ILLINOIS POLLUTION CONTROL BOARD
November 1, 2001

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

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by N.J. Melas, E.Z. Kezelis, S.T. Lawton):

On December 6, 2000, the Illinois Environmental Protection Agency (Agency) filed a proposal for rulemaking to further amend the Board's Petroleum Leaking Underground Storage Tank (UST) regulations. The proposal included the Agency's statement of reasons. The Agency submitted this proposal to the Board in order to clarify and refine sections of Part 732 in accordance with the experience that the Agency has gained in administering the regulations since they were adopted in 1994 and amended in 1997. *See* Regulation of Petroleum Leaking Underground Storage Tanks 35 Ill. Adm. Code 732 (Pursuant to P.A. 88-496), R94-2(A) (Sept. 15, 1994) (original UST regulations); Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732), R97-10 (Mar. 6, 1997) (amendments to UST regulations); Tr.1 at 12; Exh. 1 at 1; Stat. of Reas. at 1. [1]

By today's action, the Board proposes for first notice the Agency's proposed amendments, with several modifications, pursuant to the Illinois Administrative Procedure Act. 5 ILCS 100/1-1 *et seq.* (2000). The proposed amendments will be published in the *Illinois Register*, whereupon a 45-day public comment period will begin during which interested persons may file public comments with the Board.

PROCEDURAL HISTORY

Two public hearings were held in this matter before Board Hearing Officer Joel Sternstein, Board Members, and Board staff. The first hearing was held on February 27, 2001, in Springfield. The second hearing was held on April 3, 2001, in Chicago. The Agency, represented by Judith S. Dyer and Kyle Rominger, presented Agency witnesses Douglas W. Clay, P.E., Manager of the UST Section in the Bureau of Land; Kendra N. Brockamp, a Unit Manager in the UST Section; and Gregory W. Dunn, Manager of a Site Remediation Program Unit in the Bureau of Land, at the first hearing. These witnesses were also available for

[1] The Agency's statement of reasons will be cited as "Stat. of Reas. at ___," the transcript from the February 27, 2001 hearing will be cited as "Tr.1 at ___," the transcript for the April 3, 2001 hearing will be cited as "Tr.2 at ___," the exhibits will be cited as "Exh. __ at ___," and public comments will be cited as "PC __ at ___."

questions at the second hearing. Gary King, Manager of the Division of Remediation Management in the Bureau of Land, was available for questions at both hearings. Ron Dye of the American Institute of Professional Geologists (AIPG) and Kenneth W. Liss, a licensed professional geologist, also testified at the first hearing. The following persons testified at the second hearing: Steven Beverly of the Naval Facilities Engineering Command, Richard R. Butterworth, Jr. of the General Services Administration, David Piotrowski of the Illinois Petroleum Council (IPC), and James E. Huff and Bruce S. Bonczyk representing the Illinois Society of Professional Engineers (ISPE) and the Consulting Engineers Council of Illinois (CECI).

The following exhibits were submitted into the record at the hearings:

Exhibit No.	Exhibit
1	Testimony - Mr. Clay
2	Testimony - Ms. Brockamp
3	Testimony - Mr. Dunn
4	Agency's Errata Sheet Number 1
5	Agency's Motion to Amend
6	Testimony – Ms. Brockamp re: Motion to Amend
7	Testimony - Mr. Clay re: Motion to Amend
8	Pre-Filed Testimony – Mr. Dye
9	Mr. Liss
10	Pre-Filed Testimony – Mr. Beverly
11	Memorandum of Agreement between the Agency, U.S. EPA Region V, and the U.S. Department of (Navy, Army, Air Force)
12	Suggested Revisions – U.S. Department of Defense
13	Office of the Under Secretary of Defense - Policy on Land Use Controls Associated with Environmental Restoration Activities
14	Pre-Filed Testimony – Mr. Butterworth
15	Pre-Filed Testimony - Mr. Huff, in opposition to Agency's proposal

16	Pre-Filed Testimony – Mr. Bonczyk, in opposition to Agency's proposal
17	Testimony - Mr. Piotrowski
18	Memorandum of Agreement between the Agency and the Illinois Department of Transportation
19	Agency Exhibit - Methyl *tert*-Butyl Ether Biodegradation by Indigenous Aquifer Microorganisms under Natural and Artificial Oxic Conditions (Color maps attached)
20	Agency Exhibit – Widespread Potential for Microbial MTBE Degradation in Surface-Water Sediments
21	Agency Responses to Board Requests at First Hearing

The Board also received several public comments in this proceeding. Although the Board received one timely filed comment from Mr. Bonczyk on behalf of the ISPE and the CECI, the Board also received another public comment from him three weeks after the deadline and will not admit it. The timely filed comments, listed below in order of filing, appear on the Board's web site. They are:

Public Comment No.	Person and/or Organization
1	Mr. Bonczyk of the ISPE and the CECI
2	Robert Carson of Goodwin Environmental Consultants
3	Ronald St. John of the AIPG
4	Mr. Liss
5	The Agency
6	Dea Zimmerman
7	David Rieser and Brian Marquez of Ross & Hardies on behalf of the IPC
8	Christie M. Bianco of the Chemical Industry Council of Illinois
9	Weaver, Boos & Gordon

AGENCY PROPOSAL/DISCUSSION

The Board will discuss much of the substantive material that the Agency proposed, including the associated comments and counter proposals from other parties. The Board will include for first notice but will not discuss parts of the Agency's proposal such as correction of typographical errors, minor clarifications, deletion of unnecessary provisions, codification of minor Agency requirements, and some minor changes in testing and sampling procedures.

In developing its proposal, the Agency met with peer review groups including the Illinois Petroleum Marketers Association, the IPC, and the Illinois Environmental Regulatory Group. Tr.1 at 12-13; Exh. 1 at 1-2.

The Board generally supports the Agency's proposal for first notice. Some of the parties that participated in the hearings or provided public comments for docket R01-26 submitted additional regulatory language or other changes to supplement the Agency's proposal. The Board notes these submissions and incorporates them (or parts of them) in this proposal for first notice. In addition, the Board has made its own revisions to the Agency's proposal and will note those as well.

The Board will first address the inclusion of Licensed Professional Geologists (LPGs) and then off-site access for High Priority sites. (Sites designated as "High Priority" are those where, generally, indicator contaminant standards are high in groundwater or other special problems with respect to human health or the environment. *See* 415 ILCS 5/57.7(b)(3) (2000).) These issues generated the most testimony and comment during the course of the hearings and the post-hearing comment period. The Board will then address the proposed amendments that were not as controversial.

Allowing Licensed Professional Geologists to Practice Under Part 732

The Agency proposed recognizing the role of LPGs in UST remediation. With only a few exceptions, the Agency proposed that almost any aspect of UST remediation that has previously been reserved for Licensed Professional Engineers (LPEs) now also include LPGs. The Agency claims that LPGs are authorized to perform such tasks to the extent allowed by the Professional Geologists Licensing Act (Geologist Act). 225 ILCS 745/1 *et seq.* (2000). Exh. 1 at 2-3; Stat. of Reas. at 7.

The Agency also proposed that LPGs be allowed to practice under the Site Remediation Program (SRP) in the SRP amendments that the Board is submitting for first notice today. *See* Site Remediation Program: Amendments to 35 Ill. Adm. Code 740; Site Remediation Program: Proposed 35 Ill. Adm. Code 740 Subpart H (Schools, Parks, Public Playgrounds), R01-27 and R01-29 (Nov. 1, 2001).

Several of the parties discussed this topic at length during hearings and submitted many public comments. The Board provides a summary of these debates and then gives its rationale for either allowing or not allowing LPGs to practice under particular sections of Part 732.

Scope of Practice

Arguments. The ISPE and the CECI do not object to allowing LPGs to practice in areas where they are licensed so long as LPEs are not excluded from practicing their profession. Tr.2 at 38; Exh. 15.

In public comments, Mr. St. John of the AIPG claimed that most LPEs are not trained in subsurface geologic interpretation. He also argued that a well-designed surface remediation system can be ineffective if there is poor subsurface interpretation of contaminant fate and transport. He said that LPGs are better able to do subsurface work and as a result the public would benefit. PC 3 at 3.

Mr. Huff testified that many CECI member firms employ geologists and that geologists are integral to engineering practice, especially in the environmental arena. For example, in his practice, Huff hires contract geologists to perform fieldwork, proper placement of well screens, drilling activities, and soil classification. Tr.2 at 36, 41-42; Exh. 15.

Mr. Liss pointed out that environmental work crosses many disciplines including engineering, geology, chemistry, biology, and toxicology. While admitting that it may be beyond the scope of docket R01-26, Mr. Liss suggested that an "environmental professional" certification should be developed in the future to allow professional science practice under the Environmental Protection Act (Act). Tr.1 at 83.

Board Findings. While the Board is intrigued by Mr. Liss' idea for certifying environmental professionals, the Board agrees that it is beyond the scope of the regulatory proposal. Also, the Board agrees with Mr. Huff that LPEs and LPGs may work together under certain sections of Part 732. The Board approves of such cooperation provided that neither LPEs nor LPGs practice outside the scope of their respective practice areas as defined in the Professional Engineering Practice Act of 1989 (Engineer Act) (325 ILCS 225/4 (2000)) and the Geologist Act. In addition, an LPG may work under the direction of an LPE when the LPE conducts a site evaluation that verifies physical soil conditions. *See* 415 ILCS 5/57.7(b) (2000).

With respect to site evaluation, the Board finds that professional engineering judgment is an essential part of the investigation of migration pathways. Tasks related to investigation of migration pathways can include analysis of structures, soil mechanics, foundations, building materials, fluid dynamics, and chemical compatibility and behavior - all of which are generally outside the scope of an LPGs authority under the Geologist Act. However, an LPG may assist in identifying the geologic characteristics of such pathways.

Legislative Intent/Statutory Authority

Regulated Community Arguments. The ISPE and the CECI claimed that if the General Assembly intended to include LPGs in the UST amendments, then the General Assembly could have done so when they amended the UST provisions of the Act in 1996 (P.A. 89-457), after the Geologist Act had already been enacted. They argued that, as a result, there is a presumption that the General Assembly chose not to include LPGs in the UST legislation. Tr.2 at 39, 46; Exh. 15; Exh. 16; PC 1 at memo.

The ISPE and the CECI also objected to the Agency's proposal because they claimed that there is no statutory authority in the Act to include LPGs. They cited the definition of LPE in the Act and then pointed out that there is no corresponding definition for LPG. *See* 415 ILCS 5/57.2 (2000). The Act is generally silent on LPGs, and, they argued, does not provide standards for the Agency to implement the statute. Furthermore, they claimed that the Agency's proposal does not properly grant the authority for the adoption of the regulations. Tr.2 at 37, 38, 45-46, 49; Exh. 15; Exh. 16; PC 1 at 1, memo.

The ISPE and the CECI stated that there are specific functions for LPEs in the Act such as those related to determination of physical soil classifications at Section 57.7 of the Act. *See* 415 ILCS 5/57.7 (2000). The ISPE and the CECI also argued that the Engineer Act mentions soil classification as an example of professional engineering practice, but not the Geologist Act. *See* 225 ILCS 325/4(o) (2000); 225 ILCS 745/15 (2000). Tr.2 at 37, 49; Exh 15.

The ISPE and the CECI support the development of a "proper statutory framework" to allow LPGs to practice within the UST program. They are willing to work with LPGs to achieve it. Until this framework is in place, CECI and ISPE oppose the Agency allowing LPGs to practice in the UST program. Tr.2 at 38, 40-41, 47-48, 54; Exh 15; Exh. 16.

Mr. Liss argued that the Agency's proposal grants LPEs a license to practice geology without regard to qualification. Mr. Liss sites Section 4(o) of the Engineer Act (325 ILCS 225/4(o) (2000)) which lists geology as an example of an engineering practice area. Mr. Liss claimed that geology is listed under the Engineer Act to allow geotechnical engineers to practice without a geology license, not as a means to allow engineers in general to practice geology. Mr. Liss also claimed that the role of LPEs and LPGs in the Agency's proposal would be in conflict with both the Engineer Act and the Geologist Act. Mr. Liss requested that the Board strike all reference to LPEs in Subparts C through F of Part 732 where the Agency has proposed adding LPGs. Tr.1 at 81-83, 86; Exh. 9.

Agency Arguments. The Agency responded that "soil classification" is merely one example of the type of work that an LPE can perform and does not constitute an exhaustive list that excludes LPGs from practicing under Part 732. The Agency claimed that "soil classification" is cited in the Engineer Act because it is "incidental" to engineering practice. The Agency argued that, during the UST remediation process, soil classification is performed right after Early Action activities. Oftentimes the soil classification occurs well before any type of engineered system or facility is required, if at all, for the UST remediation. Soil classification may not even be incidental to engineering practice and would thus fall under activities defined in the Geologist Act. The Agency also claimed that the study of soil is the "essence of geology" and cited several examples of professional geology practice from the Geologist Act that entail soil study. PC 5 at 16-19.

The Agency stated that the Board has already adopted regulations allowing LPG certifications. *See* 35 Ill. Adm. Code 506.106(b) and 506.202(e).[2] The Agency then argued that other state agencies, such as the Historic Preservation Agency and the Department of Agriculture, allow LPGs to practice. *See* 17 Ill. Adm. Code 4190.407 and 8 Ill. Adm. Code 900.503(c), 900.603(b)(7), 900.608(a)(4). These agencies adopted these regulations without adopting new statutory provisions expressly addressing LPGs. PC 5 at 9, 13-14.

The Agency argued that the findings at the beginning of the Geologist Act clearly indicate that the legislature intended geologists to practice pursuant to Board regulations. *See* 225 ILCS 745/5(f) (2000). The Geologist Act also lists many examples of geology practice areas that the Agency claimed are representative of professional activities under Part 732. *See* 225 ILCS 745/15 (2000). PC 5 at 14-15.

In sum, the Agency argued that it has not exceeded its rulemaking authority and that LPGs may practice under Part 732 without amending the Act to expressly include LPGs. The Agency stated "The legislature did not intend every statute in Illinois to be amended to reflect the passage of the [Geologist Act]." Furthermore, the Agency claimed that there is nothing in the Act prohibiting LPGs from practicing under Part 732. PC 5 at 8-9, 16.

Board Findings. The Board finds no merit in Mr. Liss' argument that LPEs practice geology without regard to qualification under Part 732. The Board will not exclude LPEs from practice under Part 732 as Mr. Liss requested.

The Board agrees that the Act need not be amended to reflect the adoption of the Geology Act in order to allow LPGs to practice under Part 732. The Board and other Agencies have already proposed and adopted LPG provisions without amending each associated statute.

Although the Act need not define LPG in order to allow LPGs to practice under Part 732, the Board will limit the inclusion of LPGs in Part 732 so as not to violate the Act. While nothing in the Act prohibits LPG practice outright, there are instances where the Act limits professional practice to LPEs. In determining where practice should be limited to LPEs at Part 732, the Board need only focus on the language of the Act, which is clear and unambiguous. Nottage v. Jeka, 172 Ill. 2d 386, 392, 667 N.E.2d 91, 93 (1996).

As the Board has noted, an LPG may only work under the direction of an LPE when verifying physical soil conditions for site evaluations. The Act expressly provides that LPEs certify a site classification (High Priority, Low Priority, or No Further Action) after completion of the physical soil classification and groundwater investigation. 415 ILCS 5/57.7(a)(3)(B), (b)(1), (b)(2), (b)(3), and (b)(4) (2000).

Another area in which the Act limits authority to LPEs involves situations where remediation work is fully completed. Once a UST owner or operator has met all of the statutory and regulatory requirements related to a UST incident and completed any required remedial

[2] The Board notes that subsection 506.202(e) will soon become subsection 506.202(g). *See* Amendments to Livestock Waste Regulations: 35 Ill. Adm. Code 506, R01-28 (Nov. 1, 2001).

action, the Agency will issue a No Further Remediation letter (NFR letter). In order to receive an NFR letter, the owner or operator of a site must submit certification by an LPE. *See* 415 ILCS 5/57.7(c)(1)(E)(ii), (c)(2)(D), (c)(2)(E), (c)(3)(A), and (c)(3)(B) (2000); 415 ILCS 5/57.10(c) (2000). A complete application for reimbursement from the UST fund must include certification by an LPE. 415 ILCS 5/57.8(a)(6)(A) (2000).

Within the Agency's proposal, the term LPG is added in about 50 separate instances. The Board finds that some of those instances extend beyond what is authorized by the Act, the Engineer Act, and the Geologist Act. In its proposal for first notice today, the Board removes those references to LPGs from the Agency's proposal that do not comport with relevant statutes.

Presumption Against Liability

Mr. Bonczyk cited subsection 57.10(b) of the Act (415 ILCS 5/57.10(b) (2000)) which contains a presumption against liability for LPEs practicing in the UST program when certifying an NFR letter. Mr. Bonczyk claimed that including LPGs at Section 732.402 will "disrupt the General Assembly's scheme for presumption of liability" since there is no reference to LPGs in the statute. Tr.2 at 46-47, 50-51; Exh. 16; PC 1 at memo. The Agency responded that the proposed amendments will not affect the presumption against liability. PC 5 at 19-20. The Board finds that the liability provision at Section 57.10 of the Act only pertains to LPE certifications. Since only LPEs may conduct certifications under Part 732, it finds that Mr. Bonczyk's arguments here are moot.

Corrective Action Completion Reports

Ron Dye of the American Institute of Professional Geologists (AIPG) requested that the Board allow LPGs to certify High Priority corrective action completion reports at Subsection 732.409(a)(2). Mr. Dye's request generated testimony and public comments from the ISPE, the CECI, and Mr. St. John. Tr.1 at 75; Tr.2 at 39-40; Exh. 8 at 1-2; Exh. 15; Exh. 16; PC 3 at 4-6.

The Board finds that there is no statutory authority for allowing LPGs to certify No Further Action site classification reports, Low Priority groundwater monitoring reports, or High Priority corrective action completion reports or. These tasks are reserved for LPEs according to the Act. *See* 415 ILCS 5/57.7(b)(2)(A), (b)(3)(A), (b)(4)(B) (2000).

Department of Professional Regulation

At hearing, Mr. Liss asked Agency representatives if they consulted with the Department of Professional Regulation (DPR) in proposing this rule. At the second hearing, the Agency submitted a September 20, 2000 letter from the DPR's legal counsel. The letter stated that the Agency's proposal "appear[s] to appropriately authorize geologists to perform tasks contained in their practice definitions. Thus there appear to be no conflicts with the Geology or PE Practice Acts." In the letter, DPR stressed that its opinion was informal and that the Attorney General renders official opinions regarding statutory interpretation. Tr.1 at 71-72; Tr.2 at 94-95; Exh. 21, Att. 1; PC 5 at 10-11. The Board agrees with the DPR opinion to an extent, but the Board will

not allow LPGs to practice in those areas specifically reserved for LPEs in the Act, nor will it allow LPGs to practice in violation of the Engineer Act or the Geologist Act.

Off-Site Access – Sections 732.404 and 732.411

The second area of significant public comment and testimony in this rulemaking involved off-site access. For High Priority sites, the Agency proposed that it have the discretion to issue an NFR letter to a UST owner or operator that cannot access off-site properties to investigate contamination. The owner or operator must use "best efforts" to prove to the Agency that it attempted to gain off-site access according to proposed criteria at Section 732.411. Denial of off-site access must be noted in the NFR letter. The Agency also stated that an NFR letter does not necessarily relieve the owner or operator of liability for off-site contamination. Additionally, under the Agency's proposal, the UST owner or operator must send a certified letter to the off-site property owner describing legal and environmental aspects of the release. These proposed amendments reflect federal regulations at 40 CFR 264.100(e) and 264.101(c). *See also* 52 Fed. Reg. 45788, 45790-45791. Exh. 1 at 7-9; Exh. 17; PC 5 at 2-3, 6-8; Stat. of Reas. at 10-11.

Mr. Clay stated that, in the past, the Agency would not issue NFR letters to owners and operators that had not resolved off-site issues. He also testified that the primary reason for these proposed amendments is to protect human health and the environment. Tr.1 at 39-40;Tr.2 at 84-85, 87-90, 100.

Certified Letter to Off-Site Property Owners

Under questioning, Mr. Clay testified that the proposed certified letter would serve as a method to advise the adjacent property owner of "what is going on and why access is necessary". The letter is not intended to serve as admission from the property owner or as some sort of commitment from the property owner beyond what is required to access the site. Tr.1 at 40-41.

Arguments. Weaver, Boos & Gordon (WBG) had several criticisms of the proposed certified letter. It stated that the proposed letter implies that remediation and monetary damages will be necessary in every off-site access situation. WBG also claimed the letter implies that there will be a threat to human health and the environment if there is no remediation. WBG argued that the contents of the letter are contrary to the state's risk-based remediation program, considering that, for example, engineered controls are acceptable in a risk-based approach. WBG stated that the requirements would discourage UST owners and operators from doing off-site work because they will see the Agency's proposal as increasing their liability. PC 9 at 2, 4.

The Agency responded that the certified letter as required by their proposal need not be the initial means of communication with the off-site owner, and, in fact, encouraged owners and operators of USTs to pursue less intimidating means of initial contact. The certified letter should only be required in instances where the off-site property owner is uncooperative after other attempts at off-site access have failed. PC 5 at 3.

The Illinois Petroleum Council (IPC) stated that the Agency had few "pragmatic reasons" for its proposal and suggested several changes to the Agency's proposed language on off-site

access. PC 7 at 3. The IPC proposed changing the requirements for the contents of the certified letter. The IPC stated that the Agency's requirements were too specific and may not apply to every off-site access situation. For example, the part of the proposed letter which states that the UST owner or operator will "return the property to its original condition" may be inaccurate if access is needed only to install an engineered barrier. The IPC, like WBG, argues that other requirements for the letter contain legal admissions that are not necessary and that some requirements may unnecessarily "scare" adjacent property owners if the threat of contamination is not severe. The IPC proposed a more general and flexible letter that addresses different site-specific situations and omits, according to the IPC, unnecessary legal admissions. The Chemical Industry Council of Illinois (CICI) and WBG agree with several of the IPC's suggestions. Tr.2 at 62-64, 67-69; Exh. 17 at 3-5; PC 7 at 3; PC 8 at 2; PC 9 at 3.

The Agency agreed with some of the IPC's changes to Subsections 732.404(c) and 732.411(b), although most are either nonsubstantive or for clarification. Those have been included in the Board's first notice proposal. The Agency agreed with the IPC's suggestions for Subsection 732.411(b)(3) that provide the owner or operator will try to minimize disruption to the off-site owner's property in performing an investigation. On the other hand, the Agency objected to many of the IPC's substantive proposed changes such as deleting the requirement that the off-site owner be informed that the UST owner or operator is responsible for remediation costs. The Agency also requested that the Board retain the provision which states that the certified letter must state that failure to remediate the contamination may result in diminished property values and threats to the environment. PC 5 at 5-6.

Board Findings. The Board agrees with the Agency that the certified letter need not be the initial means of contacting the off-site property owner. However, the Board insists that off-site property owners be fully aware of nearby USTs and the potential problems that such USTs may cause if contamination migrates. If the UST owner or operator has made preliminary attempts to contact the off-site property owner, then the requirements of the certified letter will likely not alarm or surprise the off-site owner. The Board proposes the Agency's requirements for the certified letter along with those IPC modifications that the Agency agreed to.

"Best Efforts"

In making a determination regarding the UST owner or operator's "best efforts" to obtain off-site access, the Agency proposed that it be allowed to examine a set list of criteria at Subsection 732.411(d). These criteria include levels of and the physical and chemical characteristics of the indicator contaminants at the property line, hydrogeological characteristics of the area, potential effects to nearby waters, and others. The Agency's decision on these factors ultimately determines if the Agency issues an NFR letter.

Arguments. The IPC claimed that the proposed criteria to determine "best efforts" have nothing to do with obtaining off-site access but instead are general factors based on possible exposure scenarios. The IPC proposed replacing the Agency's language with language dictating the standard that the Agency should use in issuing an NFR letter – namely that the contamination remaining off-site does not pose "an imminent threat of harm to human health or the environment". The IPC proposed objective criteria related to threats that will assist the Agency

in determining whether a threat exists. These threats are the presence of free product on the off-site property; the presence of fire, explosion and vapor hazards via natural or manmade pathways; or the presence of potable water wells, surface water, setback zones, or regulated recharge areas. The CICI supports the IPC's "best efforts" proposal. Tr.2 at 65-66; Exh. 17 at 4-6; PC 7 at 3-4; PC 8 at 2-3.

WBG supports including a general requirement for notifying off-site owners of possible contamination. However, WBG argued that the proposed "best efforts" factors should be factors that the Agency considers in approving a remedial action plan. WBG stated that "best efforts" factors should focus on the type and level of communications with off-site owners, the response to the communications (or lack thereof), and any follow-up by the UST owner or operator. PC 9 at 3-4.

The Agency objected to the IPC's argument limiting the Agency to only considering "imminent" threats to human health in determining off-site contamination. The Agency claimed that this language would create a less stringent standard than called for in the Act. PC 5 at 7-8.

In defense of its proposal, the Agency argued that it must be able to decide "best efforts" on a case-by-case basis. The Agency must be able to determine if areas off-site have been contaminated, and, if so, the threat of possible harm to human health and the environment, including harm to parties other than the off-site owner. The Agency claimed that its criteria encompass all of the IPC's proposed criteria (free product, presence of fire, explosion, etc.). The Agency also stated that there would be no additional cost to the UST owner or operator since he or she has already submitted information that the Agency considers during the UST remediation process and in issuing an NFR letter. PC 5 at 3-4, 6.

Board Findings. The Board finds that the factors in IPC's proposed "best efforts" are insufficient. The Board agrees with the IPC that the Agency must be able to consider factors directly tied to an imminent threat to human health and the environment. However, the Agency must be able to consider a wider variety of factors as well, especially factors that point to less immediate threats such as suspected migration routes and the geology of the area. The Board finds that the Agency's "best efforts" factors will better enable the Agency to make determinations on a case-by-case basis. The Board proposes the Agency's proposed "best efforts" factors at Subsection 732.411(d) for first notice.

Zimmerman Comment. Dea Zimmerman of Northbrook submitted a public comment in which she expressed concern about the Agency's proposed criteria for determining "best efforts" at Subsections 732.411 (c) and especially 732.411 (d). Her property was adjacent to a gas station that had a High Priority UST incident. She drafted an access agreement similar to the Agency's and sent it to the gas station owner who refused to sign it because, she claimed, the agreement would have forced the owner to indemnify Ms. Zimmerman for diminution in her property value. She then learned that the gas station owner would still receive an NFR letter. Ms. Zimmerman wants to require the Agency to contact off-site property owners to determine "best efforts" in order to get their input. This way, she claims, the Agency should be able to determine if the UST owner or operator is telling the truth. Ms. Zimmerman argues that the Agency's proposal is lopsided in favor of the UST owner or operator. PC 6.

The Board notes that an NFR letter does not absolve a UST owner or operator from liability for cleaning up off-site releases, even where an NFR letter has been issued. *See* Board proposal at Subsection 732.411(f). Although the UST owner or operator must warn the off-site owner about a possible lower property value if contamination is not remediated, nothing in the UST regulations provides indemnification for diminution of property value. The Board appreciates Ms. Zimmerman's public comment but chooses not to alter the Agency's "best efforts" proposal to include mandatory Agency contacts with the off-site owner.

Electronic Filing – Section 732.101 and Other Sections

The Agency proposed language to eventually require electronic filing of documents submitted for the UST program. Mr. King said that the Agency receives seven feet of material per week for the UST program. The Agency wants to reduce the amount of paper it must store in order to comply with the State Records Act. *See* 5 ILCS 160/1 *et seq.* (2000). However, the State Records Commission has not yet set specific criteria for electronic filing, and, at the first hearing, Agency representatives were not sure of the State Records Commission's current status. The Agency is conducting a pilot electronic reporting project for the SRP to evaluate the effectiveness of electronic reporting. Tr.1 at 31-32, 57, 59; Tr.2 at 80; Exh. 1 at 2; Stat. of Reas. at 2-3.

SW-486 and Laboratory Certification – Sections 732.104 and 732.106

Currently, UST owners and operators are required to submit soil and groundwater samples as part of various testing requirements under the UST regulations. The Agency proposed that quantitative analyses of samples only be performed in accredited laboratories pursuant to 35 Ill. Adm. Code 186. The Part 186 regulations establish standards for laboratory quality that comply with U.S. EPA's National Environmental Laboratory Accreditation Program (NELAP). The Illinois Environmental Laboratory Accreditation Program must recognize NELAP accreditation in other approved states. The Agency claimed that this requirement is necessary in order to ensure the "integrity" of the samples collected during UST fieldwork. The Agency's laboratories are already accredited, but it proposed July 1, 2002 as the effective date of the requirement in order to allow other laboratories in Illinois to become accredited. Tr.1 at 24-26, 68; Exh. 3; Stat .of Reas. at 4. As this effective date is only eight months away, the Board proposes July 1, 2003 as the effective date

On a related note, the Agency updated the reference to the United States Environmental Protection Agency's analytical method SW-846 in the incorporations by reference. SW-486 describes test methods for evaluating solid wastes. As of the date of the first hearing, 17 laboratories had received SW-486 certification from the Agency's Division of Laboratories, and approximately 250 labs were accredited across the United States. The Agency will also recognize SW-486 certification by other NELAP-approved states or federal agencies, provided that the certified laboratory pays it the appropriate fees. The Agency uses the fees for the administration of the program and to pay staff necessary to review applications. Tr.1 at 26-27, 59, 68; Exh. 3; Stat. of Reas. at 4. The Board proposes a more recent update to the SW-486 analytical method than the one that the Agency proposed.

The Board notes that the new laboratory accreditation requirement and update to analytical method SW-486 are also found in the SRP amendments being proposed for first notice today.

45-Day Early Action Period – Subsection 732.202(g)

UST owners or operators must commence Early Action activities as soon as there has been a confirmed petroleum release from a UST. The Agency proposed to change and clarify the trigger for reimbursement of corrective action costs during the 45-day Early Action period. The Agency's proposal would switch the trigger for reimbursement from confirmation of a release to the initial notification of the Illinois Emergency Management Agency (IEMA). The Agency claims that the initial notification to IEMA is "clearly documented" as opposed to the initial confirmation date. Tr.1 at 16; Exh. 2 at 1; Stat. of Reas. at 4-5.

The Board declines to adopt the Agency's proposed change for the trigger date for reimbursement. There are several reasons why. First and foremost, it is not entirely clear from the Agency's proposal which of several required notifications to IEMA should be the trigger date. If the proposed trigger date is the notification to IEMA required by Subsection 732.202(a) of the Board's regulations, then the Board finds that this proposed change is unnecessary. According to Subsection 732.202(a), an owner or operator of a UST must report a release of petroleum to the IEMA within 24 hours of confirmation of that release. The Agency's proposed language for Subsection 732.202(g) would simply give the owner or operator a maximum of another 24 hours to perform reimbursement activities during the Early Action period.

The Board notes that the other requirements in Section 732.202 are all tied to the confirmation of a release as opposed to notification of the IEMA. The Board chooses to keep the requirements in Section 732.202 consistent.

The Board also notes that there are other notifications to the IEMA during the UST remediation process which are required by the Office of the State Fire Marshal's (OSFM) regulations. The Board is not sure if the Agency's proposed change in the trigger date might have referred to one of the OSFM-required notifications. For example, the owner or operator of the UST is required to notify the IEMA of a suspected release from a UST. The owner or operator is also required to notify the IEMA of spills or overfills from an UST. And, the OSFM has a requirement similar to the Board's regarding notification to the IEMA after confirmation of a release from a UST. *See* 41 Ill. Adm. Code 170.560, 170.590, and 170.600.

Finally, the Board also notes that the issue of the trigger for the reimbursement date is somewhat controversial. *See, e.g.* Broderick Teaming Company v. IEPA, PCB 00-187 (December 7, 2000 and April 5, 2001). The Board invites the Agency to submit comments or an amended proposal during the first notice period to address these matters.

Early Action - Sampling - Subsection 732.202(h)

Under the Agency's proposal, the owner or operator of the UST must determine whether areas of soil contamination exposed via Early Action excavation meet the Tier 1 remediation objectives pursuant to the Tiered Approach to Cleanup Objectives (TACO) regulations at 35 Ill. Adm. Code 742. Requirements include sampling of excavated backfill returned to the site, sampling each of the sides and the bottom on the excavation, and sampling of excavated piping runs. Although not stated in the regulations, the Agency requires sampling every 20 feet of an excavated piping run. The Agency claimed that the sampling assists the owner or operator of the UST in choosing the correct method of remediation. Such sampling does not relieve the owner or operator from other remedial sampling requirements if applicable to the site in question and under the chosen remedial plan. Tr.1 at 16-17, 32-3, 53, 61-62; Exh. 2 at 1-3; Stat.of Reas. at 5.

Early Action - Free Product Removal – Section 732.203

The Agency proposed procedures and reimbursement measures for free product removal within 45 days after the initial confirmation of the presence of free product. Exh. 5 at 14; Exh. 7 at 2.

Reimbursement of Early Action Activities – Sections 732.204 and 732.305(b)(1) and (b)(2)

The Agency proposed deleting the option to allow the owner or operator to submit line item estimates of activities and costs for the Site Classification budget plan. Instead, an owner or operator will submit a reimbursement request for Early Action activities. The Agency claimed that UST owners or operators rarely submit estimates as part of the site classification budget. Tr.1 at 17; Exh. 2 at 3; Stat.of Reas. at 5.

Permission of Property Owner – Subsections 732.300(b)(1), 732.309(a), 732.312(i), 732.409(b)

Under this part of the Agency's proposal, UST owners or operators who are not owners of the associated property must document that the property owner accepts the Corrective Action Completion Report and does not object to the recording of an NFR letter on the chain of title. There is parallel language for Corrective Action Completion Reports with respect to groundwater monitoring, for Site Classification Completion Reports, and for Site Classification Completion Reports with respect to classification by exposure pathway exclusion. The Agency stated that these amendments will codify its current procedure and are similar to requirements in the SRP. The Agency wanted to ensure that "the property owner is comfortable with the conditions of the NFR letter" when it is recorded. Tr.1 at 13, 35-36; Exh. 1 at 3; Stat. of Reas. at 6, 8, 10.

Budget Plan Not Required – Subsections 732.305(d), 732.312(k), 732.405(d)

The Agency proposed allowing UST owners and operators who have performed a Site Classification without first submitting a budget plan to submit an application for payment after the work is completed. (The Agency proposed similar language for High Priority corrective action activities and Low Priority groundwater monitoring plans.) In other words, a payment application could be submitted instead of a budget plan.

The Agency usually identifies eligible and ineligible reimbursement costs after it has been able to review a budget plan. The Agency acknowledged that some costs might be ineligible if the owner or operator proceeds without first submitting a budget plan. Tr.1 at 17-18, 62-63; Exh. 2 at 5; Stat. of Reas. at 7.

Well Screens – Subsection 732.307(c)(3)(A)

The Agency proposed deleting the requirement that the well screen be fully in the saturated zone for in-situ hydraulic conductivity testing. If the screen is fully in the saturated zone, the well may not be used for groundwater sample analysis since wells for contaminant sampling must straddle the water table between saturated and unsaturated zones. The Agency claimed that the cost to drill the extra well exclusively for the hydraulic conductivity test is not worth the benefit of having more accurate data. Ms. Brockamp noted that data obtained from a well that straddles the water table results in a higher hydraulic conductivity value. The higher value would lead the Agency to "require more protection of the aquifer than may be necessary" but at a lower cost than installing another well. Exh. 5 at 17; Exh. 6 at 1-2; Tr.1 at 19, 49, 63-64.

Investigation of Migration Pathways – Subsections 732.307(g) and 732.307(j)

Investigation of migration pathways is part of a leaking UST Site Evaluation. The Agency proposed amendments to clarify its expectations regarding the investigation of natural and man-made migration pathways. The owner or operator must perform sampling along pathways to prove that contamination is not migrating toward a man-made pathway. The Agency indicated at hearing that it might be amenable to evaluate such migration based on a method that does not involve sampling – although sampling is clearly the Agency's preferred method. The proposed amendments also provide that a groundwater investigation is required for a site where such an investigation is required pursuant to Subsection 732.302(b) and at any site that does not meet the No Further Action classification. Tr.1 at 18, 37-38; Exh. 2 at 2-3; Stat. of Reas. at 7-8.

MTBE as an Indicator Contaminant – Sections 732.310, 732.606(kk), and Appendix A

The presence of indicator contaminants plays a role in determining site classification. Much of the testing and sampling that is required after confirmation of a petroleum release from a UST involves determining the presence of indicator contaminants. The Agency proposed adding methyl tertiary butyl-ether (MTBE) as an indicator contaminant in gasoline. MTBE is a volatile organic chemical that has been used since the 1970s to promote more complete burning of gasoline, thereby reducing carbon monoxide and ozone levels. MTBE is able to quickly spread once released into groundwater (from a leaking UST, for example) and it is very difficult to remediate. Many states and the federal government have either set standards or are studying standards for MTBE in groundwater. Tr.1 at 13; Exh. 1 at 5-7, 10, att. 2; Exh. 19; Exh. 20; Stat. of Reas. at 9-10, 14-15. For more information on Illinois' proposed standards, the harmful health effects of MTBE, and detections of MTBE in community water supplies throughout Illinois, please refer to Proposed MTBE and Compliance Determination Amendments to Groundwater Quality Standards: 35 Ill. Adm. Code 620, R01-14 (Sept. 6, 2001) and Proposed

Amendments to Tiered Approach to Corrective Action Objectives (TACO)(MTBE), R00-19(C) (Sept. 6, 2001).

Under the Agency's proposal, MTBE is also to be included on releases reported to IEMA on or after the effective date of these UST amendments. An owner or operator may elect to include MTBE as an indicator contaminant if the Agency has not issued an NFR letter by the date of these amendments. In addition, after the NFR letter is issued, an owner or operator may opt back into the UST program if the release has caused off-site contamination exceeding the MTBE standards in the Board's TACO regulations at Part 742. The Agency also proposed allowing reimbursement of off-site MTBE remediation costs after receipt of an NFR letter for an on-site release. The Agency proposed allowing off-site reimbursement in this case, as opposed to on-site reimbursement, in order to protect private and community water supply wells. Tr.1 at 21, 66; Exh. 1 at 4; Exh. 2 at 2; Stat. of Reas. at 9, 14-15, 18.

Corrective Action Plan and Indicator Contaminants – Subsection 732.404(b)(1)

For High Priority Sites, the Agency proposed to clarify that a corrective action plan must address indicator contaminants so that they are not present in groundwater in amounts exceeding the remediation objectives at Section 732.408 – which are the same remediation objectives for the Board's TACO regulations at Part 742. Exh. 1 at 7-8; Stat. of Reas. at 10, 11.

Revised Corrective Action Plan – Subsections 732.405(f) and 732.606(oo)

A UST owner or operator with a High Priority site must develop a corrective action plan to address contamination from the leaking UST. The Agency proposed that the UST owner or operator submit a revised corrective action plan if the original corrective action plan has not achieved its objectives in a reasonable timeframe. Costs associated with the original corrective action plan incurred after the Agency requests a new plan will not be reimbursable, but costs associated with the revised plan may be reimbursable. Tr.1 at 65-66; Exh. 5 at 33, 38; Exh. 7 at 2.

The Agency has already ordered revised corrective action plans in certain situations and wanted to clarify that it has the authority to do so. For example, if an original plan has not achieved the stated objectives in four to six years when it was projected to have taken two years, the Agency would have the authority to require a revised plan. Tr.1 at 51-52.

At the first hearing, Mr. Rieser asked if an Agency decision to reject the original corrective action plan could be appealed to the Board. At the second hearing, the Agency proposed language allowing an appeal of an Agency decision to require a revised corrective action plan. The appeal would follow the procedure for an appeal of an Agency permit decision under Section 40 of the Act. *See* 415 ILCS 5/40 (2000). Tr.1 at 68-69; Exh. 21, att. 2.

UST Fund Payment Procedures – Sections 732.601, 732.602, 732.603, 732.605, and 732.606

If UST owners or operators qualify, they may receive reimbursement from the State's UST Fund. The Agency proposed clarifying the application for payment and payment procedures related to the UST Fund. One of the proposed changes makes the regulations consistent with the Act – specifically, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after receipt, the application is approved (as opposed to rejected) by operation of law. Tr.1 at 20-22; Exh. 2 at 8-12; Exh. 6 at 3; Stat. of Reas. at 12-14. (On a related note, the Agency also proposed clarifying language for circumstances by which a Site Classification completion report is rejected by operation of law. Exh. 1 at 7; Stat. of Reas. at 10.) The Agency also proposed clarifying that it will not reimburse UST removal or disposal costs for tanks deemed ineligible by the Office of the State Fire Marshal. Stat. of Reas. at 14.

NFR Letters – Sections 732.701 and 732.703

The Agency proposed having the discretion to make non-substantive corrections to NFR letters in order to ensure that recorded NFR letters are accurate. Tr. 1 at 70-71; Stat. of Reas. at 15-16.

The Agency also proposed several amendments for the recording and voiding of NFR letters. An owner or operator must submit a copy of necessary institutional controls when recording an NFR letter. An NFR letter is perfected, rather than effective, upon recording. *See* definition of "perfected" at proposed Section 732.200. An unperfected NFR letter would still be effective, but only between the Agency and the operator. There would be a 30-day limit for an owner or operator to submit a recorded NFR letter and attachment to the Agency. Tr.1 at 13; Exh. 1 at 9; Stat. of Reas. at 16.

IDOT MOA – Subsections 732.703(c) and 732.704(a)(7)

Previously, NFR letters could not be perfected on Illinois Department of Transportation (IDOT) right-of-ways because there is no title on these right-of-ways. To address this problem, an Agency-IDOT Memorandum of Agreement (IDOT MOA) has been signed for USTs on IDOT right-of-ways. The IDOT MOA will cover institutional controls for leaking UST incidents on IDOT property provided that the incidents are listed at Appendix B of the MOA. Land use limitations may be revised only by recording a new NFR letter or by an amendment to the Agency-IDOT MOA. Failure to comply with the Agency-IDOT MOA may result in the Agency voiding an NFR letter. Tr.1 at 13-14; 69-70, 80-81; Tr.2 at 77-78; Exh. 1 at 9; Exh. 7 at 3; Exh. 18; Stat. of Reas. at 17.

LUC MOA – Subsections 732.703(d), 732.704(a)(8), and 732.705

The U.S. General Services Administration (GSA) has the authority to manage "nonexcess" federal land and the authority to dispose of "excess" or "surplus" federal land. Under the Base Closure and Realignment (BRAC) statutes passed by Congress, the Department of Defense (DOD) has the authority to manage or dispose of military property. However, the

management and disposal authority that the GSA and the DOD have is limited. The DOD, for example, does not have the authority to record land use restrictions on federal property. Tr.2 at 12, 24-30; Exh. 10; Exh. 14. In January 2001 the DOD drafted a nationwide policy on land use controls associated with environmental remediation at both active military installations and installations that are closing under the BRAC. Tr.2 at 20-22; Exh. 13.

Taking these considerations into account, the Department of the Navy (Navy) met with the Agency to request an alternate approach to recording NFR letters. The Navy proposed a three-party, installation-specific "land use control memorandum of agreement" (LUC MOA) between the federal landholding entity, U.S. EPA Region V, and the Agency. *See* Exh. 11. Mr. Butterworth of the GSA reviewed the LUC MOA. He testified that he is confident that the LUC MOA will address concerns regarding the military's inability (and other federal landholding entities that have similar limitations) to perfect NFR letters while ensuring that the military maintains proper oversight of USTs and related land use controls. The Navy has executed these MOAs in other U.S. EPA Regions, and the Board recently approved the use of such MOAs pursuant to the TACO regulations. *See* 35 Ill. Adm. Code 742.1010. In addition, the Agency is proposing a similar LUC MOA scheme for the SRP amendments being proposed for first notice today. Tr.2 at 13-16, 20, 31, 35; Exh. 10; Exh. 14 at 5.

The Agency has proposed definitions and regulations to establish the LUC MOA at Part 732. The Agency has also proposed special regulations for recording NFR letters at federal sites where the federal landholder does not have authority to record institutional controls on the chain of title. In order to perfect an NFR letter, the landholder must enter a LUC MOA with the Agency. The LUC MOA would allow the federal landholding entity to describe property using Geographic Information System or Global Positioning System coordinates because federal property sometimes is not identified by common addresses, legal descriptions, or real estate numbers. The LUC MOA would also mandate that the federal landowning entity conduct periodic site inspections, confer with the Agency on a periodic basis, and notify the Agency of changes in land use or ownership if the site is transferred to a non-federal landowner. An NFR letter must be recorded within 45 days of transferring the property to a non-federal entity or the NFR letter will be void. Failure to comply with the LUC MOA or failure to timely record the NFR letter may result in the Agency's voiding the NFR letter. Exh. 1 at 14; Exh. 5 at 7, 42-43, 45; Exh. 7 at 1, 2; Exh. 10.

At the second hearing, the DOD submitted an exhibit in which it suggested certain changes to the Agency's proposed LUC MOA language, including additional definitions. The Agency did not provide any opinion on these suggested revisions in its final comments. Exh. 12.

The Board finds that LUC MOAs are necessary to protect human health and the environment for federal landholding entities without the authority to record deed restrictions. The Board also approves of the mechanism for recording NFR letters once the federal property is transferred to a non-federal landholding entity. The Board will propose the Agency's language in addition to most of DOD's suggested revisions for first notice.

Revisions of Land Use Restrictions – Subsection 732.703(e)

The Agency proposed that revisions of land use restrictions may be addressed only by perfecting a new NFR letter pursuant to the SRP. The MOA must be amended for revised land use restrictions at IDOT or federally-owned sites. Exh. 1 at 10; Exh. 5 at 43.

For example, this amendment would cover a new engineered barrier (or lack of an engineered barrier) that may not address site contamination in the same way that the original barrier did. Replacing an asphalt engineered barrier with concrete may not require a new NFR letter pursuant to the SRP; instead it may require an amended completion report. At hearing, Mr. King called this "a pretty simple process". Tr.1 at 45-49, 56.

Voiding NFR Letters – Subsection 732.704(a)

The Agency proposed several new ways that it can void an NFR letter including failure to perfect within 45 days of issuance, failure to comply with the IDOT right-of-way requirements, and failure to comply with notice or confirmation requirements if using an ordinance as an institutional control. Tr.1 at 14; Exh. 1 at 10; Stat. of Reas. at 17-18.

Addition of PCBs as an "Additional Parameter" – Appendix B

The "additional parameters" at Appendix B are a subset of indicator contaminants. The Agency proposed addition of polychlorinated biphenyls (PCBs) to the "additional parameter" list in Appendix B to correct an oversight from the 1997 amendments to Part 732. Tr.1 at 22; Exh. 2 at 2; Stat. of Reas. at 18.

Backfill Volume and Weight – Appendix C

Backfill refers to the soil, gravel or other material that is removed and/or replaced during the process of removing an UST. The Agency proposed describing the maximum amount of backfill material to be removed and replaced in tons; it is already listed in cubic yards. The addition should allow for easier reimbursement from the UST fund. Tr.1 at 22; Exh. 2 at 13; Stat. of Reas. at 18.

Mr. Carson submitted a public comment in which he claimed that the Agency's proposed tonnages are not representative of field conditions and are inconsistent with the default soil bulk densities listed in the Board's TACO regulations (35 Ill. Adm. Code 742, App. C, Tables B and D). Carson also argued that the weight of backfill material should account for typical moisture content for material excavated from UST sites to reflect the field conditions. PC 2.

The Board agrees that including the weight of backfill material would be helpful to both the Agency and the regulated community for reimbursement purposes. The Board agrees with Carson that the weight of backfill material should be based on material densities that are representative of field conditions and that are consistent with the default values set forth in the TACO regulations.

The Board notes that Appendix C, Table B of Part 742 lists the dry bulk density of sand as 1.8 g/cm^3 and gravel as 2.0 g/cm^3. If the typical moisture content of sand excavated from a

UST site is assumed to be 10 percent, as suggested by Carson, the bulk density of sand would increase to 1.98 g/cm^3 or approximately 2.0 g/cm^3. For replacement backfill, the Board finds that the dry bulk density of gravel of 2.0 g/cm^3 specified in the TACO regulations may be used to determine weight since the moisture content of clean gravel would be very low.

The Board finds that, at some sites, it will be more appropriate to determine the backfill weight based on site-specific information. The density of fill material and moisture content may vary significantly from the default values due to variations in water table elevations, soil conditions, and composition of fill material.

TECHNICAL FEASIBILITY/ECONOMIC REASONABLENESS

The Agency claimed that its amendments do not raise technical feasibility issues. Stat. of Reas. at 18.

The Agency stated that there could be an increase in obtaining laboratory results due to the requirement that owners and operators use accredited labs. Costs per lab for accreditation include a $350 initial cost and $350-$900 annually, but the Agency believed these are reasonable. Stat. of Reas. at 18-19.

The inclusion of MTBE as an indicator contaminant could have an economic impact to the regulated community, but the Agency believed it would be reasonable. Likewise, the Agency predicted that the requirement to investigate and remediate off-site contamination will have an economic impact, but it would be reasonable. Stat. of Reas. at 19.

The Agency provided cost estimates for the sampling requirements proposed for Subsection 732.202(h). For example, analyzing the six samples required for BETX (a common unleaded gasoline constituent) is $510. The Agency also argued that testing samples at the time of excavation is much cheaper than drilling soil borings and collecting samples at a later date. Exh. 2 at 3.

At the second hearing, the Board reserved time for testimony on the decision of the Department of Commerce and Community Affairs (DCCA) not to perform an Economic Impact Statement for docket R01-26. There was no testimony and none of the parties addressed DCCA's decision either in their exhibits or public comments. Tr.2 at 11.

After examining the record, the Board finds that the proposed amendments to the UST regulations are both technically feasible and economically reasonable.

CONCLUSION

The Board proposes much of the Agency's proposal for first notice with some revisions. Those revisions include stylistic revisions to comport with the requirements of the Joint Committee on Administrative Review. The Board is also including some minor revisions suggested by the IPC regarding off-site access at Sections 732.404(c) and 732.411 of the Board's regulations. See Exh. 17. The Agency stated that it had no objections to these provisions. PC 5

at 4-6. In addition, the Board is including some of the clarifications suggested by Mr. Dye of the AIPG at Section 732.307(c)(3) and some of the clarifications suggested by the DOD for Sections 732.103, 732.702, and 732.703.[3] The Agency did not address the clarifications from Mr. Dye or DOD. Tr.1 at 78-80; Exh. 8 at 3-4; Exh. 12. The Board has also revised some of the Agency's language allowing LPGs to practice under Part 732, included a new effective date for lab certifications, and updated the reference to analytical method SW-486. The Board chooses not to change the trigger for reimbursement of Early Action period corrective action activities.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Board directs the Clerk to cause the filing of the following amendments with the Secretary of State for first-notice publication in the *Illinois Register*.

[3] The Board will not add Mr. Dye's suggestion for a Board Note following Subsection 732.307(c)(3)(B)(iii). Mr. Dye proposed that the tester have the discretion to use the method in ASTM D 4525-90 depending on the type of rock at issue. ASTM D 4525-90 applies to all types of rock. The Board notes that the tester may use an alternate method if the Agency approves. *See* Exh. 8.

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

SUBPART B: EARLY ACTION

Section

SUBPART C: SITE EVALUATION AND CLASSIFICATION

Section

SUBPART D: CORRECTIVE ACTION

SUBPART E: SELECTION AND REVIEW PROCEDURES FOR PLANS AND REPORTS

SUBPART F: PAYMENT OR REIMBURSEMENT

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

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 in R01-26 at ___ Ill. Reg. _____, effective _____.

NOTE: Italics denotes statutory language.

SUBPART A: GENERAL

Section 732.101 Election to Proceed under Part 732

a) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority on or before September 12, 1993, may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Corrective action shall then follow the requirements of this Part. The election shall be effective upon receipt by the Agency and shall not be withdrawn once made.

b) Except as provided in Section 732.100(b) of this Part, owners or operators of underground storage tanks (USTs) used exclusively to store heating oil for consumptive use on the premises where stored and thatwhich serve other than a farm or residential unit may elect to proceed in accordance with this Part by

submitting to the Agency a written statement of such election signed by the owner or operator. Such election shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Corrective action shall then follow the requirements of this Part. The election shall be effective upon receipt by the Agency and shall not be withdrawn once made.

c) If the owner or operator elects to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election shall be payable or reimbursable in the same manner as was allowable under the then existing law. Corrective action costs incurred after the notification of election shall be payable or reimbursable in accordance with Subparts E and F of this Part.

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

Section 732.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definition of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].

"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.

"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~~.~~. [415 ILCS 5/57.2](~~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~~.~~. [415 ILCS 5/57.2](~~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~~.~~. [415 ILCS 5/57.2](~~Section 57.2 of the Act)~~ .

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

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

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

"Corrective action" means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act~~.~~ [415 ILCS 5/57.2](~~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~~.~~. [415 ILCS 5/57.2](~~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~~.~~. [415 ILCS 5/57.2](~~Section 57.2 of the Act)~~ .

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

"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~~.~~ [415 ILCS 5/3.64](~~Section 3.64 of the Act)~~ .

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

"Heating oil" means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy, No. 5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker c~~.~~ [415 ILCS 5/57.2](~~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~~.~~ [415 ILCS 5/57.2](~~Section 57.2 of the Act)~~ .

"Institutional Control" means a legal mechanism for imposing a restriction on land use as described in 35 Ill. Adm. Code 742 Subpart J.

"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 that contains land use restrictions.

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

thatwhich an owner or operator anticipates will be incurred for the development, implementation and completion of a plan or report.

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

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

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

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank.. [415 ILCS 5/57.2](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. USC § 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. USC § 6991)

"Perfect" or "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.~~ USC § 6991)

"Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). (42 ~~U.S.C.~~ USC § 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*~~.~~. [415 ILCS 5/57.2](~~Section 57.2 of the Act)~~ .

"Potable" means generally fit for human consumption in accordance with accepted water supply principles and practices~~.~~. [415 ILCS 5/3.65](~~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*~~.~~. [415 ILCS 5/57.2](~~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~~.~~. [415 ILCS 5/3.67](~~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.~~ USC § 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.~~ USC §§ 6921 et seq.)), and Petroleum. (42 ~~U.S.C.~~ USC § 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~~.~~. [415 ILCS 5/57.2](~~Section 57.2 of the Act)~~ .

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

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

"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~~.~~. [415 ILCS 5/3.61](~~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~~.~~. [415 ILCS 5/57.2](~~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:

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.~~ USC App. 1671 et seq.), or the Hazardous Liquid Pipeline Safety Act of 1979 (49 ~~U.S.C.~~ USC 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 that~~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.~~ USC § 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~~.~~. [415 ILCS 5/57.2](~~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 _____)

Section 732.104 Incorporations by Reference

a) The Board incorporates the following material by reference:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition (September, 1986), as amended by ~~Update I~~ Updates I, IIA, III, and IIIA (~~July 1992~~Final Update IIIA dated April 1998), Doc. No. 955-001-00000-1.

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

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

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

40 CFR 261, Appendix II (1992).

40 CFR 761.120 (1993).

c) This Section incorporates no later editions or amendments.

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

Section 732.106 Laboratory Certification

All quantitative analyses of samples collected on or after July 1, 2003, and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180, shall be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 shall be deemed invalid.

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

SUBPART B: EARLY ACTION

Section 732.202 Early Action

a) Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, shall perform the following initial response actions within 24 hours after the release:

1) Report the release to IEMA (e.g., by telephone or electronic mail);

2) Take immediate action to prevent any further release of the regulated substance to the environment; and

3) Identify and mitigate fire, explosion and vapor hazards.

b) Within 20 days after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, the owner or operator shall perform the following initial abatement measures:

1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;

2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator shall comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;

5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 732.203 below.

c) Within 20 days after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, owners or operators shall submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data. The report shall be submitted on forms prescribed and provided by the Agency <u>and, if specified by the Agency by written notice, in an electronic format</u>.

d) Within 45 days after confirmation of a release, owners or operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information shall include, but is not limited to, the following:

1) Data on the nature and estimated quantity of release;

2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release,

subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;

3) Results of the site check required at subsection (b)(5) of this Section;

4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 732.203.

e) Within 45 days after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, owners or operators shall submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy. The information shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal. The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen.* Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material in accordance with Section 57.7(a)(1)(B) of the Act. [415 ILCS 5/57.6(b)](~~Section 57.6(b) of the Act).~~

g) For purposes of reimbursement, the activities set forth in subsection (f) of this Section shall be performed within 45 days after confirmation of a release, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days. The owner or operator shall notify the Agency in writing within 45 days of a release of such circumstances. Costs incurred beyond 45 days shall be eligible if the Agency determines that they are consistent with early action.

h) The owner or operator shall determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g. excavation boundaries, piping runs) meet the applicable Tier 1 remediation objectives pursuant to 35 Ill. Adm. Code 742, Subpart E. Six samples shall be collected, one on each sidewall and two at the bottom of the excavation. If contaminated backfill is returned to the excavation, 2 representative samples must be collected and analyzed for the applicable indicator contaminants. Additional samples may be required for a multiple tank excavation.

1) If the remediation objectives have been met, and if there is no evidence that contaminated soils may be or may have been in contact with groundwater, the owner or operator shall submit a corrective action

completion report demonstrating compliance with those remediation objectives.

2) If the remediation objectives have not been met, or if there is evidence that contaminated soils may be or may have been in contact with groundwater, the owner or operator shall continue evaluation in accordance with Subpart C of this Part.

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

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

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;

~~c)~~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 a form prescribed and provided by the Agency and, if specified by the Agency, by written notice, in an electronic format. The report shall, at a minimum, provide the following:

~~1)~~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;

~~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 _____)

Section 732.204 Application for Payment

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

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

SUBPART C: SITE EVALUATION AND CLASSIFICATION

Section 732.300 General

a) Except as provided in subsection (b) of this Section, the owner or operator of any site subject to this Part shall evaluate and classify the site in accordance with the requirements of this Subpart C. All such sites shall be classified as No Further Action, Low Priority or High Priority. Site classifications shall be based on the

results of the site evaluation, including, but not limited to, the physical soil classification and the groundwater investigation, if applicable.

b) An owner or operator may choose to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part as an alternative to ~~Owners or operators subject to this Part 732 may proceed without~~ conducting site classification activities pursuant to this Subpart C ~~under the following circumstances~~ provided that:

1) ~~If the owner or operator chooses to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part.~~ Upon completion of the remediation, the owner or operator shall submit a corrective action completion report, demonstrating compliance with the required levels. The owner or operator must sign and submit, with the corrective action completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:

I hereby certify that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further certify that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the Corrective Action Completion Report~~A groundwater investigation shall be required if any of the following conditions exist, unless an evaluation through 35 Ill. Adm. Code 742 determines that no groundwater investigation is necessary:~~; and

2) Unless an evaluation pursuant to 35 Ill. Adm. Code 742 demonstrates that no groundwater investigation is necessary, the owner or operator must complete a groundwater investigation under the following circumstances:

A) If ~~T~~there is evidence that groundwater wells have been impacted by the release above the Tier 1 residential numbers set forth in 35 Ill. Adm. Code 742.Appendix B (e.g., as found during release confirmation or previous corrective action measures);

B) If ~~F~~free product that may impact groundwater is found to need recovery in compliance with Section 732.203 of this Part; or

C) If ~~T~~there is evidence that contaminated soils may be or may have been in contact with groundwater, except that, if the owner or operator pumps the excavation or tank cavity dry, properly

disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping, the owner or operator does not have to complete a groundwater investigation, unless the Agency's review reveals that further groundwater investigation is necessary. ~~as a result of:~~

~~i)~~ ~~Groundwater infiltrating the tank excavation; or~~

~~ii)~~ ~~Groundwater occurring at or above the invert elevation of the UST.~~

~~2)~~ ~~If, upon completion of early action requirements pursuant to Subpart B of this Part, the owner or operator can demonstrate compliance with the remediation objectives required in Section 732.408 of this Part. Upon completion of the early action requirements, the owner or operator shall submit a corrective action completion report demonstrating compliance with the required levels.~~

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

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

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

Section 732.302 No Further Action Sites

a) Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as No Further Action if all of the following criteria are satisfied:

1) The physical soil classification procedure completed in accordance with Section 732.307 confirms either of the following:

A) "Berg Circular"

i) The site is located in an area designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and

ii) The site's actual physical soil conditions are verified as consistent with those designated D, E, F or G on the Illinois

State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois"; or

B) The site soil characteristics satisfy the criteria of Section 732.307(d)(3) of this Part;

2) The UST system is not within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;

3) After ~~completing~~completion of early action measures in accordance with Subpart B of this Part, there is no evidence that, through natural pathways or man-made pathways, migration of petroleum or vapors ~~threaten~~ threatens human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

4) There is no designated Class III special resource groundwater within 200 feet of the UST system; and

5) After completing early action measures in accordance with Subpart B of this Part, no surface bodies of water are adversely affected by the presence of a visible sheen or free product layer as a result of a release of petroleum.

b) Groundwater investigation shall be required to confirm that a site meets the criteria of a No Further Action site if the Agency has received information indicating that the groundwater is contaminated at levels in excess of applicable groundwater objectives specified in 35 Ill. Adm. Code 742 at the property boundary line or 200 feet from the UST system, whichever is less. In such cases, a groundwater investigation that meets the requirements of Section 732.307(j) shall be performed. If the investigation confirms there is an exceedence of applicable Tier 1 residential indicator contaminant objectives (set forth in 35 Ill. Adm. Code 742.Appendix B), the Agency may reclassify the site as High Priority.

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

Section 732.305 Plan Submittal and Review

a) Unless an owner or operator elects to classify a site under Section 732.312, prior to conducting any site evaluation activities, the owner or operator shall submit to the Agency a site classification plan, including but not limited to a physical soil classification and groundwater investigation plan, satisfying the minimum requirements for site evaluation activities as set forth in Section 732.307. The plans shall be designed to collect data sufficient to determine the site classification in accordance with Section 732.302, 732.303 or 732.304 of this Part. Site classification plans shall be submitted on forms prescribed and

provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

b) In addition to the plan required in subsection (a) of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency:

1) An application for payment of costs associated with eligible early action costs incurred pursuant to Subpart B of this Part~~, except as provided in subsection (b)(2) of this Section~~; and

2) A site classification budget plan, that~~which~~ shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and a line item estimate of all costs associated with the development, implementation and completion of the site evaluation activities required in Section 732.307. ~~In accordance with Section 732.204 of this Part, the owner or operator may submit a site classification budget plan that includes a line item estimate of the activities and costs of early action for review and approval prior to the submittal of an application for payment.~~ Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part. Site classification budget plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

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

d) Notwithstanding subsections (a) and (b) of this Section, an owner or operator may proceed to conduct site evaluation activities in accordance with this Subpart C prior to the submittal or approval ~~or~~ of an otherwise required site classification plan (including physical soil classification and groundwater investigation plans, costs associated with activities to date and anticipated further costs ~~and associated budget plans~~). However, any such plan shall be submitted to the Agency for review and approval, rejection or modification in accordance with the procedures contained in Subpart E of this Part prior to payment or reimbursement for any related costs or the issuance of a No Further Remediation Letter. If the owner or operator has obtained Agency approval of a Site Classification Work Plan and Site Classification Completion Report without submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing site evaluation activities.

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

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

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

Section 732.307 Site Evaluation

a) Except as provided in Section 732.300(b), or unless an owner or operator elects to classify a site under Section 732.312, the owner or operator of any site for which a release of petroleum has been confirmed in accordance with regulations promulgated by the OSFM and reported to IEMA shall arrange for site evaluation and classification in accordance with the requirements of this Section. A Licensed Professional Engineer (or, where appropriate, persons working under the direction of a Licensed Professional Engineer) shall conduct the site evaluation. A Licensed Professional Geologist, to the extent authorized by the Professional Geologist Licensing Act [225 ILCS 745], may practice under the direction of a Licensed Professional Engineer on 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.

b) As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist under the direction of a Licensed Professional Engineer shall conduct a physical soil classification in accordance with the procedures at subsection (c) or (d) of this Section. Except as provided in subsection (e) of this Section, all elements of the chosen method of physical soil classification must be completed for each site. In addition to the requirement for a physical soil classification, the Licensed Professional Engineer or Licensed Professional Geologist shall, at a minimum, complete the requirements at subsections (f) through (j) of this Section before a Licensed Professional Engineer classifies~~classifying~~ a site as High Priority or Low Priority and subsection (f) through (i) of this Section before a Licensed Professional Engineer classifies~~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) of this Section. Location shall be chosen to limit to the greatest extent possible the vertical migration of contamination.

E) Soil borings shall be continuously sampled to ensure that no gaps appear in the sample column.

F) If anomalies are encountered, additional soil borings may be necessary to verify the consistency of the site geology.

G) Any water bearing units encountered shall be protected as necessary to prevent cross-contamination of water bearing units during drilling.

H) The owner or operator may utilize techniques other than those specified in ~~this~~ subsection (c)(1) of this Section 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 that 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 thickness or extent of the stratigraphic unit~~size or extent of the unit~~, and the requirements of ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993:

A) A soil particle analysis using the test methods specified in ASTM (American Society for Testing and Materials) Standards D 422-63 or D 1140-92, "Standard Test Method for Particle-Size Analysis of Soils," or "Standard Test Method for Amount of Material in Soils Finer than the No. 200 (75 um) Sieve," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

B) A soil moisture content analysis using the test methods specified in ASTM Standards D 2216-92 or D 4643-93, "Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock," or "Standard Test Method for Determination of Water (Moisture) Content of Soil by the Microwave Oven Method," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

C) A soil classification using the test methods specified in ASTM Standards D 2487-93 or D 2488-93, "Standard Test Method for Classification of 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~~ Section 732.308(a) of this Part.

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. Wells used for hydraulic conductivity testing shall be constructed in a manner that ensures the most accurate results.

B) If no water bearing unit is encountered in the required soil boring(s), then the following laboratory analyses shall be conducted, as applicable, on a representative sample from each stratigraphic unit:

i) A hydraulic conductivity analysis of undisturbed or laboratory compacted granular soils (i.e., clay, silt, sand or gravel) using the test method specified in ASTM (American Society for Testing and Materials) Standard D 5084-90, "Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter," incorporated by reference in Section 732.104 of this Part, or other Agency approved method.

ii) Granular soils that are ~~having~~ estimated to have hydraulic conductivity ~~of~~ greater than 1×10^{-3} cm/s will fail the minimum geologic conditions for "No Further Action": i.e., rating of D, E, F, or G as described in the Berg Circular~~hydraulic conductivity requirements within the Berg Circular for No Further Action geology~~, and therefore, no physical 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~~ Section 732.308(a) of this Part.

4) If the results of the physical soil classification or groundwater investigation reveal that the actual site geologic characteristics are different from those generally mapped by the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part, the site classification shall be determined using the actual site geologic characteristics.

d) Method Two for Physical Soil Classification:

1) Soil Borings

A) A minimum of one soil boring to a depth that includes native material from the invert elevation of the most shallow UST to 15 feet below the invert elevation of the deepest UST for each tank field with a release of petroleum.

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 thatwhich 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 and incorporated by reference in Section 732.104 of this Part :

A) A soil particle analysis satisfying the requirements of subsection (c)(2)(A) of this Section; and

B) Either:

i) A pump test or equivalent to determine the yield of the geologic material. Methodology, assumptions and any calculations performed shall be submitted as part of the site classification completion report. If the aquifer geometry and transmissivity have been obtained through a site-

specific field investigation, an analytical solution may be used to estimate well yield. The Licensed Professional Engineer or Licensed Professional Geologist shall demonstrate the appropriateness of the analytical solution to estimate well yield versus an actual field test. Well yield should be determined for either confined or unconfined formations. Once the yield has been determined site-specifically, the hydraulic conductivity shall be calculated; or

ii) Hydraulic conductivity shall be determined in accordance with subsection (c)(3) of this Section. Once the hydraulic conductivity has been determined site-specifically, the yield shall be calculated.

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~~ Section 732.308(a) of this Part.

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 determines that the site geology is not consistent with areas D, E, F or G of the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference in Section 732.104 of this Part or that the criteria of subsection (d)(3) are not satisfied, any remaining steps required by subsection (c) or (d) may be suspended, provided that the soil investigation has been sufficient to satisfy the requirements 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, although a Licensed Professional Geologist may not perform an investigation of migration pathways pursuant to subsection (g) of this Section. 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

1) The Licensed Professional Engineer 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 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;

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 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) of

this Part ~~at which such investigation is required pursuant to this Part~~, the Licensed Professional Engineer or Licensed Professional Geologist shall perform a groundwater investigation as required under this Part in accordance with ~~this~~ subsection (j) of this Section 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) of this Section, 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 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, that~~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 Ground-Water Sampling," "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," or "Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground-Water Samples for Selected Unstable Constituents," as appropriate for the applicable indicator contaminants or groundwater objectives and as incorporated by reference at Section 732.104 of this Part.

B) Groundwater elevation in a groundwater monitoring well shall be determined and recorded to establish the gradient of the groundwater table.

C) The analytical methodology used for the analysis of the indicator contaminants shall be consistent with both of the following:

i) The methodology shall have a practical quantitation limit (PQL) at or below the objectives or detection levels set forth in 35 Ill. Adm. Code 742 or as set for mixtures or degradation products as provided in Section 732.310 of this Part; and

ii) The methodology must be consistent with the methodologies contained in "Methods for Chemical Analysis of Water and Wastes," "Methods for the Determination of Organic Compounds in Drinking Water," "Practical Guide for Ground-Water Sampling," "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," and "Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground-Water Samples for Selected Unstable Constituents," as incorporated by reference at Section 732.104, or other Agency approved methods.

D) In addition to analytical results, sampling and analytical reports shall contain the following information:

i) Sample collection information including but not limited to the name of sample collector, time and date of sample collection, method of collection, and monitoring location;

ii) Sample preservation and shipment information including but not limited to field quality control;

iii) Analytical procedures including but not limited to the method detection limits and the practical quantitation limits (PQL);

iv) Chain of custody and control; and

v) Field and lab blanks.

6) As an alternative to the installation of monitoring wells under subsection (j)(3) <u>of this Section</u>, the Licensed Professional Engineer <u>or Licensed Professional Geologist</u> 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) of this Section or Method Two under subsection (d) of this Section);

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) of this Section or Method Two under subsection (d) of this Section), 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 Licensed Professional Geologist shall perform a groundwater investigation in accordance with the remainder of ~~this~~ subsection (j) of this Section.

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

a) Soil boring logs shall be kept for all soil borings. The logs shall be submitted along with the site classification completion report and shall be on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

1) Soil boring logs shall contain the following information at a minimum:

A) Sampling device, sample number and amount of recovery;

B) Total depth of boring to the nearest 6 inches;

C) Detailed field observations describing materials encountered in boring, including soil constituents, consistency, color, density, moisture, odors, and the nature and extent of sand or gravel lenses or seams equal to or greater than 1 inch in thickness;

D) Petroleum hydrocarbon vapor readings (as determined by continuous screening of borings with field instruments capable of detecting such vapors);

E) Locations of sample(s) used for physical or chemical analysis; and

F) Groundwater levels while boring and at completion.

2) Boring logs for soil boring(s) completed for physical soil classification also shall include the following information, as applicable for the classification method chosen, for each stratigraphic unit encountered at the site:

A) Moisture content;

B) Unconfined compression strength in tons per square foot (TSF) using a hand penetrometer;

C) Unified Soil Classification System (USCS) soil classification group symbol in accordance with ASTM Standard D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference in Section 732.104 of this Part, or other Agency approved method; and

D) The reasoning behind the Licensed Professional Engineer's or Licensed Professional Geologist's decision to perform or not perform soil testing pursuant to Section 732.307(c)(2) and (d)(2) of this Part as to each identified stratigraphic unit.

b) Boreholes and monitoring wells shall be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120.

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

Section 732.309 Site Classification Completion Report

a) Within 30 days after the completion of a site evaluation in accordance with Section 732.307 of this Part, 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 Section 732.307 of this Part, as well as the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions. The report shall be submitted on forms prescribed and provided by the Agency, shall be signed by the owner or operator, and shall contain the certification of a Licensed Professional Engineer of the site's classification as No Further Action, Low Priority or High Priority in accordance with ~~this~~ Subpart C of this Part. For No Further Action sites, the owner or operator must sign and submit, with the site classification completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:

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

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

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

Section 732.310 Indicator Contaminants

a) For purposes of this Part, the term “indicator contaminants” shall mean the parameters ~~listed~~ identified in subsections (b) through (~~g~~i) of this Section.

b) For gasoline, including but not limited to leaded, unleaded, premium and gasohol, the indicator contaminants shall be benzene, ethylbenzene, toluene, ~~and~~ total xylenes and methyl tertiary butyl ether (MTBE), except as provided in subsection

(h) of this Section. For leaded gasoline, lead shall also be an indicator contaminant.

c) For aviation turbine fuels, jet fuels, diesel fuels, gas turbine fuel oils, heating fuel oils, illuminating oils, kerosene, lubricants, liquid asphalt and dust laying oils, cable oils, crude oil, crude oil fractions, petroleum feedstocks, petroleum fractions and heavy oils, the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Appendix A. For leaded aviation turbine fuels, lead shall also be an indicator contaminant.

d) For transformer oils the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, the polynuclear aromatics listed in Appendix B and the polychlorinated biphenyl parameters listed in Appendix B.

e) For hydraulic fluids the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes the polynuclear aromatics listed in Appendix B and barium.

f) For petroleum spirits, mineral spirits, Stoddard solvents, high-flash aromatic naphthas, moderately volatile hydrocarbon solvents and petroleum extender oils, the indicator contaminants shall be the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

g) For used oil the indicator contaminants shall be determined by the results of a used oil soil sample analysis. Prior to the submission of a site classification plan the owner or operator shall collect a grab sample from a location representative of soil that is the most contaminated as a result of the ~~contaminated by a~~ release from the used oil UST. If an area of contamination cannot be identified, the sample shall be collected from beneath the used oil UST. The sample shall be analyzed for:

1) All volatile, base/neutral, polynuclear aromatic and metal parameters listed at Appendix B and any other parameters the Licensed Professional Engineer suspects may be present based on UST usage. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

2) The used oil indicator contaminants shall be those volatile, base/neutral, polynuclear aromatic and metal parameters listed at Appendix B or as otherwise identified at subsection (g)(1) of this Section that exceed their remediation objective at 35 Ill. Adm. Code 742 in addition to benzene, ethylbenzene, toluene, total xylenes and PNAs.

3) If none of the parameters exceed their remediation objective, the used oil indicator contaminants shall be benzene, ethylbenzene, toluene and total xylenes, and the polynuclear aromatics listed in Appendix B.

h) Unless an owner or operator elects otherwise pursuant to subsection (i) of this Section, the term "indicator contaminants" shall not include MTBE for any release reported to the Illinois Emergency Management Agency prior to the effective date of amendments establishing MTBE as an indicator contaminant.

i) An owner or operator of a site exempt from having to address MTBE as an indicator contaminant pursuant to subsection (h) of this Section may elect to include MTBE as an indicator contaminant under the following circumstances:

1) If the Agency has not issued a No Further Remediation Letter for the site by the effective date of the amendments establishing MTBE as an indicator contaminant; or

2) If the Agency has issued a No Further Remediation Letter and the release at the site has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 Ill. Adm. Code 742, provided that the owner or operator complies with all applicable requirements of this Part.

(Source: Amended at ___ 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 I~~ shall meet the requirements of this Section.

1) Such election shall be made in writing by the owner or operator as part of the submission of the site classification plan under subsection (c) of this Section. The election may be made at any time until the Agency issues a No Further Remediation Letter.

2) An owner or operator who chooses to revoke an election submitted under subsection (c) of this Section shall do so in writing.

b) Upon completion of early action requirements pursuant to Subpart B of this Part, the owner or operator shall determine whether the areas or locations addressed under early action (e.g., backfill) meet the requirements applicable for a Tier 1 evaluation pursuant to 35 Ill. Adm. Code 742, Subpart E.

1) If the remediation objectives have been met, the owner or operator shall submit a corrective action completion report demonstrating compliance with the required levels.

2) If the remediation objectives have not been met, evaluation shall continue in accordance with subsection (c) of this Section.

c) If, upon completion of early action requirements pursuant to Subpart B of this Part, the requirements under subsection (b) of this Section have not been met, then the owner or operator, prior to conducting any site evaluation activities, shall submit to the Agency a site classification plan including, but not limited to, a ~~physical soil classification,~~ contaminant identification~~,~~ and groundwater investigation plan (if applicable in accordance with Section 732.300(b)(1)), satisfying the minimum requirements for site evaluation activities as set forth in this Section. Site classification plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The plans shall be designed to:

1) Determine the full extent of soil or groundwater contamination exceeding remediation objectives for Tier 1 sites under 35 Ill. Adm. Code 742, Subpart E. Such activities may include soil borings with sampling and analysis, groundwater monitoring wells with sampling and analysis, groundwater modeling, or a combination of these activities.

2) Collect data sufficient to determine which, if any, of the applicable exposure routes under 35 Ill. Adm. Code 742 can be excluded pursuant to 35 Ill. Adm. Code 742, Subpart C ~~or I~~. 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) shall conduct the site evaluation. A Licensed Professional Geologist, to the extent authorized by the Professional Geologist Licensing Act [225 ILCS 725], may practice under the direction of a Licensed Professional Engineer on 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.

e) As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct physical soil classification and contaminant identification in accordance with the procedures at subsection (c) of this Section.

f) In addition to the plan required in subsection (c) of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency:

1) An application for payment of costs associated with eligible early action costs incurred pursuant to Subpart B of this Part, except as provided in subsection (f)(2) of this Section; and

2) A site classification budget plan, that~~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 the Licensed Professional Engineer determines that 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 the Licensed Professional Engineer determines that 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 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 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:

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 of this Part 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 _____)

SUBPART D: CORRECTIVE ACTION

Section 732.402 No Further Action Site

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

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

Section 732.403 Low Priority Site

a) The owner or operator of a site that has been certified as a Low Priority site by a Licensed Professional Engineer and approved as such by the Agency shall develop a groundwater monitoring plan and perform groundwater monitoring in accordance with the requirements of this Section.

b) The owner or operator of a site certified as Low Priority by a Licensed Professional Engineer and approved as such by the Agency shall develop a

groundwater monitoring plan designed to satisfy the following requirements at a minimum:

1) Groundwater monitoring shall be conducted for a period of three years following the Agency's approval of the site classification, unless subsection (b)(6) or subsection (i) of this Section applies;

2) Groundwater monitoring wells shall be placed at the property line or 200 feet from the UST system, whichever is closer. The wells shall be placed in a configuration designed to provide the greatest likelihood of detecting migration of groundwater contamination. In the event that a groundwater monitoring well cannot physically be installed at the property line or 200 feet from the UST system, whichever is closer, in accordance with ~~this~~ subsection (b)(2) of this Section, the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a monitoring well in a location that is closer to the UST system than the rule requires. However, once the election is made the owner or operator may not withdraw the election at a later time;

3) Groundwater monitoring wells shall satisfy the requirements at ~~Section~~ subsections 732.307(j)(3) and (4) of this Part;

4) During the first year of groundwater monitoring, samples from each well shall be collected and analyzed on a quarterly basis. During the second year of groundwater monitoring, samples from each well shall be collected and analyzed during the second and fourth quarters. During the third and final year of groundwater monitoring, at a minimum, samples from each well shall be collected and analyzed in the fourth quarter;

5) To determine whether groundwater quality standards or Agency approved objectives have been exceeded, samples for groundwater monitoring shall be collected and analyzed in accordance with the procedures set forth in Section 732.307(j)(5) of this Part for the applicable indicator contaminants determined pursuant to Section 732.310 of this Part;

6) The owner or operator may use groundwater monitoring data that has been collected up to 3 years prior to the site being certified as Low Priority, if the data meets the requirements of subsections (b)(2) through (b)(5) of this Section. This data may be used to satisfy all or part of the three year period of groundwater monitoring required under this Section.

c) Prior to the implementation of groundwater monitoring, except as provided under subsection (b)(6) of this Section, the owner or operator shall submit the groundwater monitoring plan to the Agency for review in accordance with Section 732.405. If the owner or operator intends to seek payment from the Fund, a groundwater monitoring budget plan also shall be submitted to the Agency for

review. The groundwater monitoring budget plan shall include a line item estimate of all costs associated with the implementation and completion of the groundwater monitoring plan. Groundwater monitoring plans and budgets shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

d) Groundwater analysis results obtained pursuant to subsection (b) of this Section shall be submitted to the Agency within 30 days after the end of each annual sampling period on forms prescribed and provided by the Agency, except as provided under subsection (b)(6) of this Section. Groundwater analysis data being used pursuant to subsection (b)(6) shall be submitted to the Agency as part of a Low Priority groundwater monitoring plan or the Low Priority groundwater monitoring completion report.

1) The information to be collected shall include but not be limited to the information set forth in Section 732.307(j)(5) of this Part.

2) If at any time the groundwater analysis results indicate a confirmed exceedence of the applicable indicator contaminant groundwater quality standards or Agency approved objectives as a result of the underground storage tank release of petroleum, the owner or operator shall notify the Agency of the exceedence within 30 days and provide supporting documentation of the nature and extent of the exceedence.

3) Indicator contaminant groundwater quality standards shall be determined in accordance with Section 732.311 of this Part.

e) Within 30 days after the completion of the Low Priority groundwater monitoring plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report in accordance with Section 732.409 of this Part. If there is no confirmed exceedence of applicable indicator contaminant objectives during the three year groundwater monitoring period, the report shall contain a certification to that effect by a Licensed Professional Engineer.

f) The Agency shall review the groundwater monitoring completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval of the report by the Agency. If the owner or operator elects to appeal an Agency action to disapprove, modify, or reject by operation of law a Low Priority groundwater monitoring completion report, the Agency shall indicate to the Board in conjunction with such appeal whether it intends to reclassify the site as High Priority.

g) If at any time groundwater analysis results indicate a confirmed exceedence of applicable indicator contaminant objectives, the Agency may reclassify the site as a High Priority site any time before the Agency's final approval of a Low Priority groundwater monitoring completion report. The Agency shall notify the owner or

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

h) The owner or operator of a Low Priority site reclassified to High Priority pursuant to subsection (g) of this Section shall develop and submit for Agency approval a High Priority corrective action plan satisfying the requirements of Section 732.404 of this Part within 120 days after receiving the notice of reclassification. If the owner or operator intends to seek reimbursement from the Fund, a corrective action plan budget also shall be submitted within 120 days after receiving the notice of reclassification.

i) As a result of the demonstration under Section 732.307(j)(6), the owner or operator of a site classified as Low Priority by a Licensed Professional Engineer.

1) Shall prepare a report in accordance with Section 732.409 of this Part, that~~which~~ supports the issuance of a No Further Remediation Letter or reclassification of the site as a High Priority site.

2) In the event the site is reclassified as a High Priority site, the owner or operator shall develop and submit for Agency approval a High Priority corrective action plan in accordance with Section 732.403(h) of this Part.

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

Section 732.404 High Priority Site

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

b) The owner or operator of a site certified as High Priority by a Licensed Professional Engineer and approved as such by the Agency or reclassified as High Priority by the Agency pursuant to Section 732.403(g) shall develop a corrective action plan based on site conditions and designed to achieve the following as applicable to the site:

1) For sites that have submitted ~~submitting~~ a site classification report under Section 732.309, provide that:

A) ~~Provide that,a~~After complete performance of the corrective action plan, applicable indicator contaminants, identified in the groundwater investigation, are not present in groundwater, as a result of the underground storage tank release, in concentrations exceeding the remediation objectives referenced in Section 732.408 of this Part ~~applicable indicator contaminant objectives are not exceeded~~ at the property boundary line or 200 feet from the UST system, whichever is less.~~, as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation. If off-site sampling is included within an approved corrective action plan and if an adjoining property owner will not allow the owner or operator access to his or her property so as to ascertain information sufficient to satisfy this requirement or if the owner cannot be located, adequate documentation of the owner or operators' efforts to gain access to the property shall satisfy this subsection (b)(1)(A)~~;

B) ~~Provide that, a~~After complete performance of the corrective action plan, Class III special resource groundwater quality standards for Class III special resource groundwater within 200 feet of the UST system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;

C) After complete performance of the corrective action plan, remediation of contamination in natural or man-made exposure pathways as a result of the underground storage tank release has been conducted in accordance with 35 Ill. Adm. Code 742~~Remediate threats due to the presence or migration, through natural or manmade pathways, of petroleum in concentrations sufficient to harm human health or human safety or to cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces~~;

D) ~~Remediate threats~~Threats to potable water supplies are remediated; and

E) ~~Remediate threats~~Threats to bodies of surface water are remediated.

2) For sites that have submitted ~~submitting~~ a site classification completion report under Section 732.312, provide that, after complete performance of the corrective action plan, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 for any applicable exposure route not excluded from consideration under Section 732.312.

~~3) Where there has been no reliance on an engineered barrier to achieve compliance with remediation objectives developed under Section 732.408, compliance with remediation objectives shall be demonstrated as follows:~~

~~A) For groundwater remediation objectives:~~

~~i) Except as provided in subsection (ii) of this Section, or Section 732.307(j)(3) where there is a separate sampling point agreed to by the Agency, sampling points shall be located at the property boundary line or 200 feet from the UST system, whichever is less.~~

~~ii) If an institutional control prohibiting the use of groundwater as a potable supply is obtained under 35 Ill. Adm. Code 742.Subpart J, sampling points shall be located at the property boundary line.~~

~~iii) Compliance with groundwater remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.~~

~~B) For soil remediation objectives:~~

~~i) Following site classification under this Part, sampling points shall be located on the site in areas where concentrations of indicator contaminants exceeded remediation objectives.~~

~~ii) Compliance with soil remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.~~

~~4) Where an engineered barrier has been relied upon to achieve compliance with remediation objectives developed under Section 732.408, compliance shall be determined based on approval by the Agency of the sufficiency of the engineered barrier.~~

c) The owner or operator is not required to perform corrective action on an adjoining or off-site property to meet the requirements of this Section, even where complete performance of the corrective action plan under (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411 of this Part.

~~c~~d) In developing the corrective action plan, if the Licensed Professional Engineer selects soil or groundwater remediation, or both, to satisfy any of the criteria set forth in subsection (b) of this Section, remediation objectives shall be determined

in accordance with Section 732.408 of this Part. Groundwater monitoring wells shall satisfy the requirements of Section 732.307(j)(3) and (4) of this Part.

~~d~~e) Except where provided otherwise pursuant to Section 732.312 of this Part, in developing the corrective action plan, additional investigation activities beyond those required for the site evaluation and classification may be necessary to determine the full extent of soil or groundwater contamination and of threats to human health or the environment. Such activities may include, but are not limited to, additional soil borings with sampling and analysis or additional groundwater monitoring wells with sampling and analysis. Such activities as are technically necessary and consistent with generally accepted engineering practices may be performed without submitting a work plan or receiving prior approval from the Agency, and associated costs may be included in a High Priority corrective action budget plan. A description of these activities and the results shall be included as a part of the corrective action plan.

~~e~~f) The owner or operator shall submit the corrective action plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a corrective action plan budget also shall be submitted to the Agency for review. The corrective action plan budget shall include a line item estimate of all costs associated with the implementation and completion of the corrective action plan. The corrective action plan and corrective action plan budget shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

~~f~~g) Within 30 days after completing the performance of the High Priority corrective action plan, the owner or operator shall submit to the Agency a corrective action completion report in accordance with Section 732.409 of this Part.

~~g~~h) Within 120 days, the Agency shall review the corrective action completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval by the Agency.

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

Section 732.405 Plan Submittal and Review

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

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. Any action by the Agency to require a revised corrective action plan pursuant to this subsection shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

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

Section 732.406 Deferred Corrective Action; Priority List for Payment

a) An *owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the underground storage tank fund may elect to defer site classification, low priority groundwater monitoring, or remediation activities until funds are available in an amount equal to the amount approved in the budget plan* if the requirements of subsection (b) of this Section are met~~.~~ ~~(Section 57.8(b) of the Act)~~ [415 ILCS 5/57.8(b)]

1) Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.

2) The Agency shall monitor the availability of funds to determine whether sufficient resources exist to provide payment approved budget plans and shall provide notice to owners or operators of the availability of funds in accordance with ~~Section~~subsection 732.503~~(h)~~(g) of this Part. Funds shall not be deemed available for owners or operators electing to defer corrective action so long as there are owners or operators on the priority list established pursuant to ~~Section~~subsection 732.603(d) of this Part awaiting forwarding of vouchers to the Office of the State Comptroller.

3) Upon receiving written notification that an owner or operator elects to defer corrective action until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment and move up based solely on the date the Agency receives the written election of deferral, with the earliest dates having the highest priority. The Agency's record of the date of receipt shall be deemed conclusive, unless a contrary date is proven by a dated, signed receipt from registered or certified mail.

4) As funds become available, the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the

owner's or operator's site. After such notification the owner or operator shall commence corrective action.

5) Authorization of payment of encumbered funds for deferred corrective action activities shall be approved in accordance with the requirements of Subpart F of this Part.

6) The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred site classification pursuant to Section 732.306 of this Part with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.

b) An owner or operator who elects to defer site classification, low priority groundwater monitoring, or remediation activities under subsection (a) of this Section shall submit a report certified by a Licensed Professional Engineer demonstrating the following:

1) The early action requirements of Subpart B of this Part have been met; and

2) The release does not pose a threat to human health or the environment through migratory pathways following the investigation of migration pathways requirements of ~~Section~~subsection 732.307(g) of this Part.

c) An owner or operator may withdraw the election to commence corrective action upon the availability of funds at any time. The Agency shall be notified in writing of the withdrawal. Upon such withdrawal, the owner or operator shall proceed with corrective action in accordance with the requirements of this Part.

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

Section 732.409 Groundwater Monitoring and Corrective Action Completion Reports

a) Within 30 days after completing the performance of a Low Priority groundwater monitoring plan or High Priority corrective plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report or a corrective action completion report.

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

2) The High Priority corrective action completion report shall include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the corrective action plan and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. A High Priority corrective action completion report shall demonstrate the following:

A) For sites submitting a site classification report under Section 732.309 of this Part:

i) Applicable indicator contaminant groundwater objectives are not exceeded at the property boundary line or 200 feet from the UST system, whichever is less, as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

ii) Class III resource groundwater quality standards, for Class III special use resource groundwater within 200 feet of the UST system are not exceeded as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

iii) The release of petroleum does not threaten human health or human safety due to the presence or migration, through natural or manmade pathways, of petroleum in concentration sufficient to harm human health or human safety or to cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

iv) The release of petroleum does not threaten any surface water body; and

v) The release of petroleum does not threaten any potable water supply.

B) For sites submitting a site classification completion report under Section 732.312 of this Part, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 of this Part for any applicable exposure route not excluded from further consideration under Section 732.312 of this Part.

b) The applicable report shall be submitted on forms prescribed and provided by the Agency, and, if specified by the Agency by written notice, in an electronic format, shall be signed by the owner or operator, and shall be accompanied by a certification from a Licensed Professional Engineer, in accordance with subsection (a) of this Section, that the information presented in the applicable report is accurate and complete, that groundwater monitoring or corrective action have been completed in accordance with the requirements of the Act and ~~this~~ Subpart D of this Part, and that no further remediation is required at the site. The owner or operator must sign and submit, with the corrective action completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:

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

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

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

Section 732.411 Off-site Access

a) An owner or operator seeking to comply with the best efforts requirements of subsection 732.404(c) of this Part must demonstrate compliance with the requirements of this Section.

b) In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:

1) Citation to Section 57 of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;

2) That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2(c) of the Act;

3) That, in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or

its consultant will maintain, appropriate insurance and will repair any damage caused by the investigation;

4) If contamination results from a release by the owner or operator, the owner or operator will conduct all associated remediation at its own expense;

5) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release and;

6) A reasonable time to respond to the letter, not less than 30 days.

c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the Corrective Action Completion Report, the following documentation:

1) A sworn affidavit, signed by the owner or operator, identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and

2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.

d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:

1) The physical and chemical characteristics, including toxicity, persistence and potential for migration, of applicable indicator contaminants at the property boundary line;

2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;

3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;

4) The potential effects of residual contamination on nearby surface water and groundwater;

5) The proximity, quality and current and future uses of nearby surface water and groundwater, including setback zones and regulated recharge areas of potable water supply wells;

6) Any known or suspected natural or man-made migration pathways existing in or near the suspected area of off-site contamination;

7) The nature and use of the part of the off-site property that is the suspected area of contamination;

8) Any existing on-site engineered barriers or institutional controls that might have an impact on the area of suspected off-site contamination, and the nature and extent of such impact; and

9) Any other applicable information assembled in compliance with this Part.

e) The Agency shall issue a No Further Remediation letter to an owner or operator subject to this Section and otherwise entitled to such issuance only if the owner or operator has, in accordance with this Section, either completed any requisite off-site corrective action or demonstrated to the Agency's satisfaction an inability to obtain off-site access despite best efforts.

f) The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access is denied.

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

SUBPART E: SELECTION AND REVIEW PROCEDURES FOR PLANS AND REPORTS

Section 732.500 General

a) The Agency shall have the authority to review any plan or report, including any amended plan or report, submitted pursuant to this Part. All such reviews shall be subject to the procedures set forth in the Act and ~~this~~ Subpart E of this Part.

b) For purposes of this Part ~~732~~, "plan" shall mean:

1) Any physical soil classification or groundwater investigation plan or associated budget plan submitted pursuant to Subpart C of this Part;

2) Any groundwater monitoring plan or associated budget plan submitted pursuant to Subpart D of this Part; or

3) Any site-specific corrective action plan or associated budget plan submitted pursuant to Subpart D of this Part.

c) For purposes of this Part ~~732~~, "report" shall mean:

1) Any early action report or free product removal report submitted pursuant to Subpart B of this Part;

2) Any site classification completion report submitted pursuant to Subpart C of this Part;

3) Any annual groundwater monitoring report submitted pursuant to Subpart D of this Part;

4) Any groundwater monitoring completion report submitted pursuant to Subpart D of this Part; or

5) Any corrective action completion report submitted pursuant to Subpart D of this Part or Sections 732.300(b) or 732.400(b) ~~or of this Part.~~

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

Section 732.501 Submittal of Plans or Reports

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

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

Section 732.503 Full Review of Plans or Reports

a) In addition to the completeness review for plans conducted pursuant to Section 732.502 of this Part, the Agency may conduct a full review of plans or reports selected in accordance with the requirements of Section 732.504 of this Part. A full review may include any or all technical or financial information, or both, relied upon by the owner or operator or Licensed Professional Engineer or Licensed Professional Geologist in developing the plan or report selected for review. The full review also may include the review of any other plans or reports submitted in conjunction with the site.

b) The Agency shall have the authority to approve, reject or require modification of any plan or report that has been given a full review. The Agency shall notify the owner or operator in writing of its final action on any such plan or report, except in the case of 20 day, 45 day or free product reports, in which case no notification is necessary. Except as provided in subsections (~~c~~d) and (~~d~~e) of this Section, if the Agency fails to notify the owner or operator of its final action on a plan or report within 120 days after the receipt of a plan or report, the owner or operator may deem the plan or report rejected by operation of law~~, except in the case of 20 day, 45 day or free product reports, in which case no notification is necessary~~. If the Agency rejects a plan or report or requires modifications, the written notification shall contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete the full review;

2) An explanation of the Sections of the Act or regulations that may be violated if the plan or report is approved; and

3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the plan or report is approved.

c) ~~d)~~ For High Priority corrective action plans submitted by owners or operators not seeking reimbursement from the Fund, the Agency may delay final action on such plans until 120 days after it receives the corrective action completion report required pursuant to Section 732.409 of this Part.

d) ~~e)~~ An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete plan or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 60 days.

e) ~~f)~~ The Agency shall mail notices of final action on plans or reports by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.

f) ~~g)~~ Any action by the Agency to reject or require modification, or rejection by failure to act, of a plan or report shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, a revised plan or report shall be submitted to the Agency within 35 days after the receipt of the Agency's written notification. If no revised plan or report is submitted to the Agency or no appeal to the Board filed within the specified time frames, the plan or report shall be deemed approved as modified by the Agency. If any plan or report is rejected by operation of law, in lieu of an immediate appeal to the Board the owner or operator may either resubmit the plan or report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.

g) ~~h)~~ Notification of Selection for Full Review

1) Owners or operators submitting plans shall be notified by the Agency within 60 days ~~from~~after the date the plan is deemed complete if the plan has not been selected for full review in accordance with Section 732.504 of this Part. Failure of the Agency to so notify the owner or operator shall mean that the plan has been selected for full review. Notification by the Agency that the plan has not been selected for full review shall constitute approval of the plan.

2) Owners or operators submitting reports shall be notified by the Agency within 60 days after the receipt of the report if the report has not been selected for full review in accordance with Section 732.504 of this Part,

except in the case of 20 day, 45 day or free product reports, in which case no notification of selection is necessary. Failure of the Agency to so notify the owner or operator shall mean that the report has been selected for full review. Notification by the Agency that the report has not been selected for full review shall constitute approval of the report.

3) Notice shall be sent and the date of notification shall be computed in accordance with subsection (e) of this Section.

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

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

SUBPART F: PAYMENT OR REIMBURSEMENT

Section 732.601 Applications for Payment

a) An owner or operator seeking payment from the Fund shall submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The owner or operator may submit an application for partial payment or final payment for materials, activities or services contained in an approved budget plan. An application for payment also may be submitted for materials, activities or services for early action conducted pursuant to Subpart B of this Part and for which no budget plan is required.

b) A complete application for payment shall consist of the following elements:

1) A certification from a Licensed Professional Engineer 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 of this Part;

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.

~~c~~d) 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.

~~d~~e) Applications for partial or final payment may be submitted no more frequently than once every 90 days.

~~e~~f) 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.

~~f~~g) In no case shall the Agency authorize payment to an owner or operator in ~~an amount~~amounts greater than the ~~amount~~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.

~~g~~h) 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 732.602 Review of Applications for Payment

a) The Agency shall conduct a review of any application for payment submitted pursuant to this Part ~~732~~. Each application for payment shall be reviewed to

determine whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part and whether the amounts sought for payment have been certified in accordance with Section 732.601(b)(2) of this Part as equal to or less than the amounts approved in the corresponding budget plan. Any action by the Agency pursuant to this subsection shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

b) The Agency may conduct a full review of any application for payment:

1) If the amounts sought for payment exceed the amounts approved in the corresponding budget plan;

2) If the Agency has reason to believe that the application for payment is fraudulent; or

3) If the application for payment includes costs for early action activities conducted pursuant to Subpart B of this Part and either of the following circumstances exist:

A) The application for payment is solely for early action costs that have not been approved as part of a prior budget plan; or

B) The application for payment includes early action costs that have not been approved as part of a prior budget plan, except that only the portion of the application for the unapproved early action costs may be given a full review.

c) When conducting a full review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (d) of this Section.

d) A full review of an application for payment shall be sufficient to determine which line items contained in the application for payment have caused the application for payment to exceed the corresponding approved budget plan pursuant to subsection (b)(1) of this Section, which line items, if any, are ineligible for payment pursuant to subsection (b)(2) or (b)(3) of this Section, and whether there is sufficient documentation to demonstrate that line items have been completed in accordance with a plan approved by the Agency . A full review may include review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The full review also may include the review of any plans or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

e) Following a review, the Agency shall have the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency shall notify the owner or operator in writing of its final action on any such application for payment. Except as provided in subsection (f) of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment ~~rejected~~ approved by operation of law. If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification shall contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete the full review;

2) An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and

3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.

f) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete application for payment by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 30 days.

g) The Agency shall mail notices of final action on applications for payment by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. The Agency shall mail notices of final action on applications for payment, and direct the Comptroller to mail payments to the owner or operator, at the address designated for receipt of payment in the application for payment or on a change of address form, provided by the Agency, submitted subsequent to submittal of the application for payment.

h) Any action by the Agency to deny payment for an application for payment or portion thereof or to require modification shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, a revised application for payment shall be submitted to the Agency within 35 days after the receipt of the Agency's written notification. If no revised application for payment is submitted to the Agency or no appeal to the Board is filed within the specified time frames, the application for payment shall be deemed approved as modified by the Agency and payment shall be authorized in the amount approved.

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

Section 732.603 Authorization for Payment; Priority List

a) Within 60 days after notification ~~of~~ to an owner or operator that the application for payment or a portion thereof has been approved by the Agency or by operation of law, the Agency shall forward to the Office of the State Comptroller in accordance with subsection (~~c~~d) or (~~d~~e) of this Section a voucher in the amount approved. If the owner or operator has filed an appeal with the Board of the Agency's final decision on an application for payment, the Agency shall have 60 days ~~from~~after the final resolution of the appeal to forward to the Office of the State Comptroller a voucher in the amount ordered as a result of the appeal. Notwithstanding the time limits imposed by this Section, the Agency shall not forward vouchers to the Office of the State Comptroller until sufficient funds are available to issue payment.

b) The following rules shall apply regarding deductibles:

1) Any deductible, as determined by the OSFM or the Agency, shall be subtracted from any amount approved for payment by the Agency or by operation of law~~.~~;

2) Only one deductible shall apply per occurrence;

3) If multiple incident numbers are issued for a single site in the same calendar year, only one deductible shall apply for those incidents, even if the incidents relate to more than one occurrence; and

4) Where more than one deductible determination is made, the higher deductible shall apply.

c) The Agency shall instruct the Office of the State Comptroller to issue payment to the owner or operator at the address designated in accordance with subsection 732.601(b)(8) of this Part. In no case shall the Agency authorize the Office of the State Comptroller to issue payment to an agent, designee, or entity who has conducted corrective action activities for the owner or operator.

~~c)~~d) For owners or operators who have deferred site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, payment shall be authorized from funds encumbered pursuant to ~~Section~~subsection 732.306(a)(4) or 732.406(a)(4) of this Part upon approval of the application for payment by the Agency or by operation of law.

~~d)~~e) For owners or operators not electing to defer site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, the Agency shall form a priority list for payment for the issuance of vouchers pursuant to subsection (a) of this Section.

1) All such applications for payment shall be assigned a date that is the date upon which the complete application for partial or final payment was received by the Agency. This date shall determine the owner or operator's

priority for payment in accordance with subsection (d)(2) of this Section, with the earliest dates receiving the highest priority.

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

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

Section 732.605 Eligible Costs

a) Types of costs that may be eligible for payment from the Fund include those for corrective action activities and for materials or services provided or performed in conjunction with corrective action activities. Such activities and services may include but are not limited to:

1) Early action activities conducted pursuant to Subpart B of this Part;

2) Engineering and geology oversight services;

3) Remedial investigation and design;

4) Feasibility studies;

5) Laboratory services necessary to determine site classification and whether the established corrective action objectives have been met;

6) Installation and operation of groundwater investigation and groundwater monitoring wells;

7) The removal, treatment, transportation and disposal of soil contaminated by petroleum at levels in excess of the established corrective action objectives;

8) The removal, treatment, transportation and disposal of water contaminated by petroleum at levels in excess of the established corrective action objectives;

9) The placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established corrective action objectives;

10) Groundwater corrective action systems;

11) Alternative technology;

12) Recovery of free phase petroleum from groundwater;

13) The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the Office of State Fire Marshal,;

14) Costs incurred as a result of a release of petroleum because of vandalism, theft or fraudulent activity by a party other than an owner, operator or agent of an owner or operator;

15) Engineering costs associated with seeking payment or reimbursement from the Fund including, but not limited to, completion of an application for partial or final payment;

16) Costs associated with obtaining an Eligibility and Deductibility Determination from the OSFM or the Agency;

17) Costs for destruction and replacement of concrete, asphalt and paving to the extent necessary to conduct corrective action and if the destruction and replacement has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer;

18) The destruction or dismantling and reassembly of above grade structures in response to a release of petroleum if such activity has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer. For purposes of this subsection, destruction, dismantling or reassembly of above grade structures does not include costs associated with replacement of pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies; and

19) Preparation of site classification plans (including physical soil classification and groundwater investigation plans) and associated budget plans, site classification reports, groundwater monitoring plans and associated budget plans, groundwater monitoring completion reports, High Priority corrective action plans and associated budget plans, and High Priority corrective action completion reports.

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

(Source: Amended at ___ 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) of this Part;

b) Costs or losses resulting from business interruption;

c) Costs incurred as a result of vandalism, theft or fraudulent activity by the owner or operator or agent of an owner or operator including the creation of spills, leaks or releases;

d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies, including but not limited to those structures destroyed or damaged during corrective action activities;

e) *Costs of corrective action or indemnification incurred by an owner or operator prior to July 28, 1989* ~~(Section 57.8(j) of the Act)~~ [415 ILCS 5/57.8(j)];

f) Costs associated with the procurement of a generator identification number;

g) *Legal defense costs* including *legal costs for seeking payment under* these regulations *unless the owner or operator prevails before the Board* and the Board authorizes payment of legal fees ~~(Section 57.8(l) of the Act)~~ [415 ILCS 5/57.8(l)];

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;

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~~ subsection 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~~ subsection 732.400(b) or (c) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;

bb) Costs of alternative technology that exceed the costs of conventional technology;

cc) Costs for investigative activities and related services or materials for developing a High Priority corrective action plan that are unnecessary or inconsistent with generally accepted engineering practices or unreasonable costs for justifiable activities, materials or services;

dd) Costs to prepare site classification plans and associated budget plans under Section 732.305 of this Part, to perform site classification under Section 732.307 of this Part, or to prepare site classification completion reports under Section 732.309 of this Part, for sites where owners or operators have elected to classify under Section 732.312 of this Part;

ee) Costs to prepare site classification plans and associated budget plans under Section 732.312 of this Part, to perform site classification under Section 732.312 of this Part, or to prepare site classification completion reports under Section 732.312 of this Part, for sites where owners or operators have performed classification activities under Sections 732.305, 732.307, or 732.309 of this Part;

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 subsection 732.310(i)(2) of this Part;

ll) Handling charges for subcontractors costs that have been billed directly to the owner or operator;

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 _____)

Section 732.607 Payment for Handling Charges

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

SUBCONTRACT OR FIELD ~~A~~ PURCHASE COST:	*ELIGIBLE HANDLING CHARGES AS A PERCENTAGE OF COST:*
$0 -$5,000	*12%*
$5,001 -$15,000	*$600 PLUS 10% OF AMOUNT OVER $5,000*
$15,001 -$50,000	*$1,600 PLUS 8% OF AMOUNT OVER $15,000*
$50,001 -$100,000	*$4,400 PLUS 5% OF AMOUNTOVER $50,000*
$100,000 - $1,000,000	*$6,900 PLUS 2% OF AMOUNT OVER $100,000* ~~(Section 57.8(g) of the Act)~~ [415 ILCS 5/57.8 (f)]:

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

Section 732.609 Subrogation of Rights

Payment of any amount from the fund for corrective action or indemnification shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or ~~indemnification~~indemnification for which the fund has compensated such owner, operator, or person from the person responsible or liable for the release~~. (Section 57.8(h) of the Act)~~ [415 ILCS 5/57.8(h)].

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

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section 732.701 Issuance of a No Further Remediation Letter

a) Upon approval by the Agency of a No Further Action site classification report, a Low Priority groundwater monitoring completion report, or a High Priority corrective action completion report, the Agency shall issue to the owner or operator a No Further Remediation Letter. The No Further Remediation Letter shall have the legal effect prescribed in Section 57.10 of the Act. The No Further Remediation Letter shall be denied if the Agency rejects or requires modification of the applicable report.

b) The Agency shall have 120 days ~~from~~after the date of receipt of a complete report to issue a No Further Remediation Letter and may include the No Further Remediation Letter as part of the notification of approval of the applicable report in accordance with Subpart E of this Part. If the Agency fails to send the No Further Remediation Letter within 120 days, it shall be deemed denied by operation of law.

c) The notice of denial of a No Further Remediation Letter by the Agency may be included with the notification of rejection or modification of the applicable report. The reasons for the denial shall be stated in the notification. The denial shall be considered a final determination appealable to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for a No Further Remediation Letter is denied by operation of law, in lieu of an immediate repeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.

d) The Agency shall mail the No Further Remediation Letter by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the postmarked date that the letter is mailed.

e) The Agency at any time may correct errors in No Further Remediation Letters that arise from oversight, omission or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency shall mail the corrected letter to the owner or operator as set forth in subsection (c) of this Section. The corrected letter shall be perfected by recording in accordance with the requirements of Section 732.703.

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

Section 732.702 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, or, for purposes of subsection 732.703(d) of this Part, other means sufficient to identify site location with particularity;

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)~~ [415 ILCS 5/57.10(c)]

e) The prohibition under Section 732.703(e) ~~(c)~~of this Part 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;

h) The opportunity to request a change in the recorded land use pursuant to Section 732.704(e)~~(c)~~ 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: Added at 21 Ill. Reg. 3617, effective July 1, 1997)

Section 732.703 Duty to Record a No Further Remediation Letter

a) Except as provided in subsections (c) and (d) of this Section, ~~A~~an owner or operator receiving a No Further Remediation Letter from the Agency pursuant to this Subpart G shall submit the letter, with a copy of any applicable institutional controls (as set forth in 35 Ill. Adm. Code 742, Subpart J) proposed as part of a Corrective Action Completion Report, to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title.

b) Except as provided in 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 after 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) of this Part, 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);

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 after 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.

2) Failure to comply with the requirements of this subsection may result in voidance 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 containing any restriction on future land use(s), the Federal Landholding Entity or Entities responsible for the site must enter into 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 the site subject to the 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 the site or sites subject to the 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 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) To perfect a No Further Remediation letter containing no restriction(s) on future land use, the Federal Landholding Entity shall submit the letter 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 it forms a permanent part of the chain of title. The Federal Landholding Entity shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter demonstrating that the recording requirements have been satisfied.

3) 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.

e~~d)~~ At no time shall any site for which a land use limitation has been imposed as a result of corrective action under this Part be used in a manner inconsistent with the land use limitation set forth in the No Further Remediation Letter.~~unless further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use and a new letter is obtained and recorded in accordance with this Part.~~ The land use limitation specified in the No Further Remediation Letter may be revised only by the perfecting 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;

4) Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based which:

   A) were not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based;

   B) results in the following:

      i) the site no longer satisfying the criteria of a No Further Action site classification.

      ii) the site no longer satisfying the criteria of a Low Priority site classification.

      iii) failing to meet the remedial objectives established for a High Priority site; and

   C) pose a threat to human health or the environment;

5) ~~Failure to record the No Further Remediation Letter in accordance with Section 732.703~~ Upon lapse of the 45 day period for perfection of the No Further Remediation Letter for recording, the failure to perfect the No Further Remediation Letter; ~~or~~

~~5)~~6) Disturbance or removal of contamination left in place under an approved plan;

7) The failure to comply with the requirements of Section 732.703(c) and 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;

9) The failure to comply with the requirements of Section 732.703(d) of this Part or 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) 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 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 _____)

Section 732.APPENDIX A Indicator Contaminants

TANK CONTENTS	INDICATOR CONTAMINANTS
GASOLINE	Benzene
leaded(1), unleaded, premium and gasohol	Ethylbenzene
	Toluene
	Xylene
	Methyl tertiary butyl ether (MTBE)
MIDDLE DISTILLATE AND HEAVY ENDS	
aviation turbine fuels(1)	Benzene
jet fuels	ethylbenzene
	toluene
	xylene
diesel fuels	acenaphthene
gas turbine fuel oils	anthracene
heating fuel oils	benzo(a)anthracene
illuminating oils	benzo(a)pyrene
Kerosene	benzo(b)fluoranthene
Lubricants	benzo(k)fluoranthene
liquid asphalt and dust laying oils	chrysene
cable oils	dibenxo(a,h)anthrancene
crude oil, crude oil fractions	fluoranthene
petroleum feedstocks	fluorene
petroleum fractions	indeno(1,2,3-c,d)pyrene
heavy oils	napthalene
transformer oils(2)	pyrene
hydraulic fluids(3)	other non-carc.PNAs(total)(6)
petroleum spirits(4)	
mineral spirits(4), Stoddard solvents(4)	
high-flash aromatic naphthas(4)	
VM&P naphthas(4)	
moderately volatile hydrocarbon solvents(4)	
petroleum extender oils(4)	
USED OIL	screening sample(5)

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

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

Section 732.Appendix B Additional Parameters

Volatiles

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

Base/Neutrals

1. Bis(2-chloroethyl)ether
2. Bis(2-ethylhexyl)phthalate
3. 1,2-Dichlorobenzene
4. 1,4-Dichlorobenzene
5. Hexachlorobenzene
6. Hexachlorocyclopentadiene
7. *n*-Nitrosodi-*n*-propylamine
8. *n*-Nitrosodiphenylamine

9. 1,2,4-Trichlorobenzene

Polynuclear Aromatics

1. Acenaphthene
2. Anthracene
3. Benzo(a)anthracene
4. Benzo(a)pyrene
5. Benzo(b)fluoranthene
6. Benzo(k)fluoranthene
7. Chrysene
8. Dibenzo(a,h)anthracene
9. Fluoranthene
10. Fluorene
11. Indeno(1,2,3-c,d)pyrene
12. Naphthalene
13. Pyrenep

Other Non-Carcinogenic PNAs (total)

14. Acenaphthylene
15. Benzo(g,h,i)perylene
16. Phenanthrene

Metals (total inorganic and organic forms)

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

Acids

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

Pesticides

1. Aldrin
2. alpha-BHC
3. Chlordane
4. 4,4'-DDD
5. 4,4'-DDE
6. 4,4-DDT
7. Dieldrin
8. Endrin
9. Heptachlor
10. Heptachlor epoxide

11. Lindane (gamma-BHC)
12. Toxaphene

Polychlorinated Biphenyls
1. Polychlorinated Biphenyls (as Decachlorobiphenyl)

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

Section 732.Appendix C Backfill Volumes and Weights

Volume of Tank in Gallons	Maximum amount of backfill material to be removed in: cubic yards ~~in place~~	tons	Maximum amount of backfill material to be replaced in: cubic yards ~~in place~~	tons
<285	54	91	56	94
285 to 299	55	92	57	96
300 to 559	56	94	58	97
560 to 999	67	113	70	118
1000 to 1049	81	136	87	146
1050 to 1149	89	150	96	161
1150 to 1999	94	158	101	170
2000 to 2499	112	188	124	208
2500 to 2999	128	215	143	240
3000 to 3999	143	240	161	270
4000 to 4999	175	294	198	333
5000 to 5999	189	318	219	368
6000 to 7499	198	333	235	395
7500 to 8299	206	346	250	420
8300 to 9999	219	368	268	450
10,000 to 11,999	252	423	312	524
12,000 to 14,999	286	480	357	600
≥15,000 ~~to 19999~~	345	580	420	706

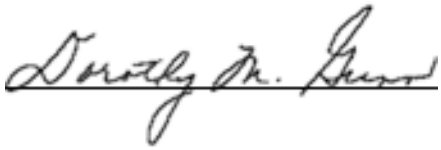
Site specific information may be used to determine the weight of backfill material if site conditions such as backfill material, soil moisture content, and soil conditions differ significantly from the default values.

BOARD NOTE; The weight of backfill material is calculated by using the default bulk density values listed in the TACO regulations at 35 Ill. Adm. Code 742, Appendix C, Table B. The weight of backfill material to be removed is based on a dry bulk density value of 1.8 g/cm^3 for sand and a moisture content of 10 percent which equals 1.98 g/cm^3. The Board has rounded the removed backfill density to 2.0 g/cm^3. The weight of backfill material to be replaced is based on a dry bulk density value of 2.0 g/cm^3 for gravel.

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

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 1, 2001, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board