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January 1, 2001.

For chemical designations, in this Part, unless the context clearly indicates otherwise, brackets indicate subscript and parentheses indicate superscript.

SUBPART H: WASTE MANAGEMENT PLAN

Section

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Section

- 900.901 Applicability

APPENDIX A: SURETY INSTRUMENTS

- ILLUSTRATION A Surety Bond
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AUTHORITY: Authorized by Section 55 of the Livestock Management Facilities Act and implementing the Livestock Management Facilities Act [510 ILCS 77] (see P.A. 91-0110, effective July 13, 1999).

SOURCE: Adopted at 24 Ill. Reg. 17963, effective

SUBPART A: GENERAL PROVISIONS

Section 900.101 Applicability

This Subpart applies to 8 Ill. Adm. Code 900. The applicability of Subpart B, Setbacks, is set forth at Section 900.201 of this Part. The applicability of Subpart C, Notice of Intent to Construct, is set forth at Section 900.301 of this Part. The applicability of Subpart D, Public Informational Meeting, is set forth at Section 900.401 of this Part. The applicability of Subpart E, Livestock Waste Handling Facilities Other Than Lagoons, is set forth at Section 900.501 of this Part. The applicability of Subpart F, Lagoon Livestock Waste Handling Facilities, is set forth at Section 900.601 of this Part. The applicability of Subpart G, Lagoon Financial Responsibility, is set forth at Section 900.701 of this Part. The applicability of Subpart H, Waste Management Plan, is set forth at Section 900.802 of this Part. The applicability of Subpart I, Certified Livestock Manager, is set forth at Section 900.901 of this Part.

DEPARTMENT NOTE: Standards for the design and construction of livestock waste handling facilities, as required in Subparts E and F of this Part, are located at 35 Ill. Adm. Code 506 and are to be used in conjunction with 8 Ill. Adm. Code 900.

Section 900.102 Severability

If any provision of this Part or its application to any person or under any other circumstances is adjudged invalid, such adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 900.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5] or the Livestock Management Facilities Act [510 ILCS 77]. For the purposes of this Part, the terms included in this Section shall have the following meanings:

“Agency” means the Illinois Environmental Protection Agency. [510 ILCS 77/10.5]

“Animal feeding operation” means a feeding operation as defined in the Illinois Environmental Protection Act and the rules promulgated under that act concerning agriculture related pollution. [510 ILCS 77/10.7]

“Animal unit” means a unit of measurement for any animal feeding operation calculated as follows:

Brood cows and slaughter and feeder cattle multiplied by 1.0.

Milking dairy cows multiplied by 1.4.

Young dairy stock multiplied by 0.6.

Swine weighing over 55 pounds multiplied by 0.4.

Swine weighing under 55 pounds multiplied by 0.03.

Sheep, lambs, or goats multiplied by 0.1.

Horses multiplied by 2.0.

Turkeys multiplied by 0.02.

Laying hens or broilers multiplied by 0.005.

Laying hens or broilers multiplied by 0.01 (if the facility has continuous overflow watering).

Laying hens or broilers multiplied by 0.03 (if the facility has a liquid manure handling system).

Ducks multiplied by 0.02. [510 ILCS 77/10.10]

For species of animals in an animal feeding operation not specifically listed in this definition, the animal unit factor shall be determined by dividing the average mature animal weight by 1,000. The average mature animal weight shall be determined by the Department with guidance from the University of Illinois Cooperative Extension Service.

“Aquifer material” means sandstone that is five feet or more in thickness, or fractured carbonate that is ten feet or more in thickness; or, sand, gravel, or sand and gravel, as defined in this Section, such that there is at least two feet present within any five foot section of a soil boring performed in accordance with Subpart B or Subpart C of 35 Ill. Adm. Code 506.

“Certified livestock manager” means a person that has been duly certified by the Department as an operator of a livestock waste handling facility. [510 ILCS 77/10.15]

“Department” means the Illinois Department of Agriculture. [510 ILCS 77/10.20]

“Farm residence” means any residence on a farm owned or occupied by the farm owners, operators, tenants, or seasonal or year-round hired workers. For purposes of this definition, a “farm” is the land, buildings, and machinery used in the commercial production of farm products, and “farm products” are those plants and animals and their products which are produced or raised for commercial purposes and include but are not limited to forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, fruits, vegetables, flowers, seeds, grasses, trees, fish, honey and other similar products, or any other plant, animal, or plant or animal product which supplies people with food, feed, fiber, or fur. [510 ILCS 77/10.23]

“Flood fringe” means that portion of the floodplain outside the floodway.

“Floodplain” means that land adjacent to a body of water with ground surface elevations at or below the 100-year frequency flood elevation.

“Floodway”, for the six counties including Cook, DuPage, Kane, Lake, McHenry and Will, means *the channel and that portion of the floodplain adjacent to a stream or watercourse* as designated by the Illinois Department of Natural Resources pursuant to Section 18g of the Rivers, Lakes, and Streams Act [615 ILCS 5/18g], *which is needed to store and convey the anticipated future 100-year frequency flood discharge* with no more than a 0.1 foot increase in stage due to the loss of flood conveyance or storage, and no more than a 10% increase in velocities. [615 ILCS 5/18g(d)(1)] For the remaining 96 counties, “Floodway” means the channel of a river, lake or stream and that portion of the adjacent land area that is needed to safely store and convey flood waters. Where floodways have been delineated for regulatory purposes, the mapped lines show the floodway encroachment limits and will be used. For other areas,

floodway limits will be estimated, using hydrologic and hydraulic calculations, to preserve adequate conveyance and storage so that stage increases for the 100-year frequency flood would not exceed 0.1 foot.

“Gravel” or “Sand and gravel” means unconsolidated materials that contain a matrix (particles of two millimeters or less) that is consistent with the definition of “sand” and particles larger than two millimeters in size.

“Inhabited residence” means an occupied residence.

“Karst area” means an area with a land surface containing sinkholes, large springs, disrupted land drainage, and underground drainage systems associated with karstified carbonate bedrock and caves or a land surface without these features but containing a karstified carbonate bedrock unit generally overlain by less than 60 feet of unconsolidated materials. [510 ILCS 77/10.24]

“Karstified carbonate bedrock” means a carbonate bedrock unit (limestone or dolomite) that has a pronounced conduit or secondary porosity due to dissolution of the rock along joints, fractures, or bedding plains. [510 ILCS 77/10.26]

“Lagoon” or “Earthen livestock waste lagoon” means any excavated, diked, or walled structure or combination of structures designed for biological stabilization and storage of livestock wastes. A lagoon does not include structures such as manufactured slurry storage structures or pits under buildings as defined in rules under the Environmental Protection Act concerning agriculture related pollution. [510 ILCS 77/10.25]

“Licensed professional engineer” means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering. [415 ILCS 5/57.2]

“Licensed professional geologist” means an individual who is licensed under the laws of the State of Illinois to engage in the practice of professional geology in Illinois. [225 ILCS 745/15]

“Livestock management facility” means any animal feeding operation, livestock shelter, or on-farm milking and accompanying milk-handling area. Two or more livestock management facilities under common ownership, where the facilities are not separated by a minimum distance of 1/4 mile, and that share a common livestock waste handling facility shall be considered a single livestock management facility. Livestock management facilities at educational institutions, livestock pasture operations, facilities where animals are housed on a temporary basis such as county and state fairs, livestock shows, race tracks, and horse breeding and foaling farms, and market holding facilities are not subject to the Livestock Management Facilities Act or the requirements of this Part. [510 ILCS 77/10.30]

“Livestock shelter” means any covered structure, including but not limited to livestock houses or barns, in which livestock are enclosed at any time.

“Livestock waste” means livestock excreta and associated feed losses, bedding, wash waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, and other materials polluted by livestock. [510 ILCS 77/10.35]

“Livestock waste handling facility” means individually or collectively those immovable constructions or devices, except sewers, used for collecting, pumping, treating, or disposing of livestock waste or for the recovery of by-products from the livestock waste. Two or more livestock waste handling facilities under

common ownership and where the facilities are not separated by a minimum distance of 1/4 mile shall be considered a single livestock waste handling facility. [510 ILCS 77/10.40] Livestock waste handling facilities at educational institutions, livestock pasture operations, facilities where animals are housed on a temporary basis, such as county and state fairs, livestock shows, race tracks, and horse breeding and foaling farms, and market holding facilities, are not subject to the Livestock Management Facilities Act or the requirements of this Part.

“Maintained” means, with reference to a lagoon, that the lagoon is inspected (including but not limited to inspection for burrow holes, trees and woody vegetation, proper freeboard, erosion, settling of berm, berm top integrity, leaks, and seepage) and preventive action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances.

“Modified” means structural changes to a lagoon that increase its volumetric capacity. [510 ILCS 77/10.43]

“New facility” means a livestock management facility or a livestock waste handling facility the construction or expansion of which is commenced on or after May 21, 1996 (the effective date of the Livestock Management Facilities Act). Expanding a facility where the fixed capital cost of the new components constructed within a 2-year period does not exceed 50% of the fixed capital cost of a comparable entirely new facility shall not be deemed a new facility as used in the Livestock Management Facilities Act. [510 ILCS 77/10.45] For facilities that have ceased operation on or after July 13, 1999, commencement of operations at a facility that has livestock shelters left intact and that has completed the requirements imposed under Section 13(k) of the Livestock Management Facilities Act [510 ILCS 77/13(k)] and Section 900.508 of this Part and that has been operated as a livestock management facility for 4 consecutive months at any time within the previous 10 years shall not be considered a new or expanded livestock management or waste handling facility. [510 ILCS 77/13(k)] For facilities that have ceased operation prior to July 13, 1999, commencement of operations at a facility that has livestock shelters left intact and that has been operated as a livestock management facility or livestock waste handling facility for 4 consecutive months at any time within the previous 10 years shall not be considered a new or expanded livestock management or waste handling facility.

“Non-farm residence” means any residence which is not a farm residence. [510 ILCS 77/10.47]

“Occupied residence” means a house or other type of shelter that is intended or used for human occupancy and has been occupied by humans for more than a total of six months in the last two years at that location. For the purposes of this definition, “intended or used for human occupancy” means running water and sanitation are provided within the residence.

“Owner or operator” means any person who owns, leases, controls, or supervises a livestock management facility or livestock waste-handling facility. [510 ILCS 77/10.50]

“Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, State agency, or any other legal entity or their legal representative, agent, or assigns. [510 ILCS 77/10.55]

“Placed in service” means the placement of livestock waste in a livestock waste handling facility upon the completion of construction or modification in accordance with the requirements of this Part.

“Populated area” means any area where at least 10 inhabited non-farm residences are located or where at least 50 persons frequent a common place of assembly or a non-farm business at least once per week.

[510 ILCS 77/10.60] The existence of a populated area shall be determined by identifying the area around the livestock management or livestock waste handling facility delineated by a distance equal to the applicable setback distance and identifying the number of residences or the existence of a non-farm business or the existence of a common place of assembly within that area. For the purpose of setback requirements, common places of assembly or non-farm businesses include but are not limited to churches, hospitals, schools, day care centers, manufacturing companies, land managed for recreational or conservation purposes, museums, camps, parks, retail and wholesale facilities, and shopping centers. A common place of assembly or a non-farm business includes places that operate less than 52 weeks per year, such as schools with seasonal vacation periods and businesses or other places which experience seasonal shutdowns, and parks, camps, and recreational areas which experience seasonal shutdowns or reduced attendance during a portion of the calendar year, provided that such places are frequented by at least 50 persons at least once per week during the portions of the year when seasonal shutdowns or reductions in attendance do not occur.

“Residence” means a house or other structure, including all attachments to the house or structure, which is used as a place of human habitation.

“Sand” means unconsolidated materials, where 70% or more of the particles are of size 0.06 millimeters to 2.00 millimeters, and which according to the USDA soil texture classification scheme includes soil textures of sand and loamy sand and portions of sandy loam and sandy clay loam.

“Serviced” means, with reference to a lagoon, that corrective action is taken as necessary to assure the integrity of the lagoon and its berm and associated appurtenances, including but not limited to removal or repair of burrow holes, trees and woody vegetation, freeboard level, erosion, settling of berm, berm top maintenance, leaks, and seepage.

Section 900.104 Incorporations by Reference

- a) The following materials are incorporated by reference:
- 1) APHA. American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005, (202) 789-5600, “Standard Methods for the Examination of Water and Wastewater”, 19th Edition, 1995.
 - 2) ASAE. American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085-9659, (616) 429-5585:
“Manure Storages”, ASAE Standards 1998, ASAE EP393.2, December 1997, pp. 649-652.
“Design of Anaerobic Lagoons for Animal Waste Management”, ASAE Standards 1998, ASAE EP403.2, August 1993, pp. 656-659.
 - 3) MWPS. MidWest Plan Service, Davidson Hall, Iowa State University, Ames, IA 50011-3080, (515) 294-4337, “Livestock Waste Facilities Handbook”, MWPS-18, 3rd Edition, 1993.
 - 4) NCR. North Central Region - University of Missouri Soil Testing Lab, 23 Mumford Hall, University of Missouri, Columbia, MO 65211, “Recommended Chemical Soil Test Procedures for the North Central Region”, North Central Regional Publication No. 221, Missouri Agr. Exp. Stn. Bul. SB 1001, January 1998.

- 5) NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600, "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA Publication No. EPA-600/R-93/100 (August 1993), Doc. No. PB 94-120821.
 - 6) USDA-NRCS. United States Department of Agriculture - Natural Resources Conservation Service, 1902 Fox Drive, Champaign, IL 61820, "Waste Treatment Lagoon", Illinois Field Office Technical Guide, Section IV, IL359, p. 5, June 1992.
 - 7) University of Illinois Extension Service - College of Agriculture, Consumer and Environmental Sciences, Mumford Hall, Urbana, IL 61801, (217) 333-0460, "Illinois Agronomy Handbook 1999-2000", Circular 1360, December 1998.
- b) This Section incorporates no later amendments or editions.

Section 900.105 Recordkeeping

- a) The Department shall maintain a file for all facilities registering or otherwise filing documents with the Department under this Part.
- b) The file shall contain all registration materials, along with all supporting data and justifications, records of Department certification and determinations, groundwater monitoring results (if required), waste management plans (if required), and any other information submitted to the Department by the owner or operator of a facility.
- c) Where a notice of intent to construct has been filed pursuant to Subpart C of this Part, the Department shall maintain a file that includes all filings and supporting data and justification that it relied upon in making its determination regarding compliance with the setback distances. This file is subject to public inspection.
- d) Materials in the file required by this Section shall be available for public inspection and copying, subject to the Freedom of Information Act [5 ILCS 140].

SUBPART B: SETBACKS

Section 900.201 Applicability

- a) All new livestock management or livestock waste handling facilities shall comply with the setback distances as established in Section 35 of the Livestock Management Facilities Act [510 ILCS 77/35] and with the provisions of this Subpart.
- b) Commencement of operations at a facility reconstructed within two years after partial or total destruction due to natural causes, such as tornado, fire, flood, or earthquake, shall not be considered the location of a new livestock management or waste handling facility for setback purposes. Likewise, a residence partially or totally destroyed due to natural causes, such as tornado, fire, flood, or earthquake, shall retain its original setback for a period of no greater than two years, to allow for reconstruction of the residence.

Section 900.202 Procedures

- a) *Grandfather provision: Facilities in existence prior to July 15, 1991. Livestock management facilities and livestock waste handling facilities in existence prior to July 15, 1991 shall comply with setbacks in*

existence prior to July 15, 1991, as set forth in the Illinois Environmental Protection Act and 35 Ill. Adm. Code 501.402. [510 ILCS 77/35(a)]

- b) *Grandfather provision: Facilities in existence on effective date and after July 15, 1991. Livestock management facilities and livestock waste handling facilities in existence on May 21, 1996 (the effective date of the Livestock Management Facilities Act) but after July 15, 1991 shall comply with setbacks in existence prior to May 21, 1996, as set forth in the Illinois Environmental Protection Act and 35 Ill. Adm. Code 501.402. [510 ILCS 77/35(b)]*
- c) *New livestock management or livestock waste handling facilities. Any new facility shall comply with the following setbacks:*
 - 1) *Residence: For purposes of determining setback distances, minimum distances shall be measured from the nearest corner of the residence to the nearest corner of the earthen waste lagoon, livestock waste handling facility, or livestock management facility, whichever is closer.*
 - 2) *Common Place of Assembly or Non-Farm Business: For the purposes of determining setback distances between a common place of assembly or non-farm business:*
 - A) *When the primary activity at a common place of assembly or non-farm business is an outdoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon, livestock waste handling facility, or livestock management facility to the nearest point on the legal property line of the common place of assembly or non-farm business.*
 - B) *When the primary activity at a common place of assembly or non-farm business is not an outdoor activity and is an indoor activity, minimum distances shall be measured from the nearest corner of the earthen waste lagoon, livestock waste handling facility, or livestock management facility to the nearest corner of the structure where the indoor activity takes place.*
 - 3) *A livestock management facility or livestock waste handling facility serving less than 50 animal units shall be exempt from setback distances as set forth in the Livestock Management Facilities Act but shall be subject to rules promulgated under the Illinois Environmental Protection Act.*
 - 4) *For a livestock management facility or waste handling facility serving 50 or greater but less than 1,000 animal units, the minimum setback distance shall be 1/4 mile from the nearest occupied residence and 1/2 mile from the nearest populated area.*
 - 5) *For a livestock management facility or livestock waste handling facility serving 1,000 or greater but less than 7,000 animal units, the setback is as follows:*
 - A) *For a populated area, the minimum setback shall be increased 440 feet over the minimum setback of 1/2 mile for each additional 1,000 animal units over 1,000 animal units.*
 - B) *For any occupied residence, the minimum setback shall be increased 220 feet over the minimum setback of 1/4 mile for each additional 1,000 animal units over 1,000 animal units.*
 - 6) *For a livestock management facility or livestock waste handling facility serving 7,000 or greater animal units, the setback is as follows:*
 - A) *For a populated area, the minimum setback shall be 1 mile.*

B) *For any occupied residence, the minimum setback shall be 1/2 mile.* [510 ILCS 77/35(c)]

- d) *Requirements governing the location of a new livestock management facility and new livestock waste handling facility and conditions for exemptions or compliance with the maximum feasible location as provided in 35 Ill. Adm. Code 501.402 concerning agriculture related pollution shall apply to those facilities identified in subsections (b) and (c) of this Section. With regard to the maximum feasible location requirements, any reference to a setback distance in 35 Ill. Adm. Code 501.402 shall mean the appropriate distance as set forth in this Section.* [510 ILCS 77/35(d)]
- e) *Setback category for a livestock management facility or livestock waste handling facility shall be determined by the maximum design capacity in animal units of the livestock management facility.* [510 ILCS 77/35(e)] For the purposes of this Subpart, the maximum design capacity of a livestock management facility shall equal the summation of the maximum existing design capacity and the maximum proposed design capacity, both expressed in animal units, of the livestock management facilities not separated by greater than 1/4 mile.
- f) *Setbacks may be decreased when innovative designs as approved by the Department are incorporated into the facility.* [510 ILCS 77/35(f)]
- 1) An owner or operator shall request a setback decrease in writing prior to construction.
 - 2) An owner or operator shall attach to the request for decrease a certification by a Licensed Professional Engineer that in the professional judgment of the Licensed Professional Engineer the innovative designs incorporated into the facility will provide more odor protection than the original setbacks.
 - 3) The Department shall notify the owner or operator of its determination within 30 days after the receipt of the request for decrease. In approving a reduction in setbacks due to innovative designs, the Department shall specifically find that such use of an innovative design will provide more odor protection than the original setbacks.
 - 4) Where the Department grants such a decrease from the setbacks, the Department must maintain a file which includes all supporting data and justification which it relied upon in making its determination. This file is subject to public inspection.
- g) *A setback may be decreased when waivers are obtained from owners of residences that are occupied and located in the setback area.* [510 ILCS 77/35(g)] A setback also may be decreased when waivers are obtained from owners of non-farm businesses or common places of assembly that are located in the setback area.
- 1) An owner or operator request for a setback decrease shall be in writing and submitted to the Department prior to construction.
 - 2) An owner or operator shall attach to the request copies of the written and notarized waivers from all the owners of the residences, non-farm businesses, and common places of assembly that are located within the setback area.
 - 3) Within 30 days after receipt of the request and waivers, the Department shall notify the owner or operator in writing of the setback decrease.

- 4) When such a decrease from the setbacks is requested, the Department must maintain a file which includes all supporting data and justification concerning the setback decrease. This file is subject to public inspection.

Section 900.203 Penalties

- a) For violations of the setback distance requirements, the Department may issue one of the following to the owner or operator of the livestock management facility or livestock waste handling facility:
 - 1) If during construction, a cease and desist order which prohibits further construction of the livestock management facility or livestock waste handling facility, prohibits entry of livestock into the livestock management facility, and prohibits use of the livestock waste handling facility; or
 - 2) An operational cease and desist order.
- b) A cease and desist order issued by the Department pursuant to subsection (a) of this Section shall be canceled by the Department pursuant to the following:
 - 1) Submission to the Department of a valid waiver as provided for in Section 900.202(g) of this Subpart by the livestock management facility owner or operator or the livestock waste handling facility owner or operator; or
 - 2) Verification by the Department of compliance with the appropriate setback distances as described in Section 35 of the Livestock Management Facilities Act [510 ILCS 77/35].

SUBPART C: NOTICE OF INTENT TO CONSTRUCT

Section 900.301 Applicability

This Subpart applies to any owner or operator who proposes to construct a livestock management facility or livestock waste handling facility.

Section 900.302 Filing

An owner or operator shall file, on a form provided by the Department, a notice of intent to construct for a livestock management facility or livestock waste handling facility with the Department prior to construction to establish a base date, which shall be valid for one year, for determination of setbacks in compliance with setback distances or, in the case of construction that is not a new facility or a facility of less than 50 animal units, with the maximum feasible location requirements of Section 35 of the Livestock Management Facilities Act. [510 ILCS 77/11(a)]

Section 900.303 Procedures

- a) The notice of intent to construct shall contain the following items:
 - 1) A legal description of the land on which the livestock facility will be constructed;

- 2) The names and addresses of the owners or operators of the facility;
 - 3) The type and size of the facility;
 - 4) The existing, proposed, and total number of animal units at the facility;
 - 5) The names and addresses of the owners, including local, State, and federal governments, of the property located within the setback areas;
 - 6) The distance to the nearest residence, non-farm business, and common place of assembly as referenced in the definition of “populated area” in Section 900.103 of this Part;
 - 7) A map or sketch showing the proposed facility and setback areas, identifying within the applicable setback areas all the residences, non-farm businesses, and common places of assembly as referenced in the definition of “populated area” in Section 900.103 of this Part; and
 - 8) A statement identifying whether a request for decrease in setbacks, pursuant to Section 900.202(f) or (g), has been sought and whether the request has been granted or denied yet.
- b) For livestock management or livestock waste handling facilities that are not subject to the public informational meeting process as outlined in Section 12 of the Livestock Management Facilities Act [510 ILCS 77] and Subpart D of this Part, the following procedures shall be followed:
- 1) *Upon receipt of the notice of intent to construct form, the Department shall review the documents to determine if all information has been submitted or if clarification is needed. The Department shall, within 15 calendar days after receipt of a notice of intent to construct form, notify the owner or operator that construction may begin, only after receipt and approval by the Department of the construction plans pursuant to Subpart E of this Part, or that clarification of the notice of intent to construct information is needed. [510 ILCS 77/11(b)]*
 - 2) The Department shall, within 15 calendar days after receipt of the clarification information submitted pursuant to this subsection or subsection (b)(1) of this Section, notify the owner or operator that construction may begin only after receipt and approval by the Department of the construction plans pursuant to Subpart E of this Part, or that clarification of the notice of intent to construct information is needed.
 - 3) Within 15 calendar days after receipt by the Department of information that completes the notice of intent to construct form, the Department shall issue an acknowledgment of setback compliance to the owner or operator if the Department has determined that the owner or operator has complied with the setback and notice of intent to construct requirements of this Part.
 - 4) Within 10 calendar days after receipt of the Department’s acknowledgment pursuant to subsection (b)(3) of this Section, the owner or operator shall mail by certified mail, return receipt requested, a copy of the complete notice of intent to construct to the owners of the property located within the setback areas. The owners of the property located within the setback areas are presumed, unless established to the contrary, to be the persons shown by the current tax collector’s warrant book to be the party in whose name the taxes were last assessed.
 - 5) Construction shall not begin until the acknowledgment of setback compliance has been issued by the Department to the owner or operator pursuant to this Section, copies of the complete notice of

intent to construct form have been mailed to owners of property within the setback areas, and construction plans for the livestock waste handling facility have been approved by the Department.

- c) For livestock management or livestock waste handling facilities that are subject to the public informational meeting process as outlined in Section 12 of the Livestock Management Facilities Act [510 ILCS 77/12] and Subpart D of this Part, the following procedures shall be followed:
- 1) Within 15 calendar days after receipt of a notice of intent to construct form by the Department, the Department shall review the form and notify the owner or operator that all information regarding the form has been submitted or that clarification is needed. Upon receipt of any clarification information, the Department shall, within 15 calendar days after receipt of the information, review the information and notify the owner or operator that all information has been submitted or that additional clarification is needed.
 - 2) If a public informational meeting is not held, the Department shall issue an acknowledgment of setback compliance to the owner or operator within 10 calendar days after the expiration of the time period for the county board to request a meeting pursuant to Section 900.403 of this Part if the Department has determined that the owner or operator has complied with the setback and notice of intent to construct requirements of this Part. If a public informational meeting is held, the Department shall issue an acknowledgment of setback compliance to the owner or operator within 10 calendar days after receipt of the county board's recommendation pursuant to Section 900.406 of this Part if the Department has determined that the owner or operator has complied with the setback and notice of intent to construct requirements of this Part.
 - 3) Within 10 calendar days after notification by the Department to the owner or operator that all information has been submitted pursuant to subsection (c)(1) of this Section, the owner or operator of the proposed facility shall mail by certified mail, return receipt requested, a copy of the complete notice of intent to construct form to the owners of property located within the setback areas. The owners of the property located within the setback distances are presumed, unless established to the contrary, to be the persons shown by the current tax collector's warrant book to be the party in whose name the taxes were last assessed.
 - 4) Construction shall not commence until the acknowledgment of setback compliance has been issued by the Department and the provisions set forth in Sections 900.407 and 900.409 of this Part have been met.
 - 5) Upon receipt of a complete notice of intent to construct form or information that completes a notice of intent to construct form, the Department shall provide notice to the county board of the county in which the facility is to be located and to the public pursuant to Subpart D of this Part.

Section 900.304 Establishment of Base Date and Setback Period

- a) The date the Department issues the acknowledgment of setback compliance pursuant to Section 900.303(b)(3) of this Part or notifies the owner or operator that all information has been submitted pursuant to Section 900.303(c)(1) of this Part establishes the base date for the determination of whether residences, non-farm businesses, or common places of assembly exist for setback purposes.
- b) The setback period shall begin on the base date. The setback period shall expire one year after the

establishment of the base date unless one or more of the following occurs:

- 1) A lagoon registration form, for construction on the site, has been approved by the Department pursuant to Subpart F of this Part, all applicable requirements of the Livestock Management Facilities Act have been met, and construction has commenced;
- 2) A livestock waste handling facility registration form, for facilities subject to the public informational meeting process as outlined in Section 12 of the Livestock Management Facilities Act [510 ILCS 77/12] and Subpart D of this Part, is filed with the Department, all applicable requirements of the Livestock Management Facilities Act and this Part have been met, and construction of the livestock management facility or livestock waste handling facility has commenced; or
- 3) A livestock waste handling facility construction plan, for facilities not subject to the public informational meeting process as outlined in Section 12 of the Livestock Management Facilities Act, is filed with the Department, all applicable requirements of the Livestock Management Facilities Act and this Part have been met, and construction of the livestock management facility or livestock waste handling facility has commenced.

The setback period shall not expire if a certification of compliance, prepared in accordance with Section 900.506(a) or Section 900.605(b) of this Part, has been received and approved by the Department within 3 years after the base date. The owner or operator may extend the 3 year setback period by an additional 2 years by submitting a written request to the Department prior to the expiration of the 3 year period. Within 15 days after receipt of the written request by the Department, the Department shall notify the owner or operator that the request has been granted.

- c) If the Department determines that the owner or operator has complied with the setback requirements and the provisions of this Subpart, residences, non-farm businesses, or common places of assembly established after the base date cannot operate to affect the setback as initially determined subject to the limitation in subsection (b) of this Section.
- d) For the purposes of this Subpart, “construction” means the commencement of on-site activities including, but not limited to, foundation preparation, fabrication, erection, or installation.

Section 900.305 Penalties

Any owner or operator who fails to file a notice of intent to construct form with the Department prior to commencing construction, upon being discovered by the Department, shall be subject to an administrative hearing by the Department. The administrative law judge, upon determination of a failure to file the appropriate form, shall impose a civil administrative penalty in an amount no more than \$1,000 and shall enter an administrative order directing that the owner or operator file the appropriate form within 10 business days after receiving notice from the Department. If, after receiving the administrative law judge’s order to file, the owner or operator fails to file the appropriate form with the Department, the Department shall impose a civil administrative penalty in an amount no less than \$1,000 and no more than \$2,500 and shall enter an administrative order prohibiting the operation of the facility until the owner or operator is in compliance with the Livestock Management Facilities Act [510 ILCS 77] and this Subpart. Penalties under this Section not paid within 60 days after notice from the Department shall be submitted to the Attorney General’s office or an approved private collection agency. [510 ILCS 77/11(d)]

SUBPART D: PUBLIC INFORMATIONAL MEETING

Section 900.401 Applicability

This Subpart establishes procedures for conducting informational meetings on notices of intent to construct received by the Department after January 1, 2001 for all new livestock management facilities and livestock waste handling facilities serving 1,000 or more animal units that do not propose to utilize a lagoon and all livestock management facilities or livestock waste handling facilities that propose to utilize a lagoon.

Section 900.402 Notice

- a) *Within 7 calendar days after receiving a complete form giving notice of intent to construct a new livestock management facility or livestock waste handling facility serving 1,000 or more animal units that does not propose to utilize a lagoon or a livestock management facility or livestock waste handling facility that does propose to utilize a lagoon, the Department shall:*
- 1) *Send a copy of the notice form to the county board of the county in which the facility is to be located;*
 - 2) *Publish a public notice in a newspaper of general circulation within the county in which the facility is to be located [510 ILCS77/12(a)]; and*
 - 3) *Send a copy of the notice to be published in the newspaper, pursuant to subsection (a)(2) of this Section, to the owner or operator.*

For the purposes of this Subpart, a complete form means that all items listed in Section 900.303(a) of this Part and included on the notice of intent to construct form have been completed by the owner or operator, the form has been reviewed by the Department, and all clarification information has been received by the Department.

- b) The notice in the newspaper shall include:
- 1) The date the Department received the notice of intent to construct;
 - 2) The type and size of the facility and the number of animal units proposed;
 - 3) The general location of the facility;
 - 4) The name of the facility;
 - 5) The date the notice form was sent to the county board;
 - 6) A summary of how the county board may request the Department to conduct an informational meeting concerning the proposed construction; and
 - 7) Any additional information the Department may consider necessary or proper.

Section 900.403 Request for Informational Meeting

- a) *Within 30 calendar days after receipt of notice under Section 900.402(a)(1), the county board may request in writing that the Department conduct an informational meeting concerning the proposed construction [510 ILCS 77/12(a)];*

- 1) Based on its own discretion; or
 - 2) Based on a petition, received by the county board within 30 calendar days after receipt of notice under Section 900.402(a)(1), by residents of the county where the proposed facility will be located that the Department conduct an informational meeting.
- b) Within 30 calendar days after receipt of the notice under Section 900.402(a)(1), *the county board shall request that the Department conduct an informational meeting concerning the proposed construction when the county board has received a petition within 30 calendar days after receipt of the notice under Section 900.402(a)(1) by 75 or more of the county's residents who are registered voters.* [510 ILCS 77/12(a)]

Section 900.404 Notice of Informational Meeting

- a) After receipt of the request to hold an informational meeting, the Department shall:
- 1) Publish a notice of the meeting in a newspaper of general circulation in the county where the facility is to be located;
 - 2) Publish a notice of the meeting in the State newspaper; and
 - 3) Send a copy of the notice to the county board in sufficient time for the county board to post the notice as required by subsection (c) of this Section.
- b) The notice of an informational meeting must contain the following information:
- 1) Date, time and place of the meeting;
 - 2) The type and size of the facility and the number of animal units proposed;
 - 3) The general location of the facility;
 - 4) The name of the facility;
 - 5) A summary of how the informational meeting will be conducted and how persons may comment; and
 - 6) Any additional information the Department may consider necessary or proper.
- c) *Upon receipt of the notice of the informational meeting under subsection (a)(3) of this Section, the county board shall post the notice on the public informational board at the county courthouse at least 10 calendar days before the meeting.* [510 ILCS 77/12(a)]

Section 900.405 Conduct of Informational Meeting

- a) Within 15 business days after receipt of a county board's request to conduct an informational meeting, the Department shall appoint a hearing officer, in accordance with 8 Ill. Adm. Code 1.22(a), to conduct

the informational meeting, and conduct an informational meeting on the proposed construction in the county where the proposed facility is to be located.

- b) The hearing officer shall have the duty to conduct a fair informational meeting, take all necessary action to avoid delay, maintain order, and ensure the development of a clear, complete, and concise record. The hearing officer shall have all powers necessary to these ends, including but not limited to the authority to:
 - 1) Require all participants to state their position with respect to the proposed facility;
 - 2) Administer oaths and affirmations;
 - 3) Regulate the course of the meeting, including but not limited to controlling the order of proceedings; and
 - 4) Establish reasonable limits on the duration of the testimony and questioning of any witness and limit repetitious or cumulative testimony and questioning.
- c) The hearing officer shall state at the beginning of the informational meeting the manner in which the meeting will be conducted, time limits for testifying, and any other procedures for conducting the meeting. Procedures and time limits may vary according to the number of people wishing to testify, the time the meeting starts, weather conditions, and other situations affecting the length of the meeting.
- d) *At the meeting, the Department shall afford members of the public an opportunity to ask questions and present oral or written comments concerning the proposed construction.* [510 ILCS 77/12(a)] All persons presenting oral comments shall be sworn in and comments shall be in narrative form. All persons presenting oral comments shall be subject to questioning by any person.
- e) Any person requesting time to make an oral comment at the informational meeting must register prior to the beginning of the meeting. Persons shall be called to testify in the order of registration, unless the hearing officer determines otherwise.
- f) All written comments shall be:
 - 1) Addressed to the Director or Hearing Officer, Illinois Department of Agriculture, State Fairgrounds, P.O. Box 19281, Springfield, IL 62794-9281, unless otherwise instructed by the hearing officer;
 - 2) Legible with lines double spaced, except that long quotations may be single spaced, on white paper measuring 8½ inches by 11 inches; and
 - 3) Signed by the party filing the comment or by an officer, agent, or attorney thereof and shall contain the address of the party filing the comment, or, if the filing party is an attorney, the name and address of such attorney.
- g) *The owner or operator who submitted the notice of intent to construct to the Department shall appear at the informational meeting.* [510 ILCS 77/12(a)] At the informational meeting, the owner or operator may supply in written form to the meeting attendees a summary of the response to each of the subjects set forth in subsection (h) of this Section.

- h) *At the informational meeting, the Department shall receive evidence by testimony or otherwise on the following subjects:*
- 1) *Whether registration and livestock waste management plan certification requirements, if required, are met by the notice of intent to construct;*
 - 2) *Whether the design, location, or proposed operation will protect the environment by being consistent with the Livestock Management Facilities Act [510 ILCS 77];*
 - 3) *Whether the location of the facility minimizes any incompatibility with the surrounding area's character by being located in any area zoned for agriculture where the county has zoning or, where the county is not zoned, the setback requirements established by the Livestock Management Facilities Act are complied with;*
 - 4) *Whether the facility is located within a 100-year floodplain or an otherwise environmentally sensitive area (defined as an area of karst area or with aquifer material within 5 feet of the bottom of the livestock waste handling facility) and whether construction standards set forth in the notice of intent to construct are consistent with the goal of protecting the safety of the area;*
 - 5) *Whether the owner or operator has submitted plans for operation that minimize the likelihood of any environmental damage to the surrounding area from spills, runoff, and leaching;*
 - 6) *Whether odor control plans are reasonable and incorporate reasonable or innovative odor reduction technologies given the current state of such technologies;*
 - 7) *Whether traffic patterns minimize the effect on existing traffic flows; and*
 - 8) *Whether construction or modification of a new facility is consistent with existing community growth, tourism, recreation, or economic development or with specific projects involving community growth, tourism, recreation, or economic development that have been identified by government action for development or operation within one year through compliance with applicable zoning and setback requirements for populated areas as established by the Livestock Management Facilities Act. [510 ILCS 77/12(d)]*
- i) In the absence of a specific provision in this Subpart governing the conduct of the informational meeting, the Department's procedural rules or a particular provision of the Code of Civil Procedure may provide guidance to the Department or hearing officer.

Section 900.406 County Board Recommendation

At the informational meeting or within 30 business days following the meeting, the County Board shall submit to the Department an *advisory, non-binding recommendation about the proposed new facility's construction in accordance with the applicable requirements of the Act. The advisory, non-binding recommendation shall contain, at a minimum, the following:*

- a) *A statement of whether the proposed facility achieves or fails to achieve each of the 8 siting criteria described in subsection (d) of Section 12 of the Livestock Management Facilities Act [510 ILCS 77/12(d)] and Section 900.405(h) of this Subpart; and*
- b) *A statement of the information and criteria used by the county board in determining that the proposed*

facility met or failed to meet any of the criteria described in subsection (d) of Section 12 of the Livestock Management Facilities Act and Section 900.405(h) of this Subpart. [510 ILCS 77/12(b)]

Section 900.407 Final Determination

- a) *Within 15 calendar days after the close of the comment period under Section 900.406 of this Subpart, the Department shall determine:*
- 1) That, *more likely than not, the provisions of the Livestock Management Facilities Act [510 ILCS 77] have been met [510 ILCS 77/12.1(a)];*
 - 2) That, *more likely than not, the provisions of the Livestock Management Facilities Act [510 ILCS 77] have not been met; or*
 - 3) That *additional information or specific changes are needed in order to assist the Department in making the determination.*
- b) *If the Department determines after an informational meeting that, more likely than not, the provisions of the Livestock Management Facilities Act have been met, the Department shall send written notice by certified mail, return receipt requested, to the applicant and the county board indicating that construction may proceed provided the other applicable provisions of the Livestock Management Facilities Act have been met. [510 ILCS 77/12.1(a)]*
- c) *If the Department determines after an informational meeting that, more likely than not, the provisions of the Livestock Management Facilities Act have not been met, the Department shall send written notice by certified mail, return receipt requested, to the applicant and the county board that construction is prohibited. [510 ILCS 77/12.1(a)] The notice shall also indicate the reasons for the construction prohibition.*
- d) *If the Department finds, after an informational meeting, that additional information or that specific changes are needed in order to assist the Department in making the determination, the Department may request such information or changes from the owner or operator of the new livestock waste handling facility or livestock management facility. [510 ILCS 77/12.1(a-5)] No later than 10 working days after the receipt of the clarification information, the Department shall notify the applicant and the county board in writing by certified mail, return receipt requested, whether, more likely than not, the provisions of the Livestock Management Facilities Act have been met and construction may proceed, whether additional information is required, or whether construction is prohibited.*
- e) *If no informational meeting is held, the Department shall, within 15 calendar days following the end of the period for the county board to request an informational meeting, notify in writing by certified mail, return receipt requested, the owner or operator that construction may begin, provided the other applicable provisions of the Livestock Management Facilities Act have been met, is prohibited or that clarification is needed. [510 ILCS 77/12.1(b)] No later than 10 working days after the receipt of the clarification information, the Department shall notify the applicant and the county board in writing by certified mail whether the provisions of the Livestock Management Facilities Act have been met and whether construction may proceed or is prohibited.*
- f) *Final decisions of the Department are subject to judicial review pursuant to the Administrative Review Law [735 ILCS 5/Art. III]. For purposes of judicial review, the Department's decision becomes final as of the date of the decision. The procedure for stay or reconsideration of any final Department decision by the Department shall be as provided for in the Department's administrative rules at 8 Ill.*

Adm. Code 1.

Section 900.408 Amendment to Plans

- a) *If the owner or operator of a proposed livestock management facility or livestock waste handling facility amends the facility plans during the Department's review by increasing the maximum design capacity of the livestock management facility or livestock waste handling facility, changing the type of livestock waste handling facility, or altering the facility location which results in a change in the status of residences and common places of assembly in setback areas, or otherwise changing or modifying any substantial feature of the facility design, the Department shall notify the county board, which may exercise its option of a public informational meeting pursuant to Section 12 of the Livestock Management Facilities Act [510 ILCS 77/12] and Section 900.403 of this Subpart. [510 ILCS 77/12.1(c)] If a request for an informational meeting is made, the Department shall follow the procedures as outlined in this Subpart. If no request for an informational meeting is made, the Department shall make its final determination in accordance with Section 900.407 of this Subpart.*
- b) *If the owner or operator of a proposed new livestock management or new livestock waste handling facility amends the facility plans during the Department's review process by increasing the animal unit capacity of the facility such that the required setback distances will be increased, the owner or operator shall submit a revised notice of intent to construct and comply with applicable provisions of the Livestock Management Facilities Act and the requirements of this Subpart. [510 ILCS 77/12.1(d)]*

Section 900.409 Construction

- a) *When the county board requests an informational meeting, construction shall not begin until after the informational meeting has been held, the Department has reviewed the county board's recommendation and replied to the recommendation indicating if the proposed new livestock management facility or the new livestock waste handling facility is or will be in compliance with the requirements of the Livestock Management Facilities Act, and the owner, operator, or certified manager and operator has received the Department's notice that the setbacks and all applicable requirements of the Livestock Management Facilities Act have been met. [510 ILCS 77/12(c)]*
- b) If no informational meeting is requested, construction shall not begin until after the Department has reviewed the notice of intent to construct and determined that the requirements of the Livestock Management Facilities Act have been met.

SUBPART E: LIVESTOCK WASTE HANDLING FACILITIES OTHER THAN LAGOONS

Section 900.501 Applicability

The applicability of this Subpart shall be as follows:

- a) Section 900.502 of this Subpart applies to new livestock management facilities and livestock waste handling facilities, other than livestock waste lagoons, constructed after January 1, 2001;
- b) Section 900.503 of this Subpart applies to livestock waste handling facilities, other than livestock waste lagoons, constructed after January 1, 2001 that are not subject to the public informational meeting process;
- c) Section 900.504 of this Subpart applies to livestock waste handling facilities, other than livestock

waste lagoons, constructed after January 1, 2001 that are subject to the public informational meeting process;

- d) Sections 900.505, 900.506, and 900.507 of this Subpart apply to livestock waste handling facilities, other than livestock waste lagoons, constructed after January 1, 2001;
- e) Section 900.508 of this Subpart applies to any livestock management facility not utilizing a livestock waste lagoon;
- f) Section 900.509 of this Subpart applies to new livestock management facilities not utilizing a livestock waste lagoon constructed after May 21, 1996;
- g) Section 900.510 of this Subpart applies to any livestock waste handling facility not utilizing a livestock waste lagoon; and
- h) Section 900.511 of this Subpart applies to new livestock waste handling facilities, other than livestock waste lagoons, constructed after January 1, 2001 required to conduct perimeter drainage tubing sampling pursuant to 35 Ill. Adm. Code 506.

Section 900.502 Siting Restrictions and Additional Construction Requirements

New livestock management facilities and livestock waste handling facilities constructed after January 1, 2001 shall be subject to the additional construction requirements and siting prohibitions provided in this Section.
[510 ILCS 77/13(b)]

- a) *No new non-lagoon livestock management facility or livestock waste handling facility may be constructed within the floodway of a 100-year floodplain. A new livestock management facility or livestock waste handling facility may be constructed within the portion of a 100-year floodplain that is within the flood fringe and outside the floodway provided that the facility is designed and constructed to be protected from flooding and meets the requirements set forth in the Rivers, Lakes, and Streams Act [615 ILCS 5], Section 5-40001 of the Counties Code [55 ILCS 5/5-40001], and Executive Order Number 4 (1979). The delineation of floodplains, floodways, and flood fringes shall be in compliance with the National Flood Insurance Program. Protection from flooding shall be consistent with the National Flood Insurance Program and shall be designed so that stored livestock waste is not readily removed.* [510 ILCS 77/13(b)(1)] Construction standards and specifications shall be utilized as set forth in Subpart C of 35 Ill. Adm. Code 506.
- b) *A new non-lagoon livestock waste handling facility constructed in a karst area shall be designed to prevent seepage of the stored material into groundwater in accordance with ASAE EP393.2 or future updates. Owners or operators of proposed facilities should consult with the local soil and water conservation district, the University of Illinois Cooperative Extension Service, or other local, county, or State resources relative to determining the possible presence or absence of such areas. Notwithstanding the other provisions of this subsection (b), after July 13, 1999, no non-lagoon livestock waste handling facility may be constructed within 400 feet of any natural depression in a karst area formed as a result of subsurface removal of soil or rock materials that has caused the formation of a collapse feature that exhibits internal drainage. For the purposes of this subsection (b), the existence of such a natural depression in a karst area shall be indicated by the uppermost closed depression contour lines on a USGS 7 ½ minute quadrangle topographic map or as determined by Department field investigation in a karst area.* [510 ILCS 77/13(b)(2)] Construction standards and specifications shall be utilized as set forth in Subpart C of 35 Ill. Adm. Code 506.

- c) *A new non-lagoon livestock waste handling facility constructed in an area where aquifer material is present within 5 feet of the bottom of the facility shall be designed to ensure the structural integrity of the containment structure and to prevent seepage of the stored material to groundwater. Footings and underlying structure support shall be incorporated into the design standards of the storage structure in accordance with the requirements of Section 4.1 of the American Society of Agricultural Engineers (ASAE) EP393.2 or future updates. [510 ILCS 77/13(b)(3)] Construction standards and specifications shall be utilized as set forth in Subpart C of 35 Ill. Adm. Code 506.*

Section 900.503 Livestock Waste Handling Facilities Not Subject to the Public Informational Meeting Process

For a livestock waste handling facility, other than a livestock waste lagoon, that is not subject to the public informational meeting process as outlined in Section 12 of the Livestock Management Facilities Act [510 ILCS 77] and Subpart D of this Part, the following procedures shall be followed:

- a) *For a new livestock waste handling facility, a site investigation shall be conducted in accordance with Subpart C of 35 Ill. Adm. Code 506 to determine whether aquifer material is considered present (or not present) within 5 feet of the planned bottom of the livestock waste handling facility, the proposed facility is located in the floodway or flood fringe of a 100-year floodplain, and the proposed facility is located in a karst area or within 400 feet of a natural depression in a karst area. A livestock waste handling facility owner may rely on guidance from the local soil and water conservation district, the Natural Resources Conservation Service of the United States Department of Agriculture, or the University of Illinois Cooperative Extension Service for soil type and associated information. [510 ILCS 77/13(c)]*
- b) *A construction plan of the waste handling structure with design specifications of the structure noted as prepared by or for the owner or operator shall be filed with the Department at least 10 calendar days prior to the anticipated dates of construction. [510 ILCS 77/11(b)] Construction standards and specifications shall be utilized as set forth in Subpart C of 35 Ill. Adm. Code 506.*
- c) *For a livestock waste handling facility required to conduct a site investigation pursuant to subsection (a) of this Section, the construction plan required pursuant to subsection (b) of this Section shall include a certification statement from the owner or operator on a form provided by the Department. The statement shall certify that the site investigation meets all the applicable requirements of subsection (a) of this Section and Subpart C of 35 Ill. Adm. Code 506, and whether aquifer material is considered present (or not present) within 5 feet of the planned bottom of the livestock waste handling facility, the proposed facility is located in the floodway or flood fringe of a 100-year floodplain, and the proposed facility is located in a karst area or within 400 feet of a natural depression in a karst area. The statement shall be accompanied by supporting justification, data, and the results of the site investigation, all from a Licensed Professional Engineer or Licensed Professional Geologist or by a representative of the Natural Resources Conservation Service of the United States Department of Agriculture designated to perform such functions.*
- d) *Upon receipt of the site investigation information, if required, and construction plan, the Department shall review the documents to determine if all information has been submitted or if clarification is needed. The Department shall, within 15 calendar days after receipt of the construction plan, notify the owner or operator that construction may begin, if all applicable requirements of the Livestock Management Facilities Act [510 ILCS 77] and this Part have been met, or that clarification is needed. [510 ILCS 77/11(b)] No later than 15 calendar days after receipt of the clarification information, the Department shall notify the owner or operator that construction may begin, if all applicable*

requirements of the Livestock Management Facilities Act and this Part have been met, or that additional clarification is needed.

Section 900.504 Livestock Waste Handling Facilities Subject to the Public Informational Meeting Process

For a livestock waste handling facility, other than a livestock waste lagoon, that is subject to the public informational meeting process as outlined in Section 12 of the Livestock Management Facilities Act [510 ILCS 77] and Subpart D of this Part, the following procedures shall be followed:

- a) The owner or operator shall file *a completed registration with the Department, on a form provided by the Department, at least 37 calendar days prior to the anticipated dates of construction.*
- b) *The registration shall include the following:*
 - 1) *Name and address of the owner and operator of the livestock waste handling facility;*
 - 2) *Location of the livestock waste handling facility;*
 - 3) *General description of the livestock waste handling facility;*
 - 4) *Type and number of animal units of livestock served by the livestock waste handling facility;*
 - 5) *Specific location information noted on a facility site map or livestock waste handling facility plot plan:*
 - A) *The location and distance to the nearest private or public potable well;*
 - B) *The location and distance to the nearest stream;*
 - C) *The location and distance to the nearest abandoned or plugged well, drainage well, or injection well located within 1,000 feet of the proposed facility; and*
 - D) *The location of any subsurface drainage lines within 100 feet of the livestock waste handling facility;*
 - 6) *Anticipated beginning and ending dates of construction [510 ILCS 77/11(c)];*
 - 7) *Results of a site investigation conducted in accordance with Subpart C of 35 Ill. Adm. Code 506 to determine whether aquifer material is considered present (or not present) within 5 feet of the planned bottom of the livestock waste handling facility, the proposed facility is located in the floodway or flood fringe of a 100-year floodplain, and the proposed facility is located in a karst area or within 400 feet of a natural depression in a karst area. A livestock waste handling facility owner may rely on guidance from the local soil and water conservation district, the Natural Resources Conservation Service of the United States Department of Agriculture, or the University of Illinois Cooperative Extension Service for soil type and associated information. [510 ILCS 77/13(c)];*
 - 8) *A certification statement from the owner or operator on a form provided by the Department. The statement, accompanied by supporting justification and data from a Licensed Professional Engineer or Licensed Professional Geologist or a representative of the Natural Resources Conservation Service of the United States Department of Agriculture designated to perform such functions, shall certify that the site investigation meets all the applicable requirements of*

subsection (b)(7) of this Section and Subpart C of 35 Ill. Adm. Code 506, and whether aquifer material is considered present (or not present) within 5 feet of the planned bottom of the livestock waste handling facility, the proposed facility is located in the floodway or flood fringe of a 100-year floodplain, and the proposed facility is located in a karst area or within 400 feet of a natural depression in a karst area; and

- 9) *Construction plan of the waste handling structure with design specifications of the structure noted as prepared by or for the owner or operator in accordance with the requirements contained in Subpart C of 35 Ill. Adm. Code 506, including a livestock waste handling facility plot plan with dimensions and elevations. [510 ILCS 77/11(c)]*
- c) *The Department shall, within 15 calendar days after receipt of the registration form, notify the person submitting the form that the registration is complete or that clarification information is needed. [510 ILCS 77/11(c)] No later than 15 calendar days after receipt of the clarification information, the Department shall notify the owner or operator that registration is complete or that additional clarification is needed.*
- d) *When the county board requests an informational meeting, construction shall not begin until after the informational meeting has been held, the Department has reviewed the county board's recommendation and replied to the recommendation indicating if the proposed new livestock management facility or the new livestock waste handling facility is or will be in compliance with the requirements of the Act, and the owner, operator, or certified manager and operator has received the Department's notice that the setbacks and all applicable requirements of the Act have been met. [510 ILCS 77/12(c)] If no informational meeting is held, the Department shall, within 15 calendar days following the end of the period for the county board to request an informational meeting, notify the owner or operator that construction may begin or that clarification is needed. [510 ILCS 77/12.1(b)]*

Section 900.505 Inspections

- a) *The Department shall inspect the construction site prior to construction, during construction, and within 10 business days following receipt of the certification of compliance, pursuant to Section 900.506 of this Subpart, to determine compliance with the construction standards and this Subpart. [510 ILCS 77/13(g)]*
- b) *The person making any inspection shall comply with reasonable animal health protection procedures as requested by the owner, operator, or certified livestock manager.*
- c) *The Department shall require modification or change when necessary to bring the construction into compliance with the standards as set forth in this Subpart and Subpart C of 35 Ill. Adm. Code 506. [510 ILCS 77/13(h)]*
- d) *The person making the inspection shall discuss with the owner, operator, or certified livestock manager an evaluation of the livestock waste handling facility construction and shall provide on-site written recommendations to the owner, operator, or certified livestock manager of what modifications or changes are necessary or inform the owner, operator, or certified livestock manager that the facility meets the standards set forth in this Subpart and Subpart C of 35 Ill. Adm. Code 506. On the day of the inspection, the person making the inspection shall give the owner, operator, or certified livestock manager a written report of findings based on the inspection together with an explanation of remedial measures necessary to enable the livestock waste handling facility to meet the standards set forth in this Subpart and Subpart C of 35 Ill. Adm. Code 506. The Department shall, within 5 business days*

after the date of inspection, send an official written notice to the owner or operator of the livestock waste handling facility by certified mail, return receipt requested, indicating that the facility meets the standards set forth in this Subpart and Subpart C of 35 Ill. Adm. Code 506 or identifying the remedial measures necessary to enable the livestock waste handling facility to meet the standards set forth in this Subpart and Subpart C of 35 Ill. Adm. Code 506. The owner or operator shall, within 10 business days after receipt of an official written notice of deficiencies, contact the Department to develop the principles of an agreement of compliance. The owner or operator and the Department shall enter into an agreement of compliance setting forth the specific changes to be made to bring the construction into compliance with the standards required under this Subpart and Subpart C of 35 Ill. Adm. Code 506. If an agreement of compliance cannot be achieved, the Department shall issue a compliance order to the owner or operator outlining the specific changes to be made to bring the construction into compliance with the standards required under this Subpart and Subpart C of 35 Ill. Adm. Code 506. The owner or operator can request an administrative hearing to contest the provisions of the Department's compliance order. [510 ILCS 77/13(h)]

- e) *If any owner or operator operates in violation of an agreement of compliance, the Department shall seek an injunction in circuit court to prohibit the operation of the facility until construction and certification of the livestock waste handling facility are in compliance with the provisions of this Subpart and Subpart C of 35 Ill. Adm. Code 506. [510 ILCS 77/13(j)]*

Section 900.506 Certification of Compliance

- a) *The owner or operator of a livestock management facility or livestock waste handling facility constructed pursuant to the requirements of this Subpart shall send, by certified mail or in person, to the Department a certification of compliance form provided by the Department together with copies of verification documents upon completion of construction. Such verification documents shall include photographic records of excavation and site preparation including any soil compaction, footing preparation and construction, concrete forming including steel reinforcement, construction joints during construction, walls and floors after form removal, installation of perimeter drains if needed, and any other items deemed necessary by the owner or operator, engineer, or construction personnel. For structures constructed of concrete, a signed statement from the concrete supplier indicating the quality of the concrete shall be included. In the case of structures constructed with the design standards used by the Natural Resources Conservation Service of the United States Department of Agriculture, copies of the design standards and a statement of verification signed by a representative of the United States Department of Agriculture shall accompany the owner's or operator's certification of compliance. The certification shall state that the structure meets or exceeds the construction requirements as set forth in Subpart C of 35 Ill. Adm. Code 506. [510 ILCS 77/13(f)]*
- b) *A \$250 filing fee shall accompany the certification of compliance statement. [510 ILCS 77/13(f)]*

Section 900.507 Failure to Register or File Construction Plans

Any owner or operator who fails to file a registration form or construction plans and site investigation information with the Department prior to commencing construction, upon being discovered by the Department, shall be subject to an administrative hearing by the Department. The administrative law judge, upon determination of a failure to file the appropriate form, shall impose a civil administrative penalty in an amount no more than \$1,000 and shall enter an administrative order directing that the owner or operator file the appropriate form within 10 business days after receiving notice from the Department. If, after receiving the administrative law judge's order to file, the owner or operator fails to file the appropriate form with the

Department, the Department shall impose a civil administrative penalty in an amount no less than \$1,000 and no more than \$2,500 and shall enter an administrative order prohibiting the operation of the facility until the owner or operator is in compliance with the Livestock Management Facilities Act [510 ILCS 77] and this Subpart. Penalties under this Section not paid within 60 days after notice from the Department shall be submitted to the Attorney General's office or an approved private collection agency. [510 ILCS 77/11(d)]

Section 900.508 Removal from Service

- a) *When any livestock management facility not using a livestock waste lagoon is removed from service, the accumulated livestock waste remaining within the facility shall be removed and applied to land at rates consistent with a waste management plan for the facility. In the case of a facility not required to develop and maintain a waste management plan, the livestock waste shall be applied at agronomic rates consistent with the Illinois Agronomy Handbook. Removal of the waste shall occur within 12 months after the date livestock production at the facility ceases. In addition, the owner or operator shall make provisions to prevent the accumulation of precipitation within the livestock waste handling facility. [510 ILCS 77/13(k)]*
- b) *Upon completion of the removal of manure, the owner or operator of the facility shall notify the Department that the facility is being removed from service and the remaining manure has been removed. The Department shall conduct an inspection of the livestock waste handling facility and inform the owner or operator in writing that the requirements imposed under this Section have been met or that additional actions are necessary. [510 ILCS 77/13(k)]*

Section 900.509 Return to Service

A new facility constructed after May 21, 1996 that has been removed from service for a period of 2 or more years shall not be placed back into service prior to an inspection of the livestock waste handling facility and receipt of written approval by the Department. [510 ILCS 77/13(k)]

Section 900.510 Odor Control

- a) *Operators of livestock waste handling facilities shall practice odor control methods during the course of manure removal and field application. Odor control methods shall be those methods identified in the rules adopted pursuant to the Illinois Environmental Protection Act concerning agriculture related pollution as set forth in 35 Ill. Adm. Code 501.405(b). [510 ILCS 77/25(a)]*
- b) *Above-ground livestock waste holding structures must be operated using odor control management guidelines based on scientific peer review accepted by the Department and determined to be economically feasible to the specific operation. [510 ILCS 77/25(c)] Such odor control methods may include, but are not limited to, biocovers and synthetic covers for gas capture.*
- c) *Upon the occurrence of a violation of this Section, the following procedures shall be followed:*
 - 1) *For a first violation of this Section by the owner or operator of a livestock management facility or livestock waste handling facility, the Department shall send the owner or operator a written notice of the violation by certified mail, return receipt requested.*
 - 2) *If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a second violation of this section, the Department shall impose on the owner or operator a civil administrative penalty in*

an amount not exceeding \$1,000. The Attorney General may bring an action in the circuit court to enforce the collection of a penalty imposed under this Section.

- 3) *If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a third violation of this Section, the Department shall enter an administrative order directing that the owner or operator cease operation of the facility until the violation is corrected.*
- 4) *If a livestock management facility or livestock waste handling facility has not committed a violation of this Section within the 5 years immediately preceding a violation, the violation shall be construed and treated as a first violation. [510 ILCS 77/25(d)]*

Section 900.511 Perimeter Drainage Tubing Sampling, Analysis and Reporting Procedures

- a) For non-lagoon livestock waste handling facilities required to install and sample perimeter drainage tubing pursuant to 35 Ill. Adm. Code 506, the requirements of this Section shall be met.
 - 1) The owner or operator of the livestock waste handling facility shall sample the liquid from the monitoring port prior to the livestock waste handling facility being placed into service and at least quarterly thereafter, if any liquid is available. The samples shall be analyzed for the following items: nitrate-nitrogen, phosphate-phosphorus, chloride, sulfate and ammonia-nitrogen.
 - 2) Analytical results as determined in subsection (a)(1) of this Section shall be submitted to the Department within 30 days after sample collection and shall include a discussion relative to the significance of the results. Such discussion of significance shall include:
 - A) A comparison of the results to the initial sampling made prior to the livestock waste handling facility being placed in service; and
 - B) A description of any proposed response action necessary to mitigate potential impacts to groundwater.
 - 3) The Department shall review the submittal provided pursuant to subsection (a)(2) of this Section, evaluate the proposed response action, and provide a time frame for the correction of any identified deficiencies. As a result of the evaluation, the Department may approve or modify the monitoring program or response action including, but not limited to, the following:
 - A) Increase the monitoring port sampling frequency;
 - B) Decrease the sampling frequency if, after four consecutive quarters, no detections are identified;
 - C) Add or delete items from the list of sample analytes provided in subsection (a)(1) of this Section, including bacteriological testing; or
 - D) Require changes to the design, construction or operation of the livestock waste handling facility or changes in the operation of the livestock management facility that shall be implemented by the owner or operator within the time frame established by the Department.
- b) The owner or operator of the livestock waste handling facility may, upon written request and with

written approval from the Department, modify or exceed these standards in order to meet site specific objectives. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water and the structural integrity of the livestock waste handling facility as the requirements of this Part.

SUBPART F: LAGOON LIVESTOCK WASTE HANDLING FACILITIES

Section 900.601 Applicability

- a) The applicability of this Subpart shall be as follows:
- 1) Sections 900.602 through 900.606 and Section 900.611 of this Subpart apply to any new or modified lagoon, the design of which has not been approved by the Department prior to January 1, 2001;
 - 2) Section 900.607 of this Subpart applies to any livestock waste lagoon that services 1,000 or more animal units and is required to be registered under the Livestock Management Facilities Act;
 - 3) Section 900.608 of this Subpart applies to any livestock waste lagoon;
 - 4) Section 900.609 of this Subpart applies to any livestock waste lagoon constructed after June 1, 1998; and
 - 5) Section 900.610 of this Subpart applies to any livestock waste lagoon required to be registered under the Livestock Management Facilities Act.
- b) A lagoon registered and certified pursuant to the emergency rules adopted by the Illinois Pollution Control Board in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996, the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, and the rules adopted in R97-15(A) at 21 Ill. Reg. 6851, effective May 20, 1997, shall be considered as registered and certified pursuant to this Subpart.
- c) For the purposes of this Subpart the number of animal units at a livestock management facility is the maximum design capacity of the livestock management facility.

Section 900.602 Lagoon Siting Restrictions and Additional Construction Requirements

- a) *New or modified earthen livestock waste lagoons constructed after January 1, 2001 shall be subject to additional construction requirements and siting prohibitions as provided in this Section.*
- 1) *No new or modified earthen livestock waste lagoon may be constructed within the floodway of a 100-year floodplain. A new or modified earthen livestock waste lagoon may be constructed within the portion of a 100-year floodplain that is within the flood fringe and outside the floodway provided that the facility is designed and constructed so that livestock waste is not readily removed during flooding and meets the requirements set forth in the Rivers, Lakes, and Streams Act [615 ILCS 5], Section 5-40001 of the Counties Code [55 ILCS 5/5-40001], and Executive Order Number 4 (1979). The delineation of floodplains, floodways, and flood fringes shall be in compliance with the National Flood Insurance Program. [510 ILCS 77/15(a-5)(1)] Construction standards and specifications shall be utilized as set forth in Subpart B of 35 Ill. Adm. Code 506.*

- 2) *A new or modified earthen livestock waste lagoon constructed in a karst area shall be designed to prevent seepage of the stored material to groundwater. Owners or operators of proposed facilities shall consult with the local soil and water conservation district, the University of Illinois Cooperative Extension Service, or other local, county, or state resources relative to determining the possible presence or absence of such areas. Notwithstanding the other provisions of this subsection (a), after July 13, 1999, no earthen livestock waste lagoon may be constructed within 400 feet of any natural depression in a karst area formed as a result of subsurface removal of soil or rock materials that has caused the formation of a collapse feature that exhibits internal drainage. For the purposes of this subsection (a), the existence of such natural depression in a karst area shall be indicated by the uppermost closed depression contour lines on a USGS 7 ½ minute quadrangle topographic map or as determined by Department field investigation in a karst area. [510 ILCS 77/15(a-5)(2)] Construction standards and specifications shall be utilized as set forth in Subpart B of 35 Ill. Adm. Code 506.*

- b) *Notwithstanding any other requirement of this Subpart, every earthen livestock waste lagoon constructed after June 1, 1998 shall include the construction of a secondary berm, filter strip, grass waterway, or terrace, or any combination of those, outside the perimeter of the primary berm if an engineer licensed under the Professional Engineering Practice Act of 1989 and retained by the registrant determines, with the concurrence of the Department, that construction of such a secondary berm or other feature or features is necessary in order to ensure against a release of livestock waste from the lagoon that encroaches or is reasonably expected to encroach upon land other than the land occupied by the livestock waste handling facility of which the lagoon is a part or that enters or is reasonably expected to enter the waters of this State. [510 ILCS 77/15(a)] Construction standards and specifications shall be utilized as set forth in Subpart B of 35 Ill. Adm. Code 506.*

Section 900.603 Registration

- a) *Prior to new construction or modification of any earthen livestock waste lagoon on or after January 1, 2001, such earthen livestock waste lagoon shall be registered by the owner or operator with the Department on a form provided by the Department in accordance with the requirements of this Section. Lagoons constructed prior to October 31, 1996 may register with the Department at no charge. [510 ILCS 77/15(b)] A completed registration shall be filed with the Department at least 37 days prior to the anticipated dates of construction. [510 ILCS 77/11(c)]*

- b) The registration form, accompanied by a \$250 fee, shall include the following:
 - 1) *Names and addresses of the owner and operator who are responsible for the livestock waste lagoon;*
 - 2) *General location of lagoon;*
 - 3) *Results of a site investigation conducted in accordance with Subpart B of 35 Ill. Adm. Code 506 to determine whether aquifer material is considered present (or not present) within 50 feet of the planned bottom of the lagoon, the proposed facility is located in the floodway or flood fringe of a 100-year floodplain, and the proposed facility is located in a karst area or within 400 feet of a natural depression in a karst area;*
 - 4) *Design construction plans and specifications prepared in accordance with the requirements contained in Subpart B of 35 Ill. Adm. Code 506 (including a lagoon plot plan with dimensions and elevations);*
 - 5) *Specific location information (noted on a facility site map or the lagoon plot plan):*

- A) The location and *distance to the nearest private or public potable well*;
 - B) The location and *distance to the closest occupied private residence (other than any occupied by the owner or operator)*;
 - C) The location and *distance to the nearest stream*;
 - D) The location and *distance to the nearest populated area*;
 - E) The location and distance to the nearest abandoned or plugged well, drainage well or injection well located within 1,000 feet of the proposed facility; and
 - F) The location of any subsurface drainage lines within 100 feet of the lagoon.
- 6) *Anticipated beginning and ending dates of lagoon construction*;
 - 7) *Type of livestock and number of animal units*;
 - 8) A certification by the supervising Licensed Professional Engineer or Licensed Professional Geologist, accompanied by supporting justification and data, certifying that the site investigation meets all the applicable requirements of this Subpart and Subpart B of 35 Ill. Adm. Code 506, whether aquifer material is considered present (or not present) within 50 feet of the planned bottom of the lagoon, the proposed facility is located in the floodway or flood fringe of a 100-year floodplain, and the proposed facility is located in a karst area or within 400 feet of a natural depression in a karst area; and
 - 9) Where applicable, a copy of the synthetic liner manufacturer's compatibility statement and liner maintenance guidelines. [510 ILCS 77/15(b)]
- c) *The Department, upon receipt of a livestock waste lagoon registration form, shall review the form to determine that all required information has been provided. The person filing the registration shall be notified within 15 working days of receipt by the Department that registration is complete or that clarification information is needed. No later than 10 working days after the receipt of the clarification information, the Department shall notify the owner or operator that registration is complete or that additional clarification information is needed. [510 ILCS 77/15(b)]*
 - d) *Construction shall not begin until 30 days after submittal of a registration form by certified mail to the Department unless otherwise restricted by subsection (a) of this Section. [510 ILCS 77/15(b)] In addition, when the county board requests an informational meeting, construction shall not begin until after the informational meeting has been held, the Department has reviewed the county board's recommendation and replied to the recommendation indicating if the proposed new livestock management facility or the new or modified livestock waste handling facility is or will be in compliance with the requirements of the Act, and the owner, operator, or certified manager and operator has received the Department's notice that the setbacks and all applicable requirements of the Act have been met. [510 ILCS 77/12(c)] If no informational meeting is held, the Department shall, within 15 calendar days following the end of the period for the county board to request an informational meeting, notify the owner or operator that construction may begin or that clarification is needed. [510 ILCS 77/12.1(b)]*

Section 900.604 Lagoon Construction, Registration, and Certification Inspections

- a) *The Department shall inspect an earthen livestock waste lagoon during pre-construction, construction, and post-construction and shall require modifications when necessary to ensure the project will be in compliance with the requirements of this Part and 35 Ill. Adm. Code 506. [510 ILCS 77/15(b)]*
- b) The Department may, as a condition of the issuance of a livestock waste lagoon registration, conduct periodic site inspections of a livestock waste lagoon to assess its degree of compliance with the

requirements of the Livestock Management Facilities Act [510 ILCS 77] and the requirements of this Part.

- c) The Department shall conduct a certification inspection within 10 business days after receipt of the certification of compliance from the lagoon owner or operator pursuant to Section 900.605(c) of this Subpart.
- d) *The person making any inspection shall comply with reasonable animal health protection procedures as requested by the owner, operator or certified livestock manager.* [510 ILCS 77/15(b)]

Section 900.605 Certification of Construction

- a) Upon completion of the liner construction or installation, the supervising Licensed Professional Engineer shall certify that the liner meets all the applicable requirements of Subpart B of 35 Ill. Adm. Code 506. Such certification shall be submitted to the Department prior to placing the lagoon in service and shall include supporting data and justification.
- b) *Upon completion of the construction or modification, but prior to placing the lagoon in service, the owner or operator of the livestock waste lagoon shall certify on a form provided by the Department that the lagoon has been constructed or modified in accordance with the standards set forth in subsection (a) of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and the requirements of this Part and that the information provided on the registration form and other supporting documents as required by this Part is correct. The certification notice to the Department shall include a certification statement and signature.* [510 ILCS 77/15(b)]
- c) *Within 10 business days after receipt of the certification of compliance, the Department shall inspect the lagoon site. The Department shall, within 5 business days after the date of inspection, send an official written notice by certified mail, return receipt requested, to the owner or operator of the facility indicating that all the requirements of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and this Subpart have been met or that deficiencies exist that must be corrected prior to the completion of the lagoon registration process and the placement of the lagoon into service.* [510 ILCS 77/15(b)]
- d) *The owner or operator of the lagoon may proceed to place the lagoon in service after receipt of the Department's notice that all the requirements of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15] and this Subpart have been met.* [510 ILCS 77/15(b)]

Section 900.606 Failure to Register or Construct in Accordance with Standards

- a) *The owner or operator of any earthen livestock waste lagoon subject to registration that has not been registered or constructed in accordance with standards set forth in subsection (a) of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15], this Part, and 35 Ill. Adm. Code 506 shall, upon being identified as such by the Department, be given written notice by the Department to register and certify the lagoon within 10 working days after receipt of the notice. The Department may inspect such lagoon and require compliance in accordance with subsections (a) and (b) of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15], this Part, and 35 Ill. Adm. Code 506. If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice, the Department may issue a cease and desist order until such time as compliance is obtained with the requirements of Section 15 of the Livestock Management Facilities Act [510 ILCS 77/15], this Part, and 35 Ill. Adm. Code 506. Failure to construct the lagoon in accordance with the construction plan and Department recommendations is a business offense punishable by a fine of not more than \$5,000.* [510 ILCS 77/15(f)]

- b) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice addressing violations occurring during lagoon construction, a cease and desist order to stop construction may be issued by the Department. Changes shall be made to the lagoon by the owner or operator to ensure construction according to the provisions of the Livestock Management Facilities Act [510 ILCS 77], this Part, and 35 Ill. Adm. Code 506. The cease and desist order shall be canceled by the Department upon submission of the registration materials by the lagoon owner or operator to the Department, and after the Department's review of the construction plans and specifications and lagoon registration materials, and after determination by the Department of compliance with the Livestock Management Facilities Act, this Part, and 35 Ill. Adm. Code 506.
- c) If the owner or operator of the livestock waste lagoon that is subject to registration fails to comply with the notice addressing violations which occur after completion of lagoon construction, an operational cease and desist order may be issued by the Department. Any necessary changes shall be made to the lagoon by the lagoon owner or operator to comply with the Livestock Management Facilities Act, this Part, and 35 Ill. Adm. Code 506. The operational cease and desist order shall be canceled by the Department after the Department determines compliance with the Livestock Management Facilities Act, this Part, and 35 Ill. Adm. Code 506.

Section 900.607 Lagoon Operational Inspections

- a) *At least once each year on a random basis, the Department shall inspect every earthen livestock waste lagoon that services 1,000 or more animal units and is required to be registered under the Act. The owner or operator of the lagoon or a certified livestock manager must be present during the inspection. If the owner, operator, or certified livestock manager is not present at the scheduled date, time, and place of the inspection, the inspection shall proceed in his or her absence. The person making the inspection shall conduct a visual inspection to determine only whether any of the following are present: burrow holes, trees or woody vegetation, proper freeboard, erosion, settling of the berm, bermtop maintenance, leaks, and seepage. The person making the inspection shall discuss with the owner, operator, or certified livestock manager an evaluation of the livestock waste lagoon's current condition and shall provide on-site written recommendations to the owner, operator, or certified livestock manager of what corrective actions are necessary or shall inform the owner, operator, or certified livestock manager that the lagoon meets the standards set forth in this subsection. [510 ILCS 77/16]*
- b) *The person making any inspection shall comply with reasonable animal health protection procedures as requested by the owner, operator, or certified livestock manager. [510 ILCS 77/16]*
- c) *The Department shall send official written notice of any deficiencies to the owner or operator of the lagoon by certified mail, return receipt requested. The owner or operator and the Department shall enter into an agreement of compliance setting forth the specific action and timetable to correct the deficiencies. The person making the reinspection shall notify the Department of the results of the reinspection, and the Department shall take the appropriate action under this Section. If the Department's inspector finds a release or evidence of a release, the Department shall immediately report such information to the Agency. [510 ILCS 77/16]*
- d) The following penalties shall be assessed for violations of this Section:
 - 1) *For a first violation of this Section by the owner or operator of a livestock management facility or livestock waste handling facility, the Department shall send the owner or operator a written notice of the violation by certified mail, return receipt requested.*
 - 2) *If after an administrative hearing the Department finds that the owner or operator of a livestock*

management facility or livestock waste handling facility has committed a second violation of this Section, the Department shall impose on the owner or operator a civil administrative penalty in an amount not exceeding \$1,000. The Attorney General may bring an action in the circuit court to enforce the collection of a penalty imposed under this Section.

- 3) *If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a third violation of this Section, the Department shall enter an administrative order directing that the owner or operator cease operation of the facility until the violation is corrected.*
- 4) *If a livestock management facility or livestock waste handling facility has not committed a violation of this Section within the 5 years immediately preceding a violation, the violation shall be construed and treated as a first violation. [510 ILCS 77/16]*

Section 900.608 Lagoon Closure

- a) *When any livestock waste lagoon is removed from service, it shall be completely emptied. Appropriate closure procedures shall be followed as determined by the requirements of this Part. [510 ILCS 77/15(e)]*
 - 1) In the event that any livestock waste lagoon is removed from service, the requirements contained in Section 15(e) of the Livestock Management Facilities Act [510 ILCS 77/15(e)] shall be met. The owner or operator shall notify the Department in writing when a lagoon is removed from service. Within 60 days after removal of the lagoon from service, the owner or operator shall submit a lagoon closure plan to the Department for review and approval. If no lagoon closure plan is received by the Department within 60 days, the Department shall send the lagoon owner a notice of default.
 - 2) The lagoon closure plan shall provide for the following:
 - A) A location area map of the lagoon and surrounding area;
 - B) The sampling, analysis for total nitrogen, ammonium nitrogen, and phosphorus, and reporting of results of all remaining livestock waste, sludge and minimum six-inch thickness of soil from throughout the lagoon interior;
 - C) The removal of all remaining livestock waste including sludge, the removal of a minimum 6 inch thickness of soil from throughout the lagoon interior, and the application of these materials to crop land at agronomic rates as set forth in Subpart H of this Part or their otherwise proper disposal;
 - D) The removal of all associated appurtenances, including but not limited to transfer lines, ramps, pumping ports and other waste conveyance structures;
 - E) The proper management of any impounded precipitation in the remaining excavation if it is not immediately filled and the area immediately returned to its pre-construction condition;
 - F) The proper abandonment of any monitoring wells conducted pursuant to the Illinois Water Well Construction Code at 77 Ill. Adm. Code 920.120;
 - G) The restoration of the topography at the lagoon site to its pre-construction condition; and

- H) A proposed time frame for the completion of the closure activities no greater than two years from the cessation of operation date unless the lagoon is maintained or serviced.
 - 3) The Department shall review and approve, reject, or request additional information relative to the lagoon closure plan.
 - 4) *The Department may also grant a waiver to any of the closure requirements of this Section that will permit the lagoon to be used for an alternative purpose. [510 ILCS 77/15(e)]* Each request for a waiver shall contain a certification from a Licensed Professional Engineer or Licensed Professional Geologist, as relevant, that the grant of the waiver is at least as protective of the groundwater and surface water as the stated requirements. The Department shall notify the applicant in writing of its determination within 30 days after receipt of the request for a waiver. To grant the waiver, the Department must determine that the waiver is at least as protective as the stated requirements.
 - 5) The owner or operator shall notify the Department prior to the commencement of closure activities to allow for an inspection by the Department during the closure process.
 - 6) Upon completion of the lagoon closure activities as prescribed by the Department-approved closure plan, the owner or operator shall notify the Department. The Department shall conduct a site inspection and issue a written notification of closure completion or inform the owner or operator of any unresolved closure issues.
- b) A lagoon is considered removed from service when:
- 1) The Department has ordered the lagoon removed from service under Section 900.720 of this Part;
 - 2) A tribunal of competent jurisdiction has ordered the lagoon closed or ordered the owner or operator to cease operations;
 - 3) The lagoon no longer receives livestock waste and the lagoon is not being serviced or maintained;
 - 4) The owner fails to extend the term for which evidence of financial responsibility is shown as required in Section 900.702(b) of this Part; or
 - 5) The owner or operator informs the Department in accordance with subsection (a)(1) of this Section that the lagoon has been removed from service.

Section 900.609 Odor Control

- a) *Operators of livestock waste handling facilities shall practice odor control methods during the course of manure removal and field application. Odor control methods shall be those methods identified in the rules adopted pursuant to the Illinois Environmental Protection Act concerning agriculture related pollution as set forth in 35 Ill. Adm. Code 501.405(b). [510 ILCS 77/25(a)]*
- b) *Every single-stage livestock waste lagoon constructed after June 1, 1998 shall comply with the following operational guidelines:*
 - 1) *In operation, the lagoon must be maintained at not less than the minimum design volume.*

- 2) *The livestock waste supply to the lagoon must be below the minimum design volume level. [510 ILCS 77/25(b)]*
- c) Every livestock waste lagoon constructed or modified after June 1, 1998 shall be initially charged with water to at least 60% of the minimum design volume prior to the initial addition of waste.
 - d) Upon the occurrence of a violation of this Section, the following procedures shall be followed:
 - 1) *For a first violation of this Section by the owner or operator of a livestock management facility or livestock waste handling facility, the Department shall send the owner or operator a written notice of the violation by certified mail, return receipt requested.*
 - 2) *If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a second violation of this Section, the Department shall impose on the owner or operator a civil administrative penalty in an amount not exceeding \$1,000. The Attorney General may bring an action in the circuit court to enforce the collection of a penalty imposed under this Section.*
 - 3) *If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a third violation of this Section, the Department shall enter an administrative order directing that the owner or operator cease operation of the facility until the violation is corrected.*
 - 4) *If a livestock management facility or livestock waste handling facility has not committed a violation of this Section within the 5 years immediately preceding a violation, the violation shall be construed and treated as a first violation. [510 ILCS 77/25(d)]*

Section 900.610 Ownership Transfer

Upon a change in ownership of a registered livestock waste lagoon, the new owner shall notify, in writing, the Department of the change within 30 working days after the closing of the transaction. [510 ILCS 77/15(e)]

Section 900.611 Monitoring Well Sampling, Analysis and Reporting Procedures

- a) For lagoons required to install monitoring wells pursuant to 35 Ill. Adm. Code 506, the requirements of this Section shall be met.
- b) Prior to placing the lagoon in service, water level measurements shall be made at each monitoring well to establish the local groundwater gradient at the lagoon site.
- c) The owner or operator shall sample each monitoring well at least once prior to placing the lagoon in service and at least quarterly thereafter. Water table level elevation measurements shall be taken at each sampling event. The samples shall be collected and analyzed consistent with the methods specified in Section 900.104(a)(1) and (a)(5) of this Part for each of the following:
 - 1) Nitrate-nitrogen;
 - 2) Phosphate-phosphorous;
 - 3) Chloride;
 - 4) Sulfate;

- 5) Ammonia-nitrogen;
 - 6) Escherichia coli or fecal coliform; and
 - 7) Fecal Streptococcus.
- d) The Department may collect and analyze samples or split samples from monitoring wells installed pursuant to this Section at the Department's discretion. The Department shall provide notice to the owner or operator of the livestock waste lagoon of such activity and *shall comply with reasonable animal health protection procedures as requested by the owner or operator.* [510 ILCS 77/15(b)]
 - e) Analytical results as determined in subsection (c) of this Section shall be submitted to the Department within 30 days after sample collection and shall include a discussion relative to the significance of the results. Such discussion of significance shall include:
 - 1) A comparison of the results to the initial sampling made prior to the lagoon being placed in service; and
 - 2) A description of any proposed response action necessary to mitigate potential impacts to groundwater.
 - f) The Department shall review the submittal provided pursuant to subsection (e) of this Section, evaluate the proposed response action, and provide a time frame for the correction of any identified deficiencies. As a result of the evaluation, the Department may approve or modify the monitoring program or response action including, but not limited to, the following:
 - 1) Increase or decrease the monitoring well sampling frequency;
 - 2) Add or delete items from the list of sample analytes; or
 - 3) Require changes to the design, construction or operation of the lagoon or changes in the operation of the livestock management facility which shall be implemented by the owner or operator within the time frame established by the Department.
 - g) The owner or operator of the livestock waste handling facility may, upon written request and with written approval from the Department, modify or exceed these standards in order to meet site specific objectives. The owner or operator shall demonstrate that such modification shall be at least as protective of the groundwater, surface water, and the structural integrity of the livestock waste handling facility as the requirements of this Part.

SUBPART G: LAGOON FINANCIAL RESPONSIBILITY

Section 900.701 Scope, Applicability, and Definitions

- a) This Subpart provides procedures by which the owner of a new or modified livestock waste lagoon registered under the Livestock Management Facilities Act provides evidence of financial responsibility satisfying the requirements of Section 17 of the Livestock Management Facilities Act.
- b) Owners of lagoons must comply with the financial responsibility requirements of this Part either:
 - 1) on or before June 1, 1999; or

- 2) before the lagoon is placed in service.
- c) For the purposes of this Subpart, the following terms have the following meanings:
- 1) “Audited financial statement” means financial statements, including a balance sheet and notes to financial statements, prepared in conformity with generally accepted accounting principles following an examination conducted in accordance with generally accepted auditing standards that has attached the unqualified opinion of an independent certified public accountant licensed under Illinois law or an entity permitted to engage in the practice of public accounting under subsection (b)(3) of Section 14 of the Illinois Public Accounting Act [225 ILCS 450/14].
 - 2) “Financial institution” means:
 - A) An insurer providing commercial or private insurance to evidence financial responsibility for lagoon closure in accordance with Section 900.709 of this Part;
 - B) A guarantor providing a guarantee as evidence of financial responsibility for lagoon closure in accordance with Section 900.710 of this Part;
 - C) The issuer of a surety bond as evidence of financial responsibility for lagoon closure in accordance with Section 900.711 of this Part;
 - D) The issuer of a letter of credit as evidence of financial responsibility for lagoon closure in accordance with Section 900.712 of this Part; or
 - E) The livestock waste lagoon closure fund managed by the Illinois Farm Development Authority that evidences financial responsibility for lagoon closure in accordance with Section 900.714 of this Part.
 - 3) “Guarantor” means a person who assumes all or part of the obligations of a lagoon owner for closure of a lagoon in accordance with Section 900.710 of this Part. For purposes of this definition, the owner of the lagoon may be the guarantor provided adequate resources exist to guarantee the closure costs in accordance with Section 900.710 of this Part.
 - 4) “Level of surety” means the level, calculated in accordance with Section 900.703 of this Part, at which evidence of financial responsibility must be provided.
 - 5) “Surety instrument” means any of the devices listed in Section 900.702 of this Part by which a lagoon owner evidences financial responsibility for lagoon closure. Unless the context requires otherwise, “surety instrument” includes a combination of surety instruments.

Section 900.702 Mechanisms for Providing Evidence of Financial Responsibility

- a) *Financial responsibility may be evidenced by any combination of the following:*
- 1) *Commercial or private insurance;*
 - 2) *Guarantee;*
 - 3) *Surety bond;*
 - 4) *Letter of credit;*

- 5) *Certificate of deposit or designated savings account; or*
- 6) *Participation in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. [510 ILCS 77/17]*

- b) The lagoon owner must provide continuous coverage from the time the lagoon is placed in service until such time as the owner is released from the financial responsibility requirements pursuant to Section 900.705(a) of this Part. The initial term of any surety instrument (other than a certificate of deposit or designated savings account) utilized to fulfill the requirements of this Part must be at least three years. At least two years prior to the expiration date of such instrument, the owner must provide the Department with proof that the term of coverage has been extended for at least one additional year.
- c) Upon a change in the ownership of a livestock management facility or livestock waste handling facility involving a lagoon that is subject to the financial responsibility requirements of this Subpart, the new owner must establish and maintain evidence of financial responsibility at a level not less than the level required pursuant to this Subpart.
- d) The lagoon owner must ensure that the terms and conditions of the surety instruments listed in subsection (a) of this Section upon which the owner relies are legally valid, binding, and enforceable under State and federal law.

Section 900.703 Level of Surety

- a) The level of surety is determined by the following formula:

$$\text{Level of Surety} = (V \times CF) + EC$$

where:

V = Volume of the lagoon as constructed or modified, in cubic feet, including the freeboard volume

CF = Cost factor determined pursuant to subsection (b) of this Section

EC = Engineering contingency determined under subsection (c) of this Section

- b) The cost factor is obtained from the following:
 - 1) Through December 31, 2002, the cost factor is 10¢ per cubic foot of lagoon volume.
 - 2) On and after January 1, 2003 through December 31, 2007, the cost factor is 12¢ per cubic foot of lagoon volume.
 - 3) On and after January 1, 2008, the cost factor is 15¢ per cubic foot of lagoon volume.
- c) The engineering contingency is equal to 10% of (V x CF).

Section 900.704 Upgrading Surety Instrument

- a) The owner of a lagoon must increase the total amount of surety in place so as to equal the level of surety as calculated within 90 days after:

- 1) a modification resulting in an increase in the volume of the lagoon; or
 - 2) an increase in the cost factor under Section 900.703(b) of this Part.
- b) If modification of a lagoon results in a decrease in volumetric capacity, the owner or operator may provide the Department with documentation of the reduction in volumetric capacity and request a recalculation of the level of surety. Within 90 days after a request by the owner or operator under this subsection (b), the Department must either:
- 1) release any surety amount above the level of surety as recalculated based upon the owner's documentation of reduction of volumetric capacity; or
 - 2) conduct an inspection and determine the amount by which volumetric capacity has been decreased.
- c) If the Department conducts an inspection under subsection (b), then the Department must release any surety amount above the level of surety as recalculated based upon the results of the inspection.

Section 900.705 Release of Lagoon Owner and Financial Institution

- a) The Department must release a lagoon owner from the requirements of this Subpart when:
- 1) The lagoon has been properly closed and a notification of closure completion pursuant to Section 900.608 of this Part has been issued to the lagoon owner by the Department; or
 - 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose; or
 - 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 900.702(c) of this Part.
- b) The Department must release a financial institution when:
- 1) A lagoon owner offers an authorized alternative surety that meets the requirements of Section 900.707(c) of this Part; or
 - 2) The Department releases the lagoon owner from the requirements of this Subpart under subsection (a) of this Section.
- c) The Department must notify the lagoon owner and financial institution in writing within 60 days after a release under this Section. If a release is based upon proper closure of a lagoon, notification under this subsection (c) should occur at the same time as notice of proper closure under Section 900.608(a)(5).

Section 900.706 Financial Responsibility Proceeds

- a) A financial institution issuing a surety instrument evidencing financial responsibility for closure of a livestock waste lagoon becomes liable on the surety instrument when a lagoon is removed from service and:
- 1) The owner fails to submit the lagoon closure plan required by Section 900.608 of this Part and:
 - A) cannot be found; or

- B) fails to cure such failure within 30 days after notice from the Department;
- 2) The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or
- 3) The owner fails to comply with an approved lagoon closure plan and:
 - A) cannot be found; or
 - B) fails to cure such noncompliance within 30 days after notice from the Department.
- b) The Department must provide notice to the financial institution providing surety for the lagoon:
 - 1) when it determines that the lagoon has been removed from service; and
 - 2) when it determines that one of the criteria for liability set forth in subsection (a) of this Section has been met.
- c) Within 30 days after notice of liability from the Department, the financial institution must either assume liability for closure of the lagoon and notify the Department of its election to assume liability, or deposit the amount for which it is liable in connection with the lagoon into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon.
 - 1) If the financial institution assumes liability for closure of the lagoon, it must submit a lagoon closure plan that meets the requirements of Section 900.608 of this Part within 60 days after notifying the Department of its election. Notwithstanding the financial institution's assumption of liability for closure of the lagoon, the Department may require the financial institution to deposit funds up to the amount for which the financial institution is liable under the surety instrument into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon if:
 - A) The financial institution does not submit the lagoon closure plan as required and fails to cure such omission within 30 days after notice from the Department;
 - B) The financial institution fails to obtain Department approval of a lagoon closure plan within eight months after the date that it elects to assume liability for closure of the lagoon, unless the lagoon is maintained or serviced; or
 - C) The financial institution fails to comply with an approved lagoon closure plan and fails to cure such noncompliance within 30 days after notice from the Department.
 - 2) A financial institution that assumes liability for closure of a lagoon under this Section remains liable for the full amount of the surety instrument until the Department issues written notification of completion of closure in accordance with Section 900.608 of this Part, notwithstanding the expiration of the instrument utilized to evidence financial responsibility by the owner.
 - 3) Any amounts that a financial institution may expend for service or maintenance of the lagoon pending closure or partial closure of the lagoon do not reduce the amount of the financial institution's obligation under this subsection (c).
 - 4) If the financial institution elects, or is required under subsection (c)(1) of this Section, to deposit

the funds required by the Department into an account from which the Department is authorized to disburse funds for the purpose of closing the lagoon, then the Department shall close the lagoon within the time frame established under Section 15(e) of the Livestock Management Facilities Act [510 ILCS 77/15(e)] or as soon as practicable, to the extent possible utilizing the funds deposited by the financial institution. The Department may use any interest earned on deposited funds to close the lagoon. The Department must release any funds remaining in the account, including any remaining interest earned on funds in the account, to the financial institution upon completion of closure.

- d) The Department may sue in any court of competent jurisdiction to enforce its rights under any surety instrument.

Section 900.707 Use of Multiple Surety Instruments

- a) The lagoon owner may use any combination of the surety instruments listed in Section 17 of the Livestock Management Facilities Act [510 ILCS 77/17] and this Subpart to evidence the required level of financial responsibility.
- b) A lagoon owner is not limited to maintaining financial responsibility with the original surety instrument or combination of instruments. The owner must notify the Department before making any change in surety instruments.
- c) If a lagoon owner makes any change in surety instruments, the lagoon owner must maintain the total financial responsibility for the lagoon at a level not less (without counting the amounts to be released) than the level of surety.
- d) A replacement surety instrument or instruments must provide evidence of financial responsibility for a period at least equal to the existing instrument or instruments. This provision does not relieve an owner of the obligation under Section 900.702(b) of this Part to provide proof at least two years prior to expiration of a surety instrument that the term for which financial responsibility has been demonstrated has been extended for at least an additional year.

Section 900.708 Use of a Single Surety Instrument for Multiple Lagoons

- a) An owner may use a surety instrument specified in this Subpart to provide evidence of financial responsibility for more than one lagoon.
- b) Whenever a single surety instrument is used for multiple lagoons, the owner must submit an itemization to the Department identifying all lagoons covered by the surety instrument and the amount allocated to each lagoon.
- c) The amount of funds available through the surety instrument must be no less than the sum of funds that would be available if a separate surety instrument had been established and maintained for each lagoon.
- d) In directing funds available through a single surety instrument for the closure of any single lagoon covered by that surety instrument, the Department shall direct only the amount of funds designated for that lagoon, unless the owner agrees to allow the Department to use additional funds available under that surety instrument. Such an agreement does not affect the owner's obligation to provide evidence of financial responsibility up to the level of surety for all other lagoons.

Section 900.709 Commercial or Private Insurance

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining closure insurance that conforms to the requirements of this Subpart and submitting an executed duplicate original of such insurance policy to the Department.
- b) The insurer must be licensed to transact the business of insurance by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5].
- c) The policy must be on forms approved by the Illinois Department of Insurance.
- d) The closure insurance policy must guarantee that funds will be available to close the lagoon. The policy must also guarantee that, upon a notice of liability from the Department, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, in accordance with Section 900.706(c) of this Part.
- e) The policy must provide that the insurer may not cancel or terminate the policy.

Section 900.710 Guarantee

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a guarantee that conforms to the requirements of this Subpart.
- b) When a guarantee is initially established for a facility, a guarantor shall submit a financial statement to the Department from the guarantor's most recent fiscal year. Thereafter on an annual basis, the guarantor shall submit a financial statement to the Department within 90 days after the close of the guarantor's fiscal year.
- c) The financial statement required pursuant to subsection (b) of this Section shall be provided to the Department in one of the following formats:
 - 1) An audited financial statement; or
 - 2) On a form provided by the Department, prepared by an accountant not employed by or possessing a financial interest in the livestock facility, and notarized.
- d) The Department will review the financial statement submitted pursuant to subsection (c) of this Section, determine if adequate resources exist to guarantee the closure costs, and notify the lagoon owner of acceptance or denial within 30 days after receipt of the financial statement by the Department. The Department shall determine that adequate resources exist to guarantee the closure costs when an equity to level of surety ratio of 1.5 or greater is demonstrated through the financial statement.
- e) The guarantor shall guarantee to pay the amount specified in the guarantee upon notice from the Department as provided in Section 900.706(c) of this Part.

Section 900.711 Surety Bond

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining a surety bond that conforms to the requirements of this Subpart and submitting the bond to the Department.
- b) The surety company issuing the bond must be licensed by the Illinois Department of Insurance pursuant to the Illinois Insurance Code [215 ILCS 5] and approved by the U.S. Department of the

Treasury as an acceptable surety. Acceptable sureties are listed in Circular 570 from the U.S. Department of the Treasury.

- c) The bond must guarantee that the lagoon owner will provide lagoon closure and content removal in accordance with Section 900.608 of this Part.
- d) The surety bond must be in substantially the form specified in Appendix A, Illustration A of this Part.

Section 900.712 Letter of Credit

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Subpart and submitting the letter to the Department.
- b) The issuing institution must be an entity that has the authority to issue letters of credit and:
 - 1) whose letter of credit operations are regulated by the Illinois Commissioner of Banks and Real Estate; or
 - 2) whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) The letter of credit made out to the Department must be accompanied by a letter from the lagoon owner referring to the letter of credit by number, issuing institution, and date and providing the following information: name and address of the lagoon site and the amount of funds assured for closure of the lagoon by the letter of credit.
- d) The letter of credit must be substantially in the form specified in Appendix A, Illustration B of this Part.

Section 900.713 Certificate of Deposit or Designated Savings Account

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by designating certificates of deposit or savings accounts for use as financial responsibility.
- b) The issuing or depository financial institution must be an entity whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.
- c) The Department may draw on the certificates of deposit or savings accounts to pay the costs of closing a lagoon in accordance with this subsection. The Department shall close a lagoon when the lagoon is removed from service and:
 - 1) The owner fails to submit the lagoon closure plan required by Section 900.608 of this Part and:
 - A) cannot be found; or
 - B) fails to cure such failure within 30 days after notice from the Department;
 - 2) The owner fails to obtain Department approval of a lagoon closure plan within eight months after the date that the lagoon is removed from service, unless the lagoon is maintained or serviced; or

- 3) The owner fails to comply with an approved lagoon closure plan and:
 - A) cannot be found; or
 - B) fails to cure such noncompliance within 30 days after notice from the Department.
- d) The Director of the Department shall be listed as trustee of the certificates of deposit or savings accounts for the lagoon owner.
- e) At maturity of any certificate of deposit designated as financial responsibility for lagoon closure, the certificate shall be renewed or the proceeds deposited into a designated savings account that meets the requirements of this Section.
- f) The Department shall relinquish trusteeship of the certificates of deposit or savings accounts when:
 - 1) The lagoon has been properly closed and a notification of closure completeness pursuant to Section 900.608 of this Part has been issued to the lagoon owner by the Department;
 - 2) A waiver has been granted by the Department to the lagoon owner allowing the lagoon to be used for an alternative purpose pursuant to Section 900.608 of this Part;
 - 3) Title of the property containing the lagoon has been transferred to a new owner and the new owner has posted financial assurance as required under Section 900.702(c) of this Part; or
 - 4) A lagoon owner offers an authorized alternative surety which meets the requirements of Section 900.707(c) of this Part.

Section 900.714 Participation in a Livestock Waste Lagoon Closure Fund

- a) A lagoon owner may provide evidence of financial responsibility for closure of a livestock waste lagoon by participating in a livestock waste lagoon closure fund managed by the Illinois Farm Development Authority. An owner electing to provide evidence of financial responsibility under this Section must submit a certificate of participation in such a lagoon closure fund to the Department.
- b) The certificate of participation submitted pursuant to subsection (a) of this Section must include:
 - 1) the level of surety for the lagoon;
 - 2) the dollar amount of coverage provided by the lagoon closure fund;
 - 3) the dates for which coverage is provided; and
 - 4) a financial statement of the lagoon closure fund establishing the lagoon closure fund's compliance with the requirements of this Section.
- c) The lagoon closure fund must maintain minimum reserves equal to the greater of:
 - 1) the level of surety of the largest lagoon covered by the lagoon closure fund; or
 - 2) twice the average level of surety of lagoons covered by the fund.
- d) The lagoon closure fund must guarantee that funds will be available to close the lagoon. Upon a notice

of liability from the Department, the lagoon closure fund must comply with the requirements of Section 900.706(c) of this Part.

- e) If the reserves of the lagoon closure fund are reduced to less than the minimum amount required under subsection (b) due to expenditures of funds in order to comply with Section 900.706(c), then within 120 days after such reduction the lagoon closure fund must demonstrate to the Department that the minimum reserve level has been restored.
- f) The lagoon closure fund may not cancel or terminate coverage prior to the date set forth in the certification pursuant to subsection (b)(3) of this Section.

Section 900.720 Penalties

The Department may order a lagoon removed from service if the owner fails to provide evidence of financial responsibility to the Department or fails to maintain financial responsibility in the amount required pursuant to Section 900.703 of this Subpart.

SUBPART H: WASTE MANAGEMENT PLAN

Section 900.801 Purpose

Livestock waste management plans shall be prepared by livestock management facility owners or operators to provide for adequate land area for the proper application of livestock waste *at rates not to exceed the agronomic nitrogen demand of the crops to be grown when averaged over a 5-year period* or at the phosphorus rate, depending on soil test results. [510 ILCS 77/20(f)(4)].

Section 900.802 Scope and Applicability

- a) A waste management plan shall be prepared according to the requirements contained in Section 20 of the Livestock Management Facilities Act [510 ILCS 77/20] and in this Subpart. *The application of livestock waste to the land is an acceptable, recommended, and established practice in Illinois. However, when livestock waste is not applied in a responsible manner, it may create pollutional problems. It is considered acceptable to prepare and implement a waste management plan based on a nitrogen rate, unless otherwise restricted by Section 20 of the Livestock Management Facilities Act and this Part.* [510 ILCS 77/20(f)]
- b) *The livestock management facility owner or operator at a facility of less than 1,000 animal units shall not be required to prepare and maintain a waste management plan.* [510 ILCS 77/20(b)]
- c) *The livestock management facility owner or operator at a facility of 1,000 or greater animal units but less than 5,000 animal units shall prepare, maintain and implement a waste management plan and comply with the following:*
 - 1) For facilities which commence operations or reach or exceed 1,000 animal units after the effective date of this Part, the owner or operator shall prepare, maintain, and implement a waste management plan within 60 working days after commencing operations or exceeding 1,000 animal units;
 - 2) Prior to the expiration of the waste management plan preparation period, the owner or operator shall submit to the Department a form certifying that a waste management plan has been prepared. The form shall list the animal unit capacity of the facility and the location of the plan;

- 3) The waste management plan and records of livestock waste disposal shall be kept on file at the facility for a period of three years and shall be available for inspection by Department personnel during normal business hours; and
 - 4) *Notwithstanding the provisions of this subsection (c), a livestock management facility subject to this subsection (c) may be operated on an interim basis but not to exceed 6 months after the effective date of this Part to allow for the owner or operator of the facility to develop a waste management plan.* [510 ILCS 77/20(c)]
- d) *The livestock management facility owner or operator at a facility of 5,000 or greater animal units shall prepare, maintain, implement, and submit to the Department the waste management plan for approval* [510 ILCS 77/20(d)] and comply with the following:
- 1) For facilities which commence operations after January 1, 2001, the owner or operator shall submit a waste management plan to the Department. The facility shall not commence operation before the Department approves the plan;
 - 2) For existing facilities that reach or exceed 5,000 animal units through expansion, the owner or operator shall submit for approval by the Department a waste management plan within 60 working days after reaching or exceeding 5,000 animal units; and
 - 3) The waste management plan and records of livestock waste disposal shall be kept on file at the facility for a period of three years and shall be available for inspection by Department personnel during normal business hours.
- e) *The owner or operator of multiple livestock management facilities under common facility ownership where the cumulative animal units of the facilities are equal to or greater than the animal unit numbers provided for in subsection (c) of this Section shall prepare and keep on file at each facility a waste management plan in accordance with the requirements of subsection (c) of this Section. The owner or operator of multiple livestock management facilities that are under common facility ownership where the cumulative animal units of the facilities are equal to or greater than the animal unit numbers provided for in subsection (d) of this Section shall prepare and file with the Department a waste management plan in accordance with the provisions of subsection (d) of this Section. Cumulative animal units shall be determined by combining the animal units of multiple livestock management facilities under the common facility ownership based upon the maximum design capacity of each facility. For the purposes of this subsection, "under common facility ownership" means the same person or persons own, directly or indirectly, through majority owned business entities at least 51% of any person or persons (as defined by Section 10.55 of the Livestock Management Facilities Act [510 ILCS 77/10.55]) that own or operate the livestock management facility or livestock waste handling facility located in the State of Illinois.* [510 ILCS 77/20(d-5)] A separate waste management plan shall be developed for each livestock waste handling facility.
- f) Waste management plans prepared pursuant to the emergency amendment adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996, the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, and the rules adopted in R97-15(A) at 21 Ill. Reg. 6851, effective May 20, 1997 shall be revised as follows:
- 1) The owner or operator of an existing facility of 1,000 or greater animal units but less than 5,000 animal units shall prepare a new or revised waste management plan that complies with the requirements of this Part and submit a waste management plan certification form to the Department pursuant to Section 900.802(c)(2) of this Subpart within 60 days after January 1, 2001.

- 2) The owner or operator of an existing facility of 5,000 or greater animal units shall prepare a new or revised waste management plan that complies with the requirements of this Part for submittal to and review by the Department within 60 days after January 1, 2001.
- g) For the purposes of this Subpart, the number of animal units served by a livestock waste handling facility shall be determined as the maximum design capacity of the livestock management facility which is being served by the livestock waste handling facility.

Section 900.803 Waste Management Plan Contents

The livestock waste management plan shall contain the following items:

- a) Name, address, and phone number of the owners of the livestock facility;
- b) Name, address, and phone number of the managers or operators if different than the owners;
- c) Address, phone number, and plat location of the facilities;
- d) Type of waste storage for the facilities;
- e) Species, general size, number of animals, and number of animal units at the facilities;
- f) Aerial photos or maps depicting fields available and intended for livestock waste applications with available acreage listed and indicating residences, non-farm businesses, common places of assembly, streams, wells, waterways, lakes, ponds, rivers, drainage ditches, other water sources, and areas restricted for application by this Subpart;
- g) For application fields not owned or rented, copies of waste application agreements between the owner or operator of the livestock facilities and the owner of the land where livestock waste will be applied;
- h) Cropping schedule for each field for the past year, anticipated crops for the current year, and anticipated crops for the next two years after the current year;
- i) Targeted crop yield goal for each crop in each field;
- j) *An estimate of the nutrient value of the waste* [510 ILCS 77/20(f)(3)];
- k) Livestock waste application methods;
- l) *Results of the Bray P1 or Mehlich test for soil phosphorus reported in pounds of elemental phosphorus per acre* [510 ILCS 77/20(f)(3.5)];
- m) Calculations showing the following:
 - 1) *An estimate of the volume of livestock waste to be disposed of annually* [510 ILCS 77/20(f)(1)];
 - 2) Nitrogen loss due to the method of storage, if applicable;
 - 3) Amount of nitrogen available for application;
 - 4) Nitrogen loss due to the method of application;

- 5) Amount of plant-available nitrogen including first-year mineralization of organic nitrogen;
 - 6) Amount of nitrogen required by each crop in each field based on targeted crop yield goal;
 - 7) Nitrogen credits from previous crops, from other sources of fertilizer applied for the growing season, and from any manure applications during the previous three years for each application field;
 - 8) Livestock waste application rate based on nitrogen for each application field; and
 - 9) Land area required for application;
- n) A listing of fields and the planned livestock waste application amounts for each field;
 - o) *A provision that livestock waste applied within 1/4 mile of any residence not part of the facility shall be injected or incorporated on the day of application. However, livestock management facilities and livestock waste handling facilities that have irrigation systems in operation prior to May 21, 1996, or existing facilities applying waste on frozen ground, are not subject to the provisions of this subsection (o) [510 ILCS 77/20(f)(5)];*
 - p) *A provision that livestock waste may not be applied within 200 feet of surface water unless the water is upgrade or there is adequate diking and waste will not be applied within 150 feet of potable water supply wells [510 ILCS 77/20(f)(6)];*
 - q) *A provision that livestock waste may not be applied in a 10-year flood plain unless the injection or incorporation method of application is used [510 ILCS 77/20(f)(7)];*
 - r) *A provision that livestock waste may not be applied in waterways. [510 ILCS 77/20(f)(8)] For the purposes of this Part, a grassed area serving as a waterway may receive livestock waste through an irrigation system if there is no runoff, the distance from applied livestock waste to surface water is greater than 200 feet, the distance from applied livestock waste to potable water supply wells is greater than 150 feet; the distance from applied livestock waste to a non-potable well, an abandoned or plugged well, a drainage well, or an injection well is greater than 100 feet; and precipitation is not expected within 24 hours;*
 - s) *A provision that if waste is spread on frozen or snow-covered land, the application will be limited to land areas on which:*
 - 1) *land slopes are 5% or less; or*
 - 2) *adequate erosion control practices exist [510 ILCS 77/20(f)(9)];*
 - t) For livestock facilities utilizing an earthen lagoon or other earthen waste storage structure, a provision that the owner, operator, or certified livestock manager shall inspect all bermtops, exterior berm sides, and non-submerged interior berm sides for evidence of erosion, burrowing animal activity, and other indications of berm degradation on a frequency of not less than once every two weeks; and
 - u) A provision that livestock waste may not be applied during a rainfall or to saturated soil and that conservative waste loading rates will be used in the case of a high water table or shallow earth cover to fractured bedrock. Caution should be exercised in applying livestock wastes, particularly on porous soils, so as not to cause nitrate or bacteria contamination of groundwaters.

Section 900.804 Livestock Waste Volumes

The estimate of the annual volume of available livestock waste for application, as required in Section 900.803(m)(1) of this Part, *shall be obtained by multiplying the number of animals constituting the maximum design capacity of the facility by the appropriate amount of waste generated by the animals.* [510 ILCS 77/20(f)(1)] The following sources may be used to obtain the amount of waste generated: MidWest Plan Service, MWPS-18, Livestock Waste Facilities Handbook, Table 2-1, or 35 Ill. Adm. Code 560, Table 1.

Section 900.805 Nutrient Value of Livestock Waste

- a) *The owner or operator may prepare a plan based on an average of the minimum and maximum numbers in the table values derived from MidWest Plan Service's MWPS-18, Livestock Waste Facilities Handbook (Table 2-1, 10-6, or 10-7) or the Agency's Agriculture Related Pollution regulations (35 Ill. Adm. Code 560, Table 1 or Table 2), or the results of analysis performed on samples of waste.* [510 ILCS 77/20(f)(3)] If "as produced" or "as excreted" nutrient values are used, the nitrogen value shall be adjusted to account for losses due to the type of storage system utilized using an average of the ranges in MidWest Plan Service, MWPS-18, Livestock Waste Facilities Handbook, Table 10-1. Other sources of nutrient values may be used if approved by the Department.
- b) If results of an analysis performed on samples of waste are used for the nutrient values in a plan, the following procedures shall be followed:
 - 1) The livestock waste handling facility owner or operator shall annually obtain a laboratory analysis of the nutrient content of the livestock waste to be applied to land as provided within the waste management plan. Livestock waste shall be sampled during the application process. Multiple subsamples shall be obtained and combined into one sample so that a representative sample is obtained for analysis. Results of a sample taken during waste application the previous year can be used for plan preparation unless there has been a change in the waste management practices during the year.
 - 2) Livestock waste sampling shall be performed under the direction of a certified livestock manager to ensure a representative sample from the livestock waste storage facility and to preserve the integrity of the sample.
 - 3) The laboratory analysis of the livestock waste sample shall include, but not be limited to, total nitrogen, ammonium nitrogen, total phosphorus, and total potassium. Results of the analysis shall be included in the waste management plan.

Section 900.806 Adjustments to Nitrogen Availability

Adjustments shall be made to nitrogen availability to account for the following:

- a) Nitrogen loss from livestock waste due to method of application, as required in Section 900.803(m)(4) of this Part and obtained from an average of the ranges in MidWest Plan Service, MWPS-18, Livestock Waste Facilities Handbook, Table 10-2; and
- b) The first-year mineralization of organic nitrogen into a plant available form, as required in Section 900.803(m)(5) of this Part and obtained from MidWest Plan Service, MWPS-18, Livestock Waste Facilities Handbook, Table 10-5.

Section 900.807 Targeted Crop Yield Goal

- a) The targeted crop yield goal, as required in Section 900.803(m)(6) of this Part, shall be determined for each field where the livestock waste is to be applied. The targeted crop yield goal shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied. The following listing of sources of data shall be utilized to determine the targeted crop yield goal.
 - 1) Proven yields. The proven yield shall be determined by obtaining an average yield over a five-year period from the field where livestock waste is to be applied. The owner or operator shall indicate the method used to determine the proven yield. Data from years with crop disasters may be discarded. Proven yields shall be used unless there is a sound agronomic basis for predicting a different targeted crop yield goal;
 - 2) Crop insurance yields. A copy of the crop insurance yields shall be included in the plan; or
 - 3) Farm Service Agency - United States Department of Agriculture yields. A copy of the assigned crop yields shall be included in the plan.
- b) Soils based yield data from the Natural Resources Conservation Service of the United States Department of Agriculture shall be used if the owner or operator cannot obtain a targeted crop yield goal pursuant to subsection (a) of this Section. A soil map of the application areas shall be included in the plan. The targeted crop yield goal shall be determined by a weighted average of the soil interpretation yield estimates for the areas that will receive livestock waste.
- c) Nitrogen and phosphorus fertilization rates for the targeted crop yield goal may be obtained from the Illinois Agronomy Handbook, or 35 Ill. Adm. Code 560, Appendix A.

Section 900.808 Nitrogen Credits

- a) Nitrogen credits shall be calculated by the livestock facility owner or operator, pursuant to Section 900.803(m)(7) of this Part, for nitrogen-producing crops grown the previous year, for other sources of nitrogen applied for the growing season, and for mineralized organic nitrogen in livestock waste applied during the previous three years.
- b) Nitrogen credits shall be calculated by the livestock facility owner or operator for the mineralized organic nitrogen in livestock waste applied during the previous three years at the rate of 50%, 25%, and 12.5%, respectively, of that mineralized during the first year.

Section 900.809 Records of Waste Disposal

Records of the livestock waste disposal shall include the following items:

- a) Date of livestock waste application;
- b) The field where livestock waste application was made;
- c) Method of livestock waste application;
- d) Livestock waste application rate;
- e) Number of acres receiving waste; and
- f) Amount of livestock waste applied.

Section 900.810 Approval of Waste Management Plans

- a) Department approval of livestock waste management plans shall be based on the following criteria:
 - 1) Livestock waste application rate of nitrogen not to exceed the crop nitrogen requirements for targeted crop yield goals;
 - 2) Demonstration of adequate land area for livestock waste application based on Section 900.803 of this Part; and
 - 3) Completeness and accuracy of plan contents as specified in Section 900.803 of this Part.
- b) The owner or operator of the livestock management facility shall be notified by the Department within 30 working days after receipt of the livestock waste management plan that the plan has been approved or that further information or changes are needed. The owner or operator shall provide the information or changes within 30 working days.

Section 900.811 Sludge Removal

- a) Within 60 days prior to periodic removal of sludge from a livestock waste storage structure, the livestock facility owner or operator shall test the sludge for nutrient content. Application of the sludge to the land shall not exceed the nitrogen requirement to obtain targeted yields of the crop to be grown for fields with soil phosphorus test results of 300 pounds or less of elemental phosphorus per acre pursuant to Section 900.813(a) of this Subpart. Application of the sludge shall be at a rate not to exceed the phosphorus rate on fields with soil phosphorus test results of greater than 300 pounds of elemental phosphorus per acre pursuant to Section 900.813(b) and (c)(3) of this Subpart.
- b) Prior to the removal of the remaining livestock waste, soil, and sludge during a lagoon closure, the waste, soil, and sludge shall be tested for nutrient content. Application of the waste, soil, and sludge to the land shall not exceed the nitrogen requirement to obtain targeted yields of the crop to be grown for fields with soil phosphorus test results of 300 pounds or less of elemental phosphorus per acre pursuant to Section 900.813(a) of this Subpart. Application of the waste, soil, and sludge shall be at a rate not to exceed the phosphorus rate on fields with soil phosphorus test results of greater than 300 pounds of elemental phosphorus per acre pursuant to Section 900.813(b) and (c)(3) of this Subpart.
- c) Nitrogen requirements based on targeted yields for the crop to be grown may be met but shall not be exceeded by any combination of the following:
 - 1) Livestock waste applications;
 - 2) Periodic sludge applications; or
 - 3) Remaining livestock waste, soil, or sludge applications during a waste storage structure closure.

Section 900.812 Soil Phosphorus Testing

Soil samples shall be obtained and analyzed from the livestock waste application fields on land owned or under the control of the owner or operator where applications are planned. Fields where livestock waste is applied shall be sampled every 3 years. Sampling procedures, such as the number of samples and the depth of sampling, as outlined in the Illinois Agronomy Handbook shall be followed when soil samples are obtained.

[510 ILCS 77/20(f)(3.5) For the purposes of this Subpart, “land owned or under the control of” means livestock waste application fields which are owned, rented, or leased by the owner or operator of the livestock

management facility or livestock waste handling facility, or those fields that are the subject of a livestock waste application agreement between the facility owner or operator and the land owner.

Section 900.813 Phosphorus Based Application

- a) *If the average Bray P1 or Mehlich test result for soil phosphorus calculated from samples obtained from the application field is 300 pounds or less of elemental phosphorus per acre, livestock waste may continue to be applied to that field in accordance with subsection (f) of Section 20 of the Livestock Management Facilities Act [510 ILCS 77/20(f)] and this Subpart. [510 ILCS 77/20(f)(3.6)]*
- b) *If the average Bray P1 or Mehlich test result for soil phosphorus for an application field is greater than 300 pounds of elemental phosphorus per acre, the owner or operator shall apply livestock waste at a rate not to exceed the phosphorus maintenance fertilizer rate to the field pursuant to subsection (c) of this Section, until the average Bray P1 or Mehlich test for soil phosphorus indicates there is less than 300 pounds of elemental phosphorus per acre. [510 ILCS 77/20(f)(3.6)]*
- c) If a phosphorus application rate is required for a field, the plan shall be amended by the owner or operator for that field to determine the maximum livestock waste application rate. The amendment to the plan for that field shall contain the following:
 - 1) The phosphorus content of the livestock waste, expressed as P₂O₅, derived from MidWest Plan Service's MWPS-18, Livestock Waste Facilities Handbook (Table 2-1, 10-6, or 10-7), 35 Ill. Adm. Code 560 (Table 1 or Table 2), or the results of analysis performed on samples of waste;
 - 2) The targeted crop yield goal of each crop in the field, obtained pursuant to Section 900.807 of this Subpart;
 - 3) The phosphorus maintenance fertilizer amount, expressed as P₂O₅ for the targeted crop yield goal of each planned crop, obtained from the Illinois Agronomy Handbook; and
 - 4) The maximum livestock waste application rate, calculated from the items in this subsection (c), for each planned crop.

Section 900.814 Plan Updates

- a) The waste management plan shall be reviewed annually by the livestock facility owner or operator and updated when there is a change in the volume of livestock waste to be disposed of annually, calculated pursuant to Section 900.804 of this Subpart, that will cause additional application land not already included in the plan to be needed.
- b) The waste management plan shall also be updated when at least one of the following occurs:
 - 1) The average Bray P1 or Mehlich test result for soil phosphorus for an application field is greater than 300 pounds of elemental phosphorus per acre, in which case a separate plan for that field shall be prepared pursuant to Section 900.813 of this Subpart if application to that field is to continue;
 - 2) A change in land that is available for livestock waste application occurs, if the land is not currently included in the waste management plan;
 - 3) A change in the method of livestock waste disposal or application occurs; or

- 4) A change in the crop to be grown on the application field occurs, if the crop is not already included in the plan.

Section 900.815 Penalties

- a) *Any person who is required to prepare a waste management plan and who fails to do so shall be subject to the following:*
 - 1) *The person shall be issued a warning letter by the Department for the first violation and shall be given 30 working days to prepare a waste management plan.*
 - 2) *For failure to prepare a waste management plan within 30 working days pursuant to subsection (a)(1) of this Section, the person shall be fined an administrative penalty of up to \$1,000 by the Department and shall be required to enter into an agreement of compliance to prepare a waste management plan within 30 working days.*
 - 3) *For failure to prepare a waste management plan after the second 30 day period or for failure to enter into a compliance agreement pursuant to subsection (a)(2) of this Section, the Department may issue an operational cease and desist order until compliance is attained. [510 ILCS 77/20(g)]*
- b) Any person who is required to maintain and implement a waste management plan and who fails to do so shall be subject to the following:
 - 1) The person shall be issued a warning letter by the Department for the first violation and shall be given 30 working days to maintain and implement a waste management plan.
 - 2) For failure to maintain and implement a waste management plan within 30 working days pursuant to subsection (b)(1) of this Section, the person shall be fined an administrative penalty of up to \$1,000 by the Department and shall be required to enter into an agreement of compliance to maintain and implement a waste management plan within 30 working days.
 - 3) For failure to maintain and implement a waste management plan after the second 30 day period or for failure to enter into a compliance agreement pursuant to subsection (b)(2) of this Section, the Department may issue an operational cease and desist order until compliance is attained.
- c) The operational cease and desist order procedures may be suspended by the Department upon submittal of a waste management plan by the owner or operator to the Department. The cease and desist order shall be canceled by the Department upon approval of the waste management plan by the Department.
- d) A waste management plan prepared as a result of a warning letter or compliance agreement shall be subject to approval by the Department.
- e) Penalties shall not be imposed for excessive nitrogen application for unplanned cropping changes due to weather or other unforeseeable circumstances.

Section 900.816 Odor Control

- a) *Operators of livestock waste handling facilities shall practice odor control methods during the course of manure removal and field application. Odor control methods shall be those methods identified in the rules adopted pursuant to the Illinois Environmental Protection Act concerning agriculture related*

pollution as set forth in 35 Ill. Adm. Code 501.405(b). [510 ILCS 77/25(a)]

- b) Upon the occurrence of a violation of this Section, the following procedures shall be followed:
- 1) *For a first violation of this Section by the owner or operator of a livestock management facility or livestock waste handling facility, the Department shall send the owner or operator a written notice of the violation by certified mail, return receipt requested.*
 - 2) *If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a second violation of this Section, the Department shall impose on the owner or operator a civil administrative penalty in an amount not exceeding \$1,000. The Attorney General may bring an action in the circuit court to enforce the collection of a penalty imposed under this Section.*
 - 3) *If after an administrative hearing the Department finds that the owner or operator of a livestock management facility or livestock waste handling facility has committed a third violation of this Section, the Department shall enter an administrative order directing that the owner or operator cease operation of the facility until the violation is corrected.*
 - 4) *If a livestock management facility or livestock waste handling facility has not committed a violation of this Section within the 5 years immediately preceding a violation, the violation shall be construed and treated as a first violation. [510 ILCS 77/25(d)]*

SUBPART I: CERTIFIED LIVESTOCK MANAGER

Section 900.901 Applicability

- a) *A livestock waste handling facility serving 300 or greater animal units shall be operated only under the supervision of a certified livestock manager. Notwithstanding the before-stated provision, a livestock waste handling facility may be operated on an interim basis, but not to exceed 6 months, to allow for the owner or operator of the facility to become certified. [510 ILCS 77/30(a)] For the purposes of this Subpart, being operated under the supervision of a certified livestock manager shall mean that the certified livestock manager shall be immediately available to the workers at a livestock waste handling facility either in person or via telecommunications and shall have the ability to be physically present at the livestock waste handling facility within one hour after notification.*
- b) *Persons may become certified livestock managers by demonstrating an understanding of and competence for the operation of livestock waste handling facilities as established in Section 30 of the Livestock Management Facilities Act [510 ILCS 77/30] and further described in this Subpart. Livestock managers shall establish or re-establish certification when required to do so in accordance with Section 30 of the Livestock Management Facilities Act.*
- c) *A livestock manager certified pursuant to the emergency amendment adopted in R97-14 at 20 Ill. Reg. 14903, effective October 31, 1996 and the emergency rules adopted in R97-14 at 21 Ill. Reg. 4313, effective March 31, 1997, shall be considered as certified pursuant to this Subpart.*
- d) *For the purposes of this Subpart, the number of animal units served by a livestock waste handling facility is the maximum design capacity of the livestock management facility which is being served by the livestock waste handling facility.*
- e) *Any certification shall be valid for 3 years and thereafter subject to renewal. A renewal shall be valid for a 3 year period and the procedures set forth in Section 30 of the Livestock Management Facilities*

Act shall be followed. The Department may require anyone who is certified to be recertified in less than 3 years for just cause including but not limited to repeated complaints where investigations reveal the need to improve management practices. [510 ILCS 77/30(c)] Examples include, but are not limited to, lagoon maintenance violations, improper waste handling practices, waste management plan violations, other violations of the Livestock Management Facilities Act or rules promulgated thereunder, or violations of other Acts related to livestock management practices including the Dead Animal Disposal Act [225 ILCS 610].

- f) The following methods shall be utilized by an owner or operator to become certified:
- 1) *The owner or operator of a livestock waste handling facility serving 300 or greater animal units but less than 1,000 animal units shall become a certified livestock manager by:*
 - A) *Attending a training session conducted by the Department, Cooperative Extension Service, or any agriculture association that has been approved by or is in cooperation with the Department; or*
 - B) *In lieu of attendance at a training session, successfully completing a written competency examination.*
 - 2) *The owner or operator of a livestock waste handling facility serving 1,000 or greater animal units shall become a certified livestock manager by attending a training session conducted by the Department, Cooperative Extension Service, or any agriculture association that has been approved by or is in cooperation with the Department; and successfully completing a written competency examination. [510 ILCS 77/ 30(d)]*
- g) *The Department shall charge \$10 for the issuance or renewal of a certified livestock manager certificate. [510 ILCS 77/30(f)]*
- h) *For violations pertaining to the certified livestock manager requirements, the owner or operator shall be issued a warning letter for the first violation and shall be required to have a certified manager for the livestock waste handling facility within 30 working days. For failure to comply with the warning letter within the 30 day period, the person shall be fined an administrative penalty of up to \$1,000 by the Department and shall be required to enter into an agreement to have a certified manager for the livestock waste handling facility within 30 working days. For continued failure to comply, the Department may issue an operational cease and desist order until compliance is attained. [510 ILCS 77/30(g)] The cease and desist order shall be canceled by the Department upon presentation to the Department of a valid certified livestock manager certificate issued in the name of the owner, operator, or current employee of the livestock facility.*

APPENDIX A SURETY INSTRUMENTS

Section 900.Illustration A Surety Bond

SURETY BOND

Date bond executed: _____

Effective date: _____

Principal: _____

Type of organization: _____

State of incorporation: _____

Surety: _____

Sites:

Name: _____

Address: _____

City: _____

Amount guaranteed by this bond: _____ \$ _____

Name: _____

Address: _____

City: _____

Amount guaranteed by this bond: _____ \$ _____

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

Total penal sum of bond _____ \$ _____

Surety's bond number: _____

The Principal and the Surety promise to pay the Illinois Department of Agriculture ("Department") the above penal sum unless the Principal provides closure for each site in accordance with 510 ILCS 77/15(e) and 35 Ill. Adm. Code 900.608. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under Section 15(b) of the Livestock Management Facilities Act ("LMFA") to register at least one livestock waste lagoon with the Department; and

Whereas the Principal is required, under Section 17 of the LMFA to evidence financial responsibility for closure of each registered lagoon; and

Whereas the Surety is licensed by the Illinois Department of Insurance; and

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

The Surety shall pay the penal sum to the Department if, during the term of the bond, the Department issues a notice of liability to the Surety.

The Surety shall pay the penal sum of the bond to the Department within 30 days after the Department mails the notice of liability to the Surety unless the Surety assumes responsibility to provide closure and so notifies the Department. Payment shall be made by deposit of funds into a designated account upon which the Department is authorized to draw.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum. If the Surety assumes responsibility to provide closure, expenditures made by the Surety for that purpose may exceed the amount of the penal sum, but the amount of the Surety's obligation under this bond is not affected.

This bond shall expire on the _____ day of _____, _____.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the Department.

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

The persons whose signatures appear below certify that they are authorized to execute this surety bond on behalf of the Principal and Surety.

PRINCIPAL

Signature Name _____

Typed Name _____

Address _____

Title _____

State of Incorporation _____

Date _____

Corporate seal

CORPORATE SURETY

Signature _____

Typed Name _____

Title _____

Corporate seal

Bond premium: _____ \$ _____

Section 900.Illustration B Irrevocable Standby Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT

Director
Illinois Department of Agriculture
P.O. Box 19281
Springfield, IL 62794-9281

Dear Sir or Madam:

We have authority to issue letters of credit. Our letter-of-credit operations are regulated by the Illinois Commissioner of Banks and Real Estate or our deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. (Omit language that does not apply.)

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of _____ up to the aggregate amount of _____ U.S. dollars (\$ _____), available upon presentation of:

1. your sight draft, bearing reference to this letter of credit No. _____; and
2. your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Livestock Management Facilities Act [510 ILCS 77] and 35 Ill. Adm. Code 900.706(a) or (c)."

This letter of credit is effective as of _____ and shall expire on _____.

Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of draft directly into a designated account in accordance with your instructions.

This letter of credit is governed by the Uniform Commercial Code [810 ILCS 5].

Signature _____

Typed Name _____

Title _____

Date _____

Name and address of
issuing institution _____

This credit is subject to _____