

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:)
)
Amendments to 35 Ill. Adm.) R00-
Code 732; Regulation of) (Rulemaking)
Petroleum Leaking)
Underground Storage Tanks)

MOTION FOR ACCEPTANCE

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency"), pursuant to 35 Ill. Adm. Code 102.121, moves that the Board accept for hearing the Agency's proposal for amendment of 35 Ill. Adm. Code 732. This regulatory proposal includes: 1) the proposed amendments; 2) the Statement of Reasons; 3) a statement regarding an economic impact study; and 4) an Appearance for the attorneys representing the Illinois EPA.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: Thomas V. Skinner
Thomas V. Skinner
Director

DATED: 12-5-00

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-3397

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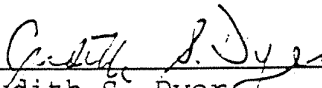
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APPEARANCE

The undersigned hereby enter their appearance as attorneys on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY



Judith S. Dyer
Assistant Counsel



Kyle Rominger
Assistant Counsel

DATED: 12-5-00
1021 North Grand Avenue East
PO Box 19276
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217-782-5544

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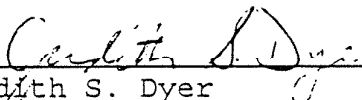
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STATEMENT REGARDING ECONOMIC IMPACT STUDY

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") and states that no recommendation regarding an economic impact study is included in this regulatory proposal because: 1) Section 27 of the Illinois Environmental Protection Act no longer requires such a recommendation; and 2) the Illinois EPA does not believe that the proposed amendments will have a negative impact on the regulated community.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY



Judith S. Dyer
Assistant Counsel

DATED: 12-5-00
1021 North Grand Avenue East
PO Box 19276
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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE G: WASTE DISPOSAL

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND UNDERGROUND
STORAGE TANK PROGRAMS

PART 732

PETROLEUM UNDERGROUND STORAGE TANKS

SUBPART A: GENERAL

Section	
732.100	Applicability
732.101	Election to Proceed under Part 732
732.102	Severability
732.103	Definitions
732.104	Incorporations by Reference
732.105	Agency Authority to Initiate Investigative, Preventive or Corrective Action
<u>732.106</u>	<u>Laboratory Certification</u>

SUBPART B: EARLY ACTION

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732.200	General
732.201	Agency Authority to Initiate
732.202	Early Action
732.203	Free Product Removal
732.204	Application for Payment

SUBPART C: SITE EVALUATION AND CLASSIFICATION

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732.300	General
732.301	Agency Authority to Initiate
732.302	No Further Action Sites
732.303	Low Priority Sites
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732.305	Plan Submittal and Review
732.306	Deferred Site Classification; Priority List for Payment
732.307	Site Evaluation

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- 732.308 Boring Logs and Sealing of Soil Borings and Groundwater Monitoring Wells
- 732.309 Site Classification Completion Report
- 732.310 Indicator Contaminants
- 732.311 Indicator Contaminant Groundwater Objectives
- 732.312 Classification by Exposure Pathway Exclusion

SUBPART D: CORRECTIVE ACTION

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- 732.407 Alternative Technologies
- 732.408 Remediation Objectives
- 732.409 Groundwater Monitoring and Corrective Action Completion Reports
- 732.410 "No Further Remediation" Letter (Repealed)
- 732.411 Off-site Access

SUBPART E: SELECTION AND REVIEW PROCEDURES FOR PLANS AND REPORTS

- Section
- 732.500 General
- 732.501 Submittal of Plans or Reports
- 732.502 Completeness Review
- 732.503 Full Review of Plans or Reports
- 732.504 Selection of Plans or Reports for Full Review
- 732.505 Standards for Review of Plans or Reports

SUBPART F: PAYMENT OR REIMBURSEMENT

- Section
- 732.600 General
- 732.601 Applications for Payment
- 732.602 Review of Applications for Payment
- 732.603 Authorization for Payment; Priority List
- 732.604 Limitations on Total Payments

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732.606	Ineligible Costs
732.607	Payment for Handling Charges
732.608	Apportionment of Costs
732.609	Subrogation of Rights
732.610	Indemnification
732.611	Costs Covered by Insurance, Agreement or Court Order
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SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING
REQUIREMENTS

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732.700	General
732.701	Issuance of a No Further Remediation Letter
732.702	Contents of a No Further Remediation Letter
732.703	Duty to Record a No Further Remediation Letter
732.704	Voidance of a No Further Remediation Letter

732.APPENDIX A Indicator Contaminants

732.APPENDIX B Additional Parameters

TABLE A Groundwater and Soil Remediation Objectives (Repealed)

TABLE B Soil remediation Methodology: Model Parameter Values (Repealed)

TABLE C Soil remediation Methodology: Chemical Specific Parameters (Repealed)

TABLE D Soil remediation Methodology: Objectives (Repealed)

ILLUSTRATION A Equation for Groundwater Transport (Repealed)

ILLUSTRATION B Equation for Soil-Groundwater Relationship (Repealed)

ILLUSTRATION C Equation for Calculating Groundwater Objectives at the Source
(Repealed)

ILLUSTRATION D Equation for Calculating Soil Objectives at the Source (Repealed)

732.APPENDIX C Backfill Volumes

AUTHORITY: Implementing Sections 22.12 and 57 -57.17 and authorized by Section 57.14 of the Environmental Protection Act [415 ILCS 5/22.12, 57 -57.17 and 57.14]

SOURCE: Adopted in R94-2 at 18 Ill. Reg. 15008, effective September 23, 1994; amended in R97-10 at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____.

NOTE: Italics denotes statutory language.

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SUBPART A: GENERAL

Section 732.101 Election to Proceed under Part 732

- a) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority on or before September 12, 1993, may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Corrective action shall then follow the requirements of this Part. The election shall be effective upon receipt by the Agency and shall not be withdrawn once made.
- b) Except as provided in Section 732.100(b) of this Part, owners or operators of underground storage tanks (USTs) used exclusively to store heating oil for consumptive use on the premises where stored and which serve other than a farm or residential unit may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Corrective action shall then follow the requirements of this Part. The election shall be effective upon receipt by the Agency and shall not be withdrawn once made.
- c) If the owner or operator elects to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election shall be payable or reimbursable in the same manner as was allowable under the then existing law. Corrective action costs incurred after the notification of election shall be payable or reimbursable in accordance with Subparts E and F of this Part.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.103 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].

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“Act” means the Environmental Protection Act [415 ILCS 5].

“Agency” means the Illinois Environmental Protection Agency.

“Alternative Technology” means a process or technique, other than conventional technology, used to perform a corrective action with respect to soils contaminated by releases of petroleum from an underground storage tank.

“Board” means the Illinois Pollution Control Board.

“Bodily Injury” means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank. (Section 57.2 of the Act)

“Class I groundwater” means groundwater that meets the Class I: potable resource groundwater criteria set forth in the board regulations adopted pursuant to the Illinois Groundwater Protection Act. (Section 57.2 of the Act)

“Class III groundwater” means groundwater that meets the Class III: special resource groundwater criteria set forth in the board regulations adopted pursuant to the Illinois Groundwater Protection Act. (Section 57.2 of the Act)

“Confirmed Exceedence” means laboratory verification of an exceedence of the applicable groundwater quality standards or objectives.

“Confirmed Release” means a release of petroleum that has been confirmed in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

“Conventional Technology” means a process or technique to perform a corrective action by removal, transportation and disposal of soils contaminated by a release of petroleum from an underground storage tank in accordance with applicable laws and regulations, but without processing to remove petroleum from the soils.

“Corrective action” means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act. (Section 57.2 of the Act).

“Fill material” means non-native or disturbed materials used to bed and backfill around an underground storage tank. (Section 57.2 of the Act)

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“Free Product” means a contaminant that is present as a non-aqueous phase liquid for chemicals whose melting point is less than 30° C (e.g., liquid not dissolved in water).

“Full Accounting” means a compilation of documentation to establish, substantiate and justify the nature and extent of the corrective action costs incurred by an owner or operator.

“Fund” means the underground storage tank fund. (Section 57.2 of the Act)

“Groundwater” means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure. (Section 3.64 of the Act)

“Handling Charges” means administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.

“Heating oil” means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy, No. 5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker c. (Section 57.2 of the Act)

“IEMA” means the Illinois Emergency Management Agency.

“Indemnification” means indemnification of an owner or operator for the amount of judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by any agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator. (Section 57.2 of the Act)

“Licensed professional engineer” means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering. (Section 57.2 of the Act)

“Licensed Professional Geologist” means an individual who is licensed under [the Professional Geologist Licensing Act] to engage in the practice of professional geology in Illinois. (Section 15 of the Professional Geologist Licensing Act, 225 ILCS 745/15)

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“Line Item Estimate” means an estimate of the costs associated with each line item (including, but not necessarily limited to, personnel, equipment, travel, etc.) which an owner or operator anticipates will be incurred for the development, implementation and completion of a plan or report.

“Man-made Pathway” means constructed routes that may allow for the transport of mobile petroleum free-liquid or petroleum-based vapors including, but not limited to, sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches or previously excavated and filled areas.

“Monitoring Well” means a water well intended for the purpose of determining groundwater quality or quantity.

“Natural Pathway” means natural routes for the transport of mobile petroleum free-liquid or petroleum-based vapors including, but not limited to soil, groundwater, sand seams and lenses and gravel seams and lenses.

“Occurrence” means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank. (Section 57.2 of the Act)

“OSFM” means the Office of the State Fire Marshal.

“Operator” means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (42 U.S.C. § 6991)

BOARD NOTE: A person who voluntarily undertakes action to remove an underground storage tank system from the ground shall not be deemed an “operator” merely by the undertaking of such action.

“Owner” means:

In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances;

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use. (42 U.S.C. § 6991)

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“Perfected” means recorded or filed for record so as to place the public on notice.

“Person” means, for the purposes of interpreting the definitions of the terms “owner” or “operator,” an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 U.S.C. § 6991)

“Petroleum” means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). (42 U.S.C. § 6991)

“Physical soil classification” means verification of geological conditions consistent with regulations for identifying and protecting potable resource groundwater or verification that subsurface strata are as generally mapped in the publication Illinois Geological Survey Circular (1984) entitled “Potential For Contamination Of Shallow Aquifers In Illinois,” by Berg, Richard C., et al. Such classification may include review of soil borings, well logs, physical soil analysis, regional geologic maps, or other scientific publications. (Section 57.2 of the Act)

“Potable” means generally fit for human consumption in accordance with accepted water supply principles and practices. (Section 3.65 of the Act)

“Property damage” means physical injury to, destruction of, or contamination of tangible property owned by a person other than an owner or operator of the UST from which a release of petroleum has occurred and which tangible property is located off the site where the release occurred. Property damage includes all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank. (Derived from Section 57.2 of the Act)

“Registration” means registration of an underground storage tank with the OSFM in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4]

“Regulated recharge area” means a compact geographic area, as determined by the Board, the geology of which renders a potable resource groundwater particularly susceptible to contamination. (Section 3.67 of the Act)

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“Regulated Substance” means any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601(14)) (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6921 et seq.)), and Petroleum. (42 U.S.C. § 6991)

“Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils. (Section 57.2 of the Act)

“Residential Tank” means an underground storage tank located on property used primarily for dwelling purposes.

“Residential Unit” means a structure used primarily for dwelling purposes including multi-unit dwellings such as apartment buildings, condominiums, cooperatives or dormitories.

“Sethack zone” means a geographic area, designated pursuant to the Act or regulations, containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwater. (Section 3.61 of the Act)

“Site” means any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way. (Section 57.2 of the Act)

“Stratigraphic Unit” means a site-specific geologic unit of native deposited material and/or bedrock of varying thickness (e.g., sand, gravel, silt, clay, bedrock, etc.). A change in stratigraphic unit is recognized by a clearly distinct contrast in geologic material or a change in physical features within a zone of gradation. For the purposes of this Part, a change in stratigraphic unit is identified by one or a combination of differences in physical features such as texture, cementation, fabric, composition, density, and/or permeability of the native material and/or bedrock.

“Surface Body of Water” or “Surface Water Body” means a natural or man-made body of water on the ground surface including, but not limited to, lakes, ponds, reservoirs, retention ponds, rivers, streams, creeks and drainage ditches. Surface body of water does not include puddles or other accumulations of precipitation, run-off or groundwater in UST excavations.

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“Tank Field” means all underground storage tanks at a site that reside within a circle with a 100 foot radius.

“Underground Storage Tank” or “UST” means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected thereto:

Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

Septic tank;

Pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.), or the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or which is an intrastate pipeline facility regulated under State laws as provided in either of these provisions of law, and which is determined by the Secretary of Energy to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

Surface impoundment, pit, pond, or lagoon;

Storm water or waste water collection system;

Flow-through process tank;

Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated on or above the surface of the floor. (Derived from 42 U.S.C. § 6991)

The term “underground storage tank” shall also mean an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit. (Section 57.2 of the Act)

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“UST system” or “tank system” means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.104 Incorporations by Reference

- a) The Board incorporates the following material by reference:

ASTM. American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (215) 299-5400

ASTM D 422-63, Standard Test Method for Particle-Size Analysis of Soils, approved November 21, 1963 (reapproved 1990).

ASTM D 1140-92, Standard Test Method for Amount of Material in Soils Finer than the No. 200 (75 um) Sieve, approved November 15, 1992.

ASTM D 2216-92, Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock, approved June 15, 1992.

ASTM D 4643-93, Standard Test Method for Determination of Water (Moisture) Content of Soil by the Microwave Oven Method, approved July 15, 1993.

ASTM D 2487-93, Standard Test Method for Classification of Soils for Engineering Purposes, approved September 15, 1993.

ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993.

ASTM D 5084-90, Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter, approved June 22, 1990.

ASTM D 4525-90, Standard Test Method for Permeability of Rocks by Flowing Air, approved May 25, 1990.

ASTM D 1587-83, Standard Practice for Thin-Walled Tube Sampling of Soils, approved August 17, 1983.

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ISGS. Illinois State Geological Survey, 615 E. Peabody Drive, Champaign, IL
61820-6964 (217) 333-4747

Richard C. Berg, John P. Kempton, Keros Cartwright, "Potential for
Contamination of Shallow Aquifers in Illinois" (1984), Circular No. 532.

NTIS. National Technical Information Service, 5285 Port Royal Road,
Springfield, VA 22161 (703) 487-4600

"Methods for Chemical Analysis of Water and Wastes," EPA Publication
No. EPA-600/4-79-020 (March 1983), Doc. No. PB 84-128677.

"Methods for the Determination of Organic Compounds in Drinking
Water," EPA, EMSL, EPA-600/4-88/039 (Dec. 1988), Doc. No. PB 89-
220461.

"Practical Guide for Ground-Water Sampling," EPA Publication No.
EPA-600/2-85/104 (September 1985), Doc. No. PB 86-137304.

"Rapid Assessment of Exposure to Particulate Emissions from Surface
Contamination Sites," EPA Publication No. EPA/600/8-85/002 (February
1985), Doc. No. PB 85-192219.

"Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,"
EPA Publication No. SW-846, Third Edition (September, 1986), as
amended by Update III (~~July 1992~~ June 1997), Doc. No. 955-001-00000-1.

USGS. United States Geological Survey, 1961 Stout Street, Denver, CO 80294
(303) 844-4169

"Techniques of Water Resources Investigations of the United States
Geological Survey, Guidelines for Collection and Field Analysis of
Ground-Water Samples for Selected Unstable Constituents," Book I,
Chapter D2 (1981).

- b) CFR (Code of Federal Regulations). Available from the Superintendent of
Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202)
783-3238

40 CFR 261, Appendix II (1992).

40 CFR 761.120 (1993).

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- c) This Section incorporates no later editions or amendments.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.106 Laboratory Certification

All quantitative analyses of samples collected on or after July 1, 2002, and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180, shall be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 shall be deemed invalid.

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

SUBPART B: EARLY ACTION

Section 732.202 Early Action

- a) Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, shall perform the following initial response actions within 24 hours after the release:
- 1) Report the release to IEMA (e.g., by telephone or electronic mail);
 - 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
 - 3) Identify and mitigate fire, explosion and vapor hazards.
- b) Within 20 days after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, the owner or operator shall perform the following initial abatement measures:
- 1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;
 - 2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

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- 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
 - 4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator shall comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;
 - 5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and
 - 6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 732.203 below.
- c) Within 20 days after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, owners or operators shall submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data. The report shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
 - d) Within 45 days after confirmation of a release, owners or operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information shall include, but is not limited to, the following:
 - 1) Data on the nature and estimated quantity of release;
 - 2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil

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- conditions, locations of subsurface sewers, climatological conditions and land use;
- 3) Results of the site check required at subsection (b)(5) of this Section;
- 4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 732.203.
- e) Within 45 days after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, owners or operators shall submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy. The information shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
- f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal. The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material in accordance with Section 57.7(a)(1)(B) of the Act. (Section 57.6(b) of the Act)*
- g) For purposes of reimbursement, the activities set forth in subsection (f) of this Section shall be performed within 45 days after ~~confirmation~~ initial notification to IEMA of a release, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days. The owner or operator shall notify the Agency in writing within 45 days of ~~confirmation~~ initial notification to IEMA of a release of such circumstances. Costs incurred beyond 45 days shall be eligible if the Agency determines that they are consistent with early action.
- h) The owner or operator shall determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g. excavation boundaries, piping runs) meet the applicable Tier 1 remediation objectives pursuant to 35 Ill. Adm. Code 742, Subpart E. Six samples shall be collected, one on each sidewall and two at the bottom of the excavation. If contaminated

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backfill is returned to the excavation, 2 representative samples must be collected and analyzed for the applicable indicator contaminants. Additional samples may be required for a multiple tank excavation.

- 1) If the remediation objectives have been met, and if there is no evidence that contaminated soils may be or may have been in contact with groundwater, the owner or operator shall submit a corrective action completion report demonstrating compliance with those remediation objectives.
- 2) If the remediation objectives have not been met, or if there is evidence that contaminated soils may be or may have been in contact with groundwater, the owner or operator shall continue evaluation in accordance with Subpart C of this Part.

BOARD NOTE: Section 57.7(a)(1)(B) of the Act limits payment or reimbursement from the Fund for removal of contaminated fill material during early action activities. Owners or operators proceeding with activities set forth in subsection (f) of this Section are advised that they may not be entitled to full payment or reimbursement. See Subpart F of this Part.

(Source: Amended at 21 Ill. Reg.3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.203 Free Product Removal

Under any circumstance in which conditions at a site indicate the presence of free product, owners or operators shall remove free product to the maximum extent practicable while initiating or continuing any actions required pursuant to this Part or other applicable laws or regulations. In meeting the requirements of this Section, owners or operators shall:

- a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, State and federal regulations;
- b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

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- c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- d) Within 45 days after the confirmation of presence of free product from a UST prepare and submit to the Agency a free product removal report on a form prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The report shall, at a minimum, provide the following:
 - 1) The name of the persons responsible for implementing the free product removal measures;
 - 2) The estimated quantity, type and thickness of free product observed or measured in wells, boreholes and excavations;
 - 3) The type of free product recovery system used;
 - 4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
 - 5) The type of treatment applied to, and the effluent quality expected from, any discharge;
 - 6) The steps that have been or are being taken to obtain necessary permits for any discharge; and
 - 7) The disposition of the recovered free product.

(Source: Amended at 21 Ill. Reg.3617, effective July 1, 1997; amended at _____ Ill. Reg. _____, effective _____)

Section 732.204 Application for Payment

Owners or operators intending to seek payment or reimbursement for early action activities are not required to submit a corresponding budget plan to the Agency prior to the application for payment. The application for payment may be submitted to the Agency upon completion of the early action activities in accordance with the requirements at Subpart F of this Part. ~~In the alternative, the owner or operator may submit line item estimates of the activities and costs as part of a site classification budget plan submitted pursuant to Section 732.305 for prior review and approval in accordance with Subpart E of this Part. If the alternative of submitting a line item estimate of the activities and costs is selected, a subsequent application for payment satisfying the requirements of Subpart F will be required before payment can be approved and~~

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~~such application for payment must be submitted with an application for payment for site classification activities.~~

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

SUBPART C: SITE EVALUATION AND CLASSIFICATION

Section 732.300 General

- a) Except as provided in subsection (b) of this Section, the owner or operator of any site subject to this Part shall evaluate and classify the site in accordance with the requirements of this Subpart C. All such sites shall be classified as No Further Action, Low Priority or High Priority. Site classifications shall be based on the results of the site evaluation, including, but not limited to, the physical soil classification and the groundwater investigation, if applicable.

- b) An owner or operator may choose to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part as an alternative to Owners or operators subject to this Part 732 may proceed without conducting site classification activities pursuant to this Subpart C under the following circumstances provided that:
 - 1) ~~If the owner or operator chooses to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part. Upon completion of the remediation, the owner or operator shall submit a corrective action completion report, demonstrating compliance with the required levels. The owner or operator must sign and submit, with the corrective action completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:~~

I hereby certify that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further certify that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the Corrective Action Completion Report. A groundwater investigation shall be required if any of the

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~~following conditions exist, unless an evaluation through 35 Ill. Adm. Code 742 determines that no groundwater investigation is necessary; and~~

- 2) Unless an evaluation pursuant to 35 Ill. Adm. Code 742 demonstrates that no groundwater investigation is necessary, the owner or operator must complete a groundwater investigation under the following circumstances:
- A) ~~If~~ There is evidence that groundwater wells have been impacted by the release above the Tier 1 residential numbers set forth in 35 Ill. Adm. Code 742. Appendix B (e.g., as found during release confirmation or previous corrective action measures);
 - B) ~~If~~ Free product that may impact groundwater is found to need recovery in compliance with Section 732.203; or
 - C) ~~If~~ There is evidence that contaminated soils may be or may have been in contact with groundwater, except that, if the owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping, the owner or operator does not have to complete a groundwater investigation, unless the Agency's review reveals that further groundwater investigation is necessary, as a result of:
 - i) ~~Groundwater infiltrating the tank excavation; or~~
 - ii) ~~Groundwater occurring at or above the invert elevation of the UST.~~
- 2) ~~If, upon completion of early action requirements pursuant to Subpart B of this Part, the owner or operator can demonstrate compliance with the remediation objectives required in Section 732.408 of this Part. Upon completion of the early action requirements, the owner or operator shall submit a corrective action completion report demonstrating compliance with the required levels.~~

BOARD NOTE: Owners or operators proceeding under subsection (b) of this Section are advised that they may not be entitled to full payment or reimbursement. See Subpart F of this Part.

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- c) For corrective action completion reports submitted pursuant to subsection (b) of this Section, the Agency shall issue a No Further Remediation Letter upon approval of the report by the Agency in accordance with Subpart E.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.302 No Further Action Sites

- a) Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as No Further Action if all of the following criteria are satisfied:
- 1) The physical soil classification procedure completed in accordance with Section 732.307 confirms either of the following:
 - A) "Berg Circular"
 - i) The site is located in an area designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and
 - ii) The site's actual physical soil conditions are verified as consistent with those designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois"; or
 - B) The site soil characteristics satisfy the criteria of Section 732.307(d)(3) of this Part;
 - 2) The UST system is not within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;
 - 3) After completion of early action measures in accordance with Subpart B of this Part, there is no evidence that, through natural pathways or man-made pathways, migration of petroleum or vapors threatens human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

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- 4) There is no designated Class III special resource groundwater within 200 feet of the UST system; and
 - 5) After completing early action measures in accordance with Subpart B of this Part, no surface bodies of water are adversely affected by the presence of a visible sheen or free product layer as a result of a release of petroleum.
- b) Groundwater investigation shall be required to confirm that a site meets the criteria of a No Further Action site if the Agency has received information indicating that the groundwater is contaminated at levels in excess of applicable groundwater objectives specified in 35 Ill. Adm. Code 742 at the property boundary line or 200 feet from the UST system, whichever is less. In such cases, a groundwater investigation that meets the requirements of Section 732.307(j) shall be performed. If the investigation confirms there is an exceedence of applicable Tier I residential indicator contaminant objectives (set forth in 35 Ill. Adm. Code Appendix B), the Agency may reclassify the site as High Priority.

(Source: Amended at 21 Ill. Reg.3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.305 Plan Submittal and Review

- a) Unless an owner or operator elects to classify a site under Section 732.312, prior to conducting any site evaluation activities, the owner or operator shall submit to the Agency a site classification plan, including but not limited to a physical soil classification and groundwater investigation plan, satisfying the minimum requirements for site evaluation activities as set forth in Section 732.307. The plans shall be designed to collect data sufficient to determine the site classification in accordance with Section 732.302, 732.303 or 732.304 of this Part. Site classification plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
- b) In addition to the plan required in subsection (a) of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency:
 - 1) An application for payment of costs associated with eligible early action costs incurred pursuant to Subpart B of this Part, ~~except as provided in subsection (b)(2) of this Section;~~ and

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- 2) A site classification budget plan, which shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and a line item estimate of all costs associated with the development, implementation and completion of the site evaluation activities required in Section 732.307. ~~In accordance with Section 732.204 of this Part, the owner or operator may submit a site classification budget plan that includes a line item estimate of the activities and costs of early action for review and approval prior to the submittal of an application for payment.~~ Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part. Site classification budget plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
- c) The Agency shall have the authority to review and approve, reject or require modification of any plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.
- d) Notwithstanding subsections (a) and (b) of this Section, an owner or operator may proceed to conduct site evaluation activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required site classification plan (including physical soil classification and groundwater investigation plans, costs associated with activities to date and anticipated further costs and associated budget plans). However, any such plan shall be submitted to the Agency for review and approval, rejection or modification in accordance with the procedures contained in Subpart E of this Part prior to payment or reimbursement for any related costs or the issuance of a No Further Remediation Letter. If the owner or operator has obtained Agency approval of a Site Classification Work Plan and Site Classification Completion Report without submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing site evaluation activities.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment or reimbursement. See Subpart F of this Part.

- e) If, following the approval of any site classification plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator

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shall submit, as applicable, an amended site classification plan or associated budget plan for review by the Agency. The Agency shall have the authority to review and approve, reject or require modifications of the amended plan in accordance with the procedures contained in Subpart E of this Part.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.307 Site Evaluation

- a) Except as provided in Section 732.300(b), or unless an owner or operator elects to classify a site under Section 732.312, the owner or operator of any site for which a release of petroleum has been confirmed in accordance with regulations promulgated by the OSFM and reported to IEMA shall arrange for site evaluation and classification in accordance with the requirements of this Section. A Licensed Professional Engineer (or, where appropriate, persons working under the direction of a Licensed Professional Engineer) or, to the extent authorized by the Professional Geologist Licensing Act [225 ILCS 745], a Licensed Professional Geologist (or, where appropriate, persons working under the direction of a Licensed Professional Geologist) shall conduct the site evaluation. The results of the site evaluation shall provide the basis for determining the site classification. The site classification shall be certified by the supervising Licensed Professional Engineer or Licensed Professional Geologist.
- b) As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct a physical soil classification in accordance with the procedures at subsection (c) or (d) of this Section. Except as provided in subsection (e) of this Section, all elements of the chosen method of physical soil classification must be completed for each site. In addition to the requirement for a physical soil classification, the Licensed Professional Engineer or Licensed Professional Geologist shall, at a minimum, complete the requirements at subsections (f) through (j) of this Section before classifying a site as High Priority or Low Priority and subsection (f) through (i) of this Section before classifying a site as No Further Action.
- c) Method One for Physical Soil Classification:
 - 1) Soil Borings
 - A) Prior to conducting field activities, a review of scientific publications and regional geologic maps shall be conducted to

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determine if the subsurface strata are as generally mapped in the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference in Section 732.104 of this Part. A list of the publications reviewed and any preliminary conclusions concerning the site geology shall be included in the site classification completion report.

- B) A minimum of one soil boring to a depth that includes 50 feet of native soil or to bedrock shall be performed for each tank field with a release of petroleum.
- C) If, during boring, bedrock is encountered or if auger refusal occurs because of the density of a geologic material, a sample of the bedrock or other material shall be collected to determine permeability or an in situ test shall be performed to determine hydraulic conductivity in accordance with subsections (c)(3)(A) and (c)(3)(B) of this Section. If bedrock is encountered or auger refusal occurs, the Licensed Professional Engineer or Licensed Professional Geologist shall verify that the conditions that prevented the full boring are expected to be continuous through the remaining required depth.
- D) Borings shall be performed within 200 feet of the outer edge of the tank field or at the property boundary, whichever is less. If more than one boring is required per site, borings shall be spaced to provide reasonable representation of site characteristics. The actual spacing of the borings shall be based on the regional hydrogeologic information collected in accordance with subsection (c)(1)(A). Location shall be chosen to limit to the greatest extent possible the vertical migration of contamination.
- E) Soil borings shall be continuously sampled to ensure that no gaps appear in the sample column.
- F) If anomalies are encountered, additional soil borings may be necessary to verify the consistency of the site geology.
- G) Any water bearing units encountered shall be protected as necessary to prevent cross-contamination of water bearing units during drilling.

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- H) The owner or operator may utilize techniques other than those specified in this subsection (c)(1) for soil classification provided that:
- i) The techniques provide equivalent, or superior, information as required by this Section;
 - ii) The techniques have been successfully utilized in applications similar to the proposed application;
 - iii) Methods for quality control can be implemented; and
 - iv) The owner or operator has received written approval from the Agency prior to the start of the investigation.

2) Soil Properties

The following tests shall be performed on a representative sample of each of the stratigraphic units encountered in the native soil boring which has been determined most conducive to transporting contaminants from the source based on site factors, including but not limited to visual and tactile observations, the classification of the soil, any prior evaluation of the site stratigraphy, the volume of the release, the size or extent of the unit, and the requirements of ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993:

- A) A soil particle analysis using the test methods specified in ASTM (American Society for Testing and Materials) Standards D 422-63 or D 1140-92, "Standard Test Method for Particle-Size Analysis of Soils," or "Standard Test Method for Amount of Material in Soils Finer than the No. 200 (75 um) Sieve," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;
- B) A soil moisture content analysis using the test methods specified in ASTM Standards D 2216-92 or D 4643-93, "Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock," or "Standard Test Method for Determination of Water (Moisture) Content of Soil by the Microwave Oven Method," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;
- C) A soil classification using the test methods specified in ASTM Standards D 2487-93 or D 2488-93, "Standard Test Method for Classification of

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Soils for Engineering Purposes” or “Standard Practice for Description and Identification of Soils (Visual-Manual Procedure),” incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

- D) Unconfined compression strength shall be determined in tons per square foot by using a hand penetrometer; and
 - E) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Method D 1587-83, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of 35 Ill. Adm. Code 732.308(a).
- 3) Hydraulic Conductivity
- A) If a water bearing unit is encountered while performing soil boring(s) for the physical soil classification, an in-situ hydraulic conductivity test shall be performed in the first fully saturated layer below the water table. If multiple water bearing units are encountered, an in-situ hydraulic conductivity test shall be performed on each such unit.
 - i) Wells used for hydraulic conductivity testing shall be constructed in a manner that ensures the most accurate results.
 - ii) The screen must be contained within the saturated zone.
 - B) If no water bearing unit is encountered in the required soil boring(s), then the following laboratory analyses shall be conducted, as applicable, on a representative sample from each stratigraphic unit:
 - i) A hydraulic conductivity analysis of undisturbed or laboratory compacted granular soils (i.e., clay, silt, sand or gravel) using the test method specified in ASTM (American Society for Testing and Materials) Standard D 5084-90, “Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter,” incorporated by

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reference in Section 732.104 of this Part, or other Agency approved method.

- ii) Granular soils having estimated hydraulic conductivity of greater than 1×10^{-3} cm/s will fail the hydraulic conductivity requirements within the Berg Circular for No Further Action geology, and therefore, no tests need to be run on the soils.
 - iii) A hydraulic conductivity analysis of bedrock using the test method specified in ASTM (American Society for Testing and Materials) Standard D 4525-90, "Standard Test Method for Permeability of Rocks by Flowing Air," incorporated by reference in Section 732.104 of this Part, or other Agency approved method.
 - iv) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Method D 1587-83, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of 35 Ill. Adm. Code 732.308(a).
- 4) If the results of the physical soil classification or groundwater investigation reveal that the actual site geologic characteristics are different from those generally mapped by the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part, the site classification shall be determined using the actual site geologic characteristics.
- d) Method Two for Physical Soil Classification:
- 1) Soil Borings
 - A) A minimum of one soil boring to a depth that includes native material from the invert elevation of the most shallow UST to 15 feet below the invert elevation of the deepest UST for each tank field with a release of petroleum.

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- B) This boring shall meet the requirements of subsections (c)(1)(C) through (c)(1)(G) of this Section.

2) Soil Properties

The following tests shall be performed on a representative sample of each of the stratigraphic units encountered in the native soil boring which has been determined most conducive to transporting contaminants from the source based on site factors including but not limited to visual and tactile observations, the classification of the soil, any prior evaluation of the site stratigraphy, the volume of the release, the size or extent of the unit, and the requirements of ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993:

- A) A soil particle analysis satisfying the requirements of subsection (c)(2)(A) of this Section; and
- B) Either:
- i) A pump test or equivalent to determine the yield of the geologic material. Methodology, assumptions and any calculations performed shall be submitted as part of the site classification completion report. If the aquifer geometry and transmissivity have been obtained through a site-specific field investigation, an analytical solution may be used to estimate well yield. The Licensed Professional Engineer or Licensed Professional Geologist shall demonstrate the appropriateness of the analytical solution to estimate well yield versus an actual field test. Well yield should be determined for either confined or unconfined formations. Once the yield has been determined site-specifically, the hydraulic conductivity shall be calculated; or
 - ii) Hydraulic conductivity shall be determined in accordance with subsection (c)(3) of this Section. Once the hydraulic conductivity has been determined site-specifically, the yield shall be calculated.

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- C) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Method D 1587-83, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of 35 Ill. Adm. Code 732.308(a).
- 3) The results of the boring(s) and tests described in subsections (d)(1) and (d)(2) of this Section shall be used to demonstrate whether the native material from the invert elevation of the most shallow UST to 15 feet below the invert elevation of the deepest UST meets all of the following criteria:
- A) Does not contain unconsolidated sand, gravel or sand and gravel that is 5 feet or more in thickness with 12 percent or less fines (i.e., fines that pass through a No. 200 sieve tested according to ASTM (American Society for Testing and Materials) Standard D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference at Section 732.104 of this Part, or other Agency approved method);
- B) Does not contain sandstone that is 10 feet or more in thickness, or fractured carbonate that is 15 feet or more in thickness;
- C) Is not capable of sustained groundwater yield, from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; and
- D) Is not capable of hydraulic conductivity of 1×10^{-4} cm/sec or greater.
- e) If, during the completion of the requirements of subsection (c) or (d) of this Section, a Licensed Professional Engineer or Licensed Professional Geologist determines that the site geology is not consistent with areas D, E, F or G of the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference in Section 732.104 of this Part or that the criteria of subsection (d)(3) are not satisfied, any remaining steps required by subsection (c) or (d) may be suspended, provided that the soil investigation has been sufficient to satisfy the requirements

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of subsection (g) of this Section. If activities are suspended under this subsection (e), the Licensed Professional Engineer or Licensed Professional Geologist shall complete the requirements of subsections (f) through (j) of this Section in order to determine whether the site is High Priority or Low Priority. The site conditions upon which the suspension of the requirements of subsection (c) or (d) of this Section is based shall be documented in the site classification completion report.

f) Survey of Water Supply Wells

- 1) The Licensed Professional Engineer or Licensed Professional Geologist shall conduct a survey of water supply wells for the purpose of identifying and locating all community water supply wells within 2500 feet of the UST system and all potable water supply wells within 200 feet of the UST system. The survey shall include, but not be limited to, contacting the Illinois State Geological Survey and the Illinois State Water Survey. The local unit of government with authority over the site shall be contacted to determine if there is a local ordinance or policy regulating the usage of potable water supply wells.
- 2) The Licensed Professional Engineer or Licensed Professional Geologist shall provide a map to scale showing the locations of all community water supply wells and ~~all~~ potable water supply wells including the designated minimum and maximum setback zones of the wells identified pursuant to subsection (f)(1) of this Section. Radii of 200, 400, 1000, and 2500 feet from the UST system shall be marked on the map.
- 3) The Licensed Professional Engineer or Licensed Professional Geologist shall provide a table indicating the setback zone for each community water supply well and potable water supply well identified pursuant to subsection (f)(1) of this Section and the distance from the UST system to the well. The locations of each well shall be identified on the map by numbers corresponding to the information provided in the table.
- 4) The Licensed Professional Engineer or Licensed Professional Geologist shall determine if the UST system is within the regulated recharge area of any community water supply well or potable water supply well. The sources consulted in making this determination shall be described in the site classification completion report.

g) Investigation of Migration Pathways

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- 1) The Licensed Professional Engineer or Licensed Professional Geologist shall conduct an investigation either separately or in conjunction with the physical soil classification to identify all potential natural and man-made migration pathways that are on the site, in rights-of-way attached to the site, or in any area surrounding the site that may be adversely affected as a result of the release of petroleum from the UST system. Once the migration pathways have been identified, the areas along all such pathways shall be further investigated in a manner sufficient to determine whether or not there is evidence that migration of petroleum or vapors along such pathways:
 - A) May potentially threaten human health or human safety; or
 - B) May cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces.

- 2) Natural pathways shall be identified using data obtained from investigation at the site. This must include, but is not limited to, identification and location of groundwater if encountered during excavation activities or soil boring activities, identification of different soil strata during excavation activities or soil boring activities and inspection of surface water bodies. Investigation and evaluation of natural migration pathways shall include, for applicable indicator contaminants along potential natural migration pathways:
 - A) soil sampling and laboratory analysis of samples; and
 - B) when groundwater is encountered or when there is potential for surface water contamination, groundwater and surface water sampling and laboratory analysis of samples.

- 3) Man-made pathways shall be identified from site plans, a review of underground utilities as identified by the Joint Utility Location Information for Excavators and interviews with site owners or personnel. The Licensed Professional Engineer or Licensed Professional Geologist must determine whether migration of contaminants of concern along any of these pathways has occurred, using laboratory analytical data for applicable indicator contaminants obtained as follows:

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- A) From prior sampling, provided that such laboratory analytical data demonstrates that no contaminant of concern has migrated to or along any man-made pathways;
 - B) From soil samples, and groundwater samples if groundwater is encountered, taken between man-made pathways and contaminated soil, provided that such laboratory analytical data demonstrates that no contaminant of concern has migrated to or along any man-made pathways; or
 - C) From soil samples, and groundwater samples if groundwater is encountered, taken along man-made pathways.
- 42) The Licensed Professional Engineer or Licensed Professional Geologist shall provide a map of the site and any surrounding areas that may be adversely affected by the release of petroleum from the UST system. At a minimum, the map shall be to scale, oriented with north at the top, and shall show the location of the leaking UST system(s) with any associated piping and all potential natural and man-made pathways that are on the site, in rights-of-way attached to the site, or that are in areas that may be adversely affected as a result of the release of petroleum.
- 53) Unless the Agency's review reveals objective evidence to the contrary, the Licensed Professional Engineer shall be presumed correct when certifying whether or not there is evidence that, through natural or man-made pathways, migration of petroleum or vapors:
- A) May potentially threaten human health or human safety; or
 - B) May cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces.
- h) The Licensed Professional Engineer or Licensed Professional Geologist shall verify whether Class III groundwater exists within 200 feet of the UST system.
- i) The Licensed Professional Engineer or Licensed Professional Geologist shall locate all surface bodies of water on site and within 100 feet of the site and provide a map noting the locations. All such surface bodies of water shall be inspected to determine whether they have been adversely affected by the presence of a sheen or free product layer resulting from the release of petroleum from the UST system.

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- j) Groundwater Investigation
- 1) For sites failing to meet NFA site classification or for sites where a groundwater investigation is necessary pursuant to Section 732.302(b) at which such investigation is required pursuant to this Part, the Licensed Professional Engineer or Licensed Professional Geologist shall perform a groundwater investigation as required under this Part in accordance with this subsection (j) to determine whether an applicable indicator contaminant groundwater quality standard has been exceeded at the property boundary or 200 feet from the UST system, whichever is less, as a result of the UST release of petroleum.
 - 2) Applicable indicator contaminants and groundwater quality standards shall be those identified pursuant to Sections 732.310 and 732.311 of this Part.
 - 3) Except as provided in subsection (j)(6), a minimum of four groundwater monitoring wells shall be installed at the property boundary or 200 feet from the UST system, whichever is less. In the event that a groundwater monitoring well cannot be physically installed at the property line or 200 feet from the UST system, whichever is closer, in accordance with this subsection, the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a monitoring well in a location that is closer to the UST system than the rule requires. However, once the election is made the owner or operator may not withdraw the election at a later time. The Agency may require the installation of additional monitoring wells to ensure that at least one monitoring well is located hydraulically upgradient and three monitoring wells are located hydraulically downgradient of the UST system. The wells must be installed so that they provide the greatest likelihood of detecting migration of groundwater contamination. At a minimum, monitoring well construction shall satisfy the following requirements:
 - A) Construction shall be in a manner that will enable the collection of representative groundwater samples;
 - B) All monitoring wells shall be cased in a manner that maintains the integrity of the borehole. Casing material shall be inert so as not to affect the water sample. Casing requiring solvent-cement type couplings shall not be used;

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- C) Wells shall be screened to allow sampling only at the desired interval. Annular space between the borehole wall and well screen section shall be packed with clean, well-rounded and uniform material sized to avoid clogging by the material in the zone being monitored. The slot size of the screen shall be designed to minimize clogging. Screens shall be fabricated from material that is inert with respect to the constituents of the groundwater to be sampled;
 - D) Annular space above the well screen section shall be sealed with a relatively impermeable, expandable material such as cement/bentonite grout, which does not react with or in any way affect the sample, in order to prevent contamination of groundwater samples and groundwater and avoid interconnections. The seal shall extend to the highest known seasonal groundwater level;
 - E) The annular space shall be backfilled with expanding cement grout from an elevation below the frost line and mounded above the surface and sloped away from the casing so as to divert surface water away;
 - F) All monitoring wells shall be covered with vented caps and equipped with devices to protect against tampering and damage. Locations of wells shall be clearly marked and protected against damage from vehicular traffic or other activities associated with expected site use; and
 - G) All wells shall be developed to allow free entry of water, minimize turbidity of the sample, and minimize clogging.
- 4) Monitoring well construction diagrams prescribed and provided by the Agency shall be completed for each monitoring well.
 - 5) Static water elevations shall be measured for each monitoring well. Groundwater samples shall be taken from each well and analyzed for the applicable indicator contaminants. The data collected shall be used to determine the direction of groundwater flow and whether the applicable groundwater quality standards or clean-up objectives have been exceeded. Samples shall be collected and analyzed in accordance with the following procedures:

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- A) Samples shall be collected in accordance with the procedures set forth in the documents "Methods for Chemical Analysis of Water and Wastes," "Methods for the Determination of Organic Compounds in Drinking Water," "Practical Guide for Ground-Water Sampling," "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," or "Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground-Water Samples for Selected Unstable Constituents," as appropriate for the applicable indicator contaminants or groundwater objectives and as incorporated by reference at Section 732.104 of this Part.
- B) Groundwater elevation in a groundwater monitoring well shall be determined and recorded to establish the gradient of the groundwater table.
- C) The analytical methodology used for the analysis of the indicator contaminants shall be consistent with both of the following:
 - i) The methodology shall have a practical quantitation limit (PQL) at or below the objectives or detection levels set forth in 35 Ill. Adm. Code 742 or as set for mixtures or degradation products as provided in Section 732.310 of this Part; and
 - ii) The methodology must be consistent with the methodologies contained in "Methods for Chemical Analysis of Water and Wastes," "Methods for the Determination of Organic Compounds in Drinking Water," "Practical Guide for Ground-Water Sampling," "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," and "Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground-Water Samples for Selected Unstable Constituents," as incorporated by reference at Section 732.104, or other Agency approved methods.
- D) In addition to analytical results, sampling and analytical reports shall contain the following information:

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- i) Sample collection information including but not limited to the name of sample collector, time and date of sample collection, method of collection, and monitoring location;
 - ii) Sample preservation and shipment information including but not limited to field quality control;
 - iii) Analytical procedures including but not limited to the method detection limits and the practical quantitation limits (PQL);
 - iv) Chain of custody and control; and
 - v) Field and lab blanks.
- 6) As an alternative to the installation of monitoring wells under subsection (j)(3), the Licensed Professional Engineer or Licensed Professional Geologist may demonstrate to the Agency through a site-specific evaluation that the groundwater monitoring should not be required.
- A) The evaluation shall be based on a demonstration of the following factors:
 - i) Whether groundwater is present within the depth of the boring used to perform physical soil classification under the selected method (Method One under subsection (c) or Method Two under subsection (d));
 - ii) Whether groundwater is withdrawn for potable use within 1000 feet of the UST system and at what depths; and
 - iii) Whether seasonal fluctuation in groundwater could result in groundwater contacting contaminated soil (e.g., historical records).
 - B) The presence or absence of a water bearing unit under subsection (j)(6)(A)(i) of this Section shall be determined on the basis of at least one soil boring to the depth necessary to perform physical soil classification under the selected method (Method One under subsection (c) or Method Two under subsection (d)), unless auger refusal occurs because of the density of a geologic material or because bedrock is encountered. If auger refusal occurs, then the

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Licensed Professional Engineer or Licensed Professional Geologist must demonstrate the depth to a water bearing unit from the available site specific or regional information.

- C) If the evaluation fails to demonstrate to the Agency that a groundwater investigation should not be required as part of site classification activities, then the Licensed Professional Engineer or Licensed Professional Geologist shall perform a groundwater investigation in accordance with the remainder of this subsection (j).
- D) If the evaluation demonstrates to the Agency that a groundwater investigation should not be required, then the site shall be classified as Low Priority, unless other High Priority criteria are present. Upon Agency approval of the evaluation to demonstrate that a groundwater investigation should not be required, then the site shall be classified as Low Priority and a No Further Remediation Letter shall be issued to the owner or operator of the site, unless other High Priority criteria are present.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.308 Boring Logs and Sealing of Soil Borings and Groundwater Monitoring Wells

- a) Soil boring logs shall be kept for all soil borings. The logs shall be submitted along with the site classification completion report and shall be on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
 - 1) Soil boring logs shall contain the following information at a minimum:
 - A) Sampling device, sample number and amount of recovery;
 - B) Total depth of boring to the nearest 6 inches;
 - C) Detailed field observations describing materials encountered in boring, including soil constituents, consistency, color, density, moisture, odors, and the nature and extent of sand or gravel lenses or seams equal to or greater than 1 inch in thickness;

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- D) Petroleum hydrocarbon vapor readings (as determined by continuous screening of borings with field instruments capable of detecting such vapors);
 - E) Locations of sample(s) used for physical or chemical analysis; and
 - F) Groundwater levels while boring and at completion.
- 2) Boring logs for soil boring(s) completed for physical soil classification also shall include the following information, as applicable for the classification method chosen, for each stratigraphic unit encountered at the site:
- A) Moisture content;
 - B) Unconfined compression strength in tons per square foot (TSF) using a hand penetrometer;
 - C) Unified Soil Classification System (USCS) soil classification group symbol in accordance with ASTM Standard D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference in Section 732.104 of this Part, or other Agency approved method; and
 - D) The reasoning behind the Licensed Professional Engineer's or Licensed Professional Geologist's decision to perform or not perform soil testing pursuant to Section 732.307(c)(2) and (d)(2) of this Part as to each identified stratigraphic unit.
- b) Boreholes and monitoring wells shall be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.309 Site Classification Completion Report

- a) Within 30 days after the completion of a site evaluation in accordance with Section 732.307, the owner or operator shall submit to the Agency a site classification completion report addressing all applicable elements of the site evaluation. The report shall contain all maps, diagrams, and any other

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information required by Section 732.307, as well as the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions. The report shall be submitted on forms prescribed and provided by the Agency, shall be signed by the owner or operator, and shall contain the certification of a Licensed Professional Engineer or Licensed Professional Geologist of the site's classification as No Further Action, Low Priority or High Priority in accordance with this Subpart C. For No Further Action sites, the owner or operator must sign and submit, with the site classification completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:

I hereby certify that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further certify that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the Site Classification Completion Report.

- b) The Agency shall have the authority to review and approve, reject or require modification of any report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.310 Indicator Contaminants

- a) For purposes of this Part, the term "indicator contaminants" shall mean the parameters ~~listed~~ identified in subsections (b) through (g) of this Section.
- b) For gasoline, including but not limited to leaded, unleaded, premium and gasohol, the indicator contaminants shall be benzene, ethylbenzene, toluene, ~~and~~ total xylenes and methyl tertiary butyl ether (MTBE), except as provided in subsection (h) of this Section. For leaded gasoline, lead shall also be an indicator contaminant.

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- c) For aviation turbine fuels, jet fuels, diesel fuels, gas turbine fuel oils, heating fuel oils, illuminating oils, kerosene, lubricants, liquid asphalt and dust laying oils, cable oils, crude oil, crude oil fractions, petroleum feedstocks, petroleum fractions and heavy oils, the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Appendix A. For leaded aviation turbine fuels, lead shall also be an indicator contaminant.
- d) For transformer oils the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, the polynuclear aromatics listed in Appendix B and the polychlorinated biphenyl parameters listed in Appendix B.
- e) For hydraulic fluids the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes the polynuclear aromatics listed in Appendix B and barium.
- f) For petroleum spirits, mineral spirits, Stoddard solvents, high-flash aromatic naphthas, moderately volatile hydrocarbon solvents and petroleum extender oils, the indicator contaminants shall be the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.
- g) For used oil the indicator contaminants shall be determined by the results of a used oil soil sample analysis. Prior to the submission of a site classification plan the owner or operator shall collect a grab sample from a location representative of soil that is the most contaminated as a result of the ~~contaminated by a~~ release from the used oil UST. If an area of contamination cannot be identified, the sample shall be collected from beneath the used oil UST. The sample shall be analyzed for:
 - 1) All volatile, base/neutral, polynuclear aromatic and metal parameters listed at Appendix B and any other parameters the Licensed Professional Engineer suspects may be present based on UST usage. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.
 - 2) The used oil indicator contaminants shall be those volatile, base/neutral, polynuclear aromatic and metal parameters listed at Appendix B or as otherwise identified at subsection (g)(1) of this Section that exceed their remediation objective at 35 Ill. Adm. Code 742 in addition to benzene, ethylbenzene, toluene, total xylenes and PNAs.

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- 3) If none of the parameters exceed their remediation objective, the used oil indicator contaminants shall be benzene, ethylbenzene, toluene and total xylenes, and the polynuclear aromatics listed in Appendix B.
- h) Unless an owner or operator elects otherwise pursuant to subsection (i) of this Section, the term "indicator contaminants" shall not include MTBE for any release reported to the Illinois Emergency Management Agency prior to the effective date of amendments establishing MTBE as an indicator contaminant.
- i) An owner or operator of a site exempt from having to address MTBE as an indicator contaminant pursuant to subsection (h) of this Section may elect to include MTBE as an indicator contaminant under the following circumstances:
- 1) If the Agency has not issued a No Further Remediation Letter for the site by the effective date of the amendments establishing MTBE as an indicator contaminant; or
- 2) If the Agency has issued a No Further Remediation Letter and the release at the site has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 Ill. Adm. Code 742, provided that the owner or operator complies with all applicable requirements of this Part.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.312 Classification by Exposure Pathway Exclusion

- a) An owner or operator electing to classify a site by exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C ¶-I shall meet the requirements of this Section.
- 1) Such election shall be made in writing by the owner or operator as part of the submission of the site classification plan under subsection (c) of this Section. The election may be made at any time until the Agency issues a No Further Remediation Letter.
- 2) An owner or operator who chooses to revoke an election submitted under subsection (c) of this Section shall do so in writing.
- b) Upon completion of early action requirements pursuant to Subpart B of this Part, the owner or operator shall determine whether the areas or locations addressed

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under early action (e.g., backfill) meet the requirements applicable for a Tier 1 evaluation pursuant to 35 Ill. Adm. Code 742, Subpart E.

- 1) If the remediation objectives have been met, the owner or operator shall submit a corrective action completion report demonstrating compliance with the required levels.
 - 2) If the remediation objectives have not been met, evaluation shall continue in accordance with subsection (c) of this Section.
- c) If, upon completion of early action requirements pursuant to Subpart B of this Part, the requirements under subsection (b) of this Section have not been met, then the owner or operator, prior to conducting any site evaluation activities, shall submit to the Agency a site classification plan including, but not limited to, a physical soil classification, contaminant identification, and groundwater investigation plan (if applicable in accordance with Section 732.300(b)(1)), satisfying the minimum requirements for site evaluation activities as set forth in this Section. Site classification plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The plans shall be designed to:
- 1) Determine the full extent of soil or groundwater contamination exceeding remediation objectives for Tier 1 sites under 35 Ill. Adm. Code 742, Subpart E. Such activities may include soil borings with sampling and analysis, groundwater monitoring wells with sampling and analysis, groundwater modeling, or a combination of these activities.
 - 2) Collect data sufficient to determine which, if any, of the applicable exposure routes under 35 Ill. Adm. Code 742 can be excluded pursuant to 35 Ill. Adm. Code 742, Subpart C ~~or F~~.
- d) A Licensed Professional Engineer (or, where appropriate, persons working under the direction of a Licensed Professional Engineer) or, to the extent authorized by the Professional Geologist Licensing Act [225 ILCS 725], a Licensed Professional Geologist (or, where appropriate, persons working under the direction of a Licensed Professional Geologist) shall conduct the site evaluation. The results of the site evaluation shall provide the basis for determining the site classification. The site classification shall be certified by the supervising Licensed Professional Engineer or Licensed Professional Geologist.

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- e) As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct physical soil classification and contaminant identification in accordance with the procedures at subsection (c) of this Section.
- f) In addition to the plan required in subsection (c) of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency:
 - 1) An application for payment of costs associated with eligible early action costs incurred pursuant to Subpart B of this Part, except as provided in subsection (f)(2) of this Section; and
 - 2) A site classification budget plan, which shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and a line item estimate of all costs associated with the development, implementation and completion of the site evaluation activities required under subsection (c) of this Section.
- g) Sites shall be classified as No Further Action if all applicable exposure routes can be excluded from further consideration pursuant to 35 Ill. Adm. Code 742, Subpart C ~~or F~~.
- h) Sites shall be classified as High Priority if any of the applicable exposure routes cannot be excluded from further consideration pursuant to 35 Ill. Adm. Code 742, Subpart C ~~or F~~.
- i) Within 30 days after the completion of a site evaluation in accordance with this Section, the owner or operator shall submit to the Agency a site classification completion report addressing all applicable elements of the site evaluation. The report shall contain all maps, diagrams, and any other information required by this Section, as well as the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions. The report shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format, shall be signed by the owner or operator, and shall contain the certification of a Licensed Professional Engineer or Licensed Professional Geologist of the site's classification as No Further Action, or High Priority in accordance with this Section. For any site classified as High Priority, the report shall also contain the certification of a Licensed Professional Engineer or Licensed Professional Geologist as to which exposure routes, if any, have been excluded from further consideration under 35 Ill. Adm. Code 742, Subpart C. The owner or operator

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must sign and submit, with the site classification completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:

I hereby certify that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further certify that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the Site Classification Completion Report.

- j) The Agency shall have the authority to review and approve, reject or require modification of any plan or report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.
- k) Notwithstanding subsections (c) and (f) of this Section, an owner or operator may proceed to conduct site evaluation activities in accordance with this Section prior to the submittal or approval of any otherwise required site classification plan and associated budget plans. However, any plan shall be submitted to the Agency for review and approval in accordance with the procedures contained in Subpart E prior to receiving payment or reimbursement for any related costs or the issuance of a No Further Remediation Letter. If the owner or operator has obtained Agency approval of a Site Classification Work Plan and Site Classification Completion Report without submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing site evaluation activities.
- l) If, following the approval of any site classification plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended site classification plan or associated budget plan for review by the Agency. The Agency shall have the authority to review and approve, reject or require modification of the amended plan in accordance with the procedures contained in Subpart E of this Part.

BOARD NOTE: Owners or operators proceeding under subsection (a)(2) or (k) of this Section are advised that they may not be entitled to full payment or

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reimbursement. Furthermore, owners or operators may only be reimbursed for one method of site classification. See Subpart F of this Part.

(Source: Added at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

SUBPART D: CORRECTIVE ACTION

Section 732.402 No Further Action Site

The owner or operator of a site that has been certified as a No Further Action site by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall have no additional remediation responsibilities beyond those performed pursuant to Subpart B or C of this Part. Unless If the Agency fails to takes action to approve, reject or modify the site classification completion report within 120 days after receipt of the completion report pursuant to Section 732.309 or Section 732.312, the site classification completion report is rejected by operation of law.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.403 Low Priority Site

- a) The owner or operator of a site that has been certified as a Low Priority site by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall develop a groundwater monitoring plan and perform groundwater monitoring in accordance with the requirements of this Section.
- b) The owner or operator of a site certified as Low Priority by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall develop a groundwater monitoring plan designed to satisfy the following requirements at a minimum:
 - 1) Groundwater monitoring shall be conducted for a period of three years following the Agency's approval of the site classification, unless subsection (b)(6) or subsection (i) of this Section applies;
 - 2) Groundwater monitoring wells shall be placed at the property line or 200 feet from the UST system, whichever is closer. The wells shall be placed in a configuration designed to provide the greatest likelihood of detecting migration of groundwater contamination. In the event that a groundwater monitoring well cannot physically be installed at the property line or 200

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feet from the UST system, whichever is closer, in accordance with this subsection (b)(2), the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a monitoring well in a location that is closer to the UST system than the rule requires. However, once the election is made the owner or operator may not withdraw the election at a later time;

- 3) Groundwater monitoring wells shall satisfy the requirements at Section 732.307(j)(3) and (4) of this Part;
 - 4) During the first year of groundwater monitoring, samples from each well shall be collected and analyzed on a quarterly basis. During the second year of groundwater monitoring, samples from each well shall be collected and analyzed during the second and fourth quarters. During the third and final year of groundwater monitoring, at a minimum, samples from each well shall be collected and analyzed in the fourth quarter;
 - 5) To determine whether groundwater quality standards or Agency approved objectives have been exceeded, samples for groundwater monitoring shall be collected and analyzed in accordance with the procedures set forth in Section 732.307(j)(5) of this Part for the applicable indicator contaminants determined pursuant to Section 732.310 of this Part;
 - 6) The owner or operator may use groundwater monitoring data that has been collected up to 3 years prior to the site being certified as Low Priority, if the data meets the requirements of subsections (b)(2) through (b)(5) of this Section. This data may be used to satisfy all or part of the three year period of groundwater monitoring required under this Section.
- c) Prior to the implementation of groundwater monitoring, except as provided under subsection (b)(6) of this Section, the owner or operator shall submit the groundwater monitoring plan to the Agency for review in accordance with Section 732.405. If the owner or operator intends to seek payment from the Fund, a groundwater monitoring budget plan also shall be submitted to the Agency for review. The groundwater monitoring budget plan shall include a line item estimate of all costs associated with the implementation and completion of the groundwater monitoring plan. Groundwater monitoring plans and budgets shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

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- d) Groundwater analysis results obtained pursuant to subsection (b) of this Section shall be submitted to the Agency within 30 days after the end of each annual sampling period on forms prescribed and provided by the Agency, except as provided under subsection (b)(6) of this Section. Groundwater analysis data being used pursuant to subsection (b)(6) shall be submitted to the Agency as part of a Low Priority groundwater monitoring plan or the Low Priority groundwater monitoring completion report.
- 1) The information to be collected shall include but not be limited to the information set forth in Section 732.307(j)(5) of this Part.
 - 2) If at any time the groundwater analysis results indicate a confirmed exceedence of the applicable indicator contaminant groundwater quality standards or Agency approved objectives as a result of the underground storage tank release of petroleum, the owner or operator shall notify the Agency of the exceedence within 30 days and provide supporting documentation of the nature and extent of the exceedence.
 - 3) Indicator contaminant groundwater quality standards shall be determined in accordance with Section 732.311 of this Part.
- e) Within 30 days after the completion of the Low Priority groundwater monitoring plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report in accordance with Section 732.409 of this Part. If there is no confirmed exceedence of applicable indicator contaminant objectives during the three year groundwater monitoring period, the report shall contain a certification to that effect by a Licensed Professional Engineer or Licensed Professional Geologist.
- f) The Agency shall review the groundwater monitoring completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G upon approval of the report by the Agency. If the owner or operator elects to appeal an Agency action to disapprove, modify, or reject by operation of law a Low Priority groundwater monitoring completion report, the Agency shall indicate to the Board in conjunction with such appeal whether it intends to reclassify the site as High Priority.
- g) If at any time groundwater analysis results indicate a confirmed exceedence of applicable indicator contaminant objectives, the Agency may reclassify the site as a High Priority site any time before the Agency's final approval of a Low Priority

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groundwater monitoring completion report. The Agency shall notify the owner or operator in writing if a site is reclassified. Notice of reclassification shall be by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. Any action by the Agency to reclassify the site as a High Priority site shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for in the review of permit decisions in Section 40 of the Act.

- h) The owner or operator of a Low Priority site reclassified to High Priority pursuant to subsection (g) of this Section shall develop and submit for Agency approval a High Priority corrective action plan satisfying the requirements of Section 732.404 of this Part within 120 days after receiving the notice of reclassification. If the owner or operator intends to seek reimbursement from the Fund, a corrective action plan budget also shall be submitted within 120 days after receiving the notice of reclassification.
- i) As a result of the demonstration under Section 732.307(j)(6), the owner or operator of a site classified as Low Priority by a Licensed Professional Engineer or Licensed Professional Geologist.
 - 1) Shall prepare a report in accordance with Section 732.409 of this Part, which supports the issuance of a No Further Remediation Letter or reclassification of the site as a High Priority site.
 - 2) In the event the site is reclassified as a High Priority site, the owner or operator shall develop and submit for Agency approval a High Priority corrective action plan in accordance with Section 732.403(h).

(Source: Amended at 21 Ill. Reg.3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.404 High Priority Site

- a) The owner or operator of a site that has been certified by a Licensed Professional Engineer or Licensed Professional Geologist as a High Priority site and approved as such by the Agency shall develop a corrective action plan and perform corrective action in accordance with the requirements of this Section. The purpose of the corrective action plan shall be to remediate or eliminate each of the criteria set forth in subsection (b) of this Section that caused the site to be classified as High Priority.

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- b) The owner or operator of a site certified as High Priority by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency or reclassified as High Priority by the Agency pursuant to Section 732.403(g) shall develop a corrective action plan based on site conditions and designed to achieve the following as applicable to the site:
- 1) For sites that have submitted ~~submitting~~ a site classification report under Section 732.309:
 - A) ~~Provide that, A~~After complete performance of the corrective action plan, applicable indicator contaminants, identified in the groundwater investigation, are not present in groundwater, as a result of the underground storage tank release, in concentrations exceeding the remediation objectives referenced in Section 732.408 ~~applicable indicator contaminant objectives are not exceeded at the property boundary line or 200 feet from the UST system, whichever is less, as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation. If off site sampling is included within an approved corrective action plan and if an adjoining property owner will not allow the owner or operator access to his or her property so as to ascertain information sufficient to satisfy this requirement or if the owner cannot be located, adequate documentation of the owner or operators' efforts to gain access to the property shall satisfy this subsection (b)(1)(A);~~
 - B) ~~Provide that, A~~After complete performance of the corrective action plan, Class III special resource groundwater quality standards for Class III special resource groundwater within 200 feet of the UST system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;
 - C) After complete performance of the corrective action plan, remediation of contamination in natural or man-made exposure pathways as a result of the underground storage tank release has been conducted in accordance with 35 Ill. Adm. Code 742~~Remediate threats due to the presence or migration, through natural or manmade pathways, of petroleum in concentrations sufficient to harm human health or human safety or to cause~~

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~~explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;~~

- D) Remediateion of threats to potable water supplies; and
 - E) Remediateion of threats to bodies of surface water.
- 2) For sites ~~that have submitted~~ submitting a site classification completion report under Section 732.312, provide that, after complete performance of the corrective action plan, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 for any applicable exposure route not excluded from consideration under Section 732.312.
- 3) ~~Where there has been no reliance on an engineered barrier to achieve compliance with remediation objectives developed under Section 732.408, compliance with remediation objectives shall be demonstrated as follows:~~
- A) ~~For groundwater remediation objectives:~~
 - i) ~~Except as provided in subsection (ii) of this Section, or Section 732.307(j)(3) where there is a separate sampling point agreed to by the Agency, sampling points shall be located at the property boundary line or 200 feet from the UST system, whichever is less.~~
 - ii) ~~If an institutional control prohibiting the use of groundwater as a potable supply is obtained under 35 Ill. Adm. Code 742.Subpart J, sampling points shall be located at the property boundary line.~~
 - iii) ~~Compliance with groundwater remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.~~
 - B) ~~For soil remediation objectives:~~
 - i) ~~Following site classification under this Part, sampling points shall be located on the site in areas where concentrations of indicator contaminants exceeded remediation objectives.~~

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- ii) ~~Compliance with soil remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.~~
- 4) ~~Where an engineered barrier has been relied upon to achieve compliance with remediation objectives developed under Section 732.408, compliance shall be determined based on approval by the Agency of the sufficiency of the engineered barrier.~~
- c) The owner or operator is not required to perform corrective action on an adjoining property to meet the requirements of this Section, even where complete performance of the corrective action plan under (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411.
- ed) In developing the corrective action plan, if the Licensed Professional Engineer or Licensed Professional Geologist selects soil or groundwater remediation, or both, to satisfy any of the criteria set forth in subsection (b) of this Section, remediation objectives shall be determined in accordance with Section 732.408 of this Part. Groundwater monitoring wells shall satisfy the requirements of Section 732.307(j)(3) and (4) of this Part.
- de) Except where provided otherwise pursuant to Section 732.312, in developing the corrective action plan, additional investigation activities beyond those required for the site evaluation and classification may be necessary to determine the full extent of soil or groundwater contamination and of threats to human health or the environment. Such activities may include, but are not limited to, additional soil borings with sampling and analysis or additional groundwater monitoring wells with sampling and analysis. Such activities as are technically necessary and consistent with generally accepted engineering practices may be performed without submitting a work plan or receiving prior approval from the Agency, and associated costs may be included in a High Priority corrective action budget plan. A description of these activities and the results shall be included as a part of the corrective action plan.
- ef) The owner or operator shall submit the corrective action plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a corrective action plan budget also shall be submitted to the Agency for review. The corrective action plan budget shall include a line item estimate of all costs associated with the implementation and

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completion of the corrective action plan. The corrective action plan and corrective action plan budget shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

- fg) Within 30 days after completing the performance of the High Priority corrective action plan, the owner or operator shall submit to the Agency a corrective action completion report in accordance with Section 732.409 of this Part.
- gh) Within 120 days, the Agency shall review the corrective action completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G upon approval by the Agency.

(Source: Amended at 21 Ill. Reg.3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.405 Plan Submittal and Review

- a) Prior to conducting any corrective action activities pursuant to this Subpart D, the owner or operator shall submit to the Agency a Low Priority groundwater monitoring plan or a High Priority corrective action plan satisfying the minimum requirements for such activities as set forth in Section 732.403 or 732.404 of this Part, as applicable. Groundwater monitoring and corrective action plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
- b) In addition to the plans required in subsection (a) of this Section and prior to conducting any groundwater monitoring or corrective action activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a groundwater monitoring or corrective action budget plan. Such budget plans shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and a line item estimate of all costs associated with the development, implementation and completion of the applicable activities. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part. Groundwater monitoring and corrective action budget plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

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- c) The Agency shall have the authority to review and approve, reject or require modification of any plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.
- d) Notwithstanding subsections (a) and (b) of this Section and except as provided at Section 732.407 of this Part, an owner or operator may proceed to conduct Low Priority groundwater monitoring or High Priority corrective action activities in accordance with this Subpart D prior to the submittal or approval of an otherwise required groundwater monitoring plan or budget or corrective action plan or budget. However, any such plan shall be submitted to the Agency for review and approval, rejection or modification in accordance with the procedures contained in Subpart E of this Part prior to payment or reimbursement for any related costs or the issuance of a No Further Remediation Letter. If the owner or operator has obtained Agency approval of a Low Priority groundwater monitoring plan and a Low Priority groundwater monitoring completion report, or has obtained Agency approval of a High Priority corrective action plan and a High Priority corrective action completion report, without the submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing the applicable activities required, for a Low Priority site, in Section 732.403 or, for a High Priority site, in Section 732.404.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment or reimbursement. See Subpart F of this Part.

- e) If, following approval of any groundwater monitoring plan, corrective action plan or associated budget plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended groundwater monitoring plan, corrective action plan or associated budget plan for review by the Agency. The Agency shall review and approve, reject or require modifications of the amended plan in accordance with the procedures contained in Subpart E of this Part.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

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Section 732.406

Deferred Corrective Action; Priority List for Payment

- a) *An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the underground storage tank fund may elect to defer site classification, low priority groundwater monitoring, or remediation activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met. (Section 57.8(b) of the Act)*
 - 1) Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.
 - 2) The Agency shall monitor the availability of funds to determine whether sufficient resources exist to provide payment approved budget plans and shall provide notice to owners or operators of the availability of funds in accordance with Section 732.503(h). Funds shall not be deemed available for owners or operators electing to defer corrective action so long as there are owners or operators on the priority list established pursuant to Section 732.603(d) of this Part awaiting forwarding of vouchers to the Office of the State Comptroller.
 - 3) Upon receiving written notification that an owner or operator elects to defer corrective action until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment and move up based solely on the date the Agency receives the written election of deferral, with the earliest dates having the highest priority. The Agency's record of the date of receipt shall be deemed conclusive, unless a contrary date is proven by a dated, signed receipt from registered or certified mail.
 - 4) As funds become available, the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the owner's or operator's site. After such notification the owner or operator shall commence corrective action.
 - 5) Authorization of payment of encumbered funds for deferred corrective action activities shall be approved in accordance with the requirements of Subpart F of this Part.

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- 6) The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred site classification pursuant to Section 732.306 with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.
- b) An owner or operator who elects to defer site classification, low priority groundwater monitoring, or remediation activities under subsection (a) of this Section shall submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:
 - 1) The early action requirements of Subpart B of this Part have been met; and
 - 2) The release does not pose a threat to human health or the environment through migratory pathways following the investigation of migration pathways requirements of Section 732.307(g).
- c) An owner or operator may withdraw the election to commence corrective action upon the availability of funds at any time. The Agency shall be notified in writing of the withdrawal. Upon such withdrawal, the owner or operator shall proceed with corrective action in accordance with the requirements of this Part.

(Source: Amended at 21 Ill. Reg.3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.409 Groundwater Monitoring and Corrective Action Completion Reports

- a) Within 30 days after completing the performance of a Low Priority groundwater monitoring plan or High Priority corrective plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report or a corrective action completion report.
 - 1) The Low Priority groundwater monitoring completion report shall include, but not be limited to, a narrative describing the implementation and completion of all elements of the groundwater monitoring plan and the procedures used for collection and analysis of samples, analytical results in tabular form, actual analytical results, laboratory certification and any other information or documentation relied upon by the Licensed Professional Engineer or Licensed Professional Geologist in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site.

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- 2) The High Priority corrective action completion report shall include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the corrective action plan and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. A High Priority corrective action completion report shall demonstrate the following:
- A) For sites submitting a site classification report under Section 732.309:
 - i) Applicable indicator contaminant groundwater objectives are not exceeded at the property boundary line or 200 feet from the UST system, whichever is less, as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;
 - ii) Class III resource groundwater quality standards, for Class III special use resource groundwater within 200 feet of the UST system are not exceeded as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;
 - iii) The release of petroleum does not threaten human health or human safety due to the presence or migration, through natural or manmade pathways, of petroleum in concentration sufficient to harm human health or human safety or to cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;
 - iv) The release of petroleum does not threaten any surface water body; and
 - v) The release of petroleum does not threaten any potable water supply.

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- B) For sites submitting a site classification completion report under Section 732.312, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 for any applicable exposure route not excluded from further consideration under Section 732.312.
- b) The applicable report shall be submitted on forms prescribed and provided by the Agency, and, if specified by the Agency by written notice, in an electronic format, shall be signed by the owner or operator, and shall be accompanied by a certification from a Licensed Professional Engineer or Licensed Professional Geologist, in accordance with subsection (a) of this Section, that the information presented in the applicable report is accurate and complete, that groundwater monitoring or corrective action have been completed in accordance with the requirements of the Act and this Subpart D, and that no further remediation is required at the site. The owner or operator must sign and submit, with the corrective action completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:
- I hereby certify that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further certify that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the Corrective Action Completion Report.
- c) The Agency shall have the authority to review and approve, reject or require modification of any report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.411 Off-site Access

- a) An owner or operator seeking to comply with the best efforts requirements of Section 732.404(c) must demonstrate compliance with the requirements of this Section. The owner or operator is not relieved of responsibility to clean up a

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release that has migrated beyond the property boundary even where off-site access is denied.

- b) In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:
- 1) Citation to Section 57 of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;
 - 2) That, if the property owner denies access, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c of the Act;
 - 3) That, if the court approves an injunction pursuant to Section 22.2c of the Act, the court will also prescribe the conditions of entry and the amount of monetary damages, if any, that are to be paid to the property owner as compensation for the entry;
 - 4) That the owner or operator, if allowed access, will return the property to its original condition prior to entry;
 - 5) That the owner or operator will conduct all remediation at its own expense;
 - 6) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release;
 - 7) That the owner or operator will maintain proper insurance, as applicable, including Worker's Compensation, Commercial General Liability, Comprehensive Automobile Liability, and Professional Liability for Errors and Omissions for the completion of all work; and
 - 8) A reasonable time to respond to the letter, not less than 30 days.
- c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the Corrective Action Completion Report, the following documentation:
- 1) A sworn affidavit, signed by the owner or operator, identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to

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obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and

- 2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.
- d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:
- 1) The physical and chemical characteristics, including toxicity, persistence and potential for migration, of applicable indicator contaminants at the property boundary line;
 - 2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;
 - 3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;
 - 4) The potential effects of residual contamination on nearby surface water and groundwater;
 - 5) The proximity, quality and current and future uses of nearby surface water and groundwater, including setback zones and regulated recharge areas of potable water supply wells;
 - 6) Any known or suspected natural or man-made migration pathways existing in or near the suspected area of off-site contamination;
 - 7) The nature and use of the part of the off-site property that is the suspected area of contamination;
 - 8) Any existing on-site engineered barriers or institutional controls that might have an impact on the area of suspected off-site contamination, and the nature and extent of such impact; and
 - 9) Any other applicable information assembled in compliance with this Part.
- e) The Agency shall issue a No Further Remediation letter to an owner or operator subject to this Section and otherwise entitled to such issuance only if the owner or operator has, in accordance with this Section, either completed any requisite off-

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site corrective action or demonstrated to the Agency's satisfaction an inability to obtain off-site access despite best efforts.

SUBPART E: SELECTION AND REVIEW PROCEDURES FOR PLANS AND REPORTS

Section 732.500 General

- a) The Agency shall have the authority to review any plan or report, including any amended plan or report, submitted pursuant to this Part. All such reviews shall be subject to the procedures set forth in the Act and this Subpart E.
- b) For purposes of this Part 732, "plan" shall mean:
 - 1) Any physical soil classification or groundwater investigation plan or associated budget plan submitted pursuant to Subpart C of this Part;
 - 2) Any groundwater monitoring plan or associated budget plan submitted pursuant to Subpart D of this Part; or
 - 3) Any site-specific corrective action plan or associated budget plan submitted pursuant to Subpart D of this Part.
- c) For purposes of this Part 732, "report" shall mean:
 - 1) Any early action report or free product removal report submitted pursuant to Subpart B of this Part;
 - 2) Any site classification completion report submitted pursuant to Subpart C of this Part;
 - 3) Any annual groundwater monitoring report submitted pursuant to Subpart D of this Part;
 - 4) Any groundwater monitoring completion report submitted pursuant to Subpart D of this Part; or
 - 5) Any corrective action completion report submitted pursuant to Subpart D of this Part or Sections 732.300(b) or 732.400(b) or
 - 6) of this Part.

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

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Section 732.501 Submittal of Plans or Reports

All plans or reports shall be made on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Plans or reports shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.503 Full Review of Plans or Reports

- a) In addition to the completeness review for plans conducted pursuant to Section 732.502, the Agency may conduct a full review of plans or reports selected in accordance with the requirements of Section 732.504. A full review may include any or all technical or financial information, or both, relied upon by the owner or operator or Licensed Professional Engineer or Licensed Professional Geologist in developing the plan or report selected for review. The full review also may include the review of any other plans or reports submitted in conjunction with the site.
- b) The Agency shall have the authority to approve, reject or require modification of any plan or report that has been given a full review. The Agency shall notify the owner or operator in writing of its final action on any such plan or report, except in the case of 20 day, 45 day or free product reports, in which case no notification is necessary. Except as provided in subsections (ed) and (de) of this Section, if the Agency fails to notify the owner or operator of its final action on a plan or report within 120 days after the receipt of a plan or report, the owner or operator may deem the plan or report rejected by operation of law, ~~except in the case of 20 day, 45 day or free product reports, in which case no notification is necessary.~~ If the Agency rejects a plan or report or requires modifications, the written notification shall contain the following information, as applicable:
 - 1) An explanation of the specific type of information, if any, that the Agency needs to complete the full review;
 - 2) An explanation of the Sections of the Act or regulations that may be violated if the plan or report is approved; and

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- 3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the plan or report is approved.
- c) The Agency shall not approve a corrective action completion report for any site at which off-site investigation or remediation is necessary for the protection of human health, safety and the environment unless and until such off-site investigation and remediation are completed.
- ed) For High Priority corrective action plans submitted by owners or operators not seeking reimbursement from the Fund, the Agency may delay final action on such plans until 120 days after it receives the corrective action completion report required pursuant to Section 732.409 of this Part.
- de) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete plan or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 60 days.
- ef) The Agency shall mail notices of final action on plans or reports by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.
- fg) Any action by the Agency to reject or require modification, or rejection by failure to act, of a plan or report shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, a revised plan or report shall be submitted to the Agency within 35 days after the receipt of the Agency's written notification. If no revised plan or report is submitted to the Agency or no appeal to the Board filed within the specified time frames, the plan or report shall be deemed approved as modified by the Agency. If any plan or report is rejected by operation of law, in lieu of an immediate appeal to the Board the owner or operator may either resubmit the plan or report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.
- gh) Notification of Selection for Full Review
- 1) Owners or operators submitting plans shall be notified by the Agency within 60 days from the date the plan is deemed complete if the plan has

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not been selected for full review in accordance with Section 732.504 of this Part. Failure of the Agency to so notify the owner or operator shall mean that the plan has been selected for full review. Notification by the Agency that the plan has not been selected for full review shall constitute approval of the plan.

- 2) Owners or operators submitting reports shall be notified by the Agency within 60 days after the receipt of the report if the report has not been selected for full review in accordance with Section 732.504 of this Part, except in the case of 20 day, 45 day or free product reports, in which case no notification of selection is necessary. Failure of the Agency to so notify the owner or operator shall mean that the report has been selected for full review. Notification by the Agency that the report has not been selected for full review shall constitute approval of the report.
- 3) Notice shall be sent and the date of notification shall be computed in accordance with subsection (e) of this Section.

- hi) In accordance with Sections 732.306 and 732.406 of this Part, upon the approval of any budget plan by the Agency, the Agency shall include as part of the final notice to the owner or operator a statement of whether or not the Fund contains sufficient resources in order to immediately commence the approved measures.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.505 Standards for Review of Plans or Reports

- a) A full technical review shall consist of a detailed review of the steps proposed or completed to accomplish the goals of the plan and to achieve compliance with the Act and regulations. Items to be reviewed, if applicable, shall include, but not be limited to, number and placement of wells and borings, number and types of samples and analysis, results of sample analysis, and protocols to be followed in making determinations. The overall goal of the technical review for plans shall be to determine if the plan is sufficient to satisfy the requirements of the Act and regulations and has been prepared in accordance with generally accepted engineering practices. The overall goal of the technical review for reports shall be to determine if the plan has been fully implemented in accordance with generally accepted engineering practices, if the conclusions are consistent with the information obtained while implementing the plan, and if the requirements of the Act and regulations have been satisfied.

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- b) If the Licensed Professional Engineer or Licensed Professional Geologist certifies that there is no evidence that, through natural or manmade pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces, the Licensed Professional Engineer's or Licensed Professional Geologist's certification to that effect shall be presumed correct unless the Agency's review reveals objective evidence to the contrary.
- c) A full financial review shall consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed shall include, but not be limited to, costs associated with any materials, activities or services that are included in the budget plan. The overall goal of the financial review shall be to assure that costs associated with materials, activities and services shall be reasonable, shall be consistent with the associated technical plan, shall be incurred in the performance of corrective action activities, and shall not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations.

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

SUBPART F: PAYMENT OR REIMBURSEMENT

Section 732.601 Applications for Payment

- a) An owner or operator seeking payment from the Fund shall submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The owner or operator may submit an application for partial payment or final payment for materials, activities or services contained in an approved budget plan. An application for payment also may be submitted for materials, activities or services for early action conducted pursuant to Subpart B of this Part and for which no budget plan is required.
- b) A complete application for payment shall consist of the following elements:
- 1) A certification from a Licensed Professional Engineer or Licensed Professional Geologist acknowledged by the owner or operator that the work performed by the Licensed Professional Engineer or Licensed Professional Geologist or under his or her supervision has been in

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accordance with a technical plan approved by the Agency or, for early action activities, in accordance with Subpart B;

- 2) A statement of the amount approved in the corresponding budget plan and the amount actually sought for payment along with a certified statement by the owner or operator that the amount so sought has been expended in conformance with the elements of a budget plan approved by the Agency;
 - 3) A copy of the OSFM or Agency eligibility and deductibility determination;
 - 4) Proof that approval of the payment requested will not exceed the limitations set forth in the Act and Section 732.604 of this Part;
 - 5) A federal taxpayer identification number and legal status disclosure certification;
 - 6) A Private Insurance Coverage form; ~~and~~
 - 7) A Minority/Women's Business Usage form; and
 - 8) designation of the address to which payment and notice of final action on the application for payment are to be sent.
- c) The address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change in address.
- ed) Applications for payment and change of address forms shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- de) Applications for partial or final payment may be submitted no more frequently than once every 90 days.
- ef) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part or applications for payment/budget plans submitted pursuant to Sections 732.305(e), 732.312(l), 732.405(e), and 732.405(f) of this Part, in no case shall the Agency review an application for payment unless there is an approved budget plan on file corresponding to the application for payment.

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- fg) In no case shall the Agency authorize payment to an owner or operator in ~~an~~ amounts greater than the amounts approved by the Agency in a corresponding budget plan. Revised cost estimates or increased costs resulting from revised procedures must be submitted to the Agency for review in accordance with Subpart E of this Part using amended budget plans in accordance with Sections 732.305(e) or 732.405(e) of this Part.
- gh) Applications for payment of costs associated with site classification may not be submitted prior to approval or modification of the site classification completion report.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.602 Review of Applications for Payment

- a) The Agency shall conduct a review of any application for payment submitted pursuant to this Part 732. Each application for payment shall be reviewed to determine whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part and whether the amounts sought for payment have been certified in accordance with Section 732.601(b)(2) of this Part as equal to or less than the amounts approved in the corresponding budget plan. Any action by the Agency pursuant to this subsection shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.
- b) The Agency may conduct a full review of any application for payment:
 - 1) If the amounts sought for payment exceed the amounts approved in the corresponding budget plan;
 - 2) If the Agency has reason to believe that the application for payment is fraudulent; or
 - 3) If the application for payment includes costs for early action activities conducted pursuant to Subpart B of this Part and either of the following circumstances exist:
 - A) The application for payment is solely for early action costs that have not been approved as part of a prior budget plan; or

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- B) The application for payment includes early action costs that have not been approved as part of a prior budget plan, except that only the portion of the application for the unapproved early action costs may be given a full review.
- c) When conducting a full review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (d) of this Section.
- d) A full review of an application for payment shall be sufficient to determine which line items contained in the application for payment have caused the application for payment to exceed the corresponding approved budget plan pursuant to subsection (b)(1) of this Section, which line items, if any, are ineligible for payment pursuant to subsection (b)(2) or (b)(3) of this Section, and whether there is sufficient documentation to demonstrate that line items have been completed in accordance with a plan approved by the Agency. A full review may include review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The full review also may include the review of any plans or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.
- e) Following a review, the Agency shall have the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency shall notify the owner or operator in writing of its final action on any such application for payment. Except as provided in subsection (f) of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment ~~rejected~~ approved by operation of law. If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification shall contain the following information, as applicable:
 - 1) An explanation of the specific type of information, if any, that the Agency needs to complete the full review;
 - 2) An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and

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- 3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.
- f) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete application for payment by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 30 days.
- g) The Agency shall mail notices of final action on applications for payment by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. The Agency shall mail notices of final action on applications for payment, and direct the Comptroller to mail payments to the owner or operator, at the address designated for receipt of payment in the application for payment or on a change of address form, provided by the Agency, submitted subsequent to submittal of the application for payment.
- h) Any action by the Agency to deny payment for an application for payment or portion thereof or to require modification shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, a revised application for payment shall be submitted to the Agency within 35 days after the receipt of the Agency's written notification. If no revised application for payment is submitted to the Agency or no appeal to the Board is filed within the specified time frames, the application for payment shall be deemed approved as modified by the Agency and payment shall be authorized in the amount approved.

(Source: Amended at 21 Ill. Reg. 3717, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.603 Authorization for Payment; Priority List

- a) Within 60 days after notification ~~of~~ to an owner or operator that the application for payment or a portion thereof has been approved by the Agency or by operation of law, the Agency shall forward to the Office of the State Comptroller in accordance with subsection (e~~d~~) or (d~~e~~) of this Section a voucher in the amount approved. If the owner or operator has filed an appeal with the Board of the Agency's final decision on an application for payment, the Agency shall have 60 days from the final resolution of the appeal to forward to the Office of the State Comptroller a voucher in the amount ordered as a result of the appeal.

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Notwithstanding the time limits imposed by this Section, the Agency shall not forward vouchers to the Office of the State Comptroller until sufficient funds are available to issue payment.

- b) The following rules shall apply regarding deductibles:
 - 1) Any deductible, as determined by the OSFM or the Agency, shall be subtracted from any amount approved for payment by the Agency or by operation of law;
 - 2) Only one deductible shall apply per occurrence;
 - 3) If multiple incident numbers are issued for a single site in the same calendar year, only one deductible shall apply for those incidents, even if the incidents relate to more than one occurrence; and
 - 4) Where more than one deductible determination is made, the higher deductible shall apply.
- c) The Agency shall instruct the Office of the State Comptroller to issue payment to the owner or operator at the address designated in accordance with Section 732.601(b)(8). In no case shall the Agency authorize the Office of the State Comptroller to issue payment to an agent, designee, or entity who has conducted corrective action activities for the owner or operator.
- e)d) For owners or operators who have deferred site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, payment shall be authorized from funds encumbered pursuant to Section 732.306(a)(4) or 732.406(a)(4) of this Part upon approval of the application for payment by the Agency or by operation of law.
- d)e) For owners or operators not electing to defer site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, the Agency shall form a priority list for payment for the issuance of vouchers pursuant to subsection (a) of this Section.
 - 1) All such applications for payment shall be assigned a date that is the date upon which the complete application for partial or final payment was received by the Agency. This date shall determine the owner or operator's priority for payment in accordance with subsection (d)(2) of this Section, with the earliest dates receiving the highest priority.

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- 2) Once payment is approved by the Agency or by operation of law or ordered by the Board or courts, the application for payment shall be assigned priority in accordance with subsection (d)(1) of this Section. The assigned date shall be the only factor determining the priority for payment for those applications approved for payment.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.605 Eligible Costs

- a) Types of costs that may be eligible for payment from the Fund include those for corrective action activities and for materials or services provided or performed in conjunction with corrective action activities. Such activities and services may include but are not limited to:
 - 1) Early action activities conducted pursuant to Subpart B of this Part;
 - 2) Engineering and geology oversight services;
 - 3) Remedial investigation and design;
 - 4) Feasibility studies;
 - 5) Laboratory services necessary to determine site classification and whether the established corrective action objectives have been met;
 - 6) Installation and operation of groundwater investigation and groundwater monitoring wells;
 - 7) The removal, treatment, transportation and disposal of soil contaminated by petroleum at levels in excess of the established corrective action objectives;
 - 8) The removal, treatment, transportation and disposal of water contaminated by petroleum at levels in excess of the established corrective action objectives;
 - 9) The placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established corrective action objectives;

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- 10) Groundwater corrective action systems;
- 11) Alternative technology;
- 12) Recovery of free phase petroleum from groundwater;
- 13) The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the Office of State Fire Marshal;
- 14) Costs incurred as a result of a release of petroleum because of vandalism, theft or fraudulent activity by a party other than an owner, operator or agent of an owner or operator;
- 15) Engineering costs associated with seeking payment or reimbursement from the Fund including, but not limited to, completion of an application for partial or final payment;
- 16) Costs associated with obtaining an Eligibility and Deductibility Determination from the OSFM or the Agency;
- 17) Costs for destruction and replacement of concrete, asphalt and paving to the extent necessary to conduct corrective action and if the destruction and replacement has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer;
- 18) The destruction or dismantling and reassembly of above grade structures in response to a release of petroleum if such activity has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer. For purposes of this subsection, destruction, dismantling or reassembly of above grade structures does not include costs associated with replacement of pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies; and
- 19) Preparation of site classification plans (including physical soil classification and groundwater investigation plans) and associated budget plans, site classification reports, groundwater monitoring plans and associated budget plans, groundwater monitoring completion reports, High Priority corrective action plans and associated budget plans, and High Priority corrective action completion reports.

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- b) An owner or operator may submit a budget plan or application for partial or final payment that includes an itemized accounting of costs associated with activities, materials or services not identified in subsection (a) of this Section if the owner or operator submits detailed information demonstrating that the activities, materials or services not identified in subsection (a) of this Section are essential to the completion of the minimum corrective action requirements of the Act and this Part 732.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.606 Ineligible Costs

Costs ineligible for payment from the Fund include but are not limited to:

- a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Appendix C of this Part, during early action activities conducted pursuant to Section 732.202(f), and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Appendix C of this Part during early action activities conducted pursuant to Section 732.202(f);
- b) Costs or losses resulting from business interruption;
- c) Costs incurred as a result of vandalism, theft or fraudulent activity by the owner or operator or agent of an owner or operator including the creation of spills, leaks or releases;
- d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies, including but not limited to those structures destroyed or damaged during corrective action activities;
- e) *Costs of corrective action or indemnification incurred by an owner or operator prior to July 28, 1989 (Section 57.8(j) of the Act);*
- f) Costs associated with the procurement of a generator identification number;
- g) *Legal defense costs including legal costs for seeking payment under these regulations unless the owner or operator prevails before the Board and the Board authorizes payment of legal fees (Section 57.8(l) of the Act);*

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- h) Purchase costs of non-expendable materials, supplies, equipment or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment or tools;
- i) Costs associated with activities that violate any provision of the Act or Board or Agency regulations;
- j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 732.105 of this Part and Section 57.12 of the Act;
- k) Costs for removal, disposal or abandonment of UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;
- l) Costs associated with the installation of new USTs, ~~and~~ the repair of existing USTs and removal and disposal of USTs determined to be ineligible by the Office of State Fire Marshall.
- m) Costs exceeding those contained in a budget plan or amended budget plan approved by the Agency;
- n) Costs of corrective action or indemnification incurred before providing notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;
- o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;
- p) Costs associated with improperly installed sampling or monitoring wells;
- q) Costs associated with improperly collected, transported or analyzed laboratory samples;
- r) Costs associated with the analysis of laboratory samples for constituents other than applicable indicator contaminants or groundwater objectives;
- s) Costs for any corrective activities, services or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;

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- t) Interest or finance costs charged as direct costs;
- u) Insurance costs charged as direct costs;
- v) Indirect corrective action costs for personnel, materials, service or equipment charged as direct costs;
- w) Costs associated with the compaction and density testing of backfill material;
- x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;
- y) Costs related to activities, materials or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations;
- z) Costs incurred after completion of early action activities in accordance with Subpart B by owners or operators choosing, pursuant to Section 732.300(b) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;
- aa) Costs incurred after completion of site classification activities in accordance with Subpart C by owners or operators choosing, pursuant to Section 732.400(b) or (c) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;
- bb) Costs of alternative technology that exceed the costs of conventional technology;
- cc) Costs for investigative activities and related services or materials for developing a High Priority corrective action plan that are unnecessary or inconsistent with generally accepted engineering practices or unreasonable costs for justifiable activities, materials or services;
- dd) Costs to prepare site classification plans and associated budget plans under Section 732.305, to perform site classification under Section 732.307, or to prepare site classification completion reports under Section 732.309, for sites where owners or operators have elected to classify under Section 732.312;
- ee) Costs to prepare site classification plans and associated budget plans under Section 732.312, to perform site classification under Section 732.312, or to prepare site classification completion reports under Section 732.312, for sites where owners or operators have performed classification activities under Sections 732.305, 732.307, or 732.309;

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- ff) Costs requested that are based on mathematical errors;
- gg) Costs that lack supporting documentation;
- hh) Costs proposed as part of a budget plan that are unreasonable;
- ii) Costs incurred during early action that are unreasonable;
- jj) Costs incurred at a site that has entered the Site Remediation Program under Title XVII and 35 Ill. Adm. Code 740; and
- kk) Costs incurred for additional remediation after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received, except costs incurred for MTBE remediation pursuant to Section 732.310(i)(2);
- ll) Handling charges for subcontractors costs that have been billed directly to the owner or operator; and
- mm) Handling charges for subcontractor's costs when the contractor has not paid the subcontractor.

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732.607 Payment for Handling Charges

Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table:

<i>SUBCONTRACT OR FIELD A PURCHASE COST:</i>	<i>ELIGIBLE HANDLING CHARGES AS A PERCENTAGE OF COST:</i>
<i>\$0 - \$5,000</i>	<i>12%</i>
<i>\$5,001 - \$15,000</i>	<i>\$600 PLUS 10% OF AMOUNT OVER \$5,000</i>
<i>\$15,001 - \$50,000</i>	<i>\$1,600 PLUS 8% OF AMOUNT OVER \$15,000</i>
<i>\$50,001 - \$100,000</i>	<i>\$4,400 PLUS 5% OF AMOUNT OVER \$50,000</i>
<i>\$100,000 - \$1,000,000</i>	<i>\$6,900 PLUS 2% OF AMOUNT OVER \$100,000 (Section 57.8(gf) of the Act):</i>

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

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Section 732.609 Subrogation of Rights

Payment of any amount from the fund for corrective action or indemnification shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or ~~indemnification~~ indemnification for which the fund has compensated such owner, operator, or person from the person responsible or liable for the release. (Section 57.8(h) of the Act)

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

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section 732.701 Issuance of a No Further Remediation Letter

- a) Upon approval by the Agency of a No Further Action site classification report, a Low Priority groundwater monitoring completion report, or a High Priority corrective action completion report, the Agency shall issue to the owner or operator a No Further Remediation Letter. The No Further Remediation Letter shall have the legal effect prescribed in Section 57.10 of the Act. The No Further Remediation Letter shall be denied if the Agency rejects or requires modification of the applicable report.
- b) The Agency shall have 120 days from the date of receipt of a complete report to issue a No Further Remediation Letter and may include the No Further Remediation Letter as part of the notification of approval of the applicable report in accordance with Subpart E of this Part. If the Agency fails to send the No Further Remediation Letter within 120 days, it shall be deemed denied by operation of law.
- c) The notice of denial of a No Further Remediation Letter by the Agency may be included with the notification of rejection or modification of the applicable report. The reasons for the denial shall be stated in the notification. The denial shall be considered a final determination appealable to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for a No Further Remediation Letter is denied by operation of law, in lieu of an immediate appeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.

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- d) The Agency shall mail the No Further Remediation Letter by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the postmarked date that the letter is mailed.
- e) The Agency at any time may correct errors in No Further Remediation Letters that arise from oversight, omission or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency shall mail the corrected letter to the owner or operator as set forth in subsection (c) of this Section. The corrected letter shall be perfected by recording in accordance with the requirements of Section 732.703.

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

Section 732.703 Duty to Record a No Further Remediation Letter

- a) Except as provided in subsection (c) of this Section, An owner or operator receiving a No Further Remediation Letter from the Agency pursuant to this Subpart G shall submit the letter, with a copy of any applicable institutional controls (as set forth in 35 Ill. Adm. Code 742, Subpart J) proposed as part of a Corrective Action Completion Report, to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title.
- b) Except as provided in subsection (c) of this Section, A a No Further Remediation Letter shall ~~not become effective~~ be perfected upon the date of the official recording of such letter until officially recorded in accordance with subsection (a) of this Section. The owner or operator shall obtain and submit to the Agency, within 30 days of the official recording date, a certified, or otherwise accurate and official copy of the letter and any attachments as recorded. An unperfected No Further Remediation Letter is effective only as between the Agency and the owner or operator. The Agency may, pursuant to Section 732.704(a)(5), void a No Further Remediation Letter for failure to perfect in a timely manner in accordance with subsection (a) of this Section.
- c) For sites located in an Illinois Department of Transportation ("IDOT") right of way, the following requirements shall apply:

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- 1) In order for the No Further Remediation Letter to be perfected, IDOT must enter into a Memorandum of Agreement (MOA) with the Agency. The MOA must include, but is not limited to:
 - A) The name of the site, if any, and any IDOT or Agency identifiers (e.g. incident number, Illinois inventory identification number);
 - B) The address of the site (or other description sufficient to identify the location of the site with certainty);
 - C) A copy of the No Further Remediation Letter for each site subject to the MOA;
 - D) Procedures for tracking sites subject to the MOA so that all IDOT bureaus whose responsibilities (e.g. land acquisition, maintenance, construction, utility permits) may affect land use limitations will have notice of any environmental concerns and land use limitations applicable to a site;
 - E) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the site to any other agency, private person or entity and the steps that will be taken to ensure the long-term integrity of any land use limitations including, but not limited to, the following:
 - i) Upon creation of a deed, the recording of the No Further Remediation Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742, with copies of the recorded instruments sent to the Agency within 30 days of recording;
 - ii) Any other arrangements necessary to ensure that property that is conveyed or transferred remains subject to any land use limitations approved and implemented as part of the corrective action plan and the No Further Remediation Letter; and
 - iii) Notice to the Agency at least 60 days prior to any such intended conveyance or transfer indicating the mechanism(s) to be used to ensure that any land use limitations will be operated or maintained as required in the

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corrective action plan and No Further Remediation Letter;
and

F) Provisions for notifying the Agency if any actions taken by IDOT or its permittees at the site result in the failure or inability to restore the site to meet the requirements of the corrective action plan and the No Further Remediation Letter.

2) Failure to comply with the requirements of this subsection may result in avoidance of the No Further Remediation Letter pursuant to Section 732.704 of this Part as well as any other penalties that may be available.

d) At no time shall any site for which a land use limitation has been imposed as a result of corrective action under this Part be used in a manner inconsistent with the land use limitation set forth in the No Further Remediation Letter unless further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use and a new letter is obtained and recorded in accordance with this Part. The land use limitation specified in the No Further Remediation Letter may be revised only by the recording of a subsequent No Further Remediation Letter, issued pursuant to Title XVII of the Act and regulations thereunder, following further investigation or remediation that demonstrates the attainment of objectives appropriate for the new land use.

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

Section 732.704 Voidance of a No Further Remediation Letter

a) The No Further Remediation Letter shall be voidable if site activities are not carried out in full compliance with the provisions of this Part, and 35 Ill. Adm. Code 742 where applicable, or the remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter include, but shall not be limited to:

- 1) Any violations of institutional controls or land use restrictions, if applicable;
- 2) The failure of the owner or operator or any subsequent transferee to operate and maintain preventive, engineering and institutional controls or comply with a groundwater monitoring plan, if applicable;

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- 3) Obtaining the No Further Remediation Letter by fraud or misrepresentation;
 - 4) Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based which:
 - A) were not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based;
 - B) results in the following:
 - i) the site no longer satisfying the criteria of a No Further Action site classification.
 - ii) the site no longer satisfying the criteria of a Low Priority site classification.
 - iii) failing to meet the remedial objectives established for a High Priority site; and
 - C) pose a threat to human health or the environment;
 - 5) ~~Failure to record the No Further Remediation Letter in accordance with Section 732.703~~ Upon lapse of the 45 day period for perfection of the No Further Remediation Letter for recording, the failure to perfect the No Further Remediation Letter; or
 - 5)6) Disturbance or removal of contamination left in place under an approved plan;
 - 7) The failure to comply with the requirements of Section 732.703(c) and 732.703(d) of this Part for No Further Remediation Letters issued to state-owned sites subject to those requirements; or
 - 8) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1015(b)(5) and 35 Ill. Adm. Code 742.1015(c).
- b) If the Agency seeks to void a No Further Remediation Letter, it shall provide notice to the current title holder of the site and the owner or operator at his or her last known address.

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- 1) The notice shall specify the cause for the avoidance and describe the facts in support of the cause.
- 2) The Agency shall mail Notices of Avoidance by registered or certified mail, date stamped with return receipt requested.
- c) Within 35 days after receipt of the Notice of Avoidance, the current title holder and owner or operator of the site at the time the No Further Remediation Letter was issued may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act.
- d) If the Board fails to take final action within 120 days, unless such time period is waived by the petitioner, the petition shall be deemed denied and the petitioner shall be entitled to an appellate court order pursuant to subsection (d) of Section 41 of the Act. The Agency shall have the burden of proof in such action.
 - 1) If the Agency's action is appealed, the action shall not become effective until the appeal process has been exhausted and a final decision is reached by the Board or courts.
 - A) Upon receiving a notice of appeal, the Agency shall file a Notice of Lis Pendens with the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The notice shall be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site.
 - B) If the Agency's action is not upheld on appeal, the Notice of Lis Pendens shall be removed in accordance with Illinois law within 45 days after receipt of the final decision of the Board or the courts.
 - 2) If the Agency's action is not appealed or is upheld on appeal, the Agency shall submit the Notice of Avoidance to the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The Notice shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

(Source: Added at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

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Section 732.APPENDIX A Indicator Contaminants

TANK CONTENTS

INDICATOR CONTAMINANTS

GASOLINE

leaded(1), unleaded, premium and gasohol

Benzene
Ethylbenzene
Toluene
Xylene
Methyl tertiary butyl ether (MTBE)

MIDDLE DISTILLATE AND HEAVY ENDS

aviation turbine fuels(1)

jet fuels

Benzene
ethylbenzene
toluene
xylene
acenaphthene
anthracene
benzo(a)anthracene
benzo(a)pyrene
benzo(b)fluoranthene
benzo(k)fluoranthene
chrysene
dibenzo(a,h)anthracene
fluoranthene
fluorene
indeno(1,2,3-c,d)pyrene
naphthalene
pyrene
other non-carc.PNAs(total)(6)

diesel fuels

gas turbine fuel oils

heating fuel oils

illuminating oils

Kerosene

Lubricants

liquid asphalt and dust laying oils

cable oils

crude oil, crude oil fractions

petroleum feedstocks

petroleum fractions

heavy oils

transformer oils(2)

hydraulic fluids(3)

petroleum spirits(4)

mineral spirits(4), Stoddard solvents(4)

high-flash aromatic naphthas(4)

VM&P naphthas(4)

moderately volatile hydrocarbon solvents(4)

petroleum extender oils(4)

USED OIL

screening sample(5)

(1) lead is also an indicator contaminant

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- (2) the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants
- (3) barium is also an indicator contaminant
- (4) the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B are also indicator contaminants
- (5) used oil indicator contaminants shall be based on the results of a used oil soil sample analysis -refer to 732.310(g)
- (6) acenaphthylene, benzo(g,h,i)perylene and phenanthrene

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

Section 732.Appendix B Additional Parameters

Volatiles

1. Benzene
2. Bromoform
3. Carbon tetrachloride
4. Chlorobenzene
5. Chloroform
6. Dichlorobromomethane
7. 1,2-Dichloroethane
8. 1,1-Dichloroethene
9. cis-1,2-Dichloroethylene
10. trans-1,2-Dichloroethylene
11. Dichloromethane (Methylene chloride)
12. 1,2-Dichloropropane
13. 1,3-Dichloropropylene (cis + trans)
14. Ethylbenzene
15. Styrene
16. Tetrachloroethylene
17. Toluene
18. 1,1,1-Trichloroethane
19. 1,1,2-Trichloroethane
20. Trichloroethylene
21. Vinyl chloride
22. Xylenes (total)

Base/Neutrals

1. Bis(2-chloroethyl)ether
2. Bis(2-ethylhexyl)phthalate
3. 1,2-Dichlorobenzene

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4. 1,4-Dichlorobenzene
5. Hexachlorobenzene
6. Hexachlorocyclopentadiene
7. *n*-Nitrosodi-*n*-propylamine
8. *n*-Nitrosodiphenylamine
9. 1,2,4-Trichlorobenzene

Polynuclear Aromatics

1. Acenaphthene
2. Anthracene
3. Benzo(a)anthracene
4. Benzo(a)pyrene
5. Benzo(b)fluoranthene
6. Benzo(k)fluoranthene
7. Chrysene
8. Dibenzo(a,h)anthracene
9. Fluoranthene
10. Fluorene
11. Indeno(1,2,3-c,d)pyrene
12. Naphthalene
13. Pyrenep
Other Non-Carcinogenic PNAs (total)
14. Acenaphthylene
15. Benzo(g,h,i)perylene
16. Phenanthrene

Metals (total inorganic and organic forms)

1. Arsenic
2. Barium
3. Cadmium
4. Chromium (total)
5. Lead
6. Mercury
7. Selenium

Acids

1. Pentachlorophenol
2. Phenol (total)
3. 2,4,6-Trichlorophenol

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Pesticides

1. Aldrin
2. alpha-BHC
3. Chlordane
4. 4,4'-DDD
5. 4,4'-DDE
6. 4,4-DDT
7. Dieldrin
8. Endrin
9. Heptachlor
10. Heptachlor epoxide
11. Lindane (gamma-BHC)
12. Toxaphene

Polychlorinated Biphenyls

1. Polychlorinated Biphenyls
(as Decachlorobiphenyl)

(Source: Amended at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

Section 732. Table A Groundwater and Soil Remediation Objectives (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732. Table B Soil Remediation Methodology: Model Parameter Values (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732. Table C Soil Remediation Methodology: Chemical Specific Parameters (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732. Table D Soil Remediation Methodology: Objectives (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732. Illustration A Equation For Groundwater Transport (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732. Illustration B Equation For Soil-Groundwater Relationship (Repealed)

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(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732. Illustration C Equation For Calculating Groundwater Objectives at the Source
(Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732. Illustration D Equation For Calculating Soil Objectives at the Source (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

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Section 732 Appendix C

Backfill Volumes

Volume of Tank in Gallons	Maximum amount of backfill material to be removed in cubic yards in place	Maximum amount of backfill material to be replaced in cubic yards in place
<285	54	56
285 to 299	55	57
300 to 559	56	58
560 to 999	67	70
1000 to 1049	81	87
1050 to 1149	89	96
1150 to 1999	94	101
2000 to 2499	112	124
2500 to 2999	128	143
3000 to 3999	143	161
4000 to 4999	175	198
5000 to 5999	189	219
6000 to 7499	198	235
7500 to 8299	206	250
8300 to 9999	219	268
10000 to 11999	252	312
12000 to 14999	286	357
15000 to 19999	345	420

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Section 732. Appendix C Backfill Volumes

<u>Volume of Tank in Gallons</u>	<u>Maximum amount of backfill material to be removed in:</u>		<u>Maximum amount of backfill material to be replaced in:</u>	
	<u>cubic yards</u>	<u>tons</u>	<u>cubic yards</u>	<u>tons</u>
<u><285</u>	<u>54</u>	<u>73</u>	<u>56</u>	<u>78</u>
<u>285 to 299</u>	<u>55</u>	<u>74</u>	<u>57</u>	<u>80</u>
<u>300 to 559</u>	<u>56</u>	<u>76</u>	<u>58</u>	<u>81</u>
<u>560 to 999</u>	<u>67</u>	<u>91</u>	<u>70</u>	<u>98</u>
<u>1000 to 1049</u>	<u>81</u>	<u>109</u>	<u>87</u>	<u>122</u>
<u>1050 to 1149</u>	<u>89</u>	<u>120</u>	<u>96</u>	<u>134</u>
<u>1150 to 1999</u>	<u>94</u>	<u>127</u>	<u>101</u>	<u>141</u>
<u>2000 to 2499</u>	<u>112</u>	<u>151</u>	<u>124</u>	<u>174</u>
<u>2500 to 2999</u>	<u>128</u>	<u>173</u>	<u>143</u>	<u>200</u>
<u>3000 to 3999</u>	<u>143</u>	<u>193</u>	<u>161</u>	<u>225</u>
<u>4000 to 4999</u>	<u>175</u>	<u>236</u>	<u>198</u>	<u>277</u>
<u>5000 to 5999</u>	<u>189</u>	<u>255</u>	<u>219</u>	<u>307</u>
<u>6000 to 7499</u>	<u>198</u>	<u>267</u>	<u>235</u>	<u>329</u>
<u>7500 to 8299</u>	<u>206</u>	<u>278</u>	<u>250</u>	<u>350</u>
<u>8300 to 9999</u>	<u>219</u>	<u>296</u>	<u>268</u>	<u>375</u>
<u>10,000 to 11,999</u>	<u>252</u>	<u>340</u>	<u>312</u>	<u>437</u>
<u>12,000 to 14,999</u>	<u>286</u>	<u>386</u>	<u>357</u>	<u>500</u>
<u>>15,000</u>	<u>345</u>	<u>466</u>	<u>420</u>	<u>588</u>

(Source: Added at 21 Ill. Reg. 3617, effective July 1, 1997; amended at ___ Ill. Reg. _____, effective _____)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
Amendments to 35 Ill. Adm.) R00-
Code 732; Regulation of) (Rulemaking)
Petroleum Leaking)
Underground Storage Tanks)

STATEMENT OF REASONS IN SUPPORT OF PROPOSAL

Now comes the Illinois Environmental Protection Agency ("Agency") and, pursuant to 35 Ill. Adm. Code 102.121(b), submits its STATEMENT OF REASONS for the above-captioned proceeding to the Illinois Pollution Control Board ("Board").

I. Facts in Support, Purpose and Effect

A. Background

The Agency is proposing amendments to 35 Ill. Adm. Code 732, the body of regulations addressing petroleum leaking underground storage tanks. These regulations, adopted pursuant to Section 57.14(b) of the Environmental Protection Act (415 ILCS 5/57.14(b), as added by P.A. 88-496 (1993)), prescribe procedures and standards for the Agency's administration of its duties under the Leaking Underground Storage Tank ("LUST") program. The amendments the Agency is proposing are intended primarily to clarify and refine certain provisions, taking into account the experience the Agency has gained in administering the rules and changes in the law since their adoption. Also included in the proposed amendments is the addition of methyl tert-butyl ether

(MTBE) as an indicator contaminant in gasoline, in response to increased national health concerns. Specific amendments will be described in greater detail in Section II. of this pleading.

B. Regulatory Development

The proposed amendments were developed by the Agency with input from members of the regulated community. An Agency workgroup drafted amendatory language, which was then distributed to members of the Illinois Environmental Regulatory Group, the Illinois Petroleum Marketers Association and the Illinois Petroleum Council. In order to expedite this rulemaking before the Board, the Agency met with interested parties several times prior to submitting this proposal. Changes were made in response to comments received from these parties. The only outstanding point of controversy between the Agency and the regulated community pertains to methyl tertiary butyl ether ("MTBE"). This issue is outlined below and will be addressed in greater detail in forthcoming testimony from the Agency.

II. The Proposed Amendments

The changes to Part 732 in the regulatory proposal before the Board are as follows:

1. Section 732.101 Election to Proceed Under Part 732 (et al.) - Language is proposed here and elsewhere in the rules to enable

the Agency to require that submittals be filed electronically. The intent of this proposed provision is to address the evolving realm of electronic communications. The Agency, anticipating that electronic filings will be routinely accepted by all governmental bodies in the not-too-distant future, regards this rulemaking as an opportunity to update Part 732 to prepare for this eventuality. The Agency will apply this filing requirement uniformly, giving written notice to all tank owners and operators when the Agency determines that electronic filing is viable (i.e. when the kinks in the system have been worked out). This language is proposed prospectively to avoid having to pursue an amendatory rulemaking addressing only this issue when the Agency is ready to implement electronic filing. The parallel changes elsewhere in the rules are not referenced individually below because they are identical to the changes described here.

2. Section 732.103 Definitions - A definition is proposed for "Licensed Professional Geologist." This definition, taken from the Professional Geologist Licensing Act, is proposed in conjunction with amendments designed to acknowledge the legitimate role licensed professional geologists may play in the remediation of LUST sites.

A definition is proposed for the term "perfected," in conjunction

with amendments in later sections that introduce the concept of perfection in place of effectiveness as the end result of recording a No Further Remediation ("NFR") letter. Under this concept, the NFR letter is effective upon issuance by the Agency, but to be perfected it must be recorded. Perfecting an NFR letter puts other parties on notice by virtue of the placing of the letter in the chain of title for the property.

3. Section 732.104 Incorporations by Reference - An update for the reference to SW-846 is proposed.

4. Section 732.106 Laboratory Certification - This is a proposed new section requiring that all quantitative analyses of samples be performed by laboratories that have been accredited in accordance with the requirements of 35 Ill. Adm. Code 186, Accreditation of Laboratories for Drinking Water, Wastewater and Hazardous Waste Analyses. This requirement will apply with respect to samples collected on or after July 1, 2002, to allow adequate lead time for laboratories to obtain accreditation. As of March 1, 2000, two laboratories are accredited for the SW-846 field of testing and twenty are in the process of obtaining accreditation.

5. Section 732.202 Early Action - In subsection (g) of this Section, the Agency proposes a change from confirmation of a

release to initial notification to IEMA as a trigger for the 45 day period for early action. This proposed change is intended to provide a clear starting date for the 45 day early action period.

A new subsection, 732.202(h), is also proposed. This subsection requires the owner or operator to determine whether the areas of soil contamination exposed as a result of early action excavation meet the applicable Tier 1 remediation objectives set forth in 35 Ill. Adm. Code 742. The number of samples that must be taken is specified to clarify Agency expectations.

6. Section 732.204 Application for Payment - The Agency proposes the deletion of language allowing the owner or operator to submit line item estimates of activities and costs as part of a site classification budget plan. The deletion of corresponding language in other sections of Part 732 is also proposed.

7. Section 732.300 General - Subsection (b) of this Section has been changed in several respects. This subsection still applies to owners or operators who choose to conduct remediation sufficient to satisfy the remediation objectives referenced in Section 732.408 without conducting site classification activities. The changes in the prefatory portion of the subsection are proposed only to clarify that applicability. In

subsection (b) (1), the Agency proposes to require that the owner or operator submit, with the corrective action completion report, a form addressing ownership of the property. If the tank owner or operator does not own the property, he or she must provide a certification signed by the title holder of record, or the agent of that person, accepting the terms and conditions of the corrective action completion report and affirming that the title holder of record has no objection to the recording of an NFR letter containing such terms and conditions. (Parallel language is proposed in Sections 732.309(a), 732.312(i), and 732.409(b))

The Agency proposes to amend subsection (b) (2) to clarify the circumstances under which a groundwater investigation is required for a site that chooses to remediate pursuant to this subsection. A revision is proposed in subsection (b) (2) (C) to afford an owner or operator an opportunity to avoid a groundwater investigation when there is no recharge after water has been pumped from the excavation.

8. Section 732.302 No Further Action Sites - The Agency proposes the addition of a cross-reference to Section 732.307, to clarify the procedures that must be followed in completing a physical soil classification.

9. Section 732.305 Plan Submittal and Review - The Agency proposes amending subsection (d) of this Section [and Sections 732.312(k) and 732.405(d)] to allow owners and operators who have performed an Agency-approved site classification [or Low Priority groundwater monitoring or High Priority corrective action] without having submitted a budget plan to submit their costs as an attachment to an application for payment, in lieu of submitting a budget plan. Under this scenario, the Agency would review the costs in the context of reviewing the application for payment.

10. Section 732.307 Site Evaluation. - The Agency proposes amendments to this section intended to recognize the legitimate role that licensed professional geologists may play in the remediation of LUST sites. Other sections of Part 732 have parallel language on this point, with the same intent. Like the proposed amendments regarding electronic filing, these parallel changes are not referenced individually below because they are identical to the changes described here.

The Agency has also proposed amending subsections (g) and (j) of this section. The proposed amendments to subsection (g) are intended to clarify existing Agency expectations regarding the investigation of natural and man-made migration pathways.

Proposed subsection (g) (2) requires soil sampling and laboratory analysis along natural pathways to determine whether migration of contaminants of concern has occurred. Proposed subsection (g) (3) requires a parallel determination for man-made pathways. Prior sampling results or results of sampling between man-made pathways and contaminated soil may be used, without sampling along man-made pathways, if the results demonstrate that no contaminant of concern has migrated to or along a man-made pathway.

The proposed amendment to subsection (j) specifies when a groundwater investigation is required as part of a Method 1 or Method 2 site classification. This language is intended to clarify that a groundwater investigation must be performed not only at any site at which a groundwater investigation is necessary pursuant to Section 732.302(b) but also at any site failing to meet No Further Action site classification.

11. Section 732.309 Site Classification Completion Report - The Agency proposes amending subsection (a) in a manner paralleling amendments to Section 732.300(b) (1), to require documentation regarding property ownership and the submittal to the Agency of a certification, where the tank owner or operator is not the property owner, that the property owner has no objection to the recording of the NFR letter.

12. Section 732.310 Indicator Contaminants - The main proposed amendments to this Section pertain to the addition of MTBE as an indicator contaminant. The Agency proposes, in subsections (b) and (g), the inclusion of MTBE as an indicator contaminant for gasoline. Proposed new subsection (h) addresses the compliance timeframe for including MTBE as an indicator contaminant, requiring that MTBE be included for releases reported to the Illinois Emergency Management Agency on or after the effective date of amendments establishing MTBE as an indicator contaminant. Proposed new subsection (i) allows an owner or operator to elect to include MTBE, if the Agency has not issued an NFR letter for the site by the effective date of amendments establishing MTBE as an indicator contaminant, or if, after issuance of an NFR letter, the release has caused off-site contamination exceeding the remediation objective for MTBE set forth in Part 742 [proposed by the Agency in the 35 Ill. Adm. Code 742 amendatory rulemaking concurrently before the Board].

Minor additional amendments to this section are also proposed.

In subsection (a), the Agency proposes the replacement of "listed" with "identified" to fit better with the language allowing the elective inclusion of MTBE as an indicator contaminant. In subsection (g), the Agency proposes replacing

"contaminated by a" with "that is the most contaminated as a result of" to clarify that the grab sample in question must be obtained from the most contaminated area of soil resulting from a release from a used oil UST.

13. Section 732.312 Classification by Exposure Pathway Exclusion

The Agency proposes amending subsection (i) in a manner paralleling amendments to Section 732.300(b)(1), to require documentation regarding property ownership and the submittal to the Agency of a certification, where the tank owner or operator is not the property owner, that the property owner has no objection to the recording of the NFR letter.

14. Section 732.402 No Further Action Site - The Agency proposes minor changes to clarify the circumstances under which a site classification completion report is rejected by operation of law.

15. Section 732.404 High Priority Site - The Agency proposes the revision of subsection (b)(1)(A) to clarify that the corrective action plan must address applicable indicator contaminants such that, upon complete performance of the plan, they will not be present in groundwater as a result of the release in amounts exceeding the remediation objectives referenced in Section 732.408, at the property boundary or 200 feet from the UST system, whichever is less. The Agency further proposes the

addition of subsection (c), in conjunction with proposed new Section 732.411, in place of the language in existing Section 732.404(b)(1)(A) addressing an owner or operator's efforts to obtain access to off-site property. This proposed amendment would allow the Agency the discretion to issue an NFR letter to an owner or operator who, despite best efforts, is unable to obtain off-site access to investigate and, if necessary remediate contamination.

The Agency proposes amending subsection (b)(1)(C) to clarify the level of remediation that is required for natural and man-made pathways. The owner or operator must meet remediation objectives developed in accordance with 35 Ill. Adm. Code 742 in remediating contamination in these pathways.

Finally, the Agency proposes the deletion of subsections (b)(3) and (b)(4) of this Section. These subsections have caused confusion, and the substantive requirements set forth in them, addressing compliance with remediation objectives, are covered elsewhere in Parts 732 and 742.

17. Section 732.411 Off-site Access - The Agency proposes this new Section to address, in conjunction with proposed subsection (c) of Section 732.404, an owner or operator's efforts to obtain access to off-site property. Under these proposed amendments, an

owner or operator is required, at a minimum, to send a certified letter to the off-site property owner containing certain prescribed statements, and to provide that letter and an affidavit to the Agency as documentation of best efforts to obtain access to off-site property. The Agency is required, in determining whether the efforts made by an owner or operator constitute best efforts, to consider the site-specific circumstances on a case-by case basis. The Agency will further explain and support this approach in testimony.

16. Section 732.500 General - The Agency proposes the deletion of subsection (c)(6), an apparent typographical error.

17. Section 732.503 Full Review of Plans or Reports - In subsection (b), the relocation of the phrase "except in the case of 20 day, 45 day or free product reports, in which case no notification is necessary" is proposed for the purpose of clarification. The Agency proposes the addition of subsection (c), in conjunction with the aforementioned proposed deletion in Section 732.404(b)(1)(A), to convey that the Agency lacks the authority to approve a corrective action completion report and issue an NFR letter for any site at which necessary off-site investigation or remediation have not been completed.

18. Section 732.601 Applications for Payment - The Agency

proposes additions to subsections (b) and (d) and a new subsection (c), all intended to eliminate confusion as to the mailing address to which payment and notice of final action are to be sent. The Agency has encountered difficulties in this regard in administering the reimbursement of LUST claimants. The Agency further proposes revising [renumbered] subsection (f) consistent with aforementioned amendments allowing the submittal, under certain circumstances, of applications for payment/budget plans. A minor change is proposed in subsection (g), from "an amount" to "amounts," to be consistent with Agency practice in authorizing payments, which is to authorize payments by line item rather than as a single lump sum.

19. Section 732.602 Review of Applications for Payment - In subsection (e), the Agency proposes changing "rejected" to "approved" by operation of law as the consequence if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment. This change is necessary to be consistent with Section 57.8(a)(1) of the Act. In subsection (g), the Agency proposes language consistent with the aforementioned amendments requiring the designation of a mailing address to which notices of final action and payments are to be

sent. The Agency is in turn required to send notices and payments to the designated address.

20. Section 732.603 Authorization for Payment; Priority List - In subsection (a), "of" is changed to "to" to make the sentence grammatically correct. The Agency proposes to amend subsection (b) to clarify Agency practice regarding the applicability of deductibles. A new subsection (c) is proposed to ensure that the Agency's dealings, in administering the LUST reimbursement program, with the Office of the State Comptroller are consistent with the aforementioned amendments requiring the designation of a mailing address.

21. Section 732.605 Eligible Costs - The Agency proposes amending subsection (a)(13) to clarify that the Agency will not reimburse costs incurred in removing or disposing of any UST deemed ineligible by the Office of the State Fire Marshal.

22. Section 732.606 Ineligible Costs - The Agency proposes amending subsection (l) to parallel the aforementioned amendment to Section 732.605(a)(13), to clarify that the Agency will not reimburse costs incurred in removing or disposing of any UST deemed ineligible by the Office of the State Fire Marshal. The Agency proposes amending subsection (k)(k) to allow reimbursement for costs incurred for elective remediation of MTBE pursuant to

Section 732.310(i)(2) after receipt of an NFR letter. A new subsection (l)(1) is proposed, to convey that handling charges for subcontractor's costs that are billed directly to the owner or operator are not reimbursable because there is no handling by the contractor. A new subsection (m)(m) is proposed, which provides that handling charges for subcontractor's costs are not reimbursable where the contractor has not paid the subcontractor.

23. Section 732.607 Payment for Handling Charges - The Agency proposes the deletion of a typographical error in the table set forth in this section and the replacement of an incorrect subsection identification for the correct one in the citation to the Act.

24. Section 732.609 Subrogation of Rights - The Agency proposes the correction of a spelling error ("indemnification") in this section.

25. Section 732.701 Issuance of a No Further Remediation Letter - A new subsection (e) is proposed. The proposed language enables the Agency to make non-substantive corrections to NFR letters. Occasionally, the Agency has discovered mistakes resulting from omissions, typographical errors or the receipt of erroneous information from owners or operators in NFR letters after issuance, e.g. inaccurate legal description, incorrect

address, error in identification number, etc.. The Agency intends that corrections can be made on the Agency's own initiative or at the request of an owner or operator. Allowing the Agency the discretion to correct mistakes serves the important public policy interest of ensuring that NFR letters, recorded in the chain of title, are accurate.

26. Section 732.703 Duty to Record a No Further Remediation Letter - Several amendments are proposed for this section. In subsection (a), the Agency proposes language requiring the owner or operator to submit a copy of any applicable institutional controls with the NFR letter for recording in the chain of title. The Agency proposes amending subsection (b), consistent with the aforementioned definition of "perfected" in Section 732.103, to provide that an NFR letter is perfected rather than effective upon recording. Under this construct, an unperfected NFR letter is effective, but only between the Agency and the owner or operator to whom it is issued. The Agency further proposes in this subsection that the Agency may void an NFR letter for failure to perfect in a timely manner. Also, in this subsection, the Agency proposes a 30 day time limit from the date of recording for the owner or operator to submit a copy of the recorded NFR letter and any attachments to the Agency.

The Agency proposes amending subsection (c) of this section to address NFR letters in the context of Illinois Department of Transportation ("IDOT") right of ways. The enumerated terms for IDOT right of ways were taken from a form Memorandum of Agreement that the Agency has negotiated with IDOT. Failure to comply with the terms of the Memorandum of Agreement may result in the avoidance of the NFR letter.

The Agency proposes amending subsection (d) to clarify that land use limitations may be revised only through the issuance and recording of a new NFR letter or, for an IDOT right of way, through an amendment of the Memorandum of Agreement. The new NFR letter would not be issued pursuant to Part 732.

27. Section 732.704 Avoidance of a No Further Remediation Letter -

The Agency proposes amending subsection (a)(5) as part of integrating the concept of perfecting an NFR letter, to convey that failure to perfect an NFR letter within 45 days of issuance constitutes a ground for avoidance. The Agency further proposes new subsections (a)(7) to provide that, for applicable sites, the failure to comply with the NFR-related requirements relating to IDOT right of ways is a ground for avoidance, and (a)(8) to provide that the failure to comply with the notice or confirmation requirements when using an ordinance as an

institutional control is also a ground for avoidance.

28. Section 732. Appendix A Indicator Contaminants - The Agency proposes to include MTBE as an indicator contaminant for gasoline, consistent with aforementioned amendments pertaining to MTBE.

29. Section 732. Appendix B Additional Parameters - The Agency proposes the addition of polychlorinated biphenyls to correct an inadvertent omission from the July 1, 1997 amendments to Part 732.

30. Section 732. Appendix C Backfill Volumes - The Agency proposes the enhancement of this table to express the maximum amount of backfill material to be removed and to be replaced in terms of tons as well as cubic yards. This proposed amendment will eliminate confusion or debate as to what volume of backfill is allowed in accordance with Section 732.606(a) for purposes of reimbursement from the LUST Fund.

III. Technical Feasibility and Economic Reasonableness

A. Technical Feasibility

The Agency submits that the proposed amendments raise no issues of technical feasibility.

B. Economic Reasonableness

The proposed amendments requiring the use of an accredited

laboratory (Section 732.106) may result in an increase in the cost of obtaining laboratory results. The cost per applicant for laboratory accreditation, prescribed by law at Section 17.8 of the Act, includes an administrative assessment of \$350 and annual accreditation assessments for each accreditation requested ranging from \$350 to \$900 depending on the nature of the accreditation. Laboratories may pass these costs relating to certification on to their customers, but the Agency believes these additional costs would be reasonable.

If adopted, the inclusion of MTBE as an indicator contaminant and the elimination of the exception in Section 732.404(a)(1) to the requirement to investigate and remediate off-site contamination will have an economic impact on the regulated community, but the Agency has no reason to believe that that impact will be unreasonable.

Therefore, the Agency submits that the proposed amendments are economically reasonable.

IV. Agency Witnesses and Synopsis of Testimony

The Agency expects to provide three witnesses in this rulemaking proceeding: Gary King, manager of the Bureau of Land's Division of Remediation Management, Doug Clay, manager of the LUST program at the Agency, and Kendra Brockamp, a project manager in the LUST

program. The Agency will provide the written pre-filed testimony of Doug Clay and Kendra Brockamp. In their testimony, these Agency witnesses will further elucidate and provide justification for the above-described proposed amendments. Gary King will not provide written testimony but will attend the hearings in this proceeding to assist in answering questions. The Agency anticipates providing oral testimony at hearing in panel form.

v. Conclusion

In conclusion, the Agency respectfully submits this STATEMENT OF REASONS in support of the above-described technically feasible and economically reasonable proposed amendments to 35 Ill. Adm. Code 732 for the Board's consideration.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Judith S. Dyer/BB
Judith S. Dyer
Assistant Counsel

DATED: 12-5-00
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Appearance, Motion for Acceptance and Statement Regarding Economic Impact Study and Statement of Reasons in Support of Proposal upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk
IL. Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste 11-500
Chicago, Illinois 60601

Matthew J. Dunn, Chief
Environmental Bureau
Office of the Attorney General
188 W. Randolph, 20th Floor
Chicago, Illinois 60601

Robert Lawley, Chief Legal Counsel
Dept. Of Natural Resources
524 South Second Street
Springfield, Illinois 62701-1787

and mailing it from Springfield, Illinois on 12-5-00 with sufficient postage affixed.

Christy L. Roberts

SUBSCRIBED AND SWORN TO BEFORE ME

this 5th day of December

Brenda Boehner
Notary Public



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