

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO)	R01-26
REGULATION OF PETROLEUM)	(Rulemaking – Land)
LEAKING UNDERGROUND STORAGE)	
TANKS (35 ILL. ADM. CODE 742))	

Motion to Amend Agency Proposal Amending 35 Ill. Adm. Code 732

Now comes the Illinois Environmental Protection Agency (“Agency”) by its attorneys, Judith S. Dyer and Kyle Rominger, and requests that the Illinois Pollution Control Board (“Board”) accept the additional proposed amendments to 35 Ill. Adm. Code 732 attached hereto, with supporting testimony also attached, as amendments in the above-captioned rulemaking.

In support of this motion, the Agency states as follows:

The Agency has, in this rulemaking before the Board, proposed amendments to 35 Ill. Adm. Code 732, the body of regulations addressing petroleum leaking underground storage tanks. The amendments the Agency has proposed are intended primarily to clarify and refine certain provisions, taking into consideration the experience the Agency has gained in administering the rules and changes in the law since their adoption.

The additional proposed amendments attached hereto were conceived after the submittal of the Agency proposal in this rulemaking. These additional proposed amendments fulfill the same purpose as those already before the Board pursuant to the Agency’s proposal, i.e. they clarify and refine certain provisions in Part 732. The Agency does not anticipate that these proposed amendments will be controversial. The Board has not

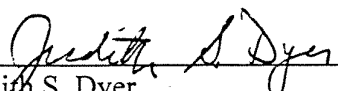
yet published the proposed amendments in this rulemaking at first notice, meaning that there is no procedural obstacle to accepting these additional proposed amendments.

Please note that the changes proposed in the attached text are indicated by double underlining and double strikethroughs.

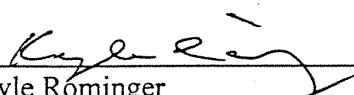
For the foregoing reasons, the Agency respectfully urges the Board to accept the additional proposed amendments attached hereto and supporting testimony, also attached, as part of this Part 732 rulemaking.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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Dated: February 16, 2001

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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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

Section

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

Section

732.300	General
732.301	Agency Authority to Initiate
732.302	No Further Action Sites
732.303	Low Priority Sites
732.304	High Priority Sites
732.305	Plan Submittal and Review
732.306	Deferred Site Classification; Priority List for Payment
732.307	Site Evaluation
732.308	Boring Logs and Sealing of Soil Borings and Groundwater Monitoring Wells

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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

- Section
- 732.400 General
- 732.401 Agency Authority to Initiate
- 732.402 No Further Action Site
- 732.403 Low Priority Site
- 732.404 High Priority Site
- 732.405 Plan Submittal and Review
- 732.406 Deferred Corrective Action; Priority List for Payment
- 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
- 732.605 Eligible Costs
- 732.606 Ineligible Costs

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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
- 732.612 Determination and Collection of Excess Payments

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING
REQUIREMENTS

Section

- 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.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART A: GENERAL

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].

“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.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

“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).

“Environmental Land Use Control” means an instrument that meets the requirements of these regulations and is placed in the chain of title to real property that limits or places requirements upon the use of the property for the purpose of protecting human health or the environment, is binding upon the property owner, heirs, successors, assigns, and lessees, and runs in perpetuity or until the Agency approves, in writing, removal of the limitation or requirement from the chain of title.

“Federal Landholding Entity” means that federal department, agency or instrumentality with the authority to occupy and control the day-to-day use, operation and management of Federally Owned Property.

“Federally Owned Property” means real property owned in fee by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

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

“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.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

"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)

"Land Use Control Memorandum of Agreement" means an agreement entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limits or places requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment, or that is used to perfect a No Further Remediation Letter.

"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)

"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.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

“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)

“Perfected” means recorded or filed for record so as to place the public on notice, or as otherwise provided in subsections 732.703(c) and (d) of this Part.

“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)

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

“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)

“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)

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

“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.

“Setback 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.

“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:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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)

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

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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART B: EARLY ACTION

Section 732.203 Free Product Removal

- a) 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)1) 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)2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
 - e)3) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
 - d)4) 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 forms prescribed and provided by the Agency. The report shall, at a minimum, provide the following:
 - 1)A) The name of the persons responsible for implementing the free product removal measures;
 - 2)B) The estimated quantity, type and thickness of free product observed or measured in wells, boreholes and excavations;
 - 3)C) The type of free product recovery system used;
 - 4)D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
 - 5)E) The type of treatment applied to, and the effluent quality expected from, any discharge;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- ~~6)F)~~ The steps that have been or are being taken to obtain necessary permits for any discharge; and
- ~~7)G)~~ The disposition of the recovered free product.
- 5) If free product removal activities are conducted more than 45 days after the confirmation of the presence of free product, submit free product removal reports in accordance with a schedule established by the Agency.
- b) For purposes of reimbursement, owners or operators are not required to obtain Agency approval pursuant to Section 732.202(g) for free product removal activities conducted more than 45 days after initial notification to IEMA of a release.

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

SUBPART C: SITE EVALUATION AND CLASSIFICATION

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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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 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.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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.
- 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;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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 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:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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.
- 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

conductivity has been determined site-specifically, the yield shall be calculated.

- 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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:
 - 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;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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.
- 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

~~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;
 - 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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:
- 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 Groundwater Sampling," "Test Methods for Evaluating Solid Wastes,

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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:
 - 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;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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 ___ 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 ~~or F~~ 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 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.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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~~. The data shall include, but is not limited to, site-specific data demonstrating the physical characteristics of soil and groundwater.
- 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.
- 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:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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~~ I.
- 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~~ I.
- 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 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:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART D: CORRECTIVE ACTION

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 subsections (a), (e) and (f) 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.
- 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), (b), (c) and (f) 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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.
- (f) If the Agency determines any approved corrective action plan has not achieved applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit a revised corrective action plan.

(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:

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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 accordance with a technical plan approved by the Agency or, for early action activities, in accordance with Subpart B;
 - 2) A statement of the amounts approved in the corresponding budget plan and the amounts actually sought for payment along with a certified statement by the owner or operator that the amounts so sought ~~have~~ 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.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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.
- 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 ___ 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;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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) Attorney fees and [l]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);
- 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, OSFM 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;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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;
- 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;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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;
- 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;*
- nn) Costs associated with standby and demurrage; and
- oo) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 732.405(f), that a revised corrective action plan is required; provided however, that costs associated with any subsequently approved corrective action plan will be eligible for reimbursement if they meet the requirements of this Part.

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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING
REQUIREMENTS

Section 732.702 Contents of a No Further Remediation Letter

A No Further Remediation Letter issued pursuant to this Part shall include all of the following:

- a) An acknowledgment that the requirements of the applicable report were satisfied;
- b) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries;
- c) The remediation objectives determined in accordance with 35 Ill. Adm. Code 742 and any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;
- d) A statement that the Agency's issuance of the No Further Remediation Letter signifies that:
 - 1) *All corrective action requirements under Title XVI and Part 732 applicable to the occurrence have been complied with;*
 - 2) *All corrective action concerning the remediation of the occurrence has been completed; and*
 - 3) *No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment. (Section 57.10(c) of the Act)*
- e) The prohibition under Section 732.703(e) ~~(e)~~ against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;
- f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;
- g) The recording obligations pursuant to Section 732.703 of this Part;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- h) The opportunity to request a change in the recorded land use pursuant to Section 732.704(e) ~~(e)~~ of this Part;
- i) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]; and
- j) Any other provisions agreed to by the Agency and the owner or operator.

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

Section 732.703 Duty to Record a No Further Remediation Letter

- a) Except as provided in subsections (c) and (d) of this Section, Aan 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 subsections (c) and (d) 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:
 - 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);

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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 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.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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) For sites located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title, the following requirements shall apply:
 - 1) To perfect a No Further Remediation Letter, the Federal Landholding Entity or Entities responsible for the site must enter a Land Use Control Memorandum of Agreement ("LUC MOA") with the Agency that requires the Federal Landholding Entity to do, at a minimum, the following:
 - A) Identify the location on the Federally Owned Property of each site subject to a No Further Remediation Letter. Such identification shall be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identifies the site in question with particularity;
 - B) Implement periodic site inspection procedures that ensure oversight by the Federal Landholding Entities of any land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;
 - C) Implement procedures for the Federal Landholding Entities to periodically advise the Agency of continued compliance with all maintenance and inspection requirements set forth in the LUC MOA;
 - D) Implement procedures for the Federal Landholding Entities to notify the Agency of any planned or emergency changes in land use that may adversely impact land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;
 - E) Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of a site subject to a No Further Remediation Letter, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure the No Further Remediation Letter is recorded on the chain of title upon transfer of the

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

property; and

F) Attach to the LUC MOA a copy of the No Further Remediation Letter for each site subject to the LUC MOA.

2) Failure to comply with the requirements of this subsection and the LUC MOA may result in voidance of the No Further Remediation Letter as well as any other penalties that may be available.

ed) 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 perfecting 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;
 - 3) Obtaining the No Further Remediation Letter by fraud or misrepresentation;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 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(e) and 732.703(d) of this Part for No Further Remediation Letters issued to state owned sites subject to those requirements; or~~
- 7) The failure to comply with the requirements of Section 732.703(c) and the Memorandum of Agreement entered in accordance with Section 732.703(c) for a site located in an IDOT right of way;
- 8) The failure to comply with the requirements of Section 732.703(d) and the LUC MOA entered in accordance with Section 732.703(d) for a site located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title;

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 9) The failure to record a No Further Remediation Letter perfected in accordance with Section 732.703(d) within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation Letter to any entity that will not remain or become a Federal Landholding Entity; or
- 10) ~~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.
- 1) The notice shall specify the cause for the voidance and describe the facts in support of the cause.
- 2) The Agency shall mail Notices of Voidance by registered or certified mail, date stamped with return receipt requested.
- c) Within 35 days after receipt of the Notice of Voidance, 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

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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 Voidance 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: Amended at ___ Ill. Reg. _____, effective _____)