

## Therriault, John

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**From:** McCambridge, Michael  
**Sent:** Wednesday, April 27, 2016 7:15 PM  
**To:** Eastvold, Jonathan C.  
**Cc:** Therriault, John; Powell, Mark  
**Subject:** RE: 35 IAC 727: appendices

ACT # 10

John T.: Please docket this e-mail chain as a public comment in docket R16-7.

Johnathan Eastvold: Sorry for the delay getting back to you. I have been quite busy with several matters of late—not least of which is review of the text to find revisions to the text made by JCAR staff. I provide the following explanation in response to your inquiries.

I provide the following on behalf of the Board to explain the repeal of the financial responsibility forms in Appendix A to 35 Ill. Adm. Code 727 at page 48 of the Board's March 3, 2016 opinion and order in this proceeding. The following summarizes the Board's current action with regard to this provision.

The Board adopted the USEPA forms of 40 C.F.R. 267.151 as Appendix A to 35 Ill. Adm. Code 727 as part of the original Standardized Permit Rule in 2006.

The repeal of the Appendix A forms was done under the general authority under 415 ILCS 5/7.2 to correct identical-in-substance rules as necessary to comport with federal requirements using the identical-in-substance procedure. The repeal of Appendix A is an action limited to making the Illinois hazardous waste rules consistent with and no less stringent than the corresponding USEPA rules on which they are based.

The repeal of Appendix A removes a potential for confusion as to the forms appropriate for use in Illinois. Illinois law sometimes forces rewording of the federal financial assurance forms. The rewording is usually needed to ensure that the Illinois forms have the same force and effect as is intended by USEPA. The Board rules limit any Agency amendments to the USEPA language to just such revisions. The Agency submits the forms to USEPA for USEPA review and approval, to ensure that the Illinois forms comply with USEPA's intent.

Thus, the Board rules establish the standard that regulated entities use USEPA-compliant forms for financial assurance. The mechanics of the Agency working with USEPA to ensure that any revisions to the forms comport with USEPA requirements is implementation of that Board-established standard. The mechanics of the Agency working with USEPA to ensure compliant forms neither establishes nor revises any standard in the regulatory scheme. Rather, the Agency working with USEPA is restricted to implementation of the Illinois program within the Agency's duties and authorized functions described in 415 ILCS 5/4 and 39.

The entities required to submit financial assurance (using the prescribed forms) are hazardous waste treatment, storage, and disposal (T/S/D) facilities. Should any T/S/D facility owner or operator have an issue with the forms required by the Agency, they have the right to appeal the Agency determination before the Board pursuant to 415 ILCS 5/40.

The history and context of the financial assurance forms provision adds to the preceding explanation. A summary of the history and regulatory context of this provision is as follows:

The Board revised 35 Ill. Adm. Code 727.240(1)(1) and (1)(2) in 2013 to require use of forms designated by the Agency. The Board added 35 Ill. Adm. Code 727.240(1)(3), which required the Agency to develop financial assurance forms based on the wording of USEPA financial instruments. The Agency was to make only those changes to the federal language that are required by Illinois law. See RCRA Subtitle C Update, USEPA Amendments (July 1, 2012 through December 31, 2012), R13-15 (Sep. 5, 2013), slip op. at 30-33.

The Board did not repeal Appendix A to 35 Ill. Adm. Code 727 in 2013. This is despite the fact that the forms provided in Appendix A were obsolete and useless.

As noted by the Board in 2013, the use of Agency-designated forms based on those required by USEPA parallels the structure used in the financial assurance provisions of the treatment, storage, and disposal (T/S/D) facility standards in Subparts H of 35 Ill. Adm. Code 724 and 725. All of those provisions require use of forms designated by the Agency pursuant to 35 Ill. Adm. Code 724.251 based on the USEPA-designated forms in 40 C.F.R. 264.151. The Board initially adopted this requirement for forms established by the Agency as derived from USEPA forms and approved by USEPA with the initial financial assurance requirements in 1983. See Phase II RCRA Rules, R82-19 (July 26, 1983), slip op. at 49.

The same scheme of Agency-approved financial assurance forms derived from USEPA forms is used in the context of the underground injection control regulations. See 35 Ill. Adm. Code 704.240.

If you need anything further, ask.

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**From:** Eastvold, Jonathan C. [mailto:JonathanE@ilga.gov]  
**Sent:** Monday, April 25, 2016 11:26 AM  
**To:** McCambridge, Michael  
**Subject:** 35 IAC 727: appendices

Could you please help me understand in a bit more detail why repealing these forms is appropriate in an exempt rulemaking? Are newer versions of these forms still used by EPA? If so, shouldn't those be included in the rule instead if they include anything that could be considered policy outside of rule?

Thanks so much!

Jonathan

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