**Section 811.713 Letter of Credit**

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

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

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

2) Whose deposits are insured by the Federal Deposit Insurance Corporation.

c) Forms:

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

2) The letter of credit must be accompanied by a letter from the owner or operator, referring to the letter of credit by number, the name and address of the issuing institution, and the effective date of the letter, and providing the following information: the name and address of the site and the amount of funds assured for closure and post-closure care of the site, or for corrective action at an MSWLF unit by the letter of credit.

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

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

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

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

A) Abandons the site;

B) Is adjudicated bankrupt;

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

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

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

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

f) Amount:

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

2) Whenever the current cost estimate decreases, the amount of credit may be reduced to the amount of the current cost estimate following written approval by the Agency.

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

g) Term:

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

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

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

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

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

h) Cure of default and refunds:

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

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

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

(Source: Amended at 35 Ill. Reg. 10842, effective June 22, 2011)