

ILLINOIS POLLUTION CONTROL BOARD
October 9, 1986

IN THE MATTER OF:)
)
RCRA UPDATE, USEPA REGULATIONS) R86-28
(4-1-86 THROUGH 6-30-86))

PROPOSAL FOR PUBLIC COMMENT.

PROPOSED ORDER OF THE BOARD (by J. Anderson):


The Board hereby proposes, pursuant to Section 22.4(a) of the Environmental Protection Act (Act), to amend the RCRA rules to correspond with amendments to USEPA rules adopted between April 1, 1986 and June 30, 1986. Because this is an "identical in substance" rulemaking, neither Title VII of the Act nor Section 5 of the Administrative Procedure Act apply. However, pursuant to 35 Ill. Adm. Code 102.202, the Board will publish the text of the proposal in the Illinois Register and receive public comment for a period of at least 45 days.

The Board has adopted a proposed Opinion supporting these proposed rules.

The complete text of the proposal is attached. Striking and underlining refer to the text of the rules as amended in R86-1 (July 11, 1986). Some of this material has already been proposed in R86-19, but is repeated here (July 11, 1986).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Order was adopted on the 9th day of October, 1986, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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TEXT OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: PERMITS

PART 702
RCRA AND UIC PERMIT PROGRAMS

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702.160	Establishing Permit Conditions
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702.182	Transfer
702.183	Modification
702.184	Causes for Modification
702.185	Facility Siting
702.186	Revocation
702.187	Minor Modifications

AUTHORITY: Implementing Section 13 and 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1013, 1022.4 and 1027).

SOURCE: Adopted in R81-32, 47 PCB 93, at 6 Ill. Reg. 12479, effective as noted in 35 Ill. Adm. Code 700.106; amended in R82-19 at at, 53 PCB 131, 7 Ill. Reg. 14352, effective as noted in 35 Ill. Adm. Code 700.106; amended in R84-9 at 9 Ill. Reg. 11926, effective July 24, 1985; amended in R85-23 at 10 Ill. Reg. 13274, effective July 29, 1986; amended in R86-1 at 10 Ill. Reg. 14083, effective August 12, 1986; amended in R86-28 at 10 Ill. Reg. , effective .

SUBPART D: ISSUED PERMITS

Section 702.187 Minor Modifications

Upon the consent of the permittee, the Agency may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 35 Ill. Adm. Code 705. Any permit modification not processed as a minor modification under this section must be made for cause and with a 35 Ill. Adm. Code 705 draft permit and public notice as required in ~~Sec.~~ Sections 702.183 through 702.185. Minor modifications may only:

- a) Correct typographical errors;
- b) Require more frequent monitoring or reporting by the permittee;
- c) Change an interim compliance date in a schedule of

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compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

- d) Allow for a change in ownership or operational control of a facility where the Agency determines that no other change in the permit is necessary, provided:
- 1) For RCRA only: that a written agreement containing a specific date for transfer of permit responsibility, ~~coverage and liability~~ between the current and new permittees has been submitted to the Agency. Changes in the ownership or operational control of a facility may be made only if the owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 35 Ill. Adm Code 724.Subpart H (financial requirements), until the new owner or operator has demonstrated to the Agency that the new owner or operator is complying with the requirements of that Subpart. The new owner or operator shall demonstrate compliance with the financial assurance requirements within six months after the date of the change in the ownership or operational control of the facility. Upon demonstration to the Agency by the new owner or operator of compliance with the financial assurance requirements, the Agency shall notify the old owner or operator in writing that the old owner or operator no longer needs to comply with 35 Ill. Adm Code 724.Subpart H as of the date of the demonstration.
 - 2) For UIC only: that a written agreement containing a specific date for transfer of permit responsibility, ~~coverage and liability~~ between the current and new permittees has been submitted to the Agency.
- e) For RCRA only:
- 1) Change the lists of facility emergency coordinators or equipment in the permit's contingency plan; or
 - 2)

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- A) Change estimates of maximum inventory under 35 Ill. Adm. Code 724.212(a)(2);
 - B) Change estimates of expected year of closure, or schedules for final closure under 35 Ill. Adm. Code 724.212(a)(4); or
 - C) Approve periods longer than 90 days or 180 days under 35 Ill. Adm. Code 724.213(a) and (b).
- 3) Change the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided that the change is minor.
 - 4) Change the operating requirements set in the permit for conducting a trial burn, provided that the change is minor.
 - 5) Grant one extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste.
 - 6) Change the treatment program requirements for land treatment units under 35 Ill. Adm. Code 724.371 to improve treatment of hazardous constituents, provided that the change is minor.
 - 7) Change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with 35 Ill. Adm. Code 703.230, provided that the change is minor.
 - 8) Allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 35 Ill. Adm. Code 724.372(a), provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.
- f) For UIC only:
- 1) Change quantities or types of fluids injected which

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are within the capacity of the facility as permitted and, in the judgment of the Agency, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification.

- 2) Change construction requirements approved by the Agency pursuant to 35 Ill. Adm. Code 704.182 (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this part and 35 Ill. Adm. Code 704 and 730.
- 3) Amend a plugging and abandonment plan which has been updated under 35 Ill. Adm. Code 704.181(e).

(Board Note: See 40 CFR ~~122-17~~144.41 and 270.42).

(Source: Amended at 10 Ill. Reg. ,
effective)

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NOTICE OF PROPOSED AMENDMENTS

The Heading of the Part: RCRA Permit Program

Code Citation: 35 Ill. Adm. Code 703

<u>Section Numbers:</u>	<u>Proposed Action:</u>
703.155	Amendment
703.183	Amendment

Statutory Authority: Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4 and 1027.

A Complete Description of the Subjects and Issues Involved:

A complete description is contained in the Board's Proposed Opinion of October 9, 1986, in R86-28, which Opinion is available from the address below. This proposal updates the Illinois RCRA hazardous waste rules to agree with rules adopted by USEPA between April 1 and June 30, 1986. As provided by Section 22.4(a) of the Environmental Protection Act, this rulemaking is not subject to Section 5 of the Administrative Procedure Act, and is hence not subject to second notice review by JCAR.

Part 703 is drawn from 40 CFR 270. The amendments are drawn from 51 Fed. Reg. 16443. They change the requirements for transfer of hazardous waste permits.

Will this proposed rule replace an emergency rule currently in effect? No.

Does this rulemaking contain an automatic repeal date?: No.

Are there any other amendments pending on this Part? Yes, in R86-19.

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
703.123	Amendment	August 15, 1986; 10 Ill. Reg. 13572
703.150	Amendment	August 15, 1986; 10 Ill. Reg. 13572

Statement of Statewide Policy Objectives:

This rulemaking is mandated by Section 22.4 of the Environmental Protection Act. The statewide policy objectives are set forth in Section 20 of that Act.

Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

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NOTICE OF PROPOSED AMENDMENTS

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R86-28 and be addressed to:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Initial Regulatory Flexibility Analysis:

Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: October 15, 1986

Types of small businesses affected:

The existing rules and amendments affect small businesses which generate, transport, treat, store or dispose of hazardous waste.

Reporting, Bookkeeping or other procedures required for compliance:

The existing rules require permits and substantial reporting and bookkeeping. The amendments modify the requirements for transfer of hazardous waste permits.

Types of professional skills necessary for compliance:

The existing rules and amendments may require the services of an attorney, a certified public accountant, a chemist and a registered professional engineer.

The full text of the Proposed Amendments is as follows:

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TEXT OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: PERMITS

PART 703
RCRA PERMIT PROGRAM

SUBPART A: GENERAL PROVISIONS

Section
703.100 Scope and Relation to Other Parts
703.101 Purpose
703.110 References

SUBPART B: PROHIBITIONS

Section
703.120 Prohibitions in General
703.121 RCRA Permits
703.122 Specific Inclusions in Permit Program
703.123 Specific Exclusions from Permit Program
703.124 Discharges of Hazardous Waste
703.125 Reapplications
703.126 Initial Applications
703.127 Federal Permits (Repealed)

SUBPART C: AUTHORIZATION BY RULE AND INTERIM STATUS

Section
703.140 Purpose and Scope
703.141 Permits by Rule
703.150 Application by Existing HWM Facilities and Interim
Status Qualifications
703.151 Application by New HWM Facilities
703.152 Amended Part A Application
703.153 Qualifying for Interim Status
703.154 Prohibitions During Interim Status
703.155 Changes During Interim Status
703.156 Interim Status Standards
703.157 Grounds for Termination of Interim Status
703.158 Permits for Less Than an Entire Facility

SUBPART D: APPLICATIONS

Section
703.180 Applications in General
703.181 Contents of Part A

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- 703.182 Contents of Part B
- 703.183 General Information
- 703.184 Facility Location Information
- 703.185 Groundwater Protection Information
- 703.186 Exposure Information
- 703.200 Specific Information
- 703.201 Containers
- 703.202 Tanks
- 703.203 Surface Impoundments
- 703.204 Waste Piles
- 703.205 Incinerators
- 703.206 Land Treatment
- 703.207 Landfills

SUBPART E: SHORT TERM AND PHASED PERMITS

Section

- 703.221 Emergency Permits
- 703.222 Incinerator Conditions Prior to Trial Burn
- 703.223 Incinerator Conditions During Trial Burn
- 703.224 Incinerator Conditions After Trial Burn
- 703.225 Trial Burns for Existing Incinerators
- 703.230 Land Treatment Demonstration
- 703.231 Research, Development and Demonstration Permits

SUBPART F: PERMIT CONDITIONS

Section

- 703.241 Establishing Permit Conditions
- 703.242 Noncompliance Pursuant to Emergency Permit
- 703.243 Monitoring
- 703.244 Notice of Planned Changes
- 703.245 Release or Discharge Reports
- 703.246 Reporting Requirements

AUTHORITY: Implementing Section 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4 and 1027).

SOURCE: Adopted in R82-19, 53 PCB 131, at 7 Ill. Reg. 14289, effective October 12, 1983; amended in R83-24 at 8 Ill. Reg. 206, effective December 27, 1983; amended in R84-9 at 9 Ill. Reg. 11899, effective July 24, 1985; amended in R85-23 at 10 Ill. Reg. 13284, effective July 29, 1986; amended in R86-1 at 10 Ill. Reg. 14093, effective August 12, 1986; amended in R86-19 at 10 Ill. Reg. , effective ; amended in R86-28 at 10 Ill. Reg. , effective .

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SUBPART C: AUTHORIZATION BY RULE AND INTERIM STATUS

Section 703.155 Changes During Interim Status

- a) New hazardous wastes not previously identified in Part A of the permit application may be treated, stored or disposed of at a facility if the owner or operator submits a revised Part A permit application prior to such a change;
- b) Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Agency approves the change because of a lack of available treatment, storage or disposal capacity at other hazardous waste management facilities;
- c) Changes in the processes for the treatment, storage or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for change) and the Agency approves the change because:
 - 1) It is necessary to prevent a threat to human health or the environment because of an emergency situation; or
 - 2) It is necessary to comply with Federal and State regulations, including 35 Ill. Adm. Code 725;
- d) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 35 Ill. Adm. Code 725, Subpart H (financial requirements), until the new owner or operator has demonstrated to the Agency that it is complying with the requirements of that Subpart. The new owner or operator shall demonstrate compliance with the financial assurance requirements within six months after the date of the change in the ownership or operational control of the facility. Upon demonstration to the Agency by the new owner or operator of compliance with the financial assurance requirements, the Agency

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shall notify the old owner or operator in writing that the old owner or operator no longer needs to comply with 35 Ill. Adm Code 725.Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the Agency by the new owner or operator of compliance with that Subpart, the Agency shall notify the old owner or operator in writing that it no longer needs to comply with that Part as of the date of demonstration;

- e) In no event shall changes be made to an HWM facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM facility.

(Board Note: See 40 CFR ~~122.23(e)~~270.72.)

(Source: Amended at 10 Ill. Reg. ,
effective)

SUBPART D: APPLICATIONS

Section 703.183 General Information

The following information is required in the Part B application for all HWM facilities, except as 35 Ill. Adm. Code 724.101 provides otherwise:

- a) A general description of the facility;
- b) Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store or dispose of the wastes properly in accordance with 35 Ill. Adm. Code 724;
- c) A copy of the waste analysis plan required by 35 Ill. Adm. Code 724.113(b) and, if applicable, 35 Ill. Adm. Code 724.113(c);
- d) A description of the security procedures and equipment required by 35 Ill. Adm. Code 724.114, or a justification demonstrating the reasons for requesting a waiver of this requirement;

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- e) A copy of the general inspection schedule required by 35 Ill. Adm. Code 724.115(b). Including, where applicable, as part of the inspection schedule, specific requirements in 35 Ill. Adm. Code 724.274, 724.294, 724.326, 724.354, 724.373 and 724.403;
- f) A justification of any request for a waiver(s) of the preparedness and prevention requirements of 35 Ill. Adm. Code 724.Subpart C;
- g) A copy of the contingency plan required by 35 Ill. Adm. Code 724.Subpart D;

(Board Note: Include, where applicable, as part of the contingency plan, specific requirements in 35 Ill. Adm. Code 724.327 and 724.355. 35 Ill. Adm. Code 724.355 has not yet been adopted.)
- h) A description of procedures, structures or equipment used at the facility to:
 - 1) Prevent hazards in unloading operations (for example, ramps, special forklifts);
 - 2) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);
 - 3) Prevent contamination of water supplies;
 - 4) Mitigate effects of equipment failure and power outages; and
 - 5) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing);
- i) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive or incompatible wastes as required to demonstrate compliance with 35 Ill. Adm. Code 724.117 including documentation demonstrating compliance with 35 Ill. Adm. Code 724.117(c);
- j) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals);

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- k) Facility location information as required by Section 703.184;
- l) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with 35 Ill. Adm. Code 724.116. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in 35 Ill. Adm. Code 724.116(a)(3);
- m) A copy of the closure plan and, where applicable, the post-closure plan required by 35 Ill. Adm. Code 724.212 and 724.218. Include where applicable, as part of the plans, specific requirements in 35 Ill. Adm. Code 724.278, 724.297, 724.328, 724.358, 724.380, 724.410 and 724.451;
- n) For existing facilities, documentation that a notice has been placed in the deed or appropriate alternate instrument as required by 35 Ill. Adm. Code 724.220; For hazardous waste disposal units that have been closed, documentation that notices required under 35 Ill. Adm. Code 724.219 have been filed;
- o) The most recent closure cost estimate for the facility prepared in accordance with 35 Ill. Adm. Code 724.242 plus a copy of the and a copy of the documentation required to demonstrate financial assurance mechanism adopted in compliance with under 35 Ill. Adm. Code 724.243. For a new facility, a copy of the required documentation may be submitted 60 days prior to the intitial receipt of hazardous wastes, if it is later than the submission of the Part B;
- p) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with 35 Ill. Adm. Code 724.244 plus a copy of the documentation required to demonstrate financial assurance mechanism adopted in compliance with under 35 Ill. Adm. Code 724.245; For a new facility, a copy of the required documentation may be submitted 60 days prior to the intitial receipt of hazardous wastes, if it is later than the submission of the Part B;
- q) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the

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requirements of 35 Ill. Adm. Code 724.247. For a new facility, documentation showing the amount of insurance meeting the specification of 35 Ill. Adm. Code 724.247(a) and, if applicable, 35 Ill. Adm. Code 724.247(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage or disposal. A request for an alternative level of required coverage, for a new or existing facility, may be submitted as specified in 35 Ill. Adm. Code 724.247(c);

- s) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:
- 1) Map scale and date;
 - 2) 100-year floodplain area;
 - 3) Surface waters including intermittent streams;
 - 4) Surrounding land uses (residential, commercial, agricultural, recreational);
 - 5) A wind rose (i.e., prevailing windspeed and direction);
 - 6) Orientation of the map (north arrow);
 - 7) Legal boundaries of the HWM facility site;
 - 8) Access control (fences, gates);
 - 9) Injection and withdrawal wells both on-site and off-site;
 - 10) Buildings; treatment, storage or disposal operations; or other structures (recreation areas,

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runoff control systems, access and internal roads, storm, sanitary and process sewage systems, loading and unloading areas, fire control facilities, etc.);

- 11) Barriers for drainage or flood control;
- 12) Location of operational units within the HWM facility site, where hazardous waste is (or will be) treated, stored or disposed (include equipment cleanup areas);

(Board Note: For large HWM facilities, the Agency will allow the use of other scales on a case by case basis.)

- t) Applicants may be required to submit such information as may be necessary to enable the Agency to determine whether a permit should be issued and what conditions to impose in any permit issued.

(Board Note: See 40 CFR 270.14(b).)

(Source: Amended at 10 Ill. Reg. ,
effective)

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NOTICE OF PROPOSED AMENDMENTS

The Heading of the Part: Hazardous Waste Management System:
General

Code Citation: 35 Ill. Adm. Code 720

Section Numbers: Proposed Action:

720.110 Amendment

Statutory Authority: Ill. Rev. Stat. 1985, ch. 111 1/2, pars.
1022.4 and 1027.

A Complete Description of the Subjects and Issues Involved:

A complete description is contained in the Board's Proposed Opinion of October 9, 1986, in R86-28, which Opinion is available from the address below. This proposal updates the Illinois RCRA hazardous waste rules to agree with rules adopted by USEPA between April 1 and June 30, 1986. As provided by Section 22.4(a) of the Environmental Protection Act, this rulemaking is not subject to Section 5 of the Administrative Procedure Act, and is hence not subject to second notice review by JCAR.

Part 720 is drawn from 40 CFR 260. The proposed amendments are drawn from 51 Fed. Reg. 16443. They relate to the closure and financial assurance rules in Parts 724 and 725. The amendments to "small quantity generator" are also proposed in R86-19, and will actually be adopted in that Docket prior to action on this proposal.

Will this proposed rule replace an emergency rule currently in effect? No.

Does this rulemaking contain an automatic repeal date?: No.

Are there any other amendments pending on this Part? Yes, in R86-19.

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
720.110	Amendment	August 15, 1986; 10 Ill. Reg. 13500

Statement of Statewide Policy Objectives:

This rulemaking is mandated by Section 22.4 of the Environmental Protection Act. The statewide policy objectives are set forth in Section 20 of that Act.

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NOTICE OF PROPOSED AMENDMENTS

Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R86-28 and be addressed to:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Initial Regulatory Flexibility Analysis:

Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: October 15, 1986

Types of small businesses affected:

The existing rules and amendments affect small businesses which generate, transport, treat, store or dispose of hazardous waste.

Reporting, Bookkeeping or other procedures required for compliance:

The existing rules require permits and substantial reporting and bookkeeping. The amendments modify the definitions which relate to the closure and financial assurance requirements in Parts 724 and 725.

Types of professional skills necessary for compliance:

The existing rules and amendments may require the services of an attorney, a certified public accountant, a chemist and a registered professional engineer.

The full text of the Proposed Amendments is as follows:

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TEXT OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 720
HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

SUBPART A: GENERAL PROVISIONS

Section
720.101 Purpose, Scope and Applicability
720.102 Availability of Information; Confidentiality of
Information
720.103 Use of Number and Gender

SUBPART B: DEFINITIONS

Section
720.110 Definitions
720.111 References

SUBPART C: RULEMAKING PETITIONS AND OTHER PROCEDURES

Section
720.120 Rulemaking
720.121 Alternative Equivalent Testing Methods
720.122 Waste Delisting
720.130 Procedures for Solid Waste Determinations
720.131 Solid Waste Determinations
720.132 Boiler Determinations
720.133 Procedures for Determinations
720.140 Additional regulation of certain hazardous waste
Recycling Activities on a case-by-case Basis
720.141 Procedures for case-by-case regulation of hazardous
waste Recycling Activities

Appendix A Overview of 40 CFR, Subtitle C Regulations

AUTHORITY: Implementing Section 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4 and 1027).

SOURCE: Adopted in R81-22, 43 PCB 427, at 5 Ill. Reg. 9781, effective as noted in 35 Ill. Adm. Code 700.106; amended and codified in R81-22, 45 PCB 317, at 6 Ill. Reg. 4828, effective as noted in 35 Ill. Adm. Code 700.106; amended in R82-19 at 7 Ill. Reg. 14015, effective Oct. 12, 1983; amended in R84-9, 53 PCB 131

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at 9 Ill. Reg. 11819, effective July 24, 1985; amended in R85-22
at 10 Ill. Reg. 968, effective January 2, 1986; amended in R86-1
at 10 Ill. Reg. 13998, effective August 12, 1986; amended in R86-
19 at 10 Ill. Reg. , effective ; amended in
R86-28 at 10 Ill. Reg. , effective .

SUBPART B: DEFINITIONS

Section 720.110 Definitions

When used in 35 Ill. Adm. Code 720 through 725 only, the following terms have the meanings given below:

"Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.)

"Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Agency receives certification of final closure.

"Active portion" means that portion of a facility where treatment, storage or disposal operations are being or have been conducted after May 19, 1980 and which is not a closed portion. (See also "closed portion" and "inactive portion".)

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or his designee.

"Agency" means the Illinois Environmental Protection Agency.

"Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

"Board" means the Illinois Pollution Control Board.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

The unit must have physical provisions for

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recovering and exporting thermal energy in the form of steam, heated fluids or heated gases; and the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section 720.132.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"Closed Portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

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"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

"Container" means any portable device in which a material is stored, transported, treated, disposed of or otherwise handled.

"Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in case of a fire, explosion or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

"Designated facility" means a hazardous waste treatment, storage or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR 270 and 124 or a permit from a state authorized in accordance with 40 CFR 271, or that is regulated under 40 CFR 261.6(c)(2) or 40 CFR 266.Subpart F or 35 Ill. Adm. Code 721.106(c)(2) or 726.Subpart F and that has been designated on the manifest by the generator pursuant to 35 Ill. Adm. Code 722.120.

"Dike" means an embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids or other materials.

"Director" means the Director of the Illinois Environmental Protection Agency.

"Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous waste into or on any land or water.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and at which waste will remain after closure.

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"Elementary neutralization unit" means a device which:

Is used for neutralizing wastes which are hazardous wastes only because they exhibit the corrosivity characteristic defined in 35 Ill. Adm. Code 721.122 or are listed in 35 Ill. Adm. Code 721.Subpart D only for this reason; and

Meets the definition of tank, container, transport vehicle or vessel in Section 720.110.

"EPA" means United States Environmental Protection Agency.

"EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in 35 Ill. Adm. Code 721.Subpart D and to each characteristic identified in 35 Ill. Adm. Code 721.Subpart C.

"EPA identification number" means the number assigned by USEPA pursuant to 35 Ill. Adm. Code 722 through 725 to each generator, transporter and treatment, storage or disposal facility.

"EPA region" means the states and territories found in any one of the following ten regions:

- | | |
|-------------|------------------------------------------------------------------------------------------------|
| Region I: | Maine, Vermont, New Hampshire, Massachusetts, Connecticut and Rhode Island |
| Region II: | New York, New Jersey, Commonwealth of Puerto Rico and the U.S. Virgin Islands |
| Region III: | Pennsylvania, Delaware, Maryland, West Virginia, Virginia and the District of Columbia |
| Region IV: | Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina and Florida |
| Region V: | Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio |
| Region VI: | New Mexico, Oklahoma, Arkansas, Louisiana and Texas |

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- Region VII: Nebraska, Kansas, Missouri and Iowa
- Region VIII: Montana, Wyoming, North Dakota, South Dakota, Utah and Colorado
- Region IX: California, Nevada, Arizona, Hawaii, Guam, American Samoa and Commonwealth of the Northern Mariana Islands
- Region X: Washington, Oregon, Idaho and Alaska

"Equivalent method" means any testing or analytical method approved by the Board pursuant to Section 720.120.

"Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility had commenced construction if:

The owner or operator had obtained the federal, state and local approvals or permits necessary to begin physical construction and either

A continuous on-site, physical construction program had begun or

the owner or operator had entered into contractual obligations--which could not be cancelled or modified without substantial loss--for physical construction of the facility to be completed within a reasonable time.

"Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

"Facility" means all contiguous land and structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units (e.g., one or more landfills, surface impoundments or combinations of them).

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"Federal agency" means any department, agency or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation and the Government Printing Office.

"Federal, state and local approvals or permits necessary to begin physical construction" means permits and approvals required under federal, state or local hazardous waste control statutes, regulations or ordinances.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under 35 Ill. Adm. Code 724 and 725 are no longer conducted at the facility unless subject to the provisions of 35 Ill. Adm Code 722.134.

"Food-chain crops" means tobacco, crops grown for human consumption and crops grown for feed for animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Generator" means any person, by site, whose act or process produce hazardous waste identified or listed in 35 Ill. Adm. Code 721 or whose act first causes a hazardous waste to become subject to regulation.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means a hazardous waste as defined in 35 Ill. Adm. Code 721.103.

"Hazardous waste constituent" means a constituent which caused the hazardous waste to be listed in 35 Ill. Adm. Code 721.Subpart D, or a constituent listed in of 35 Ill. Adm. Code 721.124.

Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the

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largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion".)

"Incinerator" means any enclosed device using controlled flame combustion which is neither a "boiler" nor an "industrial furnace"

"Incompatible waste" means a hazardous waste which is suitable for:

Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes or gases or flammable fumes or gases.

(See 35 Ill. Adm. Code 725, Appendix E for examples.)

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

Cement kilns

Lime kilns

Aggregate kilns

Phosphate kilns

Coke ovens

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Blast furnaces

Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces)

Titanium dioxide chloride process oxidation reactors

Methane reforming furnaces

Pulping liquor recovery furnaces

Combustion devices used in the recovery of sulfur values from spent sulfuric acid

Any other such device as the Agency determines to be an "Industrial Furnace" on the basis of one or more of the following factors:

The design and use of the device primarily to accomplish recovery of material products;

The use of the device to burn or reduce raw materials to make a material product;

The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

The use of the device in common industrial practice to produce a material product; and

Other relevant factors.

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

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"In operation" refers to a facility which is treating, storing or disposing of hazardous waste.

"Injection well" means a well into which fluids are being injected. (See also "underground injection".)

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment or an injection well.

"Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Liner" means means a continuous layer of natural or manmade materials beneath or on the sides of a surface impoundment, landfill or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents or leachate.

"Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.

"Manifest" means the shipping document originated and signed by the generator which contains the information required by 35 Ill. Adm. Code 722.Subpart B.

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"Manifest document number" means the USEPA twelve digit identification number assigned to the generator plus a unique five digit document number assigned to the manifest by the generator for recording and reporting purposes.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

"New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced, after November 19, 1980. (See also "Existing hazardous waste management facility".)

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection and access is by crossing as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access is also considered on-site property.

"Open burning" means the combustion of any material without the following characteristics:

Control of combustion air to maintain adequate temperature for efficient combustion;

Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

Control of emission of the gaseous combustion products.

(See also "incineration" and "thermal treatment".)

"Operator" means the person responsible for the overall operation of a facility.

"Owner" means the person who owns a facility or part of

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a facility.

"Partial closure" means the closure of a discrete part of a facility hazardous waste management unit in accordance with the applicable closure requirements of 35 Ill. Adm. Code 724 or 725 at a facility which contains other active hazardous waste management units. For example, partial closure may include the closure of a trench, a unit operation, a landfill cell or a pit, while other parts of the same facility continue in operation or will be placed in operation in the future. tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile or other hazardous waste management unit, while other units of the same facility continue to operate.

"Person" means means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state or any interstate body.

"Personnel" or "facility personnel" means all persons who work at or oversee the operations of a hazardous waste facility and whose actions or failure to act may result in noncompliance with the requirements of 35 Ill. Adm. Code 724 or 725.

"Pile" means any noncontainerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage.

"Point source" means any discernible, confined and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "state" or "municipality" (as defined by Section 502(4) of the Clean Water Act (33 U.S.C. 1362(4))).

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This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

"Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located or his designee.

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

"Runoff" means any rainwater, leachate or other liquid that drains over land from any part of a facility.

"Runon" means any rainwater, leachate or other liquid that drains over land onto any part of a facility.

"Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

"SIC Code" means Standard Industrial Code as defined in Standard Industrial Classification Manual, incorporated by reference in Section 720.111.

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Small Quantity Generator" means a generator which generates less than 1000 kg of hazardous waste in a calendar month.

"Solid waste" means a solid waste as defined in 35 Ill. Adm. Code 721.102.

"State" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

"Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of or stored elsewhere.

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"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation or diked area formed primarily of earthen materials (although it may be lined with manmade materials) which is designed to hold an accumulation of liquid wastes or wastes containing free liquids and which is not an injection well. Examples of surface impoundments are holding, storage, settling and aeration pits, ponds and lagoons.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation and microwave discharge. (See also "incinerator" and "open burning".)

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

"Transportation" means the movement of hazardous waste by air, rail, highway or water.

"Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway or water.

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"Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste or so as to render such waste non-hazardous or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage or reduced in volume.

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed or immobilized.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

"United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Wastewater treatment unit" means a device which:

Is part of a wastewater treatment facility which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (33 U.S.C. 1342 or 1317(b)); and receives and treats or stores an influent wastewater which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103 or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103 or treats or stores a

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wastewater treatment sludge which is a hazardous waste as defined in 35 Ill. Adm. Code 721.103; and

Meets the definition of tank in 35 Ill. Adm. Code 720.110.

"Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

"Well injection" (See "underground injection").

(Source: Amended at 10 Ill Reg. ,
effective)

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NOTICE OF PROPOSED AMENDMENTS

The Heading of the Part: Identification and Listing of Hazardous Waste

Code Citation: 35 Ill. Adm. Code 721

Section Numbers: 721.132
Proposed Action: Amendment

Statutory Authority: Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4 and 1027.

A Complete Description of the Subjects and Issues Involved:

A complete description is contained in the Board's Proposed Opinion of October 9, 1986, in R86-28, which Opinion is available from the address below. This proposal updates the Illinois RCRA hazardous waste rules to agree with rules adopted by USEPA between April 1 and June 30, 1986. As provided by Section 22.4(a) of the Environmental Protection Act, this rulemaking is not subject to Section 5 of the Administrative Procedure Act, and is hence not subject to second notice review by JCAR.

Part 721 is drawn from 40 CFR 261. The amendments are drawn from 51 Fed. Reg. 19322. They modify the definition of listing K062. The changes to listings K117, K118 and K136 are also proposed in Docket R86-19, and will actually be adopted in that Docket before action in this Docket.

Will this proposed rule replace an emergency rule currently in effect? No.

Does this rulemaking contain an automatic repeal date?: No.

Are there any other amendments pending on this Part? Yes, in R86-19.

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
721.101	Amendment	August 15, 1986; 10 Ill. Reg. 13517
721.105	Amendment	August 15, 1986; 10 Ill. Reg. 13517
721.131	Amendment	August 15, 1986; 10 Ill. Reg. 13517
721.132	Amendment	August 15, 1986; 10 Ill. Reg. 13517
721.133	Amendment	August 15, 1986; 10 Ill. Reg. 13517
Appendix C	Amendment	August 15, 1986; 10 Ill. Reg. 13517
Appendix G	Amendment	August 15, 1986; 10 Ill. Reg. 13517
Appendix H	Amendment	August 15, 1986; 10 Ill. Reg. 13517

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Statement of Statewide Policy Objectives:

This rulemaking is mandated by Section 22.4 of the Environmental Protection Act. The statewide policy objectives are set forth in Section 20 of that Act.

Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R86-28 and be addressed to:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Initial Regulatory Flexibility Analysis:

Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: October 15, 1986

Types of small businesses affected:

The existing rules and amendments affect small businesses which generate, transport, treat, store or dispose of hazardous waste. The proposal limits the generic listing K062 to spent pickle liquor from plants that produce iron or steel.

Reporting, Bookkeeping or other procedures required for compliance:

The existing rules require permits and substantial reporting and bookkeeping.

Types of professional skills necessary for compliance:

The existing rules and amendments may require the services of an attorney, a certified public accountant, a chemist and a registered professional engineer.

The full text of the Proposed Amendments is as follows:

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TEXT OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 721
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SUBPART A: GENERAL PROVISIONS

Section	
721.101	Purpose of Scope
721.102	Definition of Solid Waste
721.103	Definition of Hazardous Waste
721.104	Exclusions
721.105	Special Requirements For Hazardous Waste Generated by Small Quantity Generators
721.106	Requirements for Recyclable Materials
721.107	Residues of Hazardous Waste In Empty Containers

SUBPART B: CRITERIA FOR IDENTIFYING THE CHARACTERISTICS
OF HAZARDOUS WASTE AND FOR LISTING HAZARDOUS WASTES

Section	
721.110	Criteria for Identifying the Characteristics of Hazardous Waste
721.111	Criteria for Listing Hazardous Waste

SUBPART C: CHARACTERISTICS OF HAZARDOUS WASTE

Section	
721.120	General
721.121	Characteristics of Ignitability
721.122	Characteristics of Corrosivity
721.123	Characteristics of Reactivity
721.124	Characteristics of EP Toxicity

SUBPART D: LISTS OF HAZARDOUS WASTE

Section	
721.130	General
721.131	Hazardous Wastes From Nonspecific Sources
721.132	Hazardous Waste From Specific Sources
721.133	Discarded Commercial Chemical Products, Off- Specification Species, Container Residues and Spill Residues Thereof

Appendix A	Representative Sampling Methods
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Appendix B	EP Toxicity Test Procedures
Appendix C	Chemical Analysis Test Methods
Table A	Analytical Characteristics of Organic Chemicals (Repealed)
Table B	Analytical Characteristics of Inorganic Species (Repealed)
Table C	Sample Preparation/Sample Introduction Techniques (Repealed)
Appendix G	Basis for Listing Hazardous Wastes
Appendix H	Hazardous Constituents
Appendix I	Wastes Excluded under Section 720.120 and 720.122
Table A	Wastes Excluded from Non-Specific Sources
Table B	Wastes Excluded from Specific Sources
Table C	Wastes Excluded from Commercial Chemical Products, Off-Specification Species, Container Residues, and Soil Residues Thereof
Appendix J	Method of Analysis for Chlorinated Dibenzo-p- Dioxins and Dibenzofurans
Appendix Z	Table to Section 721.102

AUTHORITY: Implementing Section 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4 and 1027).

SOURCE: Adopted in R81-22, 43 PCB 427, at 5 Ill. Reg. 9781, effective as noted in 35 Ill. Adm. Code 700.106; amended and codified in R81-22, 45 PCB 317, at 6 Ill. Reg. 4828, effective as noted in 35 Ill. Adm. Code 700.106; amended in R82-18, 51 PCB 31, at 7 Ill. Reg. 2518, effective February 22, 1983; amended in R82-19, 53 PCB 131, at 7 Ill. Reg. 13999, effective October 12, 1983; amended in R84-34, 61 PCB 247, at 8 Ill. Reg. 24562, effective December 11, 1984; amended in R84-9, at 9 Ill. Reg. 11834, effective July 24, 1985; amended in R85-22 at 10 Ill. Reg. 998, effective January 2, 1986; amended in R85-2 at 10 Ill. Reg. 8112, effective May 2, 1986; amended in R86-1 at 10 Ill. Reg. 14002, effective August 12, 1986; amended in R86-19 at 10 Ill. Reg. , effective ; amended in R86-28 at 10 Ill. Reg. , effective .

SUBPART D: LISTS OF HAZARDOUS WASTES

Section 721.132 Hazardous Waste from Specific Sources

The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under 35 Ill. Adm. Code 720.120 and 720.122 and listed in Appendix I.

Wood Preservation:

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K001 Bottom sediment sludge from the treatment (T)
of wastewaters from wood preserving processes
that use creosote and/or pentachlorophenol.

Inorganic Pigments:

K002 Wastewater treatment sludge from the (T)
production of chrome yellow and orange
pigments.
K003 Wastewater treatment sludge from the (T)
production of molybdate orange pigments.
K004 Wastewater treatment sludge from the (T)
production of zinc yellow pigments.
K005 Wastewater treatment sludge from the (T)
production of chrome green pigments.
K006 Wastewater treatment sludge from the (T)
production of chrome oxide green pigments
(anhydrous and hydrated).
K007 Wastewater treatment sludge from the (T)
production of iron blue pigments.
K008 Oven residue from the production of chrome (T)
oxide green pigments.

Organic Chemicals:

K009 Distillation bottoms from the production of (T)
acetaldehyde from ethylene.
K010 Distillation side cuts from the production of (T)
acetaldehyde from ethylene.
K011 Bottom stream from the wastewater stripper in (R,T)
the production of acrylonitrile.
K013 Bottom stream from the acetrontrile column (T)
in the production of acrylontrile.
K014 Bottoms from the acetrontrile purification (T)
column in the production of acrylonitrile.
K015 Still bottoms from the distillation of benzyl (T)
chloride.
K016 Heavy ends or distillation residues from the (T)
production of carbon tetrachloride.
K017 Heavy ends (still bottoms) from the (T)
purification column in the production of
epichlorohydrin.
K018 Heavy ends from the fractionation column in (T)
ethyl chloride production.
K019 Heavy ends from the distillation of ethylene (T)
dichloride in ethylene dichloride production.
K020 Heavy ends from the distillation of vinyl (T)
chloride in vinyl chloride monomer production.
K021 Aqueous spent antimony catalyst waste from (T)

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	fluoromethanes production.	
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)
K026	Stripping still tails from the production of methyl ethyl pyridines.	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production.	(R,T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K029	Waste from the product stream stripper in the production of 1,1,1-trichloroethane.	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.	(T)
K083	Distillation bottoms from aniline production.	(T)
K103	Process residues from aniline extraction from the production of aniline.	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production.	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	(T)
K111	Product wastewaters from the production of dinitrotoluene via nitration of toluene.	(C,T)
K112	Reaction by-product water from the drying column in the production of toluene-diamine via hydrogenation of dinitrotoluene.	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K114	Vicinals from the purification of toluene-	(T)

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K115	diamine in the production of toluenediamine via hydrogenation of dinitrotoluene. Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	(T)
<u>K117</u>	<u>Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.</u>	<u>(T)</u>
<u>K118</u>	<u>Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.</u>	<u>(T)</u>
<u>K136</u>	<u>Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.</u>	<u>(T)</u>

Inorganic Chemicals:

K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production.	(T)

Pesticides:

K031	By-product salts generated in the production of MSMA and cacodylic acid.	(T)
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)
K036	Still bottoms from toluene reclamation	(T)

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K037	distillation in the production of disulfoton. Wastewater treatment sludges from the production of disulfoton.	
K038	Wastewater from the washing and stripping of phorate production.	
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
K098	Untreated process wastewater from the production of toxaphene.	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	
K099	Untreated wastewater from the production of 2,4-D.	(T)

Explosives:

K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)
K047	Pink/red water from TNT operations.	(R)

Petroleum Refining:

K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)
K049	Slop oil emulsion solids from the petroleum refining industry.	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)
K051	API separator sludge from the petroleum refining industry.	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry.	(T)

Iron and Steel:

K061	Emission control dust/sludge from the primary	(T)
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K062 production of steel in electric furnaces.
Spent pickle liquor ~~from~~ generated by (C,T)
steel finishing operations of plants that produce
iron and steel.

Secondary Lead:

K069 Emission control dust/sludge from secondary (T)
lead smelting.
K100 Waste leaching solution from acid leaching (T)
of emission control dust/sludge from
secondary lead smelting.

Veterinary Pharmaceuticals:

K084 Wastewater treatment sludges generated (T)
during the production of veterinary
pharmaceuticals from arsenic or organo-arsenic
compounds.
K101 Distillation tar residues from the distillation (T)
of aniline-based compounds in the production
of veterinary pharmaceuticals from arsenic or
organo-arsenic compounds.
K102 Residue from use of activated carbon for (T)
decolorization in the production of veterinary
pharmaceuticals from arsenic or organo-arsenic
compounds.

Ink Formulation:

K086 Solvent washes and sludges, casutic washes (T)
and sludges, or water washes and sludges from
cleaning tubs and equipment used in the
formulation of ink from pigments, driers,
soaps and stabilizers containing chromium and lead.

Coking:

K060 Ammonia still lime sludge from cooking (T)
operations.
K087 Decanter tank tar sludge from cooking (T)
operations.

(Source: Amended at 10 Ill. Reg. ,
effective)

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NOTICE OF PROPOSED AMENDMENTS

The Heading of the Part: Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

Code Citation: 35 Ill. Adm. Code 724

<u>Section Numbers:</u>	<u>Proposed Action:</u>
724.210	Amendment
724.211	Amendment
724.212	Amendment
724.213	Amendment
724.214	Amendment
724.215	Amendment
724.216	New Section
724.217	Amendment
724.218	Amendment
724.219	Amendment
724.220	Amendment
724.241	Amendment
724.242	Amendment
724.243	Amendment
724.244	Amendment
724.245	Amendment
724.247	Amendment
724.251	Amendment

Statutory Authority: Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4 and 1027.

A Complete Description of the Subjects and Issues Involved:

A complete description is contained in the Board's Proposed Opinion of October 9, 1986, in R86-28, which Opinion is available from the address below. This proposal updates the Illinois RCRA hazardous waste rules to agree with rules adopted by USEPA between April 1 and June 30, 1986. As provided by Section 22.4(a) of the Environmental Protection Act, this rulemaking is not subject to Section 5 of the Administrative Procedure Act, and is hence not subject to second notice review by JCAR.

Part 724 is drawn from 40 CFR 264. The amendments are drawn from 51 Fed. Reg. 16443. They modify the requirements for closure and financial assurance.

Will this proposed rule replace an emergency rule currently in effect? No.

Does this rulemaking contain an automatic repeal date?: No.

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Are there any other amendments pending on this Part? No.

Statement of Statewide Policy Objectives:

This rulemaking is mandated by Section 22.4 of the Environmental Protection Act. The statewide policy objectives are set forth in Section 20 of that Act.

Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R86-28 and be addressed to:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Initial Regulatory Flexibility Analysis:

Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: October 15, 1986

Types of small businesses affected:

The existing rules and amendments affect small businesses which generate, transport, treat, store or dispose of hazardous waste.

Reporting, Bookkeeping or other procedures required for compliance:

The existing rules require permits and substantial reporting and bookkeeping. The amendments modify the requirements concerning closure plans, post-closure care plans, financial assurance and liability insurance.

Types of professional skills necessary for compliance:

The existing rules and amendments may require the services of an attorney, a certified public accountant, a chemist and a registered professional engineer.

The full text of the Proposed Amendments is as follows:

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TEXT OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 724
STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE
TREATMENT, STORAGE AND DISPOSAL FACILITIES

SUBPART A: GENERAL PROVISIONS

Section
724.101 Purpose, Scope and Applicability
724.103 Relationship to Interim Status Standards

SUBPART B: GENERAL FACILITY STANDARDS

Section
724.110 Applicability
724.111 Identification Number
724.112 Required Notices
724.113 General Waste Analysis
724.114 Security
724.115 General Inspection Requirements
724.116 Personnel Training
724.117 General Requirements for Ignitable, Reactive or
Incompatible Wastes
724.118 Location Standards

SUBPART C: PREPAREDNESS AND PREVENTION

Section
724.130 Applicability
724.131 Design and Operation of Facility
724.132 Required Equipment
724.133 Testing and Maintenance of Equipment
724.134 Access to Communications or Alarm System
724.135 Required Aisle Space
724.137 Arrangements With Local Authorities

SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section
724.150 Applicability
724.151 Purpose and Implementation of Contingency Plan
724.152 Content of Contingency Plan
724.153 Copies of Contingency Plan
724.154 Amendment of Contingency Plan
724.155 Emergency Coordinator

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724.156 Emergency Procedures

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Section

724.170 Applicability
724.171 Use of Manifest System
724.172 Manifest Discrepancies
724.173 Operating Record
724.174 Availability, Retention and Disposition of Records
724.175 Annual Report
724.176 Unmanifested Waste Report
724.177 Additional Reports

SUBPART F: RELEASES FROM SOLID WASTE MANAGEMENT UNITS

Section

724.190 Applicability
724.191 Required Programs
724.192 Groundwater Protection Standard
724.193 Hazardous Constituents
724.194 Concentration Limits
724.195 Point of Compliance
724.196 Compliance Period
725.197 General Groundwater Monitoring Requirements
724.198 Detection Monitoring Program
724.199 Compliance Monitoring Program
724.200 Corrective Action Program
724.201 Corrective Action for Solid Waste Management Units

SUBPART G: CLOSURE AND POST-CLOSURE

Section

724.210 Applicability
724.211 Closure Performance Standard
724.212 Closure Plan; Amendment of Plan
724.213 Closure; Time Allowed For Closure
724.214 Disposal or Decontamination of Equipment
724.215 Certification of Closure
724.217 Post-Closure Care and Use of Property
724.218 Post-Closure Plan; Amendment of Plan
724.219 Notice of Local Land Authority
724.220 Notice in Deed to Property

SUBPART H: FINANCIAL REQUIREMENTS

Section

724.240 Applicability
724.241 Definitions of Terms As Used In This Subpart

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TEXT OF PROPOSED AMENDMENTS

- 724.242 Cost Estimate for Closure
- 724.243 Financial Assurance for Closure
- 724.244 Cost Estimate for Post-Closure Care
- 724.245 Financial Assurance for Post-Closure Care
- 724.246 Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care
- 724.247 Liability Requirements
- 724.248 Incapacity of Owners or Operators, Guarantors or Financial Institutions
- 724.251 Wording of the Instruments

SUBPART I: USE AND MANAGEMENT OF CONTAINERS

Section

- 724.270 Applicability
- 724.271 Condition of Containers
- 724.272 Compatibility of Waste With Container
- 724.273 Management of Containers
- 724.274 Inspections
- 724.275 Containment
- 724.276 Special Requirements for Ignitable or Reactive Waste
- 724.277 Special Requirements for Incompatible Wastes
- 724.278 Closure

SUBPART J: TANKS

Section

- 724.290 Applicability
- 724.291 Design of Tanks
- 724.292 General Operating Requirements
- 724.294 Inspections
- 724.297 Closure
- 724.298 Special Requirements for Ignitable or Reactive Waste
- 724.299 Special Requirements for Incompatible Wastes
- 724.300 Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026 and F027

SUBPART K: SURFACE IMPOUNDMENTS

Section

- 724.320 Applicability
- 724.321 Design and Operating Requirements
- 724.322 Double-lined Surface Impoundments: Exemption from Subpart F: Groundwater Protection Requirements (Repealed)
- 724.326 Monitoring and Inspection
- 724.327 Emergency Repairs; Contingency Plans
- 724.328 Closure and Post-Closure Care
- 724.329 Special Requirements for Ignitable or Reactive Waste

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724.330 Special Requirements for Incompatible Wastes
724.331 Special Requirements for Hazardous Wastes F020, F021,
F022, F023, F026 and F027

SUBPART L: WASTE PILES

Section
724.350 Applicability
724.351 Design and Operating Requirements
724.352 Double-lined Piles: Exemption from Subpart F:
Groundwater Protection Requirements (Repealed)
724.353 Inspection of Liners: Exemption from Subpart F:
Groundwater Protection Requirements (Repealed)
724.354 Monitoring and Inspection
724.356 Special Requirements for Ignitable or Reactive Waste
724.357 Special Requirements for Incompatible Wastes
724.358 Closure and Post-Closure Care
724.359 Special Requirements for Hazardous Wastes F020, F021,
F022, F023, F026 and F027

SUBPART M: LAND TREATMENT

Section
724.370 Applicability
724.371 Treatment Program
724.372 Treatment Demonstration
724.373 Design and Operating Requirements
724.376 Food-chain Crops
724.378 Unsaturated Zone Monitoring
724.379 Recordkeeping
724.380 Closure and Post-Closure Care
724.381 Special Requirements for Ignitable or Reactive Waste
724.382 Special Requirements for Incompatible Wastes
724.383 Special Requirements for Hazardous Wastes F020, F021,
F022, F023, F026 and F027

SUBPART N: LANDFILLS

Section
724.400 Applicability
724.401 Design and Operating Requirements
724.402 Double-lined Landfills: Exemption from Subpart F:
Groundwater Protection Requirements (Repealed)
724.403 Monitoring and Inspection
724.409 Surveying and Recordkeeping
724.410 Closure and Post-Closure Care
724.412 Special Requirements for Ignitable or Reactive Waste
724.413 Special Requirements for Incompatible Wastes
724.414 Special Requirements for Bulk and Containerized

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- Liquids
- 724.415 Special Requirements for Containers
- 724.416 Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)
- 724.417 Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026 and F027

SUBPART O: INCINERATORS

- Section
- 724.440 Applicability
- 724.441 Waste Analysis
- 724.442 Principal Organic Hazardous Constituents (POHCs)
- 724.443 Performance Standards
- 724.444 Hazardous Waste Incinerator Permits
- 724.445 Operating Requirements
- 724.447 Monitoring and Inspections
- 724.451 Closure

- Appendix A Recordkeeping Instructions
- Appendix B EPA Report Form and Instructions (Repealed)
- Appendix D Cochran's Approximation to the Behrens-Fisher Student's t-test
- Appendix E Examples of Potentially Incompatible Waste

AUTHORITY: Implementing Section 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4 and 1027).

SOURCE: Adopted in R82-19, 53 PCB 131, at 7 Ill. Reg. 14059, effective October 12, 1983; amended in R84-9 at 9 Ill. Reg. 11964, effective July 24, 1985; amended in R85-22 at 10 Ill. Reg. 1136, effective January 2, 1986; amended in R86-1 at 10 Ill. Reg. 14119, effective August 12, 1986; amended in R86-28 at 10 Ill. Reg. , effective .

SUBPART G: CLOSURE AND POST-CLOSURE

Section 724.210 Applicability

Except as Section 724.101 provides otherwise:

- a) Section 724.211 through 724.215 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and
- b) Sections ~~724.217~~ 724.216 through 724.220 (which concern post-closure care) apply to the owners and operators of:

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- 1) All hazardous waste disposal facilities; and
- 2) Waste piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these ~~Sections~~ Sections are made applicable to such facilities in Sections 724.328 ~~and~~ 724.358.

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

Section 724.211 Closure Performance Standard

The owner or operator ~~must~~shall close the facility in a manner that:

- a) Minimizes the need for further maintenance; and
- b) Controls, minimizes or eliminates, to the extent necessary to ~~prevent threats to~~protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated ~~rainfall~~run-off or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and
- c) Complies with the closure requirement of this Part including, but not limited to, the requirements of Sections 724.278, 724.297, 724.328, 724.358, 724.380, 724.410 and 724.451.

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

Section 724.212 Closure Plan; Amendment of Plan

- a) Written Plan.
 - 1) The owner or operator of a hazardous waste management facility ~~must~~shall have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by Sections 724.328(c)(1)(A) and 724.358(c)(1)(A) to have contingent closure

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plans. The plan must be submitted with the permit application, in accordance with 35 Ill. Adm. Code 703.183, and approved by the Agency as part of the permit issuance proceeding under 35 Ill. Adm. Code 705. In accordance with 35 Ill. Adm. Code 703.241, the approved closure plan will become a condition of any RCRA permit.

- 2) The Agency's decision must assure approval of the plan must ensure that the approved closure plan is consistent with Sections 724.211, ~~724.213, 724.214,~~ through 724.215 and the applicable requirements of Sections 724.190 et seq., 724.278, 724.297, 724.328, 724.358, 724.380, 724.410 and 724.451. Until final closure is completed and certified in accordance with Section 724.215, a copy of the approved plan and all approved revisions to the plan must be kept at the facility until closure is completed and certified in accordance with Section ~~724.215.~~ furnished to the Agency upon request, including request by mail.
- b) Content of plan. The plan must identify steps necessary to completely or partially close perform partial and/or final closure of the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating active life. The closure plan must include, at least:
- 1) A description of how and when the facility will be partially closed, if applicable, and finally closed each hazardous waste management unit at the facility will be closed in accordance with Section 724.211;
- 2) A description of how final closure of the facility will be conducted in accordance with Section 724.211. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility, and how the requirements of Sections ~~724.211, 724.213, 724.214,~~ 724.215 and the applicable closure requirements of Sections ~~724.278, 724.297, 724.328, 724.358,~~ 724.380, 724.410 and 724.451 will be met; and
- 3) An estimate of the maximum inventory of wastes in storage and in treatment at any time during the hazardous wastes ever on-site over the active life of the facility and a detailed description of the

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methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable; and. (Any change in this estimate is a minor modification under 35 Ill. Adm. Code 702.107);

- 34) A detailed description of the steps needed to remove or decontaminate facility equipment during closure; and all hazardous waste residues and contaminated containment system components, equipment, structures and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils and criteria for determining the extent of decontamination required to satisfy the closure performance standard; and
- 5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and
- 4) An estimate of the expected year of closure and schedule for final closure.
- 6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close the facility each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat and dispose of all hazardous waste inventory and of the time required to place a final cover must be included.)
- 7) For facilities that use trust funds to establish financial assurance under Section 724.243 or 724.245 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

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b)c) Amendment of the plan. The owner or operator may amend the closure plan at any time during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.) shall submit a written request for a permit modification to authorize a change in operating plans, facility design or the approved closure plan in accordance with the procedures in 35 Ill. Adm. Code 702, 703 and 705. The written request must include a copy of the amended closure plan for approval by the Agency.

1) The owner or operator may submit a written request to the Agency for a permit modification to amend the closure plan at any time prior to notification of partial or final closure of the facility.

2) The owner or operator must amend the shall submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

A) Changes in operating plans or facility design affect the closure plan, or whenever t

B) There is a change in the expected year of closure, if applicable. When it requests a permit modification to authorize a change in operating plans or facility design, the owner or operator must request a modification of the closure plan at the same time (see 35 Ill. Adm. Code 705:128(a)). If a permit modification is not needed to authorize the change in operating plans or facility design, the request for modification of the closure plan must be made within 60 days after the change in plans or design occurs.

(Board Note: Changes in estimates of maximum inventory and of the estimated year of closure under Section 724-212(a)(2) and (4) may be made as minor permit modifications under 35 Ill. Adm. Code 702:187(e).)

C) In conducting partial or final closure activities, unexpected events require modification of the approved closure plan.

3) The owner or operator shall submit a written

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request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in the facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under Sections 724.328(c)(1)(A) or 724.358(c)(1)(A), shall submit an amended closure plan to the Agency no later than 60 days after the date the owner or operator or Agency determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 724.410, or no later than 30 days after that date if the determination is made during partial or final closure. The Agency shall approve, disapprove or modify this amended plan in accordance with the procedures in 35 Ill. Adm. Code 702, 703 and 705. In accordance with 35 Ill. Adm. Code 702.160 and 703.241, the approved closure plan will become a condition of any RCRA permit issued.

4) The Agency may request modifications to the plan under the conditions described in Section 724.212(c)(2). The owner or operator shall submit the modified plan within 60 days after the Agency's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Agency shall be approved in accordance with the procedures in 35 Ill. Adm. Code 702, 703 and 705.

d) Notification of partial closure and final closure.

1e) The owner or operator ~~must~~ shall notify the Agency in writing at least ~~100~~ 60 days prior to the date ~~it~~ on which the owner or operator expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator shall notify the Agency in writing at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with

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only treatment or storage tanks, container storage, or incinerator units to be closed.

- 2) The date when the owner or operator "expects to begin closure" must be either no later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the Agency that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that the owner and operator have taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Agency shall approve an extension to this one-year limit.
- 3) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under Section 3008 of the Resource Conservation and Recovery Act, or the Environmental Protection Act, to cease receiving hazardous wastes or to close, then the requirements of this subsection do not apply. However, the owner or operator shall close the facility in accordance with the deadlines established in Section 724.213.
- e) Removal of wastes and decontamination or dismantling of equipment. Nothing in this Section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

{Board Note: The date when the owner or operator "expects to begin closure" should be within 30 days after the date it expects to receive the final volume of waste. If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or Board Order under Title VIII of the Illinois Environmental Protection Act, to cease receiving wastes or to close, then the requirement of this paragraph does

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not apply. However, the owner or operator must close the facility in accordance with the deadlines established in Section 724.213.)

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

Section 724.213 Closure; Time Allowed for Closure

- a) All permits shall require that, within 90 days after receiving the final volume of hazardous waste at a hazardous waste management unit or facility, the owner or operator treat, remove from the site unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan, unless the owner or operator makes the following demonstration by way of permit application or modification application. The Agency may shall approve a longer period if the owner or operator demonstrates that:
- 1)
 - A) The activities required to comply with this paragraph subsection will, of necessity, take longer than 90 days to complete; or
 - B)
 - i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and
 - ii) There is a reasonable likelihood that a person other than the owner or operator or another person will recommence operation of the site hazardous waste management unit or facility within one year; and
 - iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and
 - 2) The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

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b) All permits shall require that the owner or operator complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility, unless the owner or operator makes the following demonstration by way of permit application or modification application. The Agency ~~may~~shall approve a longer closure period if the owner or operator demonstrates that:

1)

A) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

B)

i) The hazardous waste management unit or facility has the capacity to receive additional wastes;

ii) There is reasonable likelihood that a person other than the owner or operator or another person will recommence operation of the site hazardous waste management unit or facility within one year; and

iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2) The owner ~~or~~and operator ~~has~~have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but ~~inactive~~not operating hazardous waste management unit or facility including compliance with all applicable permit requirements.

{Board Note: Any extension of the 90 or 180 day period in this Section may be made as a minor modification under 35 Ill. Adm. Code 702.187. Under paragraphs (a)(1)(B) and (b)(1)(B), if operation of the site is recommenced, the Agency may defer completion of closure activities until the new operation is terminated.}

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c) The demonstrations referred to in subsections (a) and (b) shall be made as follows:

- 1) The demonstration in subsection (a) shall be made at least 30 days prior to the expiration of the 90-day period in subsection (a); and
- 2) The demonstration in subsection (b) shall be made at least 30 days prior to the expiration of the 180-day period in subsection (b).

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

Section 724.214 Disposal or Decontamination of Equipment, Structures and Soils

When closure is completed, all facilityDuring the partial and final closure periods, all contaminated equipment, and structures must have been and soils must be properly disposed of, or decontaminated by removing all hazardous waste and residues, unless otherwise specified in Sections 724.328, 724.358, 724.380, or 724.410. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that waste in accordance with all applicable requirements of 35 Ill. Adm. Code 722.

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

Section 724.215 Certification of Closure

When closure is completed, Within 60 days after completion of closure of each hazardous waste surface impoundment, waste pile, land treatment or landfill unit, and within 60 days after completion of final closure, the owner or operator must shall submit to the Agency ,by registered mail, a certification both by the owner or operator and by an independent registered professional engineer that the hazardous waste management unit or facility, as applicable, facility has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for closure under Section 724.243(i).

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

Section 724.216 Survey Plat

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to any local zoning authority, or authority with jurisdiction over local land use, and to the Agency, and record with land titles, a survey plat indicating the location and dimensions of landfills cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's and operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subpart G. regulations.

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

Section 724.217 Post-closure Care and Use of Property

a)

- 1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections 724.217 through 724.220 must begin after completion of closure of the unit and continue for 30 years after the date of completing closure that date and must consist of at least the following:
 - A) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M and N; and
 - B) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M and N.
- 2) Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure care period for a particular unit,
 - A) During the 180-day period preceding closure (see

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Section 724.212(c) or at any time thereafter, the Board will: reduce

- A) Shorten the post-closure care period to less than 30 years if the it applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Board finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology or alternative disposal, treatment or re-use techniques indicate that the hazardous waste management unit or facility is secure); or
- B) Prior to the time that the post-closure care period is due to expire, the Board will
Extend the post-closure care period if it applicable to the hazardous waste management unit or facility if the Board finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).
- C) Reduction or extension of the post-closure care period will be by rulemaking pursuant to 35 Ill. Adm. Code 102.
- b) The Agency may shall require, at partial or final closure, continuation of any of the security requirements of Section 724.114 during part or all of the post-closure period after the date of completing closure when:
- 1) Hazardous wWastes may remain exposed after completion of partial or final closure; or
 - 2) Access by the public or domestic livestock may pose a hazard to human health.
- c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s) or any other components of any the containment system, or the function of the facility's monitoring

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systems, unless the Agency finds, by way of a permit modification, that the disturbance:

- 1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or
 - 2) Is necessary to reduce a threat to human health or the environment.
- d) All the post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in Section 724.218.

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

Section 724.218 Post-closure Plan; Amendment of Plan

- a) Written Plan. The owner or operator of a hazardous waste disposal facility must unit shall have a written post-closure plan. In addition, certain surface impoundments and waste piles and certain surface impoundments from which the owner or operator intends to remove the or decontaminate the hazardous wastes at partial or final closure are required by Sections 724.328 (c)(1)(B) and 724.358 (c)(1)(B) to have contingent) post-closure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under Sections 724.328(c)(1)(B) or 724.358(c)(1)(B) shall submit a post-closure plan to the Agency within 90 days from the date that the owner or operator or Agency determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Sections 724.217 through 724.220. The plan must be submitted with the permit application, in accordance with 35 Ill. Adm. Code 703.183, and approved by the Agency as part of the permit issuance proceeding under 35 Ill. Adm. Code 705. In accordance with 35 Ill. Adm. Code 703.241, the approved post-closure plan will become a condition of any RCRA permit issued. A copy of the approved plan and all revisions to the plan must be kept at the facility until the post-closure care period begins. This
- b) For each hazardous waste management unit subject to the requirements of this Section, the post-closure plan must

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identify the activities that will be carried on after closure and the frequency of these activities, and include at least:

- 1) A description of the planned monitoring activities and frequencies which they will be performed to comply with Subparts F, K, L, M and N during the post-closure care period;
 - 2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:
 - A) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M and N; and
 - B) The function of the ~~facility~~ monitoring equipment in accordance with the requirements of Subparts F, K, L, M and N; and
 - 3) The name, address and phone number of the person or office to contact about the hazardous disposal facility during the post-closure period. ~~This person or office must keep an updated post-closure plan during the post-closure period.~~
- c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Agency upon request, including request by mail. After final closure has been certified, the person or office specified in subsection (b)(3) shall keep the approved post-closure plan during the remainder of the post-closure period.
- d) Amendment of plan. The owner or operator shall request a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of 35 Ill. Adm. Code 703 and 705. The written request must include a copy of the amended post-closure plan for approval by the Agency.
- b) 1) The owner or operator may submit a written request to the Agency for a permit modification to amend the post-closure plan at any time during the active life of the ~~disposal~~ facility or during the post-closure care period.

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- 2) The owner or operator ~~must~~ shall submit a written request for a permit modification to authorize a change in the approved post-closure ~~amend~~ the plan whenever
- A) ~~C~~ changes in operating plans or facility design, or events which occur during the active life of the facility or during the post-closure period, affect the post-closure plan; ~~or~~ The owner or operator must also amend the plan whenever
- B) ~~T~~ there is a change in the expected year of closure ~~if applicable; or~~
- C) ~~E~~vents occur during the active life of the facility, including partial and final closures, which affect the approved post-closure plan.
- 3) The owner or operator shall submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under Sections 724.328(c)(1)(B) or 724.358(c)(1)(B) shall submit a post-closure plan to the Agency no later than 90 days after the date that the owner or operator or Agency determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of Section 724.410. The Agency shall approve, disapprove or modify this plan in accordance with the procedure in 35 Ill. Adm. Code 703 and 705. In accordance with 35 Ill. Adm. Code 703.241, the approved post-closure plan will become a permit condition.
- 4) The Agency may request modifications to the plan under the conditions described in subsection (d)(2). The owner or operator shall submit the modified plan no later than 60 days after the request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure

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plan. Any modifications requested by the Agency shall be approved, disapproved or modified in accordance with the procedure in 35 Ill. Adm. Code 703 and 705.

- e) When a permit modification is requested during the active life of the facility to authorize a change in operating plans or facility design, modification of the post-closure plan must be requested at the same time (see 35 Ill. Adm. Code 705-128). In all other cases, the request for modification of the post-closure plan must be made within 60 days after the change in operating plans or facility design or the events which affect the post-closure plan occur.

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

Section 724.219 Post-Closure Notices Notice to Local Land Authority

- a) No later than 60 days after certification of closure of each hazardous waste disposal unit, Within 90 days after closure is completed, the owner or operator of a disposal facility must shall submit to the Agency, to the County Recorder and to any local zoning authority or authority with jurisdiction over local land use, a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the County Recorder and any local zoning authority must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in Section 724.217(c). In addition, the owner or operator must submit to the Agency, the County Recorder and any local zoning authority a record of the type, location and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location and quantity of the wastes to the best of its knowledge and in accordance with any record that it has kept. Any changes in the type, location or quantity of hazardous wastes disposed of within each cell or area of the facility that occur after the survey plat and record of wastes have been filed must be reported to the

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same agencies the plat and record were filed with a record of the type, location and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location and quantity of the hazardous waste to the best of the owner or operator's knowledge and in accordance with any records the owner or operator has kept.

- b) Within 60 days after certification of closure of the first hazardous waste disposal unit and within 60 days after certification of closure of the last hazardous waste disposal unit, the owner or operator shall:
- 1) Record a notation on the deed to the facility property -- or on some other instrument which is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:
 - A) The land has been used to manage hazardous wastes; and
 - B) Its use is restricted under this Subpart; and
 - C) The survey plat and record of the type, location and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by subsection (a) and Section 724.116 have been filed with the Agency, the County Recorder and any local zoning authority or authority with jurisdiction over local land use; and
 - 2) Submit a certification, signed by the owner or operator, that the owner or operator has recorded the notation specified in subsection (b)(1), including a copy of the document in which the notation has been placed, to the Agency.
- c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, such person shall request a modification to the post-closure plan in accordance with the applicable requirements in 35 Ill. Adm. Code 703 and

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705. The owner and operator shall demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 724.217(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 703 and 720 through 726. If the owner or operator is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Agency approve either:

- 1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or
- 2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

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

Section 724.220 Notice in Deed to Property Certification of Completion of Post-Closure Care

- a) The owner of the property on which a disposal facility is located must record, in accordance with Illinois law, a notation on the deed to the facility property -- or on some other instrument which is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:
 - 1) The land has been used to manage hazardous wastes;
 - 2) Its use is restricted under Section 724.217(c);
 - 3) The survey plat and record of the type, location and quantity of hazardous wastes disposed of within each cell or area of the facility required in Section 725.219 have been filed with the Agency, the County Recorder and any local zoning authority.
- b) If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, the owner or operator may remove the notation on the deed to the facility property or other

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instrument normally examined during title search, or may add a notation to the deed or instrument indicating the removal of the waste.

(Board Note: On removing the waste and waste residues, the liner, if any, and the contaminated soil, the owner or operator, unless it can demonstrate in accordance with 35 Ill. Adm. Code 721.103(d) that any solid waste removed is not a hazardous waste, becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 722 through 725.)

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Agency, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for post-closure care under Section 724.245(i).

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

SUBPART H: FINANCIAL REQUIREMENTS

Section 724.241 Definitions of Terms As Used In This Subpart

- a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 724.212.
- b) "Current closure cost estimate" means that the most recent of the estimates prepared in accordance with Sections 724.242(a), (b) and (c).
- c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with Sections 724.244(a), (b) and (c).
- d) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the

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parent corporation.

- e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of Sections 724.217 through 724.220.
- f) The following terms are used in the specifications for the financial test for closure, post-closure care and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"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 which 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.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 35 Ill. Adm. Code 704.212(a), (b) and (c).

"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.

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

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

- g) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The Board intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

"Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

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

Section 724.242 Cost Estimate for Closure

- a) The owner or operator ~~must~~shall have a detailed written estimate, in current dollars, of the cost of closing the

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facility in accordance with the requirements in Sections 724.211 through 724.215 and applicable closure requirements in Sections 724.278, 724.297, 724.328, 724.358, 724.380, 724.410 and 724.451.

- 1) The estimate must equal the cost of final closure at the point in the facility's operating active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see Section 724.212(a)-(b)); and
 - 2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in Section 724.241(d)). The owner or operator may use costs for on-site disposal if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.
 - 3) The closure cost estimate must not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land or other assets associated with the facility at the time of partial or final closure.
 - 4) The owner or operator shall not incorporate a zero cost for hazardous wastes that might have economic value.
- b) During the active life of the facility, the owner or operator must shall adjust the closure cost estimate for inflation within 30 days after each anniversary of the date on which the first closure cost estimate was prepared, 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section 724.243. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency as specified in Section 724.243(f)(3). The adjustment must be made as specified in paragraphs (b)(1) and (b)(2) may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published

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by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

- 1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.
- 2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.
- c) During the active life of the facility the owner or operator must shall revise the closure cost estimate whenever and no later than 30 days after the Agency has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in Section 724.242(b).
- d) The owner or operator must shall keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with Sections 724.242(a) and (c) and, when this estimate has been adjusted in accordance with Section 724.242(b), the latest adjusted closure cost estimate.

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

Section 724.243 Financial Assurance For Closure

An owner or operator of each facility must shall establish financial assurance for closure of the facility. ~~It must~~ The owner or operator shall choose from the options as specified in paragraph subsections (a) through (f).

- a) Closure trust fund.
 - 1) An owner or operator may satisfy the requirements of this ~~s~~Section by establishing a closure trust fund which conforms to the requirements of this paragraph and submitting an originally original, signed duplicate of the trust agreement to the

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Agency. An owner or operator of a new facility ~~must~~shall submit the ~~originally~~original, signed duplicate of the trust agreement to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

- 2) The wording of the trust agreement must be identical to the wording specified in 40 CFR 264.151(a)(1) (incorporated by reference in Section 724.251) and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 40 CFR 264.151(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

- 3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:

- A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for treatment, storage or disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Agency before this initial receipt of hazardous waste. The first payment must be at least equal to the current closure cost estimate, except as provided in ~~paragraph~~ subsection (g), divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = (\text{CE} - \text{CV}) / Y$$

where CE is the current closure cost estimate,

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CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- B) If an owner or operator establishes a trust fund as specified in 35 Ill. Adm. Code 725.243(a) and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in paragraph subsection (a)(3). Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to 35 Ill. Adm. Code 725. The amount of each payment must be determined by this formula:

$$\text{Next payment} = (\text{CE} - \text{CV}) / \text{Y}$$

where CE is the current closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- 4) The owner or operator may accelerate payments into the trust fund or ~~it~~ may deposit the full amount of the current closure cost estimate at the time the fund is established. However, ~~it must~~ the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph subsection (a)(3).
- 5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this ~~Section~~ or in 35 Ill. Adm. Code 725.243, its first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph and 35 Ill. Adm. Code 725.243, as applicable.
- 6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator ~~must~~ shall compare the new estimate with the trustee's most recent annual valuation of the

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trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, ~~must~~shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this ~~s~~Section to cover the difference.

- 7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate.
- 8) If an owner or operator substitutes other financial assurance as specified in this ~~s~~Section for all or part of the trust fund, it may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate covered by the trust fund.
- 9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in ~~paragraph~~ subsections (a)(7) or (8), the Agency ~~will~~shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.
- 10) After beginning partial or final closure, an owner or operator or ~~any other~~another person authorized to ~~perform~~conduct partial or final closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Agency ~~shall~~will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, it will instruct the trustee to make reimbursement in ~~such~~those amounts as the Agency specifies in writing. if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise

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justified. If the Agency has reason to believe determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it may shall withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with paragraph subsection (i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

- 11) The Agency ~~will~~shall agree to termination of the trust when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this sSection; or
 - B) The Agency releases the owner or operator from the requirements of this sSection in accordance with paragraph subsection (i).
- b) Surety bond guaranteeing payment into a closure trust fund.
 - 1) An owner or operator may satisfy the requirements of this sSection by obtaining a surety bond which conforms to the requirements of this paragraph subsection and submitting the bond to the Agency. An owner or operator of a new facility must shall submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.
 - 2) The wording of the surety bond must be identical to the wording specified in 40 CFR 264.151(b) (incorporated by reference in Section 724.251).
 - 3) The owner or operator who uses a surety bond to satisfy the requirements of this sSection must shall also establish a standby trust fund. Under the

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terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in paragraph subsection (a) except that:

- A) An ~~originally~~original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and
- B) Until the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in paragraph subsection (a):
 - ii) Updaging of Schedule A of the trust agreement (see 40 CFR 264.251(a)) to show current closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator will:
 - A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or
 - B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or
 - C) Provide alternate financial assurance as specified in this ~~s~~Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

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- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
 - 6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except as provided in paragraph subsection (g).
 - 7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, mustshall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Agency.
 - 8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidence by the return receipts.
 - 9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this Section.
- c) Surety bond guaranteeing performance of closure.
- 1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Agency. An owner or operator of a new facility mustshall submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must,

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at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

- 2) The wording of the surety bond must be identical to the wording specified in 40 CFR 264.151(c) (incorporated by reference in Section 724.251).
- 3) The owner or operator who uses a surety bond to satisfy the requirements of this ~~s~~Section must ~~shall~~ also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust must meet the requirements specified in paragraph subsection (a), except that:
 - A) An ~~originally~~original, signed duplicated of the trust agreement must be submitted to the Agency with the surety bond; and
 - B) Unless the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in paragraph subsection (a);
 - ii) Updating of Schedule A of the trust agreement (see 40 CFR 264.151(a)) (incorporated by reference in Section 724.251) to show current closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator will:
 - A) Perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

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- B) Provide alternate financial assurance as specified in this sSection, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.
- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.
- 6) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate.
- 7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, mustshall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this sSection. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Agency.
- 8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
- 9) The owner or operator may cancel the bond if the

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Agency has given prior written consent. The Agency ~~will~~shall provide such written consent when:

- A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with ~~paragraph~~ subsection (i).
- 10) The surety ~~will~~shall 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 ~~s~~Section in accordance with ~~paragraph~~ subsection (i).
- d) Closure letter of credit.
- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Agency. An owner or operator of a new facility ~~must~~shall submit the letter of credit to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.
 - 2) The wording of the letter of credit must be identical to the wording specified in 40 CFR 264.151(d) (incorporated by reference in Section 724.251).
 - 3) An owner or operator who uses a letter of credit to satisfy the requirements of this ~~s~~Section ~~must~~shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in

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paragraph subsection (a), except that:

- A) An ~~originally~~original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and
- B) Unless the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations.
 - i) Payments into the trust fund as specified in paragraph subsection (a);
 - ii) Updating of Schedule A of the trust agreement (see 40 CFR 264.151(a)) (incorporated by reference in Section 724.251) to show current closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the EPA Identification Number, name and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.
- 5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.
- 6) The letter of credit must be issued in an amount at

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least equal to the current closure cost estimate, except as provided in ~~paragraph~~ subsection (g).

- 7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, ~~must~~shall either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this ~~s~~Section to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Agency.
- 8) Following a final determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Agency may draw on the letter of credit.
- 9) If the owner or operator does not establish alternate financial assurance as specified in this ~~s~~Section and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency ~~wi~~ll~~l~~l draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency ~~wi~~ll~~l~~l draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this ~~s~~Section and obtain written approval of such assurance from the Agency.
- 10) The Agency ~~wi~~ll~~l~~l return the letter of credit to the issuing institution for termination when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this

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sSection; or

- B) The Agency releases the owner or operator from the requirements of this sSection in accordance with paragraph subsection (i).
- e) Closure insurance.
- 1) An owner or operator may satisfy the requirements of this sSection by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Agency. An owner or operator of a new facility ~~must~~shall submit the certificate of insurance to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.
 - 2) The wording of the certificate of insurance must be identical to the wording specified in 40 CFR 264.151(e) (incorporated by reference in Section 724.251).
 - 3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in paragraph subsection (g). 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.
 - 4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that, once final 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.
 - 5) After beginning partial or final closure, an owner or operator or any other person authorized to

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~~perform~~conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Agency ~~shall~~will ~~determine whether the closure expenditures are in accordance with the closure plan or otherwise justified,~~ and if so, ~~will~~ instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing, if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Agency ~~has reason to believe~~ determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, it ~~may~~shall withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with paragraph subsection (i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the insurer to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

- 6) The owner or operator ~~must~~shall maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in paragraph subsection (e)(10). Failure to pay the premium, without substitution of alternate financial assurance as specified in this ~~s~~Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- 7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon

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consent of the insurer, provided such consent is not unreasonably refused.

- 8) 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:
- A) The Agency deems the facility abandoned; or
 - B) The permit is terminated or revoked or a new permit is denied; or
 - C) Closure is ordered by the Board or a U.S. district court or other court of competent jurisdiction; or
 - D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy); or
 - E) The premium due is paid.
- 9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, ~~must~~shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this ~~s~~Section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by

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the Agency.

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

A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or

B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with ~~paragraph~~ subsection (i).

f) Financial test and corporate guarantee for closure.

1) An owner or operator may satisfy the requirements of this ~~s~~Section by demonstrating that it passes a financial test as specified in this paragraph. To pass this test the owner or operator ~~must~~shall meet the criteria of either ~~paragraph~~ subsection (f)(1)(A) or (f)(1)(B):

A) The owner or operator ~~must~~shall have:

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

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates, and the current plugging and abandonment cost estimates; 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 sum of the current closure and post closure cost estimates and the current plugging and abandonment cost estimates.

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- B) The owner or operator ~~must~~shall have:
- i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
 - ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates, and the current plugging and abandonment cost estimates; 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 sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.
- 2) The phrase "current closure and post-closure cost estimates" as used in paragraph subsection (f)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 264.151(f)) (incorporated by reference in Section 724.251). The phrase "current plugging and abandonment cost estimates" as used in subsection (f)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)), incorporated by reference in 35 Ill. Adm. Code 704.240).
- 3) To demonstrate that it meets this test, the owner or operator ~~must~~shall submit the following items to the Agency:
- A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 40 CFR 264.151(f) (incorporated by reference in Section 724.251) ; and
 - B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for

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the latest completed fiscal year; and

- C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
- i) ~~He~~The accountant has compared the data which 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 ~~his~~the accountant's attention which caused ~~him~~the accountant to believe that the specified data should be adjusted.
- 4) An owner or operator of a new facility ~~must~~shall submit the items specified in paragraph subsection (f)(3) to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal.
- 5) After the initial submission of items specified in paragraph subsection (f)(3), the owner or operator ~~must~~shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph subsection (f)(3).
- 6) If the owner or operator no longer meets the requirements of paragraph subsection (f)(1) ~~it~~the owner or operator shall send notice to the Agency of intent to establish alternate financial assurance as specified in this ~~s~~Section. 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 owner or operator no longer meets the requirements. The owner or operator ~~must~~shall provide the alternate financial assurance within 120 days after the end of such fiscal year.
- 7) The Agency may, based on a reasonable belief that

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the owner or operator may no longer meet the requirements of paragraph subsection (f)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph subsection (f)(3). If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph subsection (f)(1), the owner or operator ~~must~~shall provide alternate financial assurance as specified in this ~~s~~Section within 30 days after notification of such a finding.

- 8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in ~~his~~ the accountant's report on examination of the owner's or operator's financial statements (see paragraph subsection (f)(3)(B)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency ~~will~~shall evaluate other qualifications on an individual basis. The owner or operator ~~must~~shall provide alternate financial assurance as specified in this ~~s~~Section within 30 days after notification of the disallowance.
- 9) The owner or operator is no longer required to submit the items specified in paragraph subsection (f)(3) when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with paragraph subsection (i).
- 10) An owner or operator may meet the requirements of this ~~s~~Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor ~~must~~shall be the parent corporation of the owner or operator. The guarantor ~~must~~shall meet the requirements for owners or operators in paragraph subsections (f)(1) through (f)(8), ~~must~~shall comply with the terms of the corporate guarantee and the wording of the corporate guarantee must be identical to the wording

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specified in 40 CFR 264.151(h) (incorporated by reference in Section 724.251) . The corporate guarantee must accompany the items sent to the Agency as specified in paragraph subsection (f)(3). The terms of the corporate guarantee must provide that:

- A) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in paragraph subsection (a) in the name of the owner or operator.
- B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
- C) If the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.
- g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit and insurance. The mechanisms must be as specified in paragraph subsections (a), (b), (d) and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety

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bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.

- h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this ~~s~~Section to meet the requirements of this ~~s~~Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the EPA Identification Number, name, address and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to close all of the owner or operator's facilities. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.
- i) Release of the owner or operator from the requirements of this Section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been accomplished in accordance with the approved closure plan, the Agency ~~will~~shall notify the owner or operator in writing that it is no longer required by this ~~s~~Section to maintain financial assurance for closure of the ~~particular~~ facility, unless the Agency ~~has reason to believe~~ determines that closure has not been in accordance with the approved closure plan. The Agency shall provide the owner or operator a detailed written statement of any such determination that closure has not been in accordance with the approved closure plan.
- j) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board [35 Ill. Adm. Code 702.184(e)(3)]:
- 1) An increase in, or a refusal to decrease the amount

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of, a bond, letter of credit or insurance;

- 2) Requiring alternate assurance upon a finding that an owner or operator, or parent corporation, no longer meets a financial test.

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

Section 724.244 Cost Estimate for Post-closure Care

- a) The owner or operator of a facility subject to post-closure monitoring or maintenance requirements must disposal surface impoundment, land treatment or landfill unit, or of a surface impoundment or waste pile required under Sections 724.328 or 724.358 to prepare a contingent closure and post-closure plan shall have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Sections 724.217 through 724.220, 724.328, 724.358, 724.380 and 724.410.
 - 1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in Section 724.241(d)).
 - 2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under ~~Subpart 6~~Section 724.217.
- b) During the operatingactive life of the facility, the owner or operator mustshall adjust the post-closure cost estimate for inflation within 30 days after each anniversary of the date on which the first post-closure cost estimate was prepared, 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section 724.245. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Agency as specified in

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Section 724.245(f)(5). The adjustment ~~must be made as specified in paragraphs (b)(1) and (b)(2)~~ may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

- 1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.
- 2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.
- c) During the active life of the facility ~~the owner or operator must~~ shall revise the post-closure cost estimate during the operating life of the facility whenever a within 30 days after the Agency has approved a request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in Section 724.244(b).
- d) The owner or operator ~~must~~ shall keep the following at the facility during the operating life of the facility: The latest post-closure cost estimate prepared in accordance with Section 724.244(a) and (c) and, when this estimate has been adjusted in accordance with Section 724.244(b), the latest adjusted post-closure cost estimate.

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

Section 724.245 Financial Assurance For Post-closure Care

An owner or operator of a facility subject to post-closure monitoring or maintenance requirements must hazardous waste management unit subject to the requirements of Section 724.244 shall establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility

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60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall ~~it~~ must choose from the following options:

a) Post-closure trust fund.

- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by establishing a post-closure trust fund which conforms to the requirements of this paragraph and submitting an ~~originally~~original, signed duplicate of the trust agreement to the Agency. An owner or operator of a new facility ~~must~~shall submit the ~~originally~~original, signed duplicate of the trust agreement to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.
- 2) The wording of the trust agreement must be identical to the wording specified in 40 CFR 264.151(a)(1) (incorporated by reference in Section 724.251) and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 40 CFR 264.151(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.
- 3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund must be made as follows:
 - A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Agency before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as

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provided in paragraph subsection (g), divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = (CE - CV) / Y$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- B) If an owner or operator establishes a trust fund as specified in 35 Ill. Adm. Code 725.245(a) and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in paragraph subsection (a)(3). Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to 35 Ill. Adm. Code 725. The amount of each payment must be determined by this formula:

$$\text{Next payment} = (CE - CV) / Y$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- 4) The owner or operator may accelerate payments into the trust fund or ~~it may deposit the full amount of the current post-closure cost estimate at the time the fund is established.~~ However, it must the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph subsection (a)(3).
- 5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this ~~s~~Section or in 35 Ill. Adm. Code 725.245, its first payment must be in at

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least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph and 35 Ill. Adm. Code 725.245, as applicable.

- 6) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator ~~must~~shall compare the new estimate with the trustee's ~~most~~ recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, ~~must~~shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this ~~s~~Section to cover the difference.
- 7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate.
- 8) If an owner or operator substitutes other financial assurance as specified in this ~~s~~Section for all or part of the trust fund, it may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.
- 9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in ~~paragraph subsections~~ (a)(7) or (8), the Agency ~~will~~shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.
- 10) During the period of post-closure care, the Agency ~~may~~shall approve a release of funds if the owner or operator demonstrates to the Agency that the value of the trust fund exceeds the remaining cost of post-closure care.
- 11) An owner or operator or any other person authorized

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to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency ~~will determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified,~~ and ~~if so, it will~~ shall instruct the trustee to make reimbursement ~~in such~~ those amounts as the Agency specifies in writing if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the trustee to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

- 12) The Agency ~~will~~ shall agree to termination of the trust when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with paragraph subsection (i).
- b) Surety bond guaranteeing payment into a post-closure trust fund.
 - 1) An owner or operator may satisfy the requirements of this ~~s~~Section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Agency. An owner or operator of a new facility ~~must~~ shall submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.
 - 2) The wording of the surety bond must be identical to the wording specified in 40 CFR 264.151(b) as specified in Section 724.251.

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- 3) The owner or operator who uses a surety bond to satisfy the requirements of this ~~s~~Section must shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in paragraph subsection (a), except that:
- A) An ~~originally~~original, signed duplicate of the trust agreement ~~must~~ be submitted to the Agency with the surety bond; and
 - B) Until the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in paragraph subsection (a);
 - ii) Updating of Schedule A of the trust agreement (~~see 40 CFR 264.151(a)~~as specified in Section 724.251) to show current post-closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator will:
- A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or
 - B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or
 - C) Provide alternate financial assurance as specified in this ~~s~~Section, and obtain the Agency's written approval of the assurance

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provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
 - 6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in paragraph subsection (g).
 - 7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, ~~must~~shall either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this ~~s~~Section to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.
 - 8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidence by the return receipts.
 - 9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this ~~s~~Section.
- c) Surety bond guaranteeing performance of post-closure care.
- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by obtaining a surety bond which conforms to the requirements of this paragraph and

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submitting the bond to the Agency. An owner or operator of a new facility ~~must~~shall submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

- 2) The wording of the surety bond must be ~~identical to the wording specified in 40 CFR 264.151(c)~~as specified in Section 724.251.
- 3) The owner or operator who uses a surety bond to satisfy the requirements of this ~~s~~Section must~~shall~~ also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust must meet the requirements specified in paragraph subsection (a), except that:
 - A) An ~~originally~~original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and
 - B) Unless the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in paragraph subsection (a);
 - ii) Updating of Schedule A of the trust agreement (~~see 40 CFR 264.151(a)~~as specified in Section 724.251) to show current post-closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator

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will:

- A) Perform final post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or
 - B) Provide alternate financial assurance as specified in this ~~s~~Section, and obtain the Agency's written approval of the assurance provided, within 90 days of receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.
- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.
- 6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.
- 7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, ~~must~~shall either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this ~~s~~Section. Whenever the current closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

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- 8) During the period of post-closure care, the Agency ~~may~~shall approve a decrease in the penal sum if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.
 - 9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
 - 10) The owner or operator may cancel the bond if the Agency has given prior written consent. The Agency ~~will~~ shall provide such written consent when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with ~~paragraph subsection~~ (i).
 - 11) The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with ~~paragraph subsection~~ (i).
- d) Post-closure letter of credit.
- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Agency. An owner or operator of a new facility ~~must~~shall submit the items specified in ~~paragraph subsection~~ (f)(3) to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution ~~must~~shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal

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or State agency.

- 2) The wording of the letter of credit must be ~~identical to the wording specified in 40 CFR 264.151(d)~~ as specified in Section 724.251.
- 3) An owner or operator who uses a letter of credit to satisfy the requirements of this ~~s~~Section must~~shall~~ also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in paragraph subsection (a), except that:
 - A) An ~~originally~~original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and
 - B) Unless the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in paragraph subsection (a);
 - ii) Updating of Schedule A of the trust agreement (~~see 40 CFR 264.151(a)~~ as specified in Section 724.251) to show current post-closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the EPA Identification Number, name and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

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- 5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.
- 6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in paragraph subsection (g).
- 7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, ~~must~~shall either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this ~~s~~Section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.
- 8) During the period of post-closure care, the Agency ~~may~~shall approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.
- 9) Following a determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the Agency may draw on the letter of credit.

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- 10) If the owner or operator does not establish alternate financial assurance as specified in this ~~s~~Section and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency ~~will~~shall draw on the letter of credit. The Agency may ~~delay~~ the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency ~~will~~shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this ~~s~~Section and obtain written approval of such assurance from the Agency.
- 11) The Agency ~~will~~shall return the letter of credit to the issuing institution for termination when:
- A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
- B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with paragraph subsection (i).
- e) Post-closure insurance.
- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Agency. An owner or operator of a new facility ~~must~~shall submit the certificate of insurance to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer ~~must~~shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.
- 2) The wording of the certificate of insurance must be ~~identical to the wording specified in 40 CFR 264.151(e)~~as specified in Section 724.251.

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- 3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure estimate, except as provided in paragraph subsection (g). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer's will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- 4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of facility whenever the post-closure period begins. The policy must also guarantee that, once post-closure care 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.
- 5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency will determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, will shall instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the insurer to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.
- 6) The owner or operator ~~must~~ shall maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in paragraph subsection (e)(11). Failure to pay the premium, without substitution of alternate financial assurance as specified in this ~~s~~Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by

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the Agency of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

- 7) 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.
- 8) 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:
 - A) The Agency deems the facility abandoned; or
 - B) The permit is terminated or revoked or a new permit is denied; or
 - C) Closure is ordered by the Board or a U. S. district court or other court of competent jurisdiction; or
 - D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy); or
 - E) The premium due is paid.
- 9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days

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after the increase, ~~must~~shall either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this ~~s~~Section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

- 10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer ~~will~~ shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.
 - 11) The Agency ~~will~~shall give written consent to the owner or operator that ~~it~~the owner or operator may terminate the insurance policy when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with ~~paragraph~~ subsection (i).
- f) Financial test and corporate guarantee for post-closure care.
- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by demonstrating that it passes a financial test as specified in this paragraph. To pass this test the owner or operator ~~must~~shall meet the criteria of either ~~paragraph~~ subsection (f)(1)(A) or (f)(1)(B):
 - A) The owner or operator ~~must~~shall have:
 - i) Two of the following three ratios: a ratio of total liabilities to net worth

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less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and
- iii) Tangible net worth of at least \$10 million; and
- iv) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

B) The owner or operator ~~must~~shall have:

- i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; 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 sum of the current closure and post-closure estimates and the current plugging and abandonment cost estimates.

- 2) The phrase "current closure and post-closure cost estimates" as used in paragraph subsection (f)(1) refers to the cost estimates required to be shown

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in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 264.151(f)) (incorporated by reference in Section 724.251). The phrases "current plugging and abandonment cost estimates" as used in subsection (f)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f), incorporated by reference in 35 Ill. Adm. Code 704.240.

- 3) To demonstrate that it meets this test, the owner or operator ~~must~~shall submit the following items to the Agency:
- A) A letter signed by the owner's or operator's chief financial officer and worded as specified in ~~40 CFR 264.151(f)~~Section 724.251; and
 - B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
 - C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - i) ~~He~~The accountant has compared the data which 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 ~~his~~the accountant's attention which caused ~~him~~the accountant to believe that the specified data should be adjusted.
- 4) An owner or operator of a new facility ~~must~~shall submit the items specified in ~~paragraph~~subsection (f)(3) to the Agency at least 60 days before the date on which hazardous waste is first received for disposal.

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- 5) After the initial submission of items specified in paragraph subsection (f)(3), the owner or operator ~~must~~shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph subsection (f)(3).
- 6) If the owner or operator no longer meets the requirements of paragraph subsection (f)(1), ~~it~~ the owner or operator shall send notice to the Agency of intent to establish alternate financial assurance as specified in this ~~s~~Section. 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 owner or operator no longer meets the requirements. The owner or operator ~~must~~shall provide the alternate financial assurance within 120 days after the end of such fiscal year.
- 7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph subsection (f)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph subsection (f)(3). If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph subsection (f)(1), the owner or operator ~~must~~shall provide alternate financial assurance as specified in this ~~s~~Section within 30 days after notification of such a finding.
- 8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in ~~his~~ the accountant's report on examination of the owner's or operator's financial statements (see paragraph subsection (f)(3)(B)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency ~~will~~shall evaluate other qualifications on an individual basis. The owner or operator ~~must~~shall provide alternate financial assurance as specified in this ~~s~~Section within 30 days after notification of the disallowance.

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- 9) During the period of post-closure care, the Agency ~~may~~shall approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Agency that the amount of the cost estimate exceeds the remaining cost of post-closure care.
- 10) The owner or operator is no longer required to submit the items specified in paragraph subsection (f)(3) when:
- A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with paragraph subsection (i).
- 11) An owner or operator may meet the requirements of this ~~s~~Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor ~~must~~shall be the parent corporation of the owner or operator. The guarantor ~~must~~shall meet the requirements for owners or operators in paragraph subsections (f)(1) through (f)(9), ~~must and shall~~ comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be ~~identical to the wording specified in 40 CFR 264.151(h)~~as specified in Section 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in paragraph subsection (f)(3). The terms of the corporate guarantee must provide that:
- A) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in paragraph subsection (a) in the name of the owner or operator.
 - B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may

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not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

- C) If the owner or operator fails to provide alternate financial assurance as specified in this sSection and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.
- g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this sSection by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit and insurance. The mechanisms must be as specified in paragraph subsections (a), (b), (d) and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for post-closure care of the facility.
- h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this sSection to meet the requirements of this sSection for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the EPA Identification Number, name, address and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be

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of, a bond, letter of credit or insurance;

- 2) Requiring alternate assurance upon a finding that an owner or operator, or parent corporation, no longer meets a financial test.

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

Section 724.244 Cost Estimate for Post-closure Care

- a) The owner or operator of a facility subject to post-closure monitoring or maintenance requirements must disposal surface impoundment, land treatment or landfill unit, or of a surface impoundment or waste pile required under Sections 724.328 or 724.358 to prepare a contingent closure and post-closure plan shall have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Sections 724.217 through 724.220, 724.328, 724.358, 724.380 and 724.410.
 - 1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in Section 724.241(d)).
 - 2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under ~~Subpart G~~ Section 724.217.
- b) During the ~~operating~~active life of the facility, the owner or operator ~~must~~shall adjust the post-closure cost estimate for inflation within 30 days after each anniversary of the date on which the first post-closure cost estimate was prepared, 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section 724.245. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Agency as specified in

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Section 724.245(f)(5). The adjustment must be made as specified in paragraphs (b)(1) and (b)(2) may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

- 1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.
- 2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.
- c) During the active life of the facility the owner or operator must shall revise the post-closure cost estimate during the operating life of the facility whenever a within 30 days after the Agency has approved a request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in Section 724.244(b).
- d) The owner or operator must shall keep the following at the facility during the operating life of the facility: The latest post-closure cost estimate prepared in accordance with Section 724.244(a) and (c) and, when this estimate has been adjusted in accordance with Section 724.244(b), the latest adjusted post-closure cost estimate.

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

Section 724.245 Financial Assurance For Post-closure Care

An owner or operator of a facility subject to post-closure monitoring or maintenance requirements must hazardous waste management unit subject to the requirements of Section 724.244 shall establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility

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60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. The owner or operator shall~~it must~~ choose from the following options:

- a) Post-closure trust fund.
 - 1) An owner or operator may satisfy the requirements of this ~~s~~Section by establishing a post-closure trust fund which conforms to the requirements of this paragraph and submitting an ~~originally~~original, signed duplicate of the trust agreement to the Agency. An owner or operator of a new facility ~~must~~shall submit the ~~originally~~original, signed duplicate of the trust agreement to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.
 - 2) The wording of the trust agreement must be identical to the wording specified in 40 CFR 264.151(a)(1) (incorporated by reference in Section 724.251) and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see 40 CFR 264.151(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.
 - 3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund must be made as follows:
 - A) For a new facility, the first payment must be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment must be submitted by the owner or operator to the Agency before this initial receipt of hazardous waste. The first payment must be at least equal to the current post-closure cost estimate, except as

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provided in paragraph subsection (g), divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = (\text{CE} - \text{CV}) / \text{Y}$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- B) If an owner or operator establishes a trust fund as specified in 35 Ill. Adm. Code 725.245(a) and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in paragraph subsection (a)(3). Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to 35 Ill. Adm. Code 725. The amount of each payment must be determined by this formula:

$$\text{Next payment} = (\text{CE} - \text{CV}) / \text{Y}$$

where CE is the current post-closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

- 4) The owner or operator may accelerate payments into the trust fund or ~~it may deposit the full amount of the current post-closure cost estimate at the time the fund is established.~~ However, it must the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph subsection (a)(3).
- 5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this ~~s~~Section or in 35 Ill. Adm. Code 725.245, its first payment must be in at

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least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph and 35 Ill. Adm. Code 725.245, as applicable.

- 6) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator ~~must~~shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, ~~must~~shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this ~~s~~Section to cover the difference.
- 7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate.
- 8) If an owner or operator substitutes other financial assurance as specified in this ~~s~~Section for all or part of the trust fund, it may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.
- 9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in ~~paragraph subsections~~ (a)(7) or (8), the Agency ~~will~~shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.
- 10) During the period of post-closure care, the Agency ~~may~~shall approve a release of funds if the owner or operator demonstrates to the Agency that the value of the trust fund exceeds the remaining cost of post-closure care.
- 11) An owner or operator or any other person authorized

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to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency ~~will determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, it will~~shall instruct the trustee to make reimbursement in ~~such~~those amounts as the Agency specifies in writing ~~if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the trustee to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.~~

- 12) The Agency ~~will~~shall agree to termination of the trust when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with ~~paragraph~~ subsection (i).
- b) Surety bond guaranteeing payment into a post-closure trust fund.
 - 1) An owner or operator may satisfy the requirements of this ~~s~~Section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Agency. An owner or operator of a new facility ~~must~~shall submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.
 - 2) The wording of the surety bond must be ~~identical to the wording specified in 40 CFR 264.151(b)~~as specified in Section 724.251.

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- 3) The owner or operator who uses a surety bond to satisfy the requirements of this ~~s~~Section must~~shall~~ also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements specified in ~~paragraph subsection~~ (a), except that:
- A) An ~~originally~~original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and
 - B) Until the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in ~~paragraph subsection~~ (a);
 - ii) Updating of Schedule A of the trust agreement (~~see 40 CFR 264.151(a)~~as specified in Section 724.251) to show current post-closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator will:
- A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or
 - B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or
 - C) Provide alternate financial assurance as specified in this ~~s~~Section, and obtain the Agency's written approval of the assurance

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provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.

- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
 - 6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in paragraph subsection (g).
 - 7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must shall either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.
 - 8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidence by the return receipts.
 - 9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this Section.
- c) Surety bond guaranteeing performance of post-closure care.
- 1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this paragraph and

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submitting the bond to the Agency. An owner or operator of a new facility ~~must~~shall submit the bond to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The bond must be effective before this initial receipt of hazardous waste. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

- 2) The wording of the surety bond must be ~~identical to the wording specified in 40 CFR 264.151(c)~~as specified in Section 724.251.
- 3) The owner or operator who uses a surety bond to satisfy the requirements of this ~~s~~Section must~~shall~~ also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Agency. This standby trust must meet the requirements specified in ~~paragraph subsection~~ (a), except that:
 - A) An ~~originally~~original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and
 - B) Unless the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in ~~paragraph subsection~~ (a);
 - ii) Updating of Schedule A of the trust agreement (~~see 40 CFR 264.151(a)~~as specified in Section 724.251) to show current post-closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator

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will:

- A) Perform final post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or
 - B) Provide alternate financial assurance as specified in this ~~s~~Section, and obtain the Agency's written approval of the assurance provided, within 90 days of receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.
- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.
- 6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate.
- 7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, ~~must~~shall either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this ~~s~~Section. Whenever the current closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

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- 8) During the period of post-closure care, the Agency ~~may~~shall approve a decrease in the penal sum if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.
 - 9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
 - 10) The owner or operator may cancel the bond if the Agency has given prior written consent. The Agency ~~will~~ shall provide such written consent when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~sSection; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~sSection in accordance with ~~paragraph~~ subsection (i).
 - 11) The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Agency releases the owner or operator from the requirements of this ~~s~~sSection in accordance with ~~paragraph~~ subsection (i).
- d) Post-closure letter of credit.
- 1) An owner or operator may satisfy the requirements of this ~~s~~sSection by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Agency. An owner or operator of a new facility ~~must~~shall submit the items specified in ~~paragraph~~ subsection (f)(3) to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit must be effective before this initial receipt of hazardous waste. The issuing institution ~~must~~shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal

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or State agency.

- 2) The wording of the letter of credit must be ~~identical to the wording specified in 40 CFR 264.151(d)~~ as specified in Section 724.251.
- 3) An owner or operator who uses a letter of credit to satisfy the requirements of this ~~s~~Section must ~~shall~~ also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in paragraph subsection (a), except that:
 - A) An ~~originally~~original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and
 - B) Unless the standby trust fund is funded pursuant to the requirements of this ~~s~~Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in paragraph subsection (a);
 - ii) Updating of Schedule A of the trust agreement (~~see 40 CFR 264.151(a)~~ as specified in Section 724.251) to show current post-closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the EPA Identification Number, name and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

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- 5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.
- 6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in paragraph subsection (g).
- 7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, must shall either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this sSection to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.
- 8) During the period of post-closure care, the Agency may shall approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.
- 9) Following a determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the Agency may draw on the letter of credit.

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- 10) If the owner or operator does not establish alternate financial assurance as specified in this ~~s~~Section and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency ~~will~~shall draw on the letter of credit. The Agency may ~~delay~~ the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency ~~will~~shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this ~~s~~Section and obtain written approval of such assurance from the Agency.
 - 11) The Agency ~~will~~shall return the letter of credit to the issuing institution for termination when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with paragraph subsection (i).
- e) Post-closure insurance.
- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Agency. An owner or operator of a new facility ~~must~~shall submit the certificate of insurance to the Agency at least 60 days before the date on which hazardous waste is first received for disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer ~~must~~shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.
 - 2) The wording of the certificate of insurance must be ~~identical to the wording specified in 40 CFR 264.151(e)~~as specified in Section 724.251.

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- 3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure estimate, except as provided in paragraph subsection (g). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer's will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- 4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of facility whenever the post-closure period begins. The policy must also guarantee that, once post-closure care 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.
- 5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency ~~will determine whether the post-closure expenditures are in accordance with the post-closure plan or otherwise justified, and if so, will~~shall instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the insurer to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.
- 6) The owner or operator ~~must~~shall maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in paragraph subsection (e)(11). Failure to pay the premium, without substitution of alternate financial assurance as specified in this ~~s~~Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by

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the Agency of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

- 7) 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.
- 8) 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:
 - A) The Agency deems the facility abandoned; or
 - B) The permit is terminated or revoked or a new permit is denied; or
 - C) Closure is ordered by the Board or a U. S. district court or other court of competent jurisdiction; or
 - D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy); or
 - E) The premium due is paid.
- 9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days

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after the increase, ~~must~~shall either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this ~~s~~Section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

- 10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer ~~will~~ shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.
 - 11) The Agency ~~will~~shall give written consent to the owner or operator ~~that it~~the owner or operator may terminate the insurance policy when:
 - A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with paragraph subsection (i).
- f) Financial test and corporate guarantee for post-closure care.
- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by demonstrating that it passes a financial test as specified in this paragraph. To pass this test the owner or operator ~~must~~shall meet the criteria of either paragraph subsection (f)(1)(A) or (f)(1)(B):
 - A) The owner or operator ~~must~~shall have:
 - i) Two of the following three ratios: a ratio of total liabilities to net worth

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less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

- ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and
- iii) Tangible net worth of at least \$10 million; and
- iv) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

B) The owner or operator ~~must~~shall have:

- i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; 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 sum of the current closure and post-closure estimates and the current plugging and abandonment cost estimates.

- 2) The phrase "current closure and post-closure cost estimates" as used in paragraph subsection (f)(1) refers to the cost estimates required to be shown

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in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 264.151(f)) (incorporated by reference in Section 724.251). The phrases "current plugging and abandonment cost estimates" as used in subsection (f)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f), incorporated by reference in 35 Ill. Adm. Code 704.240.

- 3) To demonstrate that it meets this test, the owner or operator ~~must~~shall submit the following items to the Agency:
- A) A letter signed by the owner's or operator's chief financial officer and worded as specified in ~~40 CFR 264.151(f)~~Section 724.251; and
 - B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
 - C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - i) ~~He~~The accountant has compared the data which 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 ~~his~~the accountant's attention which caused ~~him~~the accountant to believe that the specified data should be adjusted.
- 4) An owner or operator of a new facility ~~must~~shall submit the items specified in ~~paragraph~~subsection (f)(3) to the Agency at least 60 days before the date on which hazardous waste is first received for disposal.

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- 5) After the initial submission of items specified in paragraph subsection (f)(3), the owner or operator ~~must~~shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph subsection (f)(3).
- 6) If the owner or operator no longer meets the requirements of paragraph subsection (f)(1), ~~it must~~the owner or operator shall send notice to the Agency of intent to establish alternate financial assurance as specified in this ~~s~~Section. 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 owner or operator no longer meets the requirements. The owner or operator ~~must~~shall provide the alternate financial assurance within 120 days after the end of such fiscal year.
- 7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph subsection (f)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph subsection (f)(3). If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph subsection (f)(1), the owner or operator ~~must~~shall provide alternate financial assurance as specified in this ~~s~~Section within 30 days after notification of such a finding.
- 8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in ~~his~~the accountant's report on examination of the owner's or operator's financial statements (see paragraph subsection (f)(3)(B)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency ~~will~~shall evaluate other qualifications on an individual basis. The owner or operator ~~must~~shall provide alternate financial assurance as specified in this ~~s~~Section within 30 days after notification of the disallowance.

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- 9) During the period of post-closure care, the Agency ~~may~~shall approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Agency that the amount of the cost estimate exceeds the remaining cost of post-closure care.
- 10) The owner or operator is no longer required to submit the items specified in ~~paragraph~~ subsection (f)(3) when:
- A) An owner or operator substitutes alternate financial assurance as specified in this ~~s~~Section; or
 - B) The Agency releases the owner or operator from the requirements of this ~~s~~Section in accordance with ~~paragraph~~ subsection (i).
- 11) An owner or operator may meet the requirements of this ~~s~~Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor ~~must~~shall be the parent corporation of the owner or operator. The guarantor ~~must~~shall meet the requirements for owners or operators in ~~paragraph~~ subsections (f)(1) through (f)(9), ~~must~~and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be ~~identical to the wording specified in 40 CFR 264.151(h)~~ as specified in Section 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in ~~paragraph~~ subsection (f)(3). The terms of the corporate guarantee must provide that:
- A) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in ~~paragraph~~ subsection (a) in the name of the owner or operator.
 - B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may

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not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

- C) If the owner or operator fails to provide alternate financial assurance as specified in this sSection and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

- g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this sSection by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit and insurance. The mechanisms must be as specified in paragraph subsections (a), (b), (d) and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for post-closure care of the facility.

- h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this sSection to meet the requirements of this sSection for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the EPA Identification Number, name, address and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be

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sufficient to close all of the owner or operator's facilities. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

- i) Release of the owner or operator from the requirements of this ~~s~~Section. When an owner or operator has completed, to the satisfaction of the Agency, all post-closure care requirements in accordance with the post-closure Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Agency shall will, at the request of the owner or operator, notify the owner or operator in writing that it is no longer required by this section to maintain financial assurance for post-closure care of the particular facility that unit unless the Agency determines that post-closure care has not been in accordance with the approved post-closure plan. The Agency shall provide the owner or operator with a detailed written statement of any such determination that post-closure care has not been in accordance with the approved post-closure plan.
- j) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board [35 Ill. Adm. Code 702.184(e)(3)]:
- 1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit or insurance;
 - 2) Requiring alternate assurance upon a finding that an owner or operator, or parent corporation, no longer meets a financial test.

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 724.247 Liability Requirements

- a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage or disposal facility, or a group of such facilities, ~~must~~shall demonstrate financial responsibility for

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bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator ~~must~~shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in paragraph subsections (a)(1), (a)(2) and (a)(3):

- 1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.
 - A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be ~~identical to the wording specified in 40 CFR 264.151(i)~~as specified in Section 724.251. The wording of the certificate of insurance must be ~~identical to the wording specified in 40 CFR 264.151(j)~~as specified in Section 724.251. The owner or operator ~~must~~shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator ~~must~~shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility ~~must~~shall submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste.
 - B) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.
- 2) An owner or operator may meet the requirements of

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this ~~s~~Section by passing a financial test for liability coverage as specified in ~~paragraph subsection~~ (f).

- 3) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this Section. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.
- b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill or land treatment facility which is used to manage hazardous waste, or a group of such facilities, ~~must~~shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator ~~must~~shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in ~~paragraph subsections~~ (b)(1), (b)(2), and (b)(3):
 - 1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.
 - A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be ~~identical to the wording specified in 40 CFR 264.151(i)~~ as specified in Section 724.251. The wording of the certificate of insurance must be ~~identical to the wording specified in 40 CFR 264.151(j)~~ as specified in Section 724.251. The owner or operator ~~must~~shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator ~~must~~shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility ~~must~~shall submit the signed duplicate original

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of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste.

- B) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in one or more states.
- 2) An owner or operator may meet the requirements of this Section by passing a financial test for liability coverage as specified in paragraph subsection (f).
- 3) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this Section. The amounts of coverage must total at least the minimum amounts required by this paragraph.
- 4) For existing facilities, the required liability coverage for nonsudden accidental occurrences must be demonstrated by the dates listed below. The total sales or revenues of the owner or operator in all lines of business, in the fiscal year preceding the effective date of these regulations, will determine which of the dates applies. If the owner and operator of a facility are two different parties, or if there is more than one owner or operator, the sales or revenues of the owner or operator with the largest sales or revenues will determine the date by which the coverage must be demonstrated. The dates are as follows:
- A) For an owner or operator with sales or revenues totalling \$10 million or more, January 15, 1983.
- B) For an owner or operator with sales or revenues greater than \$5 million but less than \$10 million, January 15, 1984.

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~~6) All other owners or operators, January 15, 1985.~~

- c) Request for adjusted level of required liability coverage. If an owner or operator ~~can~~ demonstrates to the satisfaction of the Agency that the levels of financial responsibility required by paragraph subsections (a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of facilities, the owner or operator may obtain an adjusted level of required liability coverage from the Agency. The request for an adjusted level of required liability coverage must be submitted to the Agency as part of the application under 35 Ill. Adm. Code 703.182 for a facility that does not have a permit, or pursuant to the procedures for permit modification under 35 Ill. Adm. Code 705.128 for a facility that has a permit. If granted, the modification will take the form of an adjusted level of required liability coverage, such level to be based on the Agency assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Agency may require an owner or operator who requests an adjusted level of required liability coverage to provide such technical and engineering information as is deemed necessary by the Agency to determine a level of financial responsibility other than that required by paragraph subsection (a) or (b). Any request for an adjusted level of required liability coverage for a permitted facility will be treated as a request for a permit modification under 35 Ill. Adm. Code 702.184(e)(3) and 705.128.
- d) Adjustments by the Agency. If the Agency determines that the levels of financial responsibility required by paragraph subsection (a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of facilities, the Agency ~~may~~shall adjust the level of financial responsibility required under paragraph subsection (a) or (b) as may be necessary to protect human health and the environment. This adjusted level ~~will~~shall be based on the Agency's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Agency determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences

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resulting from the operations of a facility that is not a surface impoundment, landfill or land treatment facility, ~~the~~ the Agency may require that an owner or operator of the facility comply with paragraph subsection (b). An owner or operator ~~must~~ shall furnish to the Agency, within a reasonable time specified by the Agency in the request, which shall not be less than 30 days, any information which the Agency requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification under 35 Ill. Adm. Code 702.184(e)(3) and 705.128.

- e) Period of coverage. An owner or operator ~~must~~ shall continuously provide liability coverage for a facility as required by this section until certifications of closure of the facility, as specified in Section 724-215, are received by the Agency. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency shall notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain liability coverage for that facility, unless the Agency determines that closure has not been in accordance with the approved closure plan.
- f) Financial test for liability coverage.
- 1) An owner or operator may satisfy the requirements of this ~~s~~Section by demonstrating that it passes a financial test as specified in this paragraph. To pass this test the owner or operator ~~must~~ shall meet the criteria of paragraph subsection (f)(1)(A) or (f)(1)(B):
- A) The owner or operator ~~must~~ shall have:
- i) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and
- ii) Tangible net worth of at least \$10 million; and
- iii) Assets in the United States amounting to

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either: at least 90 percent of the total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

- B) The owner or operator ~~must~~shall have:
- i) A current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by Moody's; and
 - ii) Tangible net worth of at least \$10 million; and
 - iii) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and
 - iv) Assets in the United States amounting to either: at least 90 percent of the total assets; or at least six times the amount of liability coverage to be demonstrated by this test.
- 2) The phrase "amount of liability coverage" as used in ~~paragraph subsection~~ (f)(1) refers to the annual aggregate amounts for which coverage is required under ~~paragraph subsections~~ (a) and (b).
- 3) To demonstrate that it meets this test, the owner or operator ~~must~~shall submit the following three items to the Agency:
- A) A letter signed by the owner's or operator's chief financial officer and worded as specified in ~~40 CFR 264.151(g)~~Section 724.251. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by Sections 724.243(f), 724.245(f), 725.243(e) and 725.245(e), and liability coverage, it ~~must~~shall submit the letter specified in ~~40 CFR 264.151(g)~~Section 724.251 to cover both forms of financial responsibility; a separate letter as specified in ~~40 CFR 264.151(f)~~Section 724.251 is not required.
 - B) A copy of the independent certified public

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accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

- C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
- i) ~~He~~The accountant has compared the data which 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 ~~his~~the accountant's attention which caused ~~him~~the accountant to believe that the specified data should be adjusted.
- 4) An owner or operator of a new facility ~~must~~shall submit the items specified in ~~paragraph~~subsection (f)(3) to the Agency at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal.
- 5) After the initial submission of items specified in ~~paragraph~~subsection (f)(3), the owner or operator ~~must~~shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in ~~paragraph~~subsection (f)(3).
- 6) If the owner or operator no longer meets the requirements of ~~paragraph~~subsection (f)(1), ~~it~~the owner or operator shall obtain insurance for the entire amount of required liability coverage as specified in this Section. Evidence of insurance must be submitted to the Agency within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.
- 7) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by

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the independent certified public accountant in ~~his~~
the accountant's report on examination of the
owner's or operator's financial statements (see
paragraph subsection (f)(3)(B)). An adverse
opinion or a disclaimer of opinion will be cause
for disallowance. The Agency ~~will~~shall evaluate
other qualifications on an individual basis. The
owner or operator ~~must~~shall provide evidence of
insurance for the entire amount of required
liability coverage as specified in this ~~s~~Section
within 30 days after notification of disallowance.

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

Section 724.251 Wording of the Instruments

The Board incorporates by reference 40 CFR 264.151 (1985), as
amended at 51 Fed. Reg. 16443, May 2, 1986. This Section
incorporates no later amendments or editions. The Agency
~~will~~shall promulgate standardized forms based on 40 CFR 264.151
with such changes in wording as are necessary under Illinois
law. Any owner or operator required to establish financial
assurance under this Subpart shall do so only upon the
standardized forms promulgated by the Agency. The Agency
~~may~~shall reject any financial assurance document which is not
submitted on such standardized forms.

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

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The Heading of the Part: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

Code Citation: 35 Ill. Adm. Code 725

<u>Section Numbers:</u>	<u>Proposed Action:</u>
725.210	Amendment
725.211	Amendment
725.212	Amendment
725.213	Amendment
725.214	Amendment
725.215	Amendment
725.216	New Section
725.217	Amendment
725.218	Amendment
725.219	Amendment
725.220	Amendment
725.241	Amendment
725.242	Amendment
725.243	Amendment
725.244	Amendment
725.245	Amendment
725.246	New Section
725.247	New Section
725.251	Repealer
725.414	Amendment

Statutory Authority: Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4 and 1027.

A Complete Description of the Subjects and Issues Involved:

A complete description is contained in the Board's Proposed Opinion of October 9, 1986, in R86-28, which Opinion is available from the address below. This proposal updates the Illinois RCRA hazardous waste rules to agree with rules adopted by USEPA between April 1 and June 30, 1986. As provided by Section 22.4(a) of the Environmental Protection Act, this rulemaking is not subject to Section 5 of the Administrative Procedure Act, and is hence not subject to second notice review by JCAR.

Part 725 is drawn from 40 CFR 265. The amendments were drawn from 51 Fed. Reg. 16443. They modify the requirements concerning closure and financial assurance for interim status facilities.

Will this proposed rule replace an emergency rule currently in effect? No.

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Does this rulemaking contain an automatic repeal date?: No.

Are there any other amendments pending on this Part? No.

Statement of Statewide Policy Objectives:

This rulemaking is mandated by Section 22.4 of the Environmental Protection Act. The statewide policy objectives are set forth in Section 20 of that Act.

Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R86-28 and be addressed to:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Initial Regulatory Flexibility Analysis:

Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: October 15, 1986

Types of small businesses affected:

The existing rules and amendments affect small businesses which generate, transport, treat, store or dispose of hazardous waste.

Reporting, Bookkeeping or other procedures required for compliance:

The existing rules require permits and substantial reporting and bookkeeping. The amendments modify the requirements for interim status facilities concerning closure plans, post-closure plans, financial assurance and liability insurance.

Types of professional skills necessary for compliance:

The existing rules and amendments may require the services of an attorney, a certified public accountant, a chemist and a registered professional engineer.

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NOTICE OF PROPOSED AMENDMENTS

The full text of the Proposed Amendments is as follows:

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TEXT OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: HAZARDOUS WASTE OPERATING REQUIREMENTS

PART 725
INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS
WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

SUBPART A: GENERAL PROVISIONS

Section
725.101 Purpose, Scope and Applicability
725.104 Imminent Hazard Action

SUBPART B: GENERAL FACILITY STANDARDS

Section
725.110 Applicability
725.111 USEPA Identification Number
725.112 Required Notices
725.113 General Waste Analysis
725.114 Security
725.115 General Inspection Requirements
725.116 Personnel Training
725.117 General Requirements for Ignitable, Reactive or
Incompatible Wastes
725.118 Location Standards

SUBPART C: PREPAREDNESS AND PREVENTION

Section
725.130 Applicability
725.131 Maintenance and Operation of Facility
725.132 Required Equipment
725.133 Testing and Maintenance of Equipment
725.134 Access to Communications or Alarm System
725.135 Required Aisle Space
725.137 Arrangements with Local Authorities

SUBPART D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES

Section
725.150 Applicability
725.151 Purpose and Implementation of Contingency Plan
725.152 Content of Contingency Plan
725.153 Copies of Contingency Plan
725.154 Amendment of Contingency Plan
725.155 Emergency Coordinator

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725.156 Emergency Procedures

SUBPART E: MANIFEST SYSTEM, RECORDKEEPING AND REPORTING

Section

725.170 Applicability
725.171 Use of Manifest System
725.172 Manifest Discrepancies
725.173 Operating Record
725.174 Availability, Retention and Disposition of Records
725.175 Annual Report
725.176 Unmanifested Waste Report
725.177 Additional Reports

SUBPART F: GROUNDWATER MONITORING

Section

725.190 Applicability
725.191 Groundwater Monitoring System
725.192 Sampling and Analysis
725.193 Preparation, Evaluation and Response
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SUBPART G: CLOSURE AND POST-CLOSURE

Section

725.210 Applicability
725.211 Closure Performance Standard
725.212 Closure Plan; Amendment of Plan
725.213 Closure; Time Allowed for Closure
725.214 Disposal or Decontamination of Equipment,
Structures and Soils
725.215 Certification of Closure
725.216 Survey Plat
725.217 Post-Closure Care and Use of Property
725.218 Post-Closure Plan; Amendment of Plan
725.219 Notice to Local Band Authority Post-Closure Notices
725.220 Notice in Deed to Property Certification of
Completion of Post-Closure Care

SUBPART H: FINANCIAL REQUIREMENTS

Section

725.240 Applicability
725.241 Definitions of Terms as Used in this Subpart
725.242 Cost Estimate for ~~Facility~~ Closure
725.243 Financial Assurance for ~~Facility~~ Closure
725.244 Cost Estimate for Post-Closure Care
725.245 Financial Assurance for Post-Closure Monitoring and

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	Maintenance
<u>725.246</u>	<u>Use of a Mechanism for Financial Assurance of Both</u>
	<u>Closure and Post-closure Care</u>
<u>725.247</u>	<u>Liability Requirements</u>
<u>725.248</u>	<u>Incapacity of Owners or Operators, Guarantors or</u>
	<u>Financial Institutions</u>
725.251	<u>Promulgation of Forms Repealed</u>

SUBPART I: USE AND MANAGEMENT OF CONTAINERS

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725.270	Applicability
725.271	Condition of Containers
725.272	Compatibility of Waste with Containers
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SUBPART K: SURFACE IMPOUNDMENTS

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725.351 Protection from Wind
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SUBPART M: LAND TREATMENT

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Hazardous Wastes

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SUBPART Q: CHEMICAL, PHYSICAL AND BIOLOGICAL TREATMENT

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725.500	Applicability
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Appendix B	EPA Report Form and Instructions (Repealed)
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Appendix E	Examples of Potentially Incompatible Waste

AUTHORITY: Implementing Section 22.4 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111-1/2, pars. 1022.4 and 1027).

SOURCE: Adopted in R81-22, 43 PCB 427, at 5 Ill. Reg. 9781, effective as noted in 35 Ill. Adm. Code 700.106; amended and codified in R81-22, 45 PCB 317, at 6 Ill. Reg. 4828, effective as noted in 35 Ill. Adm. Code 700.106; amended in R82-18, 51 PCB 831, at 7 Ill. Reg. 2518, effective February 22, 1983; amended in R82-19, 53 PCB 131, at 7 Ill. Reg. 14034, effective October 12, 1983; amended in R84-9, at 9 Ill. Reg. 11869, effective July 24, 1985; amended in R85-22 at 10 Ill. Reg. 1085, effective January

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2, 1986; amended in R86-1 at 10 Ill. Reg. 14069, effective August 12, 1986; amended in R86-28 at 10 Ill. Reg. , effective

SUBPART G: CLOSURE AND POST-CLOSURE

Section 725.210 Applicability

Except as Section 725.101 provides otherwise:

- a) Sections 725.211-through 725.215 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and
- b) Sections 725.216 through 725.217-725.220 (which concern post-closure care) apply to the owners and operators of:
 - 1) All hazardous waste disposal facilities; and
 - 2) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these Sections are made applicable to such facilities in Sections 725.328 or 725.358.

(Source: Amended at Ill Reg. , effective)

Section 725.211 Closure Performance Standard

The owner or operator ~~must close his~~shall close the facility in a manner that:

- a) Minimizes the need for further maintenance; and
- b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated ~~rainfall~~run-off or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and
- c) Complies with the closure requirements of this Part, including, but not limited to, the requirements of Sections 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481 and 725.504.

(Source: Amended at Ill Reg. ,

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effective)

Section 725.212 Closure Plan; Amendment of Plan

- a) Written plan. ~~By May 1971~~ ~~1981~~ ~~the~~ The owner or operator must of a hazardous waste management facility shall have a written closure plan. Until final closure is completed and certified in accordance with Section 725.215. AHe must keep a copy of the most currentclosure plan and all revisions to the plan at the facility until closure is completed and certified in accordance with Section 725.215. Thismust be furnished to the Agency upon request including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections on the day of inspection to any officer, employee or representative of the Agency.
- b) Content of plan. The plan must identify the steps necessary to completely or partially closeperform partial and/or final closure of the facility at any point during its intended operatingactive life and to completely close the facility at the end of its intended operating life. The closure plan must include, at least:
- 1) A description of how and when the facility will be partially closed, if applicable, and finally closedeach hazardous waste management unit at the facility will be closed in accordance with Section 725.211; and
 - 2) A description of how final closure of the facility will be conducted in accordance with Section 725.211. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility and how the requirements of Sections 725.211, 725.213, 725.214 and 725.215 and the applicable closure requirements of Sections 725.297, 725.328, 725.380, 725.410, 725.451, 725.481 and 725.504 will be met, and
 - 3) An estimate of the maximum inventory of wastes in storage and in treatment at any time during the life of the facility, hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not

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limited to methods for removing, transporting, treating, storing or disposing of all hazardous waste, and identification of and the type(s) of off-site hazardous waste management unit(s) to be used, if applicable; and

- 4) A detailed description of the steps needed to decontaminate facility equipment during closure; and An estimate of the expected year of closure and a schedule for final closure-remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and
- 5) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control; and
- 6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close the facility each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat and/or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.); and
- 7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under Sections 725.243 or 725.245 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans.

c) Amendment of plan. The owner or operator may amend

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~~his~~the closure plan at any time during the active life of the facility. ~~(The active life of the facility is that period during which wastes are periodically received.)~~prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan shall submit a written request to the Agency to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the Agency.

- 1) The owner or operator ~~must~~shall amend the closure plan, whenever:
 - A) changes in the operating plans or facility design affect the closure plan, or
 - B) whenever there is a change in the expected year of closure ~~of the facility.~~ The plan must be amended within 60 days of the changes, if applicable, or
 - C) In conducting partial or final closure activities, unexpected events require a modification of the closure plan.
- 2) The owner or operator shall amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with Section 725.410.
- 3) An owner or operator with an approved closure plan shall submit the modified plan to the Agency at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator shall submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to

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owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with Section 725.410. If the amendment to the plan is a major modification according to the criteria in 35 Ill. Adm. Code 702.183, 702.185, and 702.187 the modification to the plan will be approved according to the procedures in subsection (d)(4)

- 4) The Agency may request modifications to the plan under the conditions described in subsection (c)(1). An owner or operator with an approved closure plan shall submit the modified plan within 60 days of the request from the Agency, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a major modification according to the criteria in 35 Ill. Adm. Code 702.183, 702.184, 702.185 and 702.187, the modification to the plan will be approved in accordance with the procedures in subsection (d)(4)

d) Notification of partial closure and final closure.

- 1) The owner or operator ~~must~~shall submit ~~his~~the closure plan to the ~~Director~~Agency at least 180 days ~~before~~prior to the date ~~he~~on which the owner or operator expects to begin closure of the first surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator shall submit the closure plan to the Agency at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks, container storage or incinerator units. Owners or operators with approved closure plans shall notify the Agency in writing at least 60 days prior to the date on which the owner or operator expects to begin closure of a surface impoundment, waste pile, landfill or land treatment unit, or final closure of a facility involving such a unit. Owners and operators with approved closure plans shall notify the Agency in writing at least 45 days prior to the date on which the owner or operator expects to begin final closure of a facility with only tanks, container storage or incinerator units.

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2) The date when the owner or operator "expects to begin closure" must be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the Agency that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that the owner or operator has taken and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Agency shall approve an extension to this one-year limit.

3) The owner or operator ~~must~~shall submit ~~his~~the closure plan to the ~~Director~~Agency no later than 15 days after:

1) A) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

2) B) Issuance of a judicial decree, Board order or compliance order under Section 3008 of ~~RERA~~the Resource Conservation Recovery Act to cease receiving wastes or close.

~~Comment: The date when closure commences should be within 30 days after the date on which the owner or operator expects to receive the final volume of wastes.~~

d) 4) The ~~Director will~~Agency shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan ~~within~~no later than 30 days off from the date of the notice. ~~He will~~The Agency shall also, in response to a request or at ~~his~~its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The ~~Director will~~Agency shall give public notice of the hearing at least 30 days before it

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occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments and the two notices may be combined.) ~~The Director will~~Agency shall approve, modify or disapprove the plan within 90 days of its receipt. If the ~~Director~~Agency does not approve the plan, the Agency shall provide the owner or operator with a detailed written statement of reasons for the refusal, and the owner or operator must~~shall~~ modify the plan or submit a new plan for approval within 30 days after receiving such written statement. ~~The Director will~~Agency shall approve or modify this plan in writing within 60 days. If the ~~Director~~Agency modifies the plan, this modified plan becomes the approved closure plan. ~~The Director's decision must~~The Agency shall assure that the approved closure plan is consistent with Sections 725.211, ~~725.213, 725.214 and~~through 725.215 and the applicable requirements of Sections 725.190 et seq., 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481 and 725.504. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator. ~~If the owner or operator plans to begin closure before November 19, 1981, he must submit the closure plan by May 19, 1981.~~

- e) Removal of wastes and decontamination or dismantling of equipment. Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

(Source: Amended at Ill Reg. ,
effective)

Section 725.213 Closure; Time Allowed for Closure

- a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, or 90 days after approval of the closure plan, if that~~whichever~~ is later, the owner or operator ~~must~~shall treat, remove from the ~~site~~unit or facility or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. ~~The Director may~~Agency

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shall approve a longer period using the procedures under Section 725-212(d) if the owner or operator demonstrates that:

- 1) A) The activities required to comply with this paragraph will, of necessity, take ~~him~~ longer than 90 days to complete; or
- B) i) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes;
ii) There is a reasonable likelihood that ~~the owner or operator, or another person other than the owner or operator~~ will recommence operation of the ~~site~~ hazardous waste management unit or facility within one year; and
iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and
- 2) He hasThe owner and operator have taken and will continue to take all steps to prevent threats to human health and the environment including compliance with all applicable interim status requirements.
- b) The owner or operator ~~must~~ shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of ~~wastes~~ hazardous wastes at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The ~~Director may~~ Agency shall approve a longer ~~an~~ extension to the closure period using the procedures under Section 725-212(e) if the owner or operator demonstrates that:
 - 1) A) The partial or final closure activities will, of necessity, take ~~him~~ longer than 180 days to complete; or
 - B) i) The hazardous waste management unit or facility has the capacity to receive additional ~~waste~~ hazardous wastes;
ii) There is a reasonable likelihood that ~~the owner or operator or another person~~

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~~other than the owner or operator will recommence operation of the site, hazardous waste management unit or facility within one year; and~~

iii) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

2) ~~He has~~The owner and operator have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

c) The demonstration referred to in subsections (a) and (b) must be made as follows:

1) The demonstration in subsection (a) must be made at least 30 days prior to the expiration of the 90-day period in subsection (a); and

2) The demonstrations in subsection (b) must be made at least 30 days prior to the expiration of the 180-day period in subsection (b).

~~Comment: Under paragraphs (a)(1)(B) and (b)(1)(B) of this Section, if operation of the facility is recommenced, the Director may defer completion of closure activities until the new operation is terminated.~~

(Source: Amended at Ill Reg. ,
effective)

Section 725.214 Disposal or Decontamination of Equipment, Structures and Soils

~~When closure is completed, all facility equipment and structures must have been properly disposed of, or decontaminated by removing all hazardous waste and residues.~~

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of, or decontaminated, unless specified otherwise in Sections 725.328, 725.358, 725.380 or 725.410. By removing all hazardous wastes or hazardous constituents during partial and final closure, the

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owner or operator may become a generator of hazardous waste and shall handle that hazardous waste in accordance with all applicable requirements of 35 Ill. Adm. Code 722.

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 725.215 Certification of Closure

When closure is completed, Within 60 days after completion of closure of each hazardous waste surface impoundment, waste pile, land treatment and landfill unit, and within 60 days after completion of final closure, the owner or operator must shall submit to the Director Agency, by registered mail, a certification both by the owner or operator and by an independent registered professional engineer that the facility hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for closure under Section 725.243(h).

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 725.216 Survey Plat

No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator shall submit to any local zoning authority, or authority with jurisdiction over local land use, to the County Recorder and to the Agency, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with any local zoning authority, or authority with jurisdiction over local land use, and the County Recorder must contain a note, prominently displayed, which states the owner's and operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subpart G regulations.

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

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Section 725.217 Post-closure Care and Use of Property

- a) 1) Post-closure care must for each hazardous waste management unit subject to the requirements of Sections 725.117 through 725.120 must begin after completion of closure of the unit and continue for 30 years after the date of completing closure and that date. It must consist of at least the following:
- 1→ A) Groundwater monitoring and reporting in accordance with the requirements of Subpart F, Subparts F, K, L, M and N; and
- 2→ B) Maintenance of and monitoring of waste containment systems as specified in Sections 725.191, 725.323, 725.328, 725.380 and 725.410, where applicable, in accordance with the requirements of Subparts F, K, L, M and N.
- 2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Agency shall:
- A) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if the Agency finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or groundwater monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or
- B) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if the Agency finds that the extended period is necessary to protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

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- b) The Director mayAgency shall require, at partial or final closure, continuation of any of the security requirements of Section 725.114 for 30 years after the date closure has been completed during part or all of the post-closure period when:
- 1) Hazardous wWastes may remain exposed after completion of partial or final closure; or
 - 2) Access by the public or domestic livestock may pose a hazard to human health; and.
 - 3) In extending any of these requirements, the Director will use the procedures of Section 725.218(c).
- c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s) or any other components of any containment system or the function of the facility's monitoring systems, unless the owner or operator can demonstrate to the Director, either in the post-closure plan or by petition, through the procedures in Section 725.218(c) or (f), as appropriate, Agency finds that the disturbance:
- 1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or
 - 2) Is necessary to reduce a threat to human health or the environment.
- d) All post-closure care activities must be performed in accordance with the provisions of the approved post-closure plan as specified in Section 725.218.

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 725.218 Post-closure Plan; Amendment of Plan

- a) By May 19, 1981, tWritten Plan. The owner or operator of a hazardous waste disposal facility mustunit shall have a written post-closure plan. He must keep a copy of the post-closure plan and all revisions to the plan at the facility until the post-closure care period begins.An owner or operator of a surface impoundment or waste pile

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that intends to remove all hazardous wastes at closure must prepare a post-closure plan and submit it to the Agency within 90 days after the date that the owner or operator or Agency determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of Sections 725.217 through 725.220.

- b) Until final closure of the facility, a copy of the most current post-closure plan must be furnished to the Agency upon request, including request by mail. In addition, for facilities without approved post-closure plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency. After final closure has been certified, the person or office specified in Section 725.218(c)(3) shall keep the approved post-closure plan during the post-closure period.
- c) For each hazardous waste management unit subject to the requirements of this Section. The post-closure plan must identify the activities which will be carried on after closure of each disposal unit and the frequency of these activities and include at least:
- 1) A description of the planned ~~groundwater~~ monitoring activities and frequencies at which they will be performed to comply with ~~Subpart F~~ Subparts F, K, L, M and N during the post-closure period;
 - 2) A description of the planned maintenance activities and frequencies at which they will be performed to ensure:
 - A) The integrity of the cap and final cover or other containment structures as specified in Sections 725.323, 725.328, 725.380 and 725.410, where applicable systems in accordance with the requirements of Subparts K, L, M and N; and
 - B) The function of the facility monitoring equipment as specified in Section 725.191 in accordance with the requirements of Subparts K, L, M and N; and
 - 3) The name, address and phone number of the person or office to contact about the ~~disposal~~ hazardous waste disposal unit or facility during the post-closure

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care period. This person or office must keep an updated post-closure plan during the post-closure care period.

- bd) Amendment of plan. The owner or operator may amend ~~his~~ the post-closure plan at any time during the active life of the disposal facility or during the post-closure care period. An owner or operator with an approved post-closure plan shall submit a written request to the Agency to authorize a change to the approved plan. The written request must include a copy of the amended post-closure plan for approval by the Agency.
- 1) The owner or operator ~~must~~ shall amend his plan any ~~time~~ the post-closure plan whenever
- A) Cchanges in operating plans or facility design, or events which occur during the active life of the facility, affect ~~his~~ the post-closure plan. The plan must be amended within 60 days after the changes or events occur; or
- B) Events occur during the active life of the facility, including partial and final closures, which affect the post-closure plan.
- 2) The owner or operator shall amend the post-closure plan at least 60 days prior to the proposed changes in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan.
- 3) An owner or operator with an approved post-closure plan shall submit the modified plan to the Agency at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post-closure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with Sections 725.328(b) or 725.358(a) is required to close as a landfill in accordance with Section 725.410, the owner or operator shall submit a post-closure plan within 90 days after the determination by the owner or operator or Agency that the unit must be closed as a landfill. If the amendment to the post-closure plan is a major modification according to the

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criteria in 35 Ill. Adm. Code 702.183, 702.184, 702.185 and 702.187, the modification to the plan will be approved according to the procedures in Section 725.218(f).

- 4) The Agency may request modifications to the plan under the conditions described in above subsection (d)(1). An owner or operator with an approved post-closure plan shall submit the modified plan no later than 60 days after the request from the Agency. If the amendment to the plan is considered a major modification according to the criteria in 35 Ill. Adm. Code 702.183, 702.184, 702.185 and 702.187 the modifications to the post-closure plan will be approved in accordance with the procedures in Section 725.218(f). If the Agency determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure shall close the facility as a landfill, the owner or operator shall submit a post-closure plan for approval to the Agency within 90 days after the determination.

- ee) The owner or operator of a disposal facility must facility with hazardous waste management units subject to these requirements shall submit his the post-closure plan to the Director Agency at least 180 days before the date he the owner or operator expects to begin partial or final closure of the first hazardous waste disposal unit. The date when he the owner or operator "expects to begin closure" should be immediately after the date on which he expects to receive the final volume of wastes, of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit recieved the most recent volume of hazardous wastes. The owner or operator must shall submit his the closure plan to the Director Agency no later than 15 days after:

- 1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or
- 2) Issuance of a judicial decree, Board order or

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compliance order under Section 3008 of RCRA the Resource Conservation Recovery Act to cease receiving wastes or close.

Comment: The date when closure commences should be within 30 days after the date on which the owner or operator expects to receive the final volume of wastes.

- df) The ~~Director will~~ Agency shall provide the owner or operator and the public through a newspaper notice the opportunity to submit written comments on the post-closure plan and request modifications ~~of~~ to the plan, including modification of the 30 year post-closure period required in Section 725.217 within no later than 30 days of ~~after~~ the date of the notice. ~~He may~~ The Agency may also, in response to a request or at his ~~its~~ own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the post-closure plan. ~~The Director will give the~~ Agency shall give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) ~~The Director will~~ Agency shall approve, modify or disapprove the plan within 90 days of its receipt. If the ~~Director~~ Agency does not approve the plan, the Agency shall provide the owner or operator with a detailed statement of reasons for the refusal and the owner or operator must ~~shall~~ modify the plan or submit a new plan for approval within 30 days after receiving such written statements. ~~The Director will~~ Agency shall approve or modify this plan in writing within 60 days. If the ~~Director~~ Agency modifies the plan, this modified plan becomes the approved post-closure plan. ~~The Director must base his decision upon the criteria required of petitions under paragraph (f)(1)(A) of this Section.~~ The Agency shall ensure that the approved post-closure plan is consistent with Sections 725.217 through 725.220. A copy of this modified plan ~~must~~ with a detailed statement of reasons for the modifications shall be mailed to the owner or operator. If an owner or operator plans to begin closure before November 19, 1981, he must submit the post-closure plan by May 19, 1981.
- e) The owner or operator may amend his post-closure plan during the post-closure care period. The owner or operator must amend his plan any time changes in

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monitoring or maintenance plans or events which occur during the post-closure care period affect the post-closure plan. The owner or operator must petition the Director within 60 days of the changes or events, under the procedures of paragraph (f) of this Section, to allow the plan to be modified.

fg) The post-closure plan (or period) and length of the post-closure period may be modified during the post-closure care period or at any time prior to the end of the post-closure care period in either of the following two ways:

1) The owner or operator or any member of the public may petition the Director Agency to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

A) The petition must include evidence demonstrating that:

i) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology or alternative disposal, treatment or re-use techniques indicate that the facility is secure), or

ii) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment. (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

B) These petitions ~~will~~shall be considered by the Director Agency only when they present new and relevant information not previously considered

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by the ~~Director~~Agency. Whenever the ~~Director~~Agency is considering a petition, he ~~will~~it shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. He ~~will~~The Agency shall also, in response to a request or at ~~his~~its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The ~~Director~~Agency shall give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) After considering the comments, he ~~will~~the Agency shall issue a final determination, based upon the criteria set forth in ~~subparagraph (1)~~subsection(g)(1).

- C) If the ~~Director~~Agency denies the petition, he ~~will~~it shall send the petitioner a brief written response giving a reason for the denial.
- 2) The ~~Director~~Agency shall tentatively decide to modify the post-closure plan if he ~~deems~~the Agency finds it necessary to prevent threats to human health and the environment. He~~The~~The Agency may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.
- A) The ~~Director~~Agency shall provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in ~~subparagraph (a)(1)(B)~~subsection(g)(1)(B) of ~~this Section~~subsection(g)(1)(B). After considering the comments, he ~~will~~the Agency shall issue a final determination.
- B) The ~~Director~~Agency shall base ~~his~~its final determination upon the same criteria as required for petitions under ~~paragraph~~

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~~(f)(1)(A)~~ of this Section subsection(g)(1)(A). **Comment:** A modification of the post-closure plan may include where appropriate the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the DirectorAgency would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

- g) The procedures described in Sections 725.212-through 725.219 are in the nature of permit amendments. Amendment or refusal to amend the plan is a permit denial for purposes of appeal pursuant to Part 35 Ill. Adm. Code 105 of Subtitle A. The Director mayAgency shall not amend permits in such a manner so that the permit would not conform with Board regulations. Where the requested amendment would conflict with Board regulations, a concurrent petition for variance or a site specific regulation must be filed pursuant to Parts 35 Ill. Adm. Code 104 or 102 of Subtitle A.

Comment: Prior to codification, Parts 102, 104 and 105 of Subtitle A of Title 35 are Parts II, IV and V of the Procedural Rules.

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 725.219 Post-Closure NoticesNotice to Local Land Authority

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the County Recorder and to the Director a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the County Recorder must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in Section 725.217(c). In addition, the owner or operator must submit to the Director and to the County Recorder a record of the type, location and quantity of hazardous waste disposed of within each cell or area of the facility. The owner or operator must identify the type, location and quantity of hazardous wastes disposed of within each

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cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept.

- a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the County Recorder, to any local zoning authority, or any authority with jurisdiction over local land use, and to the Agency, a record of the type, location and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location and quantity of the hazardous wastes to the best of the owner or operator's knowledge and in accordance with any records the owner or operator has kept.

- b) Within 60 days after certification of closure of the first hazardous waste disposal unit and within 60 days after certification of closure of the last hazardous waste disposal unit, the owner or operator shall
 - 1) Record, in accordance with Illinois law, a notation on the deed to the facility property -- or on some other instrument which is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:
 - A) The land has been used to manage hazardous wastes; and
 - B) Its use is restricted under 35 Ill. Adm. Code 725. Subpart G; and
 - C) The survey plat and record of the type, location and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Sections 725.216 and 725.219(a) have been filed with the County Recorder, any local zoning authority, or any authority with jurisdiction over local land use, and with the Agency; and

 - 2) Submit a certification signed by the owner or operator that the owner or operator has recorded

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the notation specified in subsection (b)(1), and a copy of the document in which the notation has been placed, to the Agency.

- c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment and soils, such person shall request a modification to the approved post-closure plan in accordance with the requirements of Section 725.218(g). The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the criteria of Section 725.217(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of 35 Ill. Adm. Code 702, 703 and 720 through 726. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Agency approve either:
- 1) Removal of the notation on the deed to the facility property or other instrument normally examined during title search, or
 - 2) Addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 725.220 Certification of Completion of Post-Closure Care Notice in Deed to Property

The owner of the property on which a disposal facility is located must record with the County Recorder a notation on the deed to the facility property -- or on some other instrument which is normally examined during title search -- that will in perpetuity notify any potential purchaser of the property that:

- a) The land has been used to manage hazardous waste, and
- b) Its use is restricted under Section 725.217(c).

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Agency, by registered mail, a certification that the post-closure care period for the

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hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Agency upon request until the Agency releases the owner or operator from the financial assurance requirements for post-closure care under Section 725.245(h).

(Source: Amended at 10 Ill. Reg. ,
effective)

SUBPART H: FINANCIAL REQUIREMENTS

Section 725.241 Definitions of Terms as Used in this Subpart

- a) "Closure plan" means the plan for closure prepared in accordance with the requirements of Section 725.212.
- b) "Current closure cost estimate" means the most recent of the estimates prepared in accordance with Sections 725.242(a), (b) and (c).
- c) "Current post-closure cost estimate" means the most recent of the estimates prepared in accordance with Sections 725.244(a), (b) and (c).
- d) "Parent corporation" means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.
- e) "Post-closure plan" means the plan for post-closure care prepared in accordance with the requirements of Sections 725.217 through 725.220.
- f) The following terms are used in the specifications for the financial tests for closure, post-closure care and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

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

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"Current assets" mean cash or other assets or resources commonly identified as those which 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.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 35 Ill. Adm. Code 704.212(a), (b) and (c).

"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 the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

- g) In the liability insurance requirements the terms "bodily injury" and "property damage" shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practice, are excluded from coverage in liability policies for bodily injury and property damage. The Board intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given

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below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

"Accidental occurrence" means an accident including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Nonsudden accidental occurrence" means an occurrence which takes place over time and involves continuous or repeated exposure.

"Sudden accidental occurrence" means an occurrence which is not continuous or repeated in nature.

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 725.242 Cost Estimate for Facility Closure

- a) The owner or operator ~~must prepare a~~ shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with ~~the closure plan as specified in Section 725.212~~ the requirements in Sections 725.211 through 725.215 and applicable closure requirements of Sections 725.297, 725.328, 725.358, 725.380, 725.410, 725.451, 725.481 and 725.504.
- 1) The closure cost estimate must equal the cost of final closure at the point in the facility's operating active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan [see Section 725.212(b)]; and
- 2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent

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corporation" in Section 725.241(d).) The owner or operator may use costs for on-site disposal if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

3) The closure cost estimate must not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures or equipment, land or other facility assets at the time of partial or final closure.

4) The owner or operator shall not incorporate a zero cost for hazardous waste which may have economic value.

b) During the active life of the facility, the owner or operator must shall adjust the closure cost estimate for inflation within 30 days after each anniversary of the date on which the first closure cost estimate was prepared. The adjustment must be made as specified in paragraphs (b)(1) and (b)(2) of this Section, 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with Section 725.243. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency as specified in Section 725.243(e)(5). The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

c) The owner or operator must During the active life of the facility, the owner or operator shall revise the closure

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cost estimate whenever a change in the closure plan increases the cost of closure, no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than 30 days after the Agency has approved the request to modify the closure plan if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in Section 725.242 subsection (b).

- d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with Sections 725.242 subsections (a) and (c) and, when this estimate has been adjusted in accordance with Section 725.242 subsection (b), the latest adjusted closure cost estimate.

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 725.243 Financial Assurance for Facility Closure

~~The Board adopts by reference 40 CFR 265.143 financial assurance for facility closure.~~

An owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from the options as specified in subsections (a) through (e).

a) Closure trust fund.

- 1) An owner or operator may satisfy the requirements of this Section by establishing a closure trust fund which conforms to the requirements of this paragraph and submitting an original, signed duplicate of the trust agreement to the Agency. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.
- 2) The wording of the trust agreement must be as specified in 35 Ill. Adm. Code 724.251 and the trust agreement must be accompanied by a formal certification of acknowledgment as specified in 35

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Ill. Adm. Code 724.251. Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

3) Payments into the trust fund must be made annually by the owner or operator over the 20 years beginning May 19, 1981, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund must be made as follows:

A) The first payment must be made before May 19, 1981, except as provided in subsection (a)(5). The first payment must be at least equal to the current closure cost estimate, except as provided in subsection (f), divided by the number of years in the pay-in period.

B) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = (CE - CV) / Y$$

where CE is the current closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.

4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3).

5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in this Section, the owner or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3).

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- 6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.
- 7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate.
- 8) If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current closure cost estimate covered by the trust fund.
- 9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (a)(7) or (a)(8), the Agency shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.
- 10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Agency shall instruct the trustee to make reimbursement in those amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the

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Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it shall withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (h), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Agency does not instruct the trustee to make such reimbursements, the Agency shall provide the owner or operator a detailed written statement of reasons.

11) The Agency shall agree to termination of the trust when:

A) An owner or operator substitutes alternate financial assurance as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h).

b) Surety bond guaranteeing payment into a closure trust fund.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this subsection and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2) The wording of the surety bond must be as specified in 35 Ill. Adm. Code 724.251.

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

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- A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and
- B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:
 - i) Payments into the trust fund as specified in subsection (a):
 - ii) Updating of Schedule A of the trust agreement (see 40 CFR 264.251(a)) to show current closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator will:
 - A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or
 - B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin final closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or
 - C) Provide alternate financial assurance as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.
- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- 6) The penal sum of the bond must be in an amount at

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least equal to the current closure cost estimate, except as provided in subsection (f).

- 7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Agency.
- 8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
- 9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this Section.

c) Closure letter of credit.

- 1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Agency. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- 2) The wording of the letter of credit must be as specified in 35 Ill. Adm. Code 724.251.
- 3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency will be deposited by the

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issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a), except that:

- A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the letter of credit; and
- B) Unless the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations.
 - i) Payments into the trust fund as specified in subsection (a);
 - ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the EPA Identification Number, name and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.
- 5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return

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receipts.

- 6) The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in subsection (f).
- 7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Agency.
- 8) Following a final determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Agency may draw on the letter of credit.
- 9) If the owner or operator does not establish alternate financial assurance as specified in this Section and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency shall draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Section and obtain written approval of such assurance from the Agency.
- 10) The Agency shall return the letter of credit to the issuing institution for termination when:
 - A) An owner or operator substitutes alternate

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financial assurance as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h).

d) Closure insurance.

1) An owner or operator may satisfy the requirements of this Section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Agency. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

2) The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251.

3) The closure insurance policy must be issued for a face amount at least equal to the current closure cost estimate, except as provided in subsection (f). 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.

4) The closure insurance policy must guarantee that funds will be available to close the facility whenever final closure occurs. The policy must also guarantee that, once final 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.

5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursement for closure expenditures by submitting itemized bills to the Agency. The owner or operator may request reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility

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over its remaining operating life. Within 60 days after receiving bills for closure activities, the Agency shall instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing if the Agency determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Agency determines that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, it shall withhold reimbursement of such amounts as it deems prudent until it determines, in accordance with subsection (h), that the owner or operator is no longer required to maintain financial assurance for final closure of the particular facility. If the Agency does not instruct the insurer to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

- 6) The owner or operator shall maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in subsection (d)(10). Failure to pay the premium, without substitution of alternate financial assurance as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- 7) 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.
- 8) 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

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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:

- A) The Agency deems the facility abandoned; or
 - B) Interim status is terminated or revoked; or
 - C) Closure is ordered by the Board or a U.S. district court or other court of competent jurisdiction; or
 - D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy); or
 - E) The premium due is paid.
- 9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Agency.
- 10) The Agency shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:
- A) An owner or operator substitutes alternate financial assurance as specified in this Section; or
 - B) The Agency releases the owner or operator from

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the requirements of this Section in accordance with subsection (h).

e) Financial test and corporate guarantee for closure.

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria of either subsection (e)(1)(A) or (e)(1)(B):

A) The owner or operator shall have:

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

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; 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 total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

B) The owner or operator shall have:

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

ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current

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plugging and abandonment cost estimates;
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 total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2) The phrase "current closure and post-closure cost estimates" as used in subsection (e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 264.151(f)) (incorporated by reference in 35 Ill. Adm. Code 724.251). The phrase "current plugging and abandonment cost estimates" as used in subsection (e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)), incorporated by reference in 35 Ill. Adm. Code 704.240.

3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the Agency:

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251; and

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

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

i) The accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end

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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 which caused the accountant to believe that the specified data should be adjusted.
- 5) After the initial submission of items specified in subsection (e)(3), the owner or operator shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (e)(3).
- 6) If the owner or operator no longer meets the requirements of subsection (e)(1), the owner or operator shall send notice to the Agency of intent to establish alternate financial assurance as specified in this Section. 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 owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.
- 7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3). If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1), the owner or operator shall provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.
- 8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency

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shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this Section within 30 days after notification of the disallowance.

9) The owner or operator is no longer required to submit the items specified in subsection (e)(3) when:

A) An owner or operator substitutes alternate financial assurance as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h).

10) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall be the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (e)(1) through (e)(8) and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be as specified in 35 Ill. Adm. Code 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in subsection (e)(3). The terms of the corporate guarantee must provide that:

A) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (a) in the name of the owner or operator.

B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator

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and the Agency, as evidenced by the return receipts.

- C) If the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.
- f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit and insurance. The mechanisms must be as specified in subsections (a) through (d), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the owner or operator may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for closure of the facility.
- g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility. Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the EPA Identification Number, name, address and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to close all of the owner or operator's facilities. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that

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facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

h) Release of the owner or operator from the requirements of this Section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency shall notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain financial assurance for closure of the facility, unless the Agency determines that closure has not been in accordance with the approved closure plan. The Agency shall provide the owner or operator a detailed written statement of any such determination that closure has not been in accordance with the approved closure plan.

j) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board [35 Ill. Adm. Code 702.184(e)(3)]:

- 1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit or insurance;
- 2) Requiring alternate assurance upon a finding that an owner or operator, or parent corporation, no longer meets a financial test.

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

Section 725.244 Cost Estimate for Post-closure Care

- a) The owner or operator of a disposal facility must prepare a hazardous waste disposal unit shall have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Section 725.217 through 725.220, 725.328, 725.358, 725.380 and 725.410.
- 1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See

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definition of "parent corporation" in Section 725.241(d).

- 2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Subpart 6 of Part 725 Section 725.217.

- b) During the ~~operating~~ active life of the facility, the owner or operator ~~must~~ shall adjust the post-closure cost estimate for inflation within 30 days after each anniversary of the date on which the first post-closure cost estimate was prepared. The adjustment must be made as specified in paragraphs (b)(1) and (b)(2) of this Section, 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with Section 725.245. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Agency as specified in Section 725.245(e)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars, or by using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business as specified in subsections (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.
 - 1) The first adjustment is made by multiplying the post-closure estimate by the inflation factor. The result is the adjusted post-closure cost estimate.
 - 2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

- c) The owner or operator must During the active life of the facility, the owner or operator shall revise the post-closure cost estimate during the operating life of the facility whenever a change in the post-closure plan no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later

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than 30 days after the Agency has approved the request to modify the plan if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in ~~Section 725-244~~ subsection (b).

- d) The owner or operator ~~must~~shall keep the following at the facility during the operating life of the facility: the latest post-closure costs estimate prepared in accordance with ~~Sections 725-244~~subsections (a) and (c) and, when this estimate has been adjusted in accordance with ~~Section 725-244~~subsection (b), the latest adjusted post-closure cost estimate.

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 725.245 Financial Assurance for Post-Closure
Monitoring and Maintenance

~~The Board adopts by reference 40 CFR 265-145 through 265-150. These will be referred to as Sections 725-245 through 725-250.~~

An owner or operator of a facility with a hazardous waste disposal unit shall establish financial assurance for post-closure care of the disposal unit(s). The owner or operator shall choose from the following options:

a) Post-closure trust fund.

- 1) An owner or operator may satisfy the requirements of this Section by establishing a post-closure trust fund which conforms to the requirements of this paragraph and submitting an original, signed duplicate of the trust agreement to the Agency. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.
- 2) The wording of the trust agreement must be as specified in 35 Ill. Adm. Code 724.251 and the trust agreement must be accompanied by a formal certification of acknowledgment (as specified in 35 Ill. Adm. Code 724.251). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

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- 3) Payments into the trust fund must be made annually by the owner or operator over the 20 years beginning May 19, 1981, or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund must be made as follows:
- A) The first payment must be made before May 19, 1981, except as provided in subsection (a)(5). The first payment must be at least equal to the current post-closure cost estimate, except as provided in subsection (f), divided by the number of years in the pay-in period.
- B) Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:
- $$\text{Next payment} = (CE - CV) / Y$$
- where CE is the current post-closure cost estimate, CV is the current value of the trust fund and Y is the number of years remaining in the pay-in period.
- 4) The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, the owner or operator shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in subsection (a)(3).
- 5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this Section, the owner or operator's first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made as specified in subsection (a)(3).
- 6) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or

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operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

- 7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate.
- 8) If an owner or operator substitutes other financial assurance as specified in this Section for all or part of the trust fund, owner or operator may submit a written request to the Agency for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.
- 9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (a)(7) or (a)(8), the Agency shall instruct the trustee to release to the owner or operator such funds as the Agency specifies in writing.
- 10) During the period of post-closure care, the Agency shall approve a release of funds if the owner or operator demonstrates to the Agency that the value of the trust fund exceeds the remaining cost of post-closure care.
- 11) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency shall instruct the trustee to make reimbursement in those amounts as the Agency specifies in writing if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does

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not instruct the trustee to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

12) The Agency shall agree to termination of a trust when:

A) An owner or operator substitutes alternate financial assurance as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h).

b) Surety bond guaranteeing payment into a post-closure trust fund.

1) An owner or operator may satisfy the requirements of this Section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Agency. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

2) The wording of the surety bond must be as specified in 35 Ill. Adm. Code 724.251.

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

A) An original, signed duplicate of the trust agreement must be submitted to the Agency with the surety bond; and

B) Until the standby trust fund is funded pursuant to the requirements of this Section, the following are not required by these regulations:

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- i) Payments into the trust fund as specified in subsection (a);
 - ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current post-closure cost estimates;
 - iii) Annual valuations as required by the trust agreement; and
 - iv) Notices of nonpayment as required by the trust agreement.
- 4) The bond must guarantee that the owner or operator will:
- A) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or
 - B) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the Board or a U.S. district court or other court of competent jurisdiction; or
 - C) Provide alternate financial assurance as specified in this Section, and obtain the Agency's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the bond from the surety.
- 5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
- 6) The penal sum of the bond must be in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (f).
- 7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the

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current post-closure cost estimate and submit evidence of such increase to the Agency or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.

- 8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.
- 9) The owner or operator may cancel the bond if the Agency has given prior written consent based on its receipt of evidence of alternate financial assurance as specified in this Section.

c) Post-closure letter of credit.

- 1) An owner or operator may satisfy the requirements of this Section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Agency. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.
- 2) The wording of the letter of credit must be as specified in 35 Ill. Adm. Code 724.251.
- 3) An owner or operator who uses a letter of credit to satisfy the requirements of this Section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Agency. This standby trust fund must meet the requirements of the trust fund specified in subsection (a), except that:

A) An original, signed duplicate of the trust

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agreement must be submitted to the Agency with the letter of credit; and

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

i) Payments into the trust fund as specified in subsection (a);

ii) Updating of Schedule A of the trust agreement (as specified in 35 Ill. Adm. Code 724.251) to show current post-closure cost estimates;

iii) Annual valuations as required by the trust agreement; and

iv) Notices of nonpayment as required by the trust agreement.

4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date and providing the following information: the EPA Identification Number, name and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Agency by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Agency have received the notice, as evidenced by the return receipts.

6) The letter of credit must be issued in an amount at least equal to the current post-closure cost estimate, except as provided in subsection (f).

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- 7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.
- 8) During the period of post-closure care, the Agency shall approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Agency that the amount exceeds the remaining cost of post-closure care.
- 9) Following a determination pursuant to Section 3008 of the Resource Conservation and Recovery Act or Section 21(f) of the Environmental Protection Act that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other interim status requirements, the Agency may draw on the letter of credit.
- 10) If the owner or operator does not establish alternate financial assurance as specified in this Section and obtain written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Agency shall draw on the letter of credit. The Agency may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Agency shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Section and obtain written approval of such assurance from the Agency.

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- 11) The Agency shall return the letter of credit to the issuing institution for termination when:
- A) An owner or operator substitutes alternate financial assurance as specified in this Section; or
 - B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h).
- d) Post-closure insurance.
- 1) An owner or operator may satisfy the requirements of this Section by obtaining post-closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Agency. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.
 - 2) The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251.
 - 3) The post-closure insurance policy must be issued for a face amount at least equal to the current post-closure estimate, except as provided in subsection (f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer's will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
 - 4) The post-closure insurance policy must guarantee that funds will be available to provide post-closure care of facility whenever the post-closure period begins. The policy must also guarantee that, once post-closure care 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.
 - 5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by

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submitting itemized bills to the Agency. Within 60 days after receiving bills for post-closure activities, the Agency shall instruct the insurer to make reimbursement in such amounts as the Agency specifies in writing, if the Agency determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Agency does not instruct the insurer to make such reimbursements, the Agency shall provide the owner or operator with a detailed written statement of reasons.

- 6) The owner or operator shall maintain the policy in full force and effect until the Agency consents to termination of the policy by the owner or operator as specified in subsection (d)(11). Failure to pay the premium, without substitution of alternate financial assurance as specified in this Section, will constitute a significant violation of these regulations, warranting such remedy as the Board may impose pursuant to the Environmental Protection Act. Such violation will be deemed to begin upon receipt by the Agency of a notice of future cancellation, termination or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.
- 7) 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.
- 8) 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

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remain in full force and effect in the event that on or before the date of expiration:

- A) The Agency deems the facility abandoned; or
 - B) Interim status is terminated or revoked; or
 - C) Closure is ordered by the Board or a U.S. district court or other court of competent jurisdiction; or
 - D) The owner or operator is named as debtor in a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy); or
 - E) The premium due is paid.
- 9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Agency, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency.
- 10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.
- 11) The Agency shall give written consent to the owner or operator that the owner or operator may terminate the insurance policy when:
- A) An owner or operator substitutes alternate

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financial assurance as specified in this Section; or

B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h).

e) Financial test and corporate guarantee for post-closure care.

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria of either subsection (e)(1)(A) or (e)(1)(B):

A) The owner or operator shall have:

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

ii) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

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

iv) Assets in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

B) The owner or operator shall have:

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

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Baa as issued by Moody's; and

ii) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; 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 sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2) The phrase "current closure and post-closure cost estimates" as used in subsection (e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 264.151(f)) (incorporated by reference in 35 Ill. Adm. Code 724.251). The phrases "current plugging and abandonment cost estimates" as used in subsection (e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)), incorporated by reference in 35 Ill. Adm. Code 704.240.

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

A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251; and

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

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

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- i) The accountant has compared the data which 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 which caused the accountant to believe that the specified data should be adjusted.
- 5) After the initial submission of items specified in subsection (e)(3), the owner or operator shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subsection (e)(3).
- 6) If the owner or operator no longer meets the requirements of subsection (e)(1), the owner or operator shall send notice to the Agency of intent to establish alternate financial assurance as specified in this Section. 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 owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.
- 7) The Agency may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subsection (e)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in subsection (e)(3). If the Agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subsection (e)(1), the owner or operator shall provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.
- 8) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by

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the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (e)(3)(B)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this Section within 30 days after notification of the disallowance.

- 9) During the period of post-closure care, the Agency shall approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Agency that the amount of the cost estimate exceeds the remaining cost of post-closure care.
- 10) The owner or operator is no longer required to submit the items specified in subsection (e)(3) when:
- A) An owner or operator substitutes alternate financial assurance as specified in this Section; or
 - B) The Agency releases the owner or operator from the requirements of this Section in accordance with subsection (h).
- 11) An owner or operator may meet the requirements of this Section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall be the parent corporation of the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (e)(1) through (e)(9), and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be as specified in 35 Ill. Adm. Code 724.251. The corporate guarantee must accompany the items sent to the Agency as specified in subsection (e)(3). The terms of the corporate guarantee must provide that:
- A) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the

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post-closure plan and other interim status requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subsection (a) in the name of the owner or operator.

B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Agency, as evidenced by the return receipts.

C) If the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the Agency within 90 days after receipt by both the owner or operator and the Agency of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit and insurance. The mechanisms must be as specified in subsections (a) through (d), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, it may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Agency may use any or all of the mechanisms to provide for post-closure care of the facility.

g) Use of a financial mechanism or multiple facilities. An owner or operator may use a financial assurance mechanism specified in this Section to meet the requirements of this Section for more than one facility.

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Evidence of financial assurance submitted to the Agency must include a list showing, for each facility, the EPA Identification Number, name, address and the amount of funds for post-closure care assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. The amount of funds available to the Agency must be sufficient to provide post-closure care for all of the owner or operator's facilities. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Agency may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

- i) Release of the owner or operator from the requirements of this Section. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed in accordance with the approved post-closure plan, the Agency shall notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain financial assurance for post-closure care of that unit, unless the Agency determines that post-closure care has not been in accordance with the approved post-closure plan. The Agency shall provide the owner or operator a detailed written statement of any such determination that post-closure care has not been in accordance with the approved post-closure plan.
- j) Appeal. The following Agency actions are deemed to be permit modifications or refusals to modify for purposes of appeal to the Board [35 Ill. Adm. Code 702.184(e)(3)]:
- 1) An increase in, or a refusal to decrease the amount of, a bond, letter of credit or insurance;
 - 2) Requiring alternate assurance upon a finding that an owner or operator, or parent corporation, no longer meets a financial test.

(Source: Amended at 10 Ill. Reg. ,
effective)

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Section 725.246 Use of a Mechanism for Financial Assurance of Both Closure and Post-closure Care

An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test or corporate guarantee that meets the specifications for the mechanism in both Sections 725.243 and 725.245. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

Section 725.247 Liability Requirements

a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in subsections (a)(1), (a)(2) and (a)(3):

1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be as specified in 35 Ill. Adm. Code 724.251. The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner or operator shall provide a signed duplicate original of the insurance policy.

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- B) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.
- 2) An owner or operator may meet the requirements of this Section by passing a financial test for liability coverage as specified in subsection (f).
- 3) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this Section. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.
- b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill or land treatment facility which is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. This liability coverage may be demonstrated in one of three ways, as specified in subsections (b)(1), (b)(2), and (b)(3):
- 1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.
- A) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidence by a Certificate of Liability Insurance. The wording of the endorsement must be as specified in 35 Ill. Adm. Code 724.251. The wording of the certificate of insurance must be as specified in 35 Ill. Adm. Code 724.251. The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Agency. If requested by the Agency, the owner

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or operator shall provide a signed duplicate original of the insurance policy.

- B) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in one or more states.
- 2) An owner or operator may meet the requirements of this Section by passing a financial test for liability coverage as specified in subsection (f).
- 3) An owner or operator may demonstrate the required liability coverage through use of both the financial test and insurance as these mechanisms are specified in this Section. The amounts of coverage must total at least the minimum amounts required by this paragraph.
- c) Request for adjusted level of required liability coverage. If an owner or operator demonstrates to the Agency that the levels of financial responsibility required by subsections (a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of facilities, the owner or operator may obtain an adjusted level of required liability coverage from the Agency. The request for an adjusted level of required liability coverage must be submitted in writing to the Agency. If granted, the Agency's action will take the form of an adjusted level of required liability coverage, such level to be based on the Agency assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Agency may require an owner or operator who requests an adjusted level of required liability coverage to provide such technical and engineering information as is necessary to determine a level of financial responsibility other than that required by subsection (a) or (b). The Agency shall process any request for an adjusted level of required liability coverage as if it were a permit modification request under 35 Ill. Adm. Code 702.184(e)(3) and 705.128. Notwithstanding any other provision, the Agency shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a tentative decision to grant an adjusted level of required liability insurance. The Agency may

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also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the tentative decision.

- d) Adjustments by the Agency. If the Agency determines that the levels of financial responsibility required by subsection (a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage or disposal at the facility or group of facilities, the Agency shall adjust the level of financial responsibility required under subsection (a) or (b) as may be necessary to protect human health and the environment. This adjusted level shall be based on the Agency's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Agency determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill or land treatment facility, the Agency may require that an owner or operator of the facility comply with subsection (b). An owner or operator shall furnish to the Agency, within a time specified by the Agency in the request, which shall not be less than 30 days, any information which the Agency requests to determine whether cause exists for such adjustments of level or type of coverage. The Agency shall process any request for an adjusted level of required liability coverage as if it were a permit modification request under 35 Ill. Adm. Code 702.184(e)(3) and 705.128. Notwithstanding any other provision, the Agency shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a tentative decision to grant an adjusted level of required liability insurance. The Agency may also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the tentative decision.
- e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Agency shall notify the owner or operator in writing that the owner or operator is no longer required by this Section to maintain liability coverage for that facility, unless the Agency determines that closure has not been in accordance with the

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approved closure plan.

f) Financial test for liability coverage.

1) An owner or operator may satisfy the requirements of this Section by demonstrating that the owner or operator passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria of subsection (f)(1)(A) or (f)(1)(B):

A) The owner or operator shall have:

i) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

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

iii) Assets in the United States amounting to either: at least 90 percent of total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

B) The owner or operator shall have:

i) A current rating for the owner or operator's most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by Moody's; and

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

iii) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

iv) Assets in the United States amounting to either: at least 90 percent of total assets; or at least six times the amount of liability coverage to be demonstrated by this test.

2) The phrase "amount of liability coverage" as used

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in subsection (f)(1) refers to the annual aggregate amounts for which coverage is required under subsections (a) and (b).

- 3) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following three items to the Agency:
- A) A letter signed by the owner's or operator's chief financial officer and worded as specified in 35 Ill. Adm. Code 724.251. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by Sections 724.243(f), 724.245(f), 725.243(e) and 725.245(e), and liability coverage, it shall submit the letter specified in 35 Ill. Adm. Code 724.251 to cover both forms of financial responsibility; a separate letter as specified in 35 Ill. Adm. Code 724.251 is not required.
 - B) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
 - C) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:
 - i) The accountant has compared the data which 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 which caused the accountant to believe that the specified data should be adjusted.
- 5) After the initial submission of items specified in subsection (f)(3), the owner or operator shall send updated information to the Agency within 90 days after the close of each succeeding fiscal year.

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This information must consist of all three items specified in subsection (f)(3).

- 6) If the owner or operator no longer meets the requirements of subsection (f)(1), the owner or operator shall obtain insurance for the entire amount of required liability coverage as specified in this Section. Evidence of insurance must be submitted to the Agency within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.
- 7) The Agency may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the accountant's report on examination of the owner's or operator's financial statements (see subsection (f)(3)(B)). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Agency shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in this Section within 30 days after notification of disallowance.

(Source: Added at 10 Ill. Reg. ,
effective)

Section 725.248 Incapacity of Owners or Operators,
Guarantors or Financial Institutions

- a) An owner or operator shall notify the Agency by certified mail of the commencement of a voluntary or involuntary proceeding under 11 U.S.C. (Bankruptcy) naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Sections 725.243(e) and 725.245(e) shall make such a notification if the guarantor is named as a debtor, as required under the terms of the corporate guarantee (35 Ill. Adm. Code 724.251).
- b) An owner or operator who fulfills the requirements of Sections 725.243, 725.245 or 725.247 by obtaining a trust fund, surety bond, letter of credit or insurance policy will be deemed to be without the required

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financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

(Source: Added at 10 Ill. Reg. ,
effective)

Section 725.251 Promulgation of Forms (Repealed)

The Agency may, pursuant to Section 39(a) of the Act, promulgate standardized forms consistent with this Subpart and 40 CFR 265, Subpart H. Any owner or operator required to establish financial assurance under this Subpart shall do so only upon the standardized forms promulgated by the Agency. The Agency may reject any financial assurance document which is not submitted on such standardized forms.

(Source: Repealed at 10 Ill. Reg. ,
effective)

SUBPART N: LANDFILLS

Section 725.414 Special Requirements for Liquid Wastes

- b) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.
- c) Containers holding free liquids must not be placed in a landfill unless:
 - 1) All free-standing liquid;
 - A) Has been removed by decanting, or other methods; or
 - B) Has been mixed with absorbent or solidified so that free-standing liquid is no longer observed; or
 - C) Has been otherwise eliminated; or

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- 2) The container is very small, such as an ampule; or
 - 3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or
 - 4) The container is a lab pack as defined in Section 725.416 and is disposed of in accordance with Section 725.416.
- de) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods" for Evaluating Solid Wastes, Physical/Chemical Methods." (EPA Publication No. SW 846, incorporated by reference in 35 Ill. Adm. Code 720.111).
- f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited (35 Ill. Adm. Code 729.311).
- g) Disposal of liquid wastes or wastes containing free liquids otherwise allowed under this Section must be authorized pursuant to 35 Ill. Adm. Code 709.401(a). As required by 35 Ill. Adm. Code 709.520(c), the Agency must require the addition of absorbents to any such waste, any provision of this Section notwithstanding.

(Source: Amended at 10 Ill. Reg. ,
effective)

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NOTICE OF PROPOSED AMENDMENTS

The Heading of the Part: Underground Storage Tanks

Code Citation: 35 Ill. Adm. Code 731

Section Numbers:

Proposed Action:

731.101
731.103
Appendix A

Amendment
New Section
New Section

Statutory Authority: Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4(e) and 1027.

A Complete Description of the Subjects and Issues Involved:

A complete description is contained in the Board's Proposed Opinion of October 9, 1986, in R86-28, which Opinion is available from the address below. This proposal updates the Illinois RCRA hazardous waste rules to agree with rules adopted by USEPA between April 1 and June 30, 1986. As provided by Section 22.4(a) of the Environmental Protection Act, this rulemaking is not subject to Section 5 of the Administrative Procedure Act, and is hence not subject to second notice review by JCAR.

Part 731 is drawn from 40 CFR 280. The amendments are drawn from 50 Fed. Reg. 46613 and 51 Fed. Reg. 13497. They include notification requirements for owners of underground storage tanks.

Will this proposed rule replace an emergency rule currently in effect? No.

Does this rulemaking contain an automatic repeal date?: No.

Are there any other amendments pending on this Part? No.

Statement of Statewide Policy Objectives:

This rulemaking is mandated by Section 22.4 of the Environmental Protection Act. The statewide policy objectives are set forth in Section 20 of that Act.

Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference Docket R86-28 and be addressed to:

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Initial Regulatory Flexibility Analysis:

Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: October 15, 1986

Types of small businesses affected:

The existing rules and amendments affect small businesses which own or operate underground storage tanks, including gasoline storage tanks.

Reporting, Bookkeeping or other procedures required for compliance:

The existing rules require permits and substantial reporting and bookkeeping. The amendments immediate notification by owners or operators of underground storage tanks.

Types of professional skills necessary for compliance:

The existing rules and amendments may require the services of an attorney, a certified public accountant, a chemist and a registered professional engineer.

The full text of the Proposed Amendments is as follows:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL
AND UNDERGROUND STORAGE TANK PROGRAMS

PART 731

UNDERGROUND STORAGE TANKS

Section	
731.101	Definitions and exemptions
731.102	Interim prohibitions
731.103	<u>Notification Requirements</u>
731.900	<u>Incorporations by reference</u>
731.901	Compliance Date
Appendix A	<u>Notification Form</u>

AUTHORITY: Implementing Section 22.4(e) and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2, pars. 1022.4(e) and 1027).

SOURCE: Adopted in R86-1 at 10 Ill. Reg. 14175, effective August 12, 1986; amended in R86-28 at 10 Ill. Reg. , effective .

Section 731.101 Definitions and exemptions

- a) "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank.
- b) "Owner" means:
- 1) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for storage, use or dispensing of regulated substances; and
 - 2) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before discontinuation of its use.
- ca) "Person" has the same meaning as provided in Section 1004(15) of the Resource Conservation and Recovery Act, as amended, (42 U.S.C. 6901 et seq.) except that such

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term includes a consortium, a joint venture, a commercial entity, and the United States Government.

bd) "Regulated substance" means

- 1) Any substance of defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act, as amended), and
- 2) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

ee) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface soils.

df) "Underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten per centum or more beneath the surface of the ground. Such term does not include any:

- 1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,
- 2) Tank used for storing heating oil for consumptive use on the premises when stored,
- 3) Septic tank,
- 4) Pipeline facility (including gathering lines),
- 5) Regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et. seq.) or
- 6) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 et seq.) or
- 7) Regulated under the Illinois Gas Pipeline Safety Act, Ill. Rev. Stat. 1985, ch. 111 2/3, pars. 551

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et seq.,

- 8) Surface impoundment, pit pond or lagoon,
- 9) Storm water or wastewater collection system,
- 10) Flow-through process tank,
- 11) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or
- 12) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the undesignated floor,
- 13) Any pipes connected to any tank which is described in subsection (d)(1) through (d)(12).

(Source: Amended at 10 Ill. Reg. ,
effective)

Section 731.103 Notification Requirements

- a) Each owner of an underground storage tank currently in use shall submit, in the form prescribed in Appendix A, a notice of the existence of such tank to:

Underground Storage Tank Coordinator
Division of Fire Prevention
Office of State Fire Marshal
3150 Executive Park Drive
Springfield, IL 62703-4599

- b) Each owner of an underground storage tank taken out of operation after January 1, 1974, (unless the owner knows that such tank has been removed from the ground) shall submit, in the form prescribed in Appendix A, a notice of the existence of such tank to the address specified in subsection (a).
- c) Any owner who brings an underground storage tank into use shall, within 30 days after bringing such tank into use, submit, in the form prescribed in Appendix A, a notice of the existence of such tank to the address specified in subsection (a).
- e) Owners required to submit notices under subsections (a)

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through (c) shall provide notices to the agency specified in subsection (a) for each tank they own. Owners may provide notice for several tanks on one form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.

- f) Notices submitted under subsections (a) through (c) must provide all of the information indicated on the form in Appendix A for each tank for which notice must be given.
- g) Through June 8, 1987, any person who deposits regulated substances in an underground storage tank shall make reasonable efforts to notify the owner or operator of such tank of the owner's obligations under subsections (a) through (c).
- h) Beginning 30 days after the United States Environmental Protection Agency issues new tank performance standards pursuant to Section 9003(e) of the Resource Conservation and Recovery Act, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification obligations under subsections (a) through (c).
- i) Subsections (a) through (c) do not apply to tanks for which notice was given pursuant to Section 103(c) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(Source: Added at 10 Ill. Reg. ,
effective)

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Appendix A: Notification Form

FOR TANKS IN IL		RETURN COMPLETED FORM TO	LIST Coordinator Division of Fire Prevention P.O. Box 3803 Springfield, IL 62708-3803	FORM APPROVED DMS NO. 2950-0067 APPROVAL EXPIRES 6-30-83
			I.D. Number	STATE USE ONLY
			Date Received	
GENERAL INFORMATION				
<p>Notification is required by Federal law for all underground tanks that have been used to store regulated substances since January 1, 1974, that are in the ground as of May 8, 1980, or that are brought into use after May 8, 1980. The information requested is required by Section 9002 of the Resource Conservation and Recovery Act, (RCRA), as amended.</p> <p>The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonably available records, or, in the absence of such records, your knowledge, belief, or recollection.</p> <p>Who Must Notify? Section 9002 of RCRA, as amended, requires that, unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owner means: (a) in the case of an underground storage tank in use on November 8, 1980, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and (b) in the case of any underground storage tank in use before November 8, 1980, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.</p> <p>What Tanks Are Included? Underground storage tank is defined as any one or combination of tanks that (1) is used to contain an accumulation of "regulated substances" and (2) whose volume (including connected underground piping) is 10% or more beneath the ground. Some examples are underground tanks storing: 1. gasoline, used oil, or diesel fuel, and 2. industrial solvents, pesticides, herbicides, or fungicides.</p> <p>What Tanks Are Excluded? Tanks removed from the ground are not subject to notification. Other tanks excluded from notification are: 1. farm or residential tanks of 1,000 gallons or less capacity used for storing motor fuel for noncommercial purposes, 2. tanks used for storing heating oil for consumptive use on the premises where stored, 3. septic tanks, 4. pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979, or which is an interstate pipeline facility regulated under State laws, 5. surface impoundments, pits, ponds, or lagoons, 6. storm water or waste water collection systems, 7. flow-through process tanks, 8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations, 9. storage tanks situated in an underground area (such as a basement, cellar, interworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.</p> <p>What Substances Are Covered? The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), with the exception of those substances regulated as hazardous waste under Subtitle C of RCRA. It also includes petroleum, e.g. crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).</p> <p>When To Notify? 1. Owners of underground storage tanks in use or that have been taken out of operation after January 1, 1974, but still in the ground, must notify by May 8, 1980. 2. Owners who bring underground storage tanks into use after May 8, 1980, must notify within 30 days of bringing the tanks into use.</p> <p>Penalties: Any owner who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or for which false information is submitted.</p>				
INSTRUCTIONS				
Please type or print in ink all items except "signature" in Section V. This form must be completed for each location containing underground storage tanks. If more than 5 tanks are owned at this location, photocopy the reverse side, and staple continuation sheets to this form.				Indicate number of continuation sheets attached <input style="width: 40px; height: 20px;" type="text"/>
I. OWNERSHIP OF TANK(S)		II. LOCATION OF TANK(S)		
Owner Name (Corporation, Individual, Public Agency, or Other Entity) _____		(If same as Section I, mark box here <input type="checkbox"/>)		
Street Address _____		Facility Name or Company Site Identifier, as applicable _____		
County _____		Street Address or State Road, as applicable _____		
City _____ State _____ ZIP Code _____		County _____		
Area Code _____ Phone Number _____		City (nearest) _____ State _____ ZIP Code _____		
Type of Owner (Mark all that apply <input type="checkbox"/>)		Indicate number of tanks at this location <input style="width: 40px;" type="text"/>		
<input type="checkbox"/> Current <input type="checkbox"/> State or Local Gov't <input type="checkbox"/> Private or Corporate		Mark box here if tank(s) are located on land within an Indian reservation or on other Indian trust lands <input type="checkbox"/>		
<input type="checkbox"/> Former <input type="checkbox"/> Federal Gov't (GSA facility I.D. no. _____) <input type="checkbox"/> Ownership uncertain				
III. CONTACT PERSON AT TANK LOCATION				
Name (If same as Section I, mark box here <input type="checkbox"/>) _____		Job Title _____		Area Code _____ Phone Number _____
IV. TYPE OF NOTIFICATION				
<input type="checkbox"/> Mark box here only if this is an amended or subsequent notification for this location.				
V. CERTIFICATION (Read and sign after completing Section VI)				
I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.				
Name and official title of owner or owner's authorized representative _____		Signature _____		Date Signed _____

CONTINUE ON REVERSE SIDE

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Owner Name (from Section I) _____ Location (from Section II) _____ Page No. _____ of _____ Pages

VI DESCRIPTION OF UNDERGROUND STORAGE TANKS (Complete for each tank at this location)					
Tank Identification No. (e.g., ABC-123), or Arbitrarily Assigned Sequential Number (e.g., 1,2,3...)	Tank No.	Tank No.	Tank No.	Tank No.	Tank No.
1. Status of Tank (Mark all that apply <input type="checkbox"/>) Currently in Use Temporarily Out of Use Permanently Out of Use Brought into Use after 5/8/86	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
2. Estimated Age (Years)					
3. Estimated Total Capacity (Gallons)					
4. Material of Construction (Mark one <input type="checkbox"/>) Steel Concrete Fiberglass Reinforced Plastic Unknown Other, Please Specify _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5. Internal Protection (Mark all that apply <input type="checkbox"/>) Cathodic Protection Interior Lining (e.g., epoxy resins) None Unknown Other, Please Specify _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
6. External Protection (Mark all that apply <input type="checkbox"/>) Cathodic Protection Painted (e.g., asphaltic) Fiberglass Reinforced Plastic Coated None Unknown Other, Please Specify _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
7. Piping (Mark all that apply <input type="checkbox"/>) Bare Steel Galvanized Steel Fiberglass Reinforced Plastic Cathodically Protected Unknown Other, Please Specify _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
8. Substance Currently or Last Stored in Greatest Quantity by Volume (Mark all that apply <input type="checkbox"/>) a. Empty b. Petroleum Diesel Kerosene Gasoline (including alcohol blends) Used Oil Other, Please Specify _____ c. Hazardous Substance Please Indicate Name of Principal CERCLA Substance OR Chemical Abstract Service (CAS) No. Mark box <input type="checkbox"/> if tank stores a mixture of substances d. Unknown	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
9. Additional Information (for tanks permanently taken out of service) a. Estimated date last used (mo/yr) b. Estimated quantity of substance remaining (gal.) c. Mark box <input type="checkbox"/> if tank was filled with inert material (e.g., sand, concrete)	/	/	/	/	/

(Source: Added at 10 Ill. Reg. ,
effective)