throughout the rest of the proposal.
6. On page 3212 as published in the Illinois Register and page 28 of the Board’s Order, for consistency and clarification Section 807.663(b) should have a Board Note at the end of the subsection, reading “The U.S. Department of the Treasury lists acceptable sureties in is Circular 570”, as it is in Section 811.712(b).
7. On page 3212 as published in the Illinois Register and page 28 of the Board’s Order, for consistency and clarification Section 807.663(c) should read “The surety bond must be on the form specified in Appendix A, Illustration D” as it is in Section 811.712(c).

8. On page 3215 as published in the Illinois Register and page 31 of the Board's Order, for consistency and clarification Section 807.664(c)(1) should read "The letter of credit must be on the form specified in Appendix A, Illustration E" as it is in Section 811.713(c)(1).
9. On page 3216 as published in the Illinois Register and page 31 of the Board's Order, Section 807.664(c)(2) should read as follows for clarification and to be consistent with the wording of 811.713(c)(2):

"The letter of credit must be accompanied by a letter from the operator referring to the letter of credit by number, issuing institution and date and providing the following information: name and address of the site and the amount of funds assured for closure and postclosure care of the site by the letter of credit."
10. On page 3218 as published in the Illinois Register, at Section 807.664(h)(2), the word "which" should be replaced with "that" as in Section 807.663(h)(2).
11. On page 3222 as published in the Illinois Register and page 36 of the Board's Order, for consistency and clarification Section 807.666(c) should read "An operator utilizing self-insurance must provide a bond without surety on the form provided in Appendix A, Illustration G", as it is in Section 811.715(c).
12. On page 3223 as published in the Illinois Register and page 38 of the Board's Order, for consistency and clarification Section 807.666(e)(2)(A) should read "A letter signed by the operator's chief financial officer and worded as specified in Appendix A, Illustration I; and" as it is in Section 811.715(e)(2)(A).
13. On page 3234 as published in the Illinois Register, 807 Appendix A, Illustration C, paragraph 6(c), the "or" at the end of the clause should be stricken.

14. On page 3235 as published in the Illinois Register and page 47 of the Board's Order, 807.Appendix A, Illustration C, paragraph 8, for consistency the brackets for date, month and year should be changed to be identical to those in 807.Appendix A Illustration D.
15. On page 3235 as published in the Illinois Register and page 47 of the Board's Order, 807 Appendix A, Illustration C, paragraph 8 beginning "This bond shall expire on . . .", the term "owner and operator" used twice in this paragraph is not defined by the instrument and should be changed to "Principal" in both instances.
16. On page 3239 as published in the Illinois Register and page 50 and 51 of the Board's Order, 807.Appendix A, Illustration D, paragraphs 7 and 8, the Board's substituted language "met one or more of the conditions described above" used in the Forfeiture Bond and discussed at page 12 and 13 of the Board's Order should also be used in the Performance Bond instead of the language "failed to fulfill one or more of the conditions described above".
17. On page 3239 as published in the Illinois Register and page 51 of the Board's Order, 807.Appendix A, Illustration D, paragraph 10, the term "operator" used in this paragraph is not defined by the instrument and should be changed to "Principal".
18. On page 3242 and 3243 as published in the Illinois Register and page 53 of the Board's Order, 807.Appendix A, Illustration E, paragraph 3, there are three places where the operator is used in this paragraph and all should be identical. The paragraph should read:

This letter of credit is effective as of _____ [date] and shall expire on _____ [date at least 1 year later], but, such expiration date shall

be automatically extended for a period of _____ [at least 1 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 _____ [owner's or operator's name] 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.

19. On page 3243 as published in the Illinois Register and page 54 of the Board's Order, 807.Appendix A, Illustration E, last paragraph, the word "Commercial" should be stricken from the title of the "Uniform Customs and Practice for Documentary Credits".
20. On page 3249 as published in the Illinois Register and page 58 of the Board's Order, 807.Appendix A, Illustration H, item (d) of paragraph 6, should read "Notifies the IEPA . . ." instead of Agency.
21. On page 3249 as published in the Illinois Register and page 58 of the Board's Order, 807.Appendix A, Illustration H, paragraph 9, the brackets for date, month and year should be changed to be identical to those in 807.Appendix A Illustration D.
22. On page 3250 as published in the Illinois Register 807.Appendix A, Illustration H, paragraph 11, the last phrase of the sentence should be restored to "date set forth above" to reference the first line of the bond which is "Date bond executed" and to be identical to 807.Appendix A Illustrations C and D.

23. On page 3287 as published in the Illinois Register and page 85 of the Board's Order, Section 811.712(e)(3) should read as follows for clarification and to be consistent with the wording of 807.663(e)(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 in accordance with the closure and post-closure care plans or carrying out corrective action in accordance with the corrective action plan, or of paying the penal sum.”
24. On page 3315 as published in the Illinois Register 811. Appendix A, Illustration A, Section 8, subsections (b), (c), (d), and (e) were incorrectly removed and should be restored.
25. On page 3321 as published in the Illinois Register and page 115 of the Board's Order, 811. Appendix A, Illustration C, paragraph 7, the Board's substituted language “met one or more of the conditions described above” used in the Part 807 Forfeiture Bond and discussed at page 12 and 13 of the Board's Order should also be used in the Part 811 Forfeiture Bond instead of the language “failed to fulfill one or more of the conditions described above”.
26. On page 3321 as published in the Illinois Register and page 116 of the Board's Order, 811. Appendix A, Illustration C, paragraph 9, the brackets for date, month and year should be changed to be identical to those in 807. Appendix A Illustration D.
27. On page 3321 as published in the Illinois Register and page 116 of the Board's Order, 811 Appendix A, Illustration C, paragraph 9, the term “owner or operator” used in this paragraph is not defined by the instrument and should be changed to “Principal”.

28. On page 3321 as published in the Illinois Register 811.Appendix A, Illustration D, paragraph 11, the last phrase of the sentence should be restored to “date set forth above” to reference the first line of the bond which is “Date bond executed” and to be identical to 807.Appendix A Illustrations C and D.
29. On page 3325 as published in the Illinois Register 811 Appendix A, Illustration D, paragraph 6, the following language was incorrectly deleted from the paragraph and should be restored:
- “ . . . or provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans for the site . . .”.
30. On page 3326 as published in the Illinois Register 811 Appendix A, Illustration D, paragraph 7, the following language was incorrectly deleted from the paragraph and should be restored:
- “ . . . or notify the IEPA that is 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 . . .”.
31. On page 3326 as published in the Illinois Register and page 120 of the Board’s Order, 811.Appendix A, Illustration D, paragraphs 7 and 8, the Board’s substituted language “met one or more of the conditions described above” used in the Part 807 Forfeiture Bond and discussed at page 12 and 13 of the Board’s Order should also be used in the Part 811 Performance Bond instead of the language “failed to fulfill one or more of the conditions described above”.
32. On page 3326 as published in the Illinois Register and page 120 of the Board’s Order, 811.Appendix A, Illustration D, paragraph 10, the brackets for date, month and year should be changed to be identical to those in 807.Appendix A Illustration D

33. On page 3326 as published in the Illinois Register and page 120 of the Board's Order, 811 Appendix A, Illustration D, paragraph 10, the term "owner or operator" used in this paragraph is not defined by the instrument and should be changed to "Principal".
34. On page 3327 as published in the Illinois Register 811 Appendix A, Illustration D, paragraph 12, the last phrase of the sentence should be restored to "date set forth above" to reference the first line of the bond which is "Date bond executed" and to be identical to 807 Appendix A Illustrations C and D.
35. On page 3330 and 3331 as published in the Illinois Register and page 123 of the Board's Order, 811 Appendix A, Illustration E, paragraph 3, same as comment 9, the three places where "owner or operator" is used in this paragraph should be identical to indicate an insertion of the owner's or operator's name.
36. On page 3338 as published in the Illinois Register 811 Appendix A, Illustration H, paragraph 6, at the end of the opening paragraph the word "Operator" has incorrectly been stricken and should be restored.
37. On page 3338 as published in the Illinois Register 811 Appendix A, Illustration H, paragraph 6(c), the term "Board" has been expanded to "Illinois Pollution Control Board" but for consistency should also be expanded throughout the other forms 807 Appendix A, Illustrations C, D, and H and 811 Appendix A, Illustrations C and D.
38. On page 3338 as published in the Illinois Register and page 129 of the Board's Order, 811 Appendix A, Illustration H, paragraph 7, same as comment 21, the Board's substituted language "met one or more of the conditions described above"

used in the Part 807 Forfeiture Bond and discussed at page 12 and 13 of the Board's Order should also be used in the Part 811 Owner's or Operator's Bond with Surety.

39. On page 3338 as published in the Illinois Register and page 129 of the Board's Order, 811.Appendix A, Illustration H, paragraph 8, that begins "In Witness Whereof, . . ." is misplaced and should be moved to above the paragraph beginning "The persons whose signatures appear below . . ." as in 811.Appendix A, Illustrations C and D.
40. On page 3338 as published in the Illinois Register and page 129 of the Board's Order, 811.Appendix A, Illustration H, paragraph 8, that begins "In Witness Whereof, . . ." the term "Operator" in this sentence should be replaced with "Owner or Operator".
41. On page 3338 as published in the Illinois Register and page 129 of the Board's Order, 811.Appendix A, Illustration H, paragraph 8 that begins "In Witness Whereof, . . .", as in comment 24, the last phrase of the sentence should be restored to "date set forth above" to reference the first line of the bond which is "Date bond executed" and to be identical to 807.Appendix A Illustrations C and D.
42. On page 3339 as published in the Illinois Register and page 129 of the Board's Order, 811.Appendix A, Illustration H, paragraph 10 as published and paragraph 9 of the Board's Order, the brackets for date, month and year should be changed to be identical to those in 807.Appendix A Illustration D.
43. On page 3339 as published in the Illinois Register and page 129 of the Board's Order, 811.Appendix A, Illustration H, paragraph 10 as published and paragraph 9

of the Board's Order, the term "owner and operator" used twice in this paragraph should be capitalized in the second instance as it was in the first and as in 807.Appendix A, Illustration H.

44. On page 3341 as published in the Illinois Register and page 131 of the Board's Order, 811.Appendix A, Illustration I, the opening address for the IEPA should read as follows, the same address as 811. Appendix A Illustration E,:

Director
Illinois Environmental Protection Agency
C/O Bureau of Land #24
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

45. On page 3341 as published in the Illinois Register and page 131 of the Board's Order, 811.Appendix A, Illustration I, the term "Operator", used 4 times throughout this Illustration, should be replaced with "Owner or Operator".

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED: 4-8-11
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

CERTIFICATE OF SERVICE

RECEIVED
CLERK'S OFFICE
APR 11 2011
STATE OF ILLINOIS
Pollution Control Board

I, STEPHANIE FLOWERS, an attorney, do certify that I filed with the Office of the Clerk of the Illinois Pollution Control Board the COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and will cause the same to be served upon the following persons, by placing a true and correct copy in an envelope addressed to:

ORIGINAL

John Therriault, Acting Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Daniel L. Robertson, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601

Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

Mitchell Cohen, General Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

and mailing it by First Class Mail from Springfield, Illinois on April 8, 2011 with sufficient postage affixed.

Stephanie Flowers
STEPHANIE FLOWERS

DATED: 4-8-11
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544