

ILLINOIS POLLUTION CONTROL BOARD

November 1, 2001

IN THE MATTER OF: )  
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SITE REMEDIATION PROGRAM:     ) R01-27  
AMENDMENTS TO 35 ILL. ADM. CODE ) (Rulemaking – Land)  
740                       )  

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IN THE MATTER OF:             )  
                          )  
SITE REMEDIATION PROGRAM:     ) R01-29  
PROPOSED 35 ILL. ADM. CODE     ) (Rulemaking – Land)  
740.SUBPART H (PUBLIC SCHOOLS) ) (Consolidated)

Proposed Rule. First Notice.

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

On January 12, 2001, the Illinois Environmental Protection Agency (Agency) filed a proposal to amend 35 Ill. Adm. Code 740 of the Board's land regulations, commonly referred to as the Site Remediation Program (SRP) rules. The Board accepted this matter for hearing on January 18, 2001. *See Site Remediation Program: Amendments to 35 Ill. Adm. Code 740, R01-27.*

The amendments proposed by the Agency are intended to update and clarify the SRP rules that were originally adopted by the Board in Site Remediation Program (Brownfields) and Groundwater Quality (35 Ill. Adm. Code 740 and 35 Ill. Adm. Code 620), R97-11 (June 5, 1997). The SRP rules establish a voluntary program that participants may use to investigate releases and clean up contaminated sites. The SRP regulations give participants the opportunity to obtain Agency approval of remediation costs before applying for environmental remediation tax credits for the cleanup. The amendments proposed in this first-notice opinion and order are based on the experience gained by the Agency in administering the rules for over three years.

Consolidated with the Agency's proposal is a January 26, 2001 proposal filed by the Citizens for a Better Environment (CBE). CBR originally proposed amending the SRP rules by adding a new Subpart H, relating to schools, public parks, and playgrounds. The Board accepted CBE's proposal for hearing on February 1, 2001. *See Site Remediation Program: Proposed 35 Ill. Adm. Code 740.Subpart H (Schools, Public Parks, and Playgrounds), R01-29.* In that same February 1, 2001 order, the Board consolidated the two SRP-related rulemakings.

By today's action, and pursuant to the Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (2000)), the Board adopts the two rulemaking proposals with the modifications set forth herein for first notice. The proposed amendments will be published in the *Illinois Register*,

whereupon a 45-day public comment period will begin. During the public comment period, any interested persons may file written public comments with the Board pertaining to this proposal.

### **PROCEDURAL HISTORY**

Following receipt of the rulemaking proposals described above, the Board scheduled and held two public hearings. The first hearing was held in Springfield on February 28, 2001. The second hearing was held in Chicago on April 4, 2001. During the hearings, information was sought regarding both the substance of the proposed amendments and the economic impact of the proposed amendments, including the Illinois Department of Commerce and Community Affairs' (DCCA) decision to not provide an economic impact study.

At the February 28, 2001 hearing, the Agency presented testimony from the following witnesses: Lawrence Eastep, Manager of the Remedial Project Management Section of the Agency's Bureau of Land; Gregory Dunn, Manager of a Site Remediation Program Unit in the Agency's Bureau of Land; and Gary King, Manager of the Division of Remediation Management in the Agency's Bureau of Land. Also testifying during the February 28, 2001 hearing was Abigail Jarka, a Registered Professional Engineer working for CBE.

During the April 4, 2001 hearing, Ms. Jarka and Stefan Noe testified on behalf of CBE. On behalf of the Agency, Mr. Eastep and Mr. Dunn testified. Harry Walton presented testimony on behalf of the Site Remediation Advisory Committee (SRAC) and the Illinois Environmental Regulatory Group (IERG). Lynn Crivello testified on behalf of Consoer, Townsend & Envirodyne Engineers. On behalf of the federal government, Richard Butterworth, Senior Assistant General Counsel in the Office of General Counsel, General Service Administration, and Georgia Vlahos, Counsel to the Commander of the Navy Training Center (Great Lakes), provided testimony. Also providing testimony was Bruce Bonczyk, on behalf of the Illinois Society of Professional Engineers and the Consulting Engineers Council of Illinois.

The following exhibits were offered into the record for R01-27 at hearing:

<u>Exhibit No.</u>	<u>Exhibit Name</u>
Exh. 1	Prefiled Testimony of Lawrence W. Eastep
Exh. 2	Prefiled Testimony of Gregory W. Dunn
Exh. 3	Prefiled Testimony of Richard R. Butterworth, Jr.
Exh. 4	Prefiled Testimony of Georgia Vlahos
Exh. 5	Memorandum for Assistant Secretary of the Army, Installations and Environment; Assistant Secretary of the Navy, Installations and Environment; Assistant Secretary of the Air Force, Manpower Reserve Affairs, Installations and Environment;

Director, Defense Logistics Agency (Jan. 17, 2001)

Exh. 6	Prefiled Testimony of Harry R. Walton
Exh. 7	Memorandum of Agreement between Illinois Environmental Protection Agency and Illinois Department of Transportation
Exh. 8	Prefiled Testimony of Gregory W. Dunn

The following exhibits were offered into the record for R01-29 at hearing:

<u>Exhibit No.</u>	<u>Exhibit Name</u>
Exh. 1	Prefiled Testimony of Abigail Jarka
Exh. 2	Prefiled Testimony of Abigail Jarka
Exh. 3	Community Relations in the Site Remediation Program, Guidance for Fulfilling 415 ILCS 5/58.7(h) Community Relations and Site Remediation (June 1996)
Exh. 4	Community Relations in the Site Remediation Program, Guidance for Fulfilling 415 ILCS 5/58.7(h) Community Relations and Site Remediation (No Date)
Exh. 5	Prefiled Testimony of Harry R. Walton
Exh. 6	Memorandum of Understanding between Illinois Environmental Protection Agency and the City of Chicago, Department of Environment (Oct. 6, 1999)
Exh. 7	Chart - Schools in the Site Remediation Program (March 22, 2001)

Public comments were also filed following the April 4, 2001 hearing. Public comments were filed in R01-27 as follows:

<u>Public Comment No.</u>	<u>Comment</u>
PC 1	Agency's Motion to Amend Original Agency

Proposal and Testimony of Gregory W. Dunn  
Supporting Agency's Proposed Revisions to  
Section 740.415(d)(3)

PC 2	Motion to Oppose Certain Proposed Amendments to the Agency's Proposal to Amend 35 Ill. Adm. Code 740 and a Memorandum of Law in Support thereof
PC 3	Public Comments of Bruce S. Bonczyk in Opposition to Certain Proposed Amendments of the Agency's Proposal to Amend 35 Ill. Adm. Code 740
PC 4	Agency's Post-Hearing Comments
PC 5	Comments of the Chicago Department of Environment
PC 6	Post-Hearing Comments of IERG

The following public comments were filed in R01-29:

<u>Public Comment No.</u>	<u>Comment</u>
PC 1	CBE's April 2, 2001 Amended Proposal
PC 2	CBE's May 1, 2001 Amended Proposal

**PROPOSED AMENDMENTS (R01-27)**

The Agency proposes amendments to the SRP regulations in order to clarify and refine the rules based on the experience gained in administering the program since the Board's adoption of it in 1997. PC 1 at 1.

**Soil Management Zone**

One of the most significant items included in the proposed amendments is the creation, in proposed Section 740.535, of a Soil Management Zone (SMZ) within a site under the SRP. The purpose of an SMZ is to provide for the development of approvable on-site solutions to on-site contamination without violating solid waste disposal rules. Pursuant to proposed Section 740.535, SMZs may include, but are not limited to: (1) placement of contaminated soils for structural fill or land reclamation; (2) consolidation of contaminated soils within a remediation site; and (3) removal and re-deposit of contaminated soils within the remediation site.

In general, it appears that the regulated community supports the proposed creation of SMZs. For example, David Rieser, from the law firm of Ross & Hardies, stated that, “as a member of the Site Remediation Advisory Committee, the Board should understand that the Advisory Committee is very much in favor of the [SMZ] concept.” Tr. (2/28/01) at 19. There are, however, several areas where concerns still exist. They include: (1) a prohibition on soil placement; and (2) the lack of a definition for “soil.”

Proposed Section 740.535(b)(8)(A) and (B) prohibits certain placement of soil within an SMZ. It provides:

- 8) Soil containing contaminants of concern above the concentration in 35 Ill. Adm. Code 742.Appendix B: Table A (Tier 1 objectives for residential properties) or approved by the Agency pursuant to 35 Ill. Adm. Code 742.510(c) may not be:
  - A) Treated or placed in any area where all contaminants of concern within the remediation site are at or below the concentrations in 35 Ill. Adm. Code 742.Appendix B: Table A (Tier 1 objectives for residential properties) or approved by the Agency pursuant to 35 Ill. Adm. Code 742.510(c); or
  - B) Treated or placed closer to any residential property contiguous to the remediation site. Proposed 35 Ill. Adm. Code 740.535(b)(8)(A), (B).

In his prefilled testimony, Lawrence Eastep stated that the prohibition in subsection (A) was intended to “prevent degradation of any area currently suitable for residential development, even when such areas are located on commercial properties (*i.e.*, currently ‘clean’ areas would remain clean.)” R01-27 Exh. 1 (Eastep) at 7. When questioned specifically regarding the need for the prohibition in subsection (B), the Agency admitted that the prohibition was intended to address public perception, not actual risk. Tr. (2/28/01) at 30-32. For example, Mr. Eastep stated:

I am not sure it is a matter of risk that is being addressed here. This is as much a matter of public perception and public acceptance of this more than the risk. So we have not done any risk analysis of this.

\* \* \*

[T]he way this is written, regardless of whether you have made a case that there was no incremental risk or no unacceptable risk, and even if the public accepted that, this is a prohibition of creating the Soil Management Zone close to a residential property.

\* \* \*

That prohibition is based upon really a public perception. *Id.*

This proposed prohibition generated controversy during the hearings. For example, Mr. Walton expressed opposition to the prohibition on behalf of SRAC and IERG as follows:

[I]f site conditions dictate it's not an issue, it's not an issue . . . if . . . there is an issue in regards to adjacent residences, the remedial applicant has the opportunity to do a community relations plan to address the issue, the perceptions issues, inform them, let them know if the site conditions dictate [that it is] an issue.

\* \* \*

What I'm saying is delete the section that . . . prohibits moving [contaminated soil] closer to the residents . . . [and] if these are issues let's use community relations to address them. Tr. (4/4/01) at 142-43.

Mr. Rieser also expressed concern regarding the proposed soil movement prohibitions in the SMZ. Mr. Rieser was concerned about the applicability of the prohibitions in the following circumstance:

Another example is with respect to [740.535(b)(8)(B)] if you had . . . a very large industrial site where it was thousands of yards to any residential [area] and you happened to be ten yards closer going one direction and twenty yards closer going in another direction in such a way that no one can say that it really increased the risks for the residential populations at that site. Tr. (2/28/01) at 29.

The Board shares the concerns expressed by members of the regulated community. The Agency's justification for the proposed prohibition against placement of contaminated soil closer to any contiguous residential property is not based on any calculation of actual risk to human health or the environment, but merely on anticipated expectations of public perception. The Board notes that the Tiered Approach to Corrective Action (TACO) standards of 35 Ill. Adm. Code 742 will still apply to the SMZ and that the Board has found those standards to be protective of human health and the environment. Because the proposed prohibition on relocating contaminated soils closer to residential property is not supported by any scientific analysis or evidence in the record, the Board concludes that for this first-notice opinion and order, the prohibition on soil placement originally contained in proposed Section 740.535(b)(8)(B) should be deleted. The Board will retain, however, the prohibition against placement of soil in any area where all contaminants of concern are at or below the TACO Tier 1 objectives for residential properties.

Accordingly, the Board proposes at first notice the following Section 740.535(b)(8):

- 8) Soil containing contaminants of concern above the concentration in 35 Ill. Adm. Code 742.Appendix B: Table A (Tier 1 objectives for residential properties) or approved by the Agency pursuant to 35 Ill. Adm. Code 742.510(c) may not be treated or placed in any area where all contaminants of concern within the remediation site are at or below the concentrations in 35 Ill. Adm. Code 742.Appendix B, Table A (Tier 1 objectives for residential properties) or approved by the Agency pursuant to 35 Ill. Adm. Code 742.510(c).

The Board notes that testimony offered at hearing emphasized the need for a community relations plan that would, in part, foster public acceptance and understanding of the remediation

plans and of the regulatory protections that are in place for the safety of human health and the environment. The Board concludes that an effective community relations plan may alleviate many of the public perception problems anticipated by the Agency.

### **Proposed Definition of Soil**

Another concern raised by IERG and SRAC regarding the proposed SMZ is the lack of a specific definition for “soil.” Both IERG and SRAC favor including a definition of soil in these regulations and urge the Board to adopt the following definition:

Soil means, for the purpose of a soil management zone, contaminated media which meets the requirements of 35 Ill. Adm. Code 742.305, managed pursuant to an Agency-approved remedial action plan. R01-27 Exh. 6 at 4.

Mr. Walton argues that the definition of “soil” is necessary in order to ensure that the development of an SMZ will not be seen as the development of an unpermitted waste disposal facility. R01-27 Exh. 6 at 4. Absent this definition, IERG and SRAC are afraid that the Agency could view soil containing such things as slag, ash, or bits of concrete, as a waste material that would be ineligible for treatment as an SMZ. R01-27 Exh. 6 at 3.

The Agency testified at hearing and reiterated in public comment that it intentionally has not attempted to define “soil” but would rather leave the determination of what constitutes “soil” to a site-specific discussion between itself and the remediation applicant. PC 4 (R01-27) at 5. Furthermore, the Agency maintains that if “soil” was to be defined, it should be in the TACO regulations at 35 Ill. Adm. Code 742, not SRP. *Id.*

While the Board appreciates IERG and SRAC’s attempts to develop a workable definition of “soil,” the Board concludes that defining “soil” may ultimately create more problems than it would solve. For example, remediation activities may be impeded by attempting to define “soil” without regard to specific site factors, such as the type of soil (clay, silt, loam, etc.); the amount of soil; or the amount of waste (slag, ash, general refuse, demolition debris, etc.) in the soil. Furthermore, while the purpose of the SMZ is to provide workable on-site solutions to contamination, the SMZ should not be used as a means for avoiding the proper disposal of materials that should have been landfilled previously.

Accordingly, the Board will not include a definition of “soil” in this proposal. Rather, the Board will rely upon the Agency’s statements that soil will be defined on a case-by-case basis in consultation with the specific site’s remediation application.

### **Laboratory Accreditation**

At proposed Section 740.415(d)(6), the Agency proposes adding a requirement that:

- 6) Effective July 1, 2002, all quantitative analyses of samples collected on or after that date 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. Proposed 35 Ill. Adm. Code 740.415 (d)(6).

The Agency maintains that requiring laboratory accreditation will help ensure that “the data that is coming into the Site Remediation Program is of known and established quality from these labs.” Tr. (2/28/01) at 14. This requirement would establish “laboratory standards for data quality that are compliant with the standards of the National Environmental Laboratory Accreditation Program (NELAP)” operated by the United States Environmental Protection Agency (USEPA). R01-27 Exh. 2 (Dunn) at 4. The Agency testified that, as of January 24, 2001, there were 17 accredited labs in the State. *Id.* Further, the Agency proposed a delayed effective date of July 1, 2002, in order to allow additional laboratories the opportunity to become accredited. In order to allow laboratories ample opportunity to become accredited prior to the effective date of this amendment, the Board is extending the effective date to January 1, 2003.

While raising some questions regarding this proposal during hearing, IERG and SRAC clarified their support for this proposal in public comments. See PC 6 (R01-27) at 1. In its public comment, IERG stated that it supports the proposed laboratory accreditation requirement and believes that it will help ensure that accurate data is provided to the Agency. *Id.*

The Board includes this amendment in the first-notice opinion and order. Requiring laboratory accreditation should, as the Agency maintains, ensure a high quality and reliability of information submitted to the Agency by remedial applicants in the SRP.

### **Licensed Professional Geologists (LPG)**

The Agency proposes amendments that “recognize the role for Licensed Professional Geologists” in SRP. Tr. (2/28/01) at 8. The amendments involve the addition of a definition for “Licensed Professional Geologist” at Section 740.120 and the recognition of the work of LPGs at remediation sites in Section 740.405, 740.410, and 740.425. Specifically, these amendments provide that LPG’s may perform certain remediation site activities that were previously limited to Licensed Professional Engineers (LPEs). Even with the proposed amendment, however, “all plans and reports submitted for review and evaluation still must be prepared by, or under the supervision of, an LPE.” R01-27 Exh.1 (Eastep) at 2-3.

The Agency maintains that changes in Illinois law, namely the adoption of the Professional Geologist Licensing Act, now authorize the amendments proposed in SRP. R01-27 Exh. 1 (Eastep) at 3. The proposed amendments expressly authorize LPGs to perform a number of remediation site activities, but do not “expressly change who is ultimately responsible for plans and reports under the Act.” *Id.*

The Illinois Society of Professional Engineers (ISPE) and the Consulting Engineers Council of Illinois (CECI) oppose these proposed amendments. See PC 2, 3 (R01-27). Bruce Bonczyk testified at hearing in opposition to the amendments. Mr. Bonczyk testified that ISPE and CECI are opposed to the regulations allowing LPGs to perform and supervise specific site remediation activities because they believe there is no statutory authority in the SRP legislation.

Tr. (4/4/01) at 161-62. Specifically, Mr. Bonczyk argues that Section 58.6 of the Environmental Protection Act (Act) (415 ILCS 5/58.6 (2000)) makes no reference to LPGs, and the proposal is, therefore, in conflict with the express language of the Act. Tr. (4/4/01) at 162. Section 58.6 of the Act provides, in pertinent part:

- a. Any RA who proceeds under this Title may elect to seek review and approval for any of the remediation objectives . . . All investigations, plans, and reports conducted or prepared under this Section shall be under the supervision of a Licensed Professional Engineer (LPE) in accordance with the requirements of this Title. 415 ILCS 5/58.6(a) (2000).

Additionally, Section 58.7(f) of the Act (415 ILCS 5/58.7(f) (2000)) requires:

All plans and reports submitted for review shall include a Licensed Professional Engineer's certification that all investigations and remedial activities were carried out under his or her direction and, to the best of his or her knowledge and belief, the work described in the plan or report has been completed in accordance with generally accepted engineering practices, and the information presented is accurate and complete. 415 ILCS 5/58.7(f) (2000).

Sections 58.6 and 58.7 of the Act are silent as to the performance of any remediation site activities by an LPG.

The Board concludes that neither Section 58.6 nor 58.7 of the Act preclude the performance of certain remediation activities by an LPG. However, Sections 58.6 and 58.7 of the Act require that all work, *i.e.*, investigations, plans, and reports, be performed or prepared under the supervision of an LPE. Accordingly, absent a statutory change, LPGs cannot be permitted, in the context of the SRP regulations, to supervise others or to perform unsupervised work themselves.

The general nature of the amendments proposed by the Agency does not conflict with the statutory requirement that LPEs supervise all remediation activities. In fact, the Agency acknowledges that the amendments will, "as a practical matter . . . [mean] that LPGs could conduct site activities only as an employee or under contract to an LPE." R01-27 Exh. 1 (Eastep) at 3. So long as it is an LPE who supervises the work that is performed and the plans and reports that are prepared, the proposed amendments are consistent with the Act.

The Board notes, however, that in order to ensure clarity in the proposed regulations regarding the requirement that all remediation activities be supervised by an LPE, some changes have been made to the Agency's proposed language. First, the Board has revised Section 740.405 to read as follows:

- a) All remediation site activities shall be conducted by, or under the supervision of, a Licensed Professional Engineer (LPE).

- b) To the extent authorized by the Professional Geologist Licensing Act [225 ILCS 745], a Licensed Professional Geologist (LPG) may conduct remediation activities under the supervision of an LPE.
- c) All plans and reports submitted for review and evaluation shall be prepared by, or under the supervision of, an LPE.

The Board has removed the proposed language that would have allowed LPGs to supervise any of the remedial activities.

Next, the Board modified the proposed language in Section 740.410(b)(3) to clarify that it is still the LPE who is responsible for supervising all work performed and all plans and reports prepared with regard to a site undergoing remediation in the SRP. Finally, in Section 740.425, the Agency proposed adding a reference to LPG in subsection (b)(5)(B). The Board has removed that reference from this first-notice opinion and order because, pursuant to Section 58.6 of the Act (415 ILCS 5/58.6 (2000)), only an LPE can be responsible for making the “*de minimus* determination” provided in that subsection.

### **Federal Exemption**

At the April 4, 2001 hearing, representatives of the United States Department of Defense (DoD) testified in support of the exemption from certain recording requirements for federally owned property. The proposed exemption is very similar to that proposed and ultimately adopted by the Board in Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742, R00-19(A) (Dec. 27, 2000).

DoD argues that federal landholding entities lack the ability to deed record land use restrictions for certain federally owned property. Tr. (4/4/01) at 110. Because of their inability to record land use restrictions, DoD proposes entering into a Land Use Control Memorandum of Agreement (LUC MOA) with both the Agency and with the United States Environmental Protection Agency. Tr. (4/4/01) at 111. DoD maintains that the LUC MOA provides sufficient safeguards to ensure the viability of institutional controls. Tr. (4/4/01) at 106. Richard Butterworth testified that:

These safeguards include identification and notice requirements, procedures to ensure ongoing updates are communicated to IEPA, measures to ensure continued compliance with the LUC MOA and advance notification to IEPA of any proposed disposal of a property regulated by an institutional control. *Id.*

In support of the proposed exemption, DoD proposes adding definitions of “Federal Landholding Entity,” “Federally Owned Property,” “GIS,” “GPS,” “Institutional Control,” and “Land Use Control Memorandum of Agreement or LUC MOA.” DoD also proposes revisions to existing language in the definition of “Perfected” and in Sections 740.450, 740.610, 740.620, and 740.625. Finally, DoD proposes an entirely new Section 740.622, which provides the “Requirements for Perfection of No Further Remediation Letters Issued to Federal Landholding Entities Without Authority to Record Institutional Controls.” *See generally* R01-27 Exh. 4.

These revisions would also apply to other federal, non-DoD agencies with similar difficulties in recording deed restrictions. Tr. (4/4/01) at 107.

In post-hearing comments, the Agency expressed its support for the DoD requested exemption and implementation of the LUC MOA. The Agency stated:

The LUC MOA concept, already a part of the TACO [35 Ill. Adm. Code 742] regulations, will be used as the basis for an alternative procedure for perfecting NFR Letters issued to federal landholding entities and containing land use restrictions. Ms. Vlahos and Mr. Butterworth testified to the many safeguards built into the LUC MOAs to ensure that land use restrictions are maintained while the property remains in the possession of the federal landholding entity and that the restrictions are transferred with the property once it passes from federal ownership. PC 5 (R01-27) at 11-12.

The Agency concluded by requesting “that the Board accept the DoD amendments to Part 740.” PC 5 (R01-27) at 12.

Based on the testimony and evidence presented by DoD, and in light of the Agency’s agreement with DoD’s proposal, as well as the Board’s own prior experience with LUC MOA’s in TACO, (*See Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO) (35 Ill. Adm. Code 742)*, R00-19(A) (Dec. 27, 2000)), the Board accepts the exemption proposed by DoD including the use of the agreed upon LUC MOA.

#### **IDOT Memorandums of Understanding**

Similarly, a new section, Section 740.621, was proposed to “address the difficulties of recording NFR Letters or other land use restrictions at certain remediation sites of the Illinois Department of Transportation (IDOT).” R01-27 Exh. 1 (Eastep) at 11. In lieu of recording NFR Letters, IDOT requested and the Agency proposed the IDOT Memorandum of Agreement (MOA). Exh. 7. In support of this proposal, Mr. Eastep testified:

On occasion IDOT encounters contamination in its highway system at sites for which there is no legal description, real estate tax index, or parcel index number. To enable continued use of risk-based remediation criteria, including land use limitations, IDOT has requested and the Agency is proposing that such sites be made subject to Memoranda of Agreement (“MOA”) between IDOT and the Agency. . . . The IDOT MOA would contain all pertinent information about the site and the applicable land use controls. . . . Failure by IDOT to comply with the requirements of the MOA or any violation of an institutional control or other conditions could result in voidance of the NFR Letter. R01-27 Exh. 1 (Eastep) at 11-12.

The proposed IDOT MOA is included in the amendments the Board proposes today for first notice.

## **PROPOSED NEW SUBPART H (R01-29)**

Following its initial submission on January 26, 2001, CBE amended its proposed rule twice. In the first revision, filed with the Board on April 2, 2001, CBE deleted from its proposal regulations pertaining to public parks and playgrounds. Then, on May 1, 2001, CBE further revised its proposal in response to comments raised during hearing. The most recent revision contains regulations pertaining only to remediation sites intended for future use as a public school. The Board has not received any comments to the May 1, 2001 filing.

Overall, CBE seeks to add procedural requirements for ensuring the receipt of a NFR Letter before schools open, maintenance of institutional controls and engineered barriers, and enhanced public participation at remediation sites that will eventually be used as schools. CBE's proposal was prompted by the site remediation that took place at two school sites in Cook County, Illinois: Finkl Academy and Zapata Academy. Tr. (4/4/01) at 16. Both schools were built on contaminated property that was in the process of being remediated under the SRP. Tr. (4/4/01) at 17. At both sites, however, the schools were actually built and opened without notification to the Agency and prior to issuance of an NFR Letter. *Id.* After this was discovered, additional remediation was necessary at both sites before NFR Letters could be issued. *Id.* CBE filed this proposal because it believes that public school sites should be treated differently than other remediation sites in the SRP. *Id.*

Numerous questions were asked of CBE at hearing. Some of the questions addressed CBE's proposed language that the Board will attempt to clarify in this first-notice opinion and order.

### **Interested and Affected Persons**

CBE's proposed Sections 740.815 and 740.825 require a remediation applicant to provide written notice of the site's enrollment in SRP and other specified facts pertaining to the remediation site to "interested and affected persons." *See PC 2 (R01-29) at 4-5.* At hearing, CBE was questioned regarding the definition of "interested and affected persons." *See Tr. (4/4/01) at 27.* In response, CBE suggested that the Agency's guidance on community relations could be used by a remediation applicant to identify "interested and affected persons" might be. Tr. (4/4/01) at 27-28. In order to clarify the availability of this guidance, the Board is adding a reference to the Agency's community relations guidance document in both Section 740.815 and 740.825.

### **Agency Involvement**

Provisions were included in CBE's original and first revised proposals requiring Agency involvement. For example, in the first revised proposal, if a remediation applicant decided to not undertake a community relations plan, then the burden fell on the Agency to do so. *See PC 1 (R01-29) at 3.* Likewise, the original proposal contained provisions whereby the Agency could hold a public hearing concerning the application for a NFR Letter for sites in the SRP with an intended future use as a school.

The Agency questioned the propriety of these and similar provisions which would require the expenditure of Agency resources. Following the April 4, 2001 hearing, CBE and the Agency planned to meet to discuss these provisions. As reflected in the May 1, 2001 amended proposal, CBE deleted from their proposal those amendments that would require the expenditure of Agency resources. The Agency has not commented on the latest proposal. Since this is just a first-notice opinion and order, the Board requests that the Agency, and other interested persons, provide comment on the most recent CBE proposal, as set forth in proposed 35 Ill. Adm. Code 740.Subpart H. Interested persons have an opportunity to comment on this first-notice proposal for 45 days following publication in the *Illinois Register*.

### **Public Act 92-0151**

Relevant to CBE's proposal is the recent enactment of Public Act 92-0151, which amends Section 58.16 of the Act (415 ILCS 5/58.16 (2001)) so as to prohibit, in counties with a population of more than 3,000,000, the occupancy of a school building prior to completion of a remedial action plan required by Board regulations. While Public Act 92-0151 addresses, to some extent, CBE's concerns, it only applies to schools within Cook County. CBE's proposal, if adopted, would apply Statewide. CBE's proposal also contains notification and maintenance requirements not part of Public Act 92-0151.

### **Board Discussion**

The Board commends CBE for its efforts in attempting to secure greater public participation in the construction and operation of public schools on property undergoing remediation in the SRP. The Board adopts CBE's revised proposal in this first-notice opinion and order and invites additional public comment on the proposal during the 45-day public comment period.

### **TECHNICAL FEASIBILITY/ECONOMIC REASONABLENESS**

Section 27(a) of the Environmental Protection Act, requires that in promulgating regulations, the Board "shall take into account . . . the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution." 415 ILCS 5/27(a) (2000).

According to the Agency, there are "[n]o new technical requirements . . . created by the proposed amendments [except for] . . . those updating existing methods and procedures." Stat. of Reas. at 16. Accordingly, the Agency maintains that there are no technical feasibility issues involved in the proposed amendments. *Id.*

Additionally, the Agency maintains that there may be some "marginal increase in costs" for the Agency, the Board, and for those participating in the program. Stat. of Reas. at 16. For example, the Agency may need to revise some of its forms and methods of training and public outreach. *Id.* Since remedial applicants can appeal an Agency determination regarding the SMZ to the Board, the Board may also see an increase in some incidental costs. *Id.* Finally, those participating in the program may also see a slight increase in costs associated with using only

accredited laboratories. *Id.* The Agency notes, however, that the remedial applicants may also experience some cost benefit as a result of their ability to utilize the proposed SMZ. Stat. of Reas. at 17.

The Board notes that remedial applicants may also experience a slight increase in costs as a result of the new requirements proposed as a new Subpart H by CBE. These costs, however, do not appear to be significant and are considered reasonable.

Pursuant to a letter dated January 30, 2001, the Board requested that DCCA conduct an economic impact study related to these proposed amendments. As is the Board's practice, the January 30, 2001 letter contained a provision providing that in the event DCCA failed to respond to the letter within ten days, the Board would rely on a previous letter from DCCA, dated March 10, 2000, in which DCCA expressed its inability to perform the requested economic impact study. DCCA did not respond to the Board's January 30, 2001 letter. Time was reserved during one of the hearings held in this matter to examine the Board's request and DCCA's lack of response, but no testimony was given.

Considering that the majority of the proposed amendments in this first-notice proposal will have little if any actual economic impact on either State agencies or the regulated community, the Board concludes that the proposed amendments are economically reasonable. The Board also finds that the proposed amendments are technically feasible and are largely supported by the regulated community.

## **ORDER**

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

TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE G: WASTE DISPOSAL  
 CHAPTER I: POLLUTION CONTROL BOARD  
 PART 740  
 SITE REMEDIATION PROGRAM

SUBPART A: GENERAL

Section

- 740.100 Purpose
- 740.105 Applicability
- 740.110 Permit Waiver
- 740.115 Agency Authority
- 740.120 Definitions
- 740.125 Incorporations by Reference
- 740.130 Severability

## SUBPART B: APPLICATIONS AND AGREEMENTS FOR REVIEW AND EVALUATION SERVICES

Section	
740.200	General
740.205	Submittal of Application and Agreement
740.210	Contents of Application and Agreement
740.215	Approval or Denial of Application and Agreement
740.220	Acceptance and Modification of Application and Agreement
740.225	Termination of Agreement by the Remediation Applicant (RA)
740.230	Termination of Agreement by the Agency
740.235	Use of Review and Evaluation Licensed Professional Engineer (RELPE)

## SUBPART C: RECORDKEEPING, BILLING AND PAYMENT

Section	
740.300	General
740.305	Recordkeeping for Agency Services
740.310	Request for Payment
740.315	Submittal of Payment
740.320	Manner of Payment

## SUBPART D: SITE INVESTIGATIONS, DETERMINATION OF REMEDIATION OBJECTIVES, PREPARATION OF PLANS AND REPORTS

Section	
740.400	General
740.405	Conduct of Site Activities and Preparation of Plans and Reports by <del>Licensed Professional Engineer (LPE)</del>
740.410	Form and Delivery of Plans and Reports, Signatories and Certifications
740.415	Site Investigation -- General
740.420	Comprehensive Site Investigation
740.425	Site Investigation Report -- Comprehensive Site Investigation
740.430	Focused Site Investigation
740.435	Site Investigation Report -- Focused Site Investigation
740.440	Determination of Remediation Objectives
740.445	Remediation Objectives Report
740.450	Remedial Action Plan
740.455	Remedial Action Completion Report

## SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS

Section	
740.500	General
740.505	Reviews of Plans and Reports
740.510	Standards for Review of Site Investigation Reports and Related Activities

- 740.515 Standards for Review of Remediation Objectives Reports
- 740.520 Standards for Review of Remedial Action Plans and Related Activities
- 740.525 Standards for Review of Remedial Action Completion Reports and Related Activities
- 740.530 Establishment of Groundwater Management Zones
- 740.535 Establishment of Soil Management Zones

**SUBPART F: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS**

- Section
- 740.600 General
- 740.605 Issuance of No Further Remediation Letter
- 740.610 Contents of No Further Remediation Letter
- 740.615 Payment of Fees
- 740.620 Duty to Record No Further Remediation Letter
- 740.621 Requirements for No Further Remediation Letters Issued to Illinois Department of Transportation Remediation Sites Located in Rights-of-Way
- 740.622 Requirements for No Further Remediation Letters Issued to Federal Landholding Entities Without Authority to Record Institutional Controls
- 740.625 Voidance of No Further Remediation Letter

**SUBPART G: REVIEW OF ENVIRONMENTAL REMEDIATION COSTS FOR ENVIRONMENTAL REMEDIATION TAX CREDIT**

- Section
- 740.700 General
- 740.705 Preliminary Review of Estimated Remediation Costs
- 740.710 Application for Final Review of Remediation Costs
- 740.715 Agency Review of Application for Final Review of Remediation Costs
- 740.720 Fees and Manner of Payment
- 740.725 Remediation Costs
- 740.730 Ineligible Costs

**SUBPART H: REQUIREMENTS RELATED TO SCHOOLS**

- Section
- 740.800 General
- 740.805 Requirements Prior to Public Use
- 740.810 Engineered Barriers and Institutional Controls
- 740.815 Public Notice of Site Remedial Action Plan
- 740.820 Community Relations Plan
- 740.825 Fact Sheet

- 740.APPENDIX A Target Compound List
- 740.TABLE A Volatile Organics Analytical Parameters and Required Quantitation Limits

740.TABLE B	Semivolatile Organic Analytical Parameters <del>and Required Quantitation Limits</del>
740.TABLE C	Pesticide and Aroclors Organic Analytical Parameters <del>and Required Quantitation Limits</del>
740.TABLE D	Inorganic Analytical Parameters <del>and Required Quantitation Limits</del>
740.APPENDIX B	Review and Evaluation Licensed Professional Engineer Information

AUTHORITY: Implementing Sections 58 through 58.8 and 58.10 through 58.14 and authorized by Sections 58.5, 58.6, 58.7, 58.11 and 58.14 of the Environmental Protection Act [415 ILCS 5/58 through 58.8 and 58.10 through 58.14].

SOURCE: Adopted in R97-11 at 21 Ill. Reg. 7889, effective July 1, 1997; amended in R98-27 at 22 Ill. Reg. 19580, effective October 26, 1998; amended in R01-27 and R01-29 at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: Capitalization denotes statutory language. ~~In this Part, the abbreviation ug is used to indicate micrograms.~~

#### SUBPART A: GENERAL

##### Section 740.120 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.

"Act" means the Environmental Protection Act [415 ILCS 5/1 *et seq.*].

"Agency" means the Illinois Environmental Protection Agency. [415 ILCS 5/3.01]  
~~"AGENCY" MEANS THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Section 3.01 of the Act)~~

"Agency travel costs" means costs incurred and documented for travel in accordance with 80 Ill. Adm. Code 2800 and 3000 by individuals employed by the Agency. Such costs include costs for lodging, meals, travel, automobile mileage, vehicle leasing, tolls, taxi fares, parking and miscellaneous items.

"Agrichemical facility" means a site on which agricultural pesticides are stored or handled, or both, in preparation for end use, or distributed. The term does not include basic manufacturing facility sites. [415 ILCS 5/58.2] "~~AGRICHEMICAL FACILITY" MEANS A SITE ON WHICH AGRICULTURAL PESTICIDES ARE STORED OR HANDLED, OR BOTH, IN PREPARATION FOR END USE, OR DISTRIBUTED. THE TERM DOES NOT INCLUDE BASIC MANUFACTURING FACILITY SITES (Section 58.2 of the Act)~~

"ASTM" means the American Society for Testing and Materials. [415 ILCS 5/58.2] "~~ASTM" MEANS THE AMERICAN SOCIETY FOR TESTING AND MATERIALS (Section 58.2 of the Act)~~

"Authorized agent" means a person who is authorized by written consent or by law to act on behalf of an owner, operator, or Remediation Applicant.

"Board" means the Pollution Control Board.

"Contaminant of concern" or "*regulated substance of concern*" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. [415 ILCS 5/58.2] "~~REGULATED SUBSTANCE OF CONCERN~~" MEANS ANY CONTAMINANT THAT IS EXPECTED TO BE PRESENT AT THE SITE BASED UPON PAST AND CURRENT LAND USES AND ASSOCIATED RELEASES THAT ARE KNOWN TO THE REMEDIATION APPLICANT BASED UPON REASONABLE INQUIRY (Section 58.2 of the Act)

"Costs" means all costs incurred by the Agency in providing services pursuant to a Review and Evaluation Services Agreement.

"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.

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

"Groundwater management zone" or "GMZ" means a three-dimensional region containing groundwater being managed to mitigate impairment caused by the release of contaminants of concern at a remediation site.

"Indirect costs" means those costs incurred by the Agency which cannot be attributed directly to a specific site but are necessary to support the site-specific activities, including, but not limited to, such expenses as managerial and administrative services, building rent and maintenance, utilities, telephone and office supplies.

"Institutional Control" means a legal mechanism for imposing a restriction on land use.

"Laboratory costs" means costs for services and materials associated with identifying, analyzing, and quantifying chemical compounds in samples at a laboratory.

"Land Use Control Memorandum of Agreement" or "LUC MOA" 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" or "LPE" means a person, corporation or partnership licensed under the laws of this State to practice professional engineering. [415 ILCS 5/58.2] "LICENSED PROFESSIONAL ENGINEER" OR "LPE" MEANS A PERSON, CORPORATION OR PARTNERSHIP LICENSED UNDER THE LAWS OF THIS STATE TO PRACTICE PROFESSIONAL ENGINEERING (Section 58.2 of the Act)

"Licensed Professional Geologist" or "LPG" 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]

"Other contractual costs" means costs for contractual services not otherwise specifically identified, including, but not limited to, printing, blueprints, photography, film processing, computer services and overnight mail.

"Perfect" or "Perfected" means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 740.621 and 740.622 of this Part.

"Person" means 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, including the United States Government and each department, agency and instrumentality of the United States. [415 ILCS 5/58.2] "PERSON" MEANS 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, INCLUDING THE UNITED STATES GOVERNMENT AND EACH DEPARTMENT, AGENCY AND INSTRUMENTALITY OF THE UNITED STATES (Section 58.2 of the Act)

"Personal services costs" means costs relative to the employment of individuals by the Agency. Such costs include, but are not limited to, hourly wages and fringe benefits.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or

desiccant. "PESTICIDE" MEANS ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR PREVENTING, DESTROYING, REPELLING, OR MITIGATING ANY PEST OR ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR USE AS A PLANT REGULATOR, DEFOLIANT OR DESICCANT (Illinois Pesticide Act [415 ILCS 60/4])}

"Practical quantitation limit" or "PQL" or "Estimated quantitation limit" means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 740.125 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 740.125 of this Part.

"Reasonably obtainable" means that a copy or reasonable facsimile of the record must be obtainable from a private entity or government agency by request and upon payment of a processing fee, if any.

"Recognized environmental condition" means the presence or likely presence of any regulated substance or pesticide under conditions that indicate a release, threatened release or suspected release of any regulated substance or pesticide at, on, to or from a remediation site into structures, surface water, sediments, groundwater, soil, fill or geologic materials. The term shall not include de minimis conditions that do not present a threat to human health or the environment.

"Regulated substance" means any hazardous substance as defined under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). [415 ILCS 5/58.2] "REGULATED SUBSTANCE" MEANS ANY HAZARDOUS SUBSTANCE AS DEFINED UNDER SECTION 101(14) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (P.L. 96-510) AND PETROLEUM PRODUCTS, INCLUDING CRUDE OIL OR ANY FRACTION

~~THEREOF, NATURAL GAS, NATURAL GAS LIQUIDS, LIQUEFIED NATURAL GAS, OR SYNTHETIC GAS USABLE FOR FUEL (OR MIXTURES OF NATURAL GAS AND SUCH SYNTHETIC GAS) (Section 58.2 of the Act)~~

*"Regulated substance of concern"* or *"contaminant of concern"* means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. [415 ILCS 5/58.2] "~~REGULATED SUBSTANCE OF CONCERN~~" OR "~~CONTAMINANT OF CONCERN~~" MEANS ANY CONTAMINANT THAT IS EXPECTED TO BE PRESENT AT THE SITE BASED UPON PAST AND CURRENT LAND USES AND ASSOCIATED RELEASES THAT ARE KNOWN TO THE REMEDIATION APPLICANT BASED UPON REASONABLE INQUIRY (Section 58.2 of the Act)

*"Release"* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer or such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and the normal application of fertilizer. [415 ILCS 5/3.33] "~~RELEASE~~" MEANS ANY SPILLING, LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING, INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING INTO THE ENVIRONMENT, BUT EXCLUDES ANY RELEASE WHICH RESULTS IN EXPOSURE TO PERSONS SOLELY WITHIN A WORKPLACE, WITH RESPECT TO A CLAIM WHICH SUCH PERSONS MAY ASSERT AGAINST THE EMPLOYER OR SUCH PERSONS; EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE, ROLLING STOCK, AIRCRAFT, VESSEL, OR PIPELINE PUMPING STATION ENGINE; RELEASE OF SOURCE, BYPRODUCT, OR SPECIAL NUCLEAR MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS ARE DEFINED IN THE FEDERAL ATOMIC ENERGY ACT OF 1954, IF SUCH RELEASE IS SUBJECT TO REQUIREMENTS WITH RESPECT TO FINANCIAL PROTECTION ESTABLISHED BY THE NUCLEAR REGULATORY COMMISSION UNDER SECTION 170 OF SUCH ACT; AND THE NORMAL APPLICATION OF FERTILIZER (Section 3.33 of the Act)

*"Remedial action"* means activities associated with compliance with the provisions of Sections 58.6 and 58.7 "~~REMEDIAL ACTION~~" MEANS ACTIVITIES ASSOCIATED WITH COMPLIANCE WITH THE PROVISIONS OF SECTIONS 58.6 AND 58.7 of the Act, including, but not limited to, the

conduct of site investigations, preparation of work plans and reports, removal or treatment of contaminants, construction and maintenance of engineered barriers, and/or implementation of institutional controls. (Section 58.2 of the Act)[415 ILCS 5/58.2]

"Remediation Applicant" or "RA" means any person seeking to perform or performing investigative or remedial activities under Title XVII of the Act, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site. [415 ILCS 5/58.2] "REMEDIATION APPLICANT" OR "RA" MEANS ANY PERSON SEEKING TO PERFORM OR PERFORMING INVESTIGATIVE OR REMEDIAL ACTIVITIES UNDER TITLE XVII OF THE ACT, INCLUDING THE OWNER OR OPERATOR OF THE SITE OR PERSONS AUTHORIZED BY LAW OR CONSENT TO ACT ON BEHALF OF OR IN LIEU OF THE OWNER OR OPERATOR OF THE SITE (Section 58.2 of the Act)

"Remediation costs" means reasonable costs paid for investigating and remediating regulated substances of concern consistent with the remedy selected for the site. For purposes of Subpart G of this Part, "Remediation Costs" shall not include costs incurred prior to January 1, 1998, costs incurred after the issuance of a No Further Remediation Letter under "REMEDIATION COSTS" MEANS REASONABLE COSTS PAID FOR INVESTIGATING AND REMEDIATING REGULATED SUBSTANCES OF CONCERN CONSISTENT WITH THE REMEDY SELECTED FOR THE SITE. FOR PURPOSES OF SUBPART G OF THIS PART, "REMEDIATION COSTS" SHALL NOT INCLUDE COSTS INCURRED PRIOR TO JANUARY 1, 1998, COSTS INCURRED AFTER THE ISSUANCE OF A NO FURTHER REMEDIATION LETTER UNDER Subpart F of this Part, or costs incurred more than 12 months prior to acceptance into the Site Remediation Program OR COSTS INCURRED MORE THAN 12 MONTHS PRIOR TO ACCEPTANCE INTO THE SITE REMEDIATION PROGRAM under this Part. (Section 58.2 of the Act)[415 ILCS 5/58.2]

"Remediation objective" means a goal to be achieved in performing remedial action, including but not limited to the concentration of a contaminant, an engineered barrier or engineered control, or an institutional control established under Section 58.5 of the Act or Section 740.Subpart D of this Part.

"Remediation site" means the single location, place, tract of land, or parcel or portion of any parcel of property, including contiguous property separated by a public right-of-way, for which review, evaluation, and approval of any plan or report has been requested by the Remediation Applicant in its application for review and evaluation services. This term also includes, but is not limited to, all buildings and improvements present at that location, place, or tract of land.

"Residential property" means any real property that is used for habitation by individuals, "RESIDENTIAL PROPERTY" MEANS ANY REAL PROPERTY

~~THAT IS USED FOR HABITATION BY INDIVIDUALS~~, or where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas. (~~Section 58.2 of the Act~~)[415 ILCS 5/58.2]

"Review and Evaluation Licensed Professional Engineer" or "RELPE" means the licensed professional engineer with whom a Remediation Applicant (RA) has contracted to perform review and evaluation services under the direction of the Agency.

*"Site"* means any single location, place, tract of land or parcel of property or portion thereof, including contiguous property separated by a public right-of-way. "SITE" MEANS ANY SINGLE LOCATION, PLACE, TRACT OF LAND OR PARCEL OF PROPERTY OR PORTION THEREOF, INCLUDING CONTIGUOUS PROPERTY SEPARATED BY A PUBLIC RIGHT OF WAY (~~Section 58.2 of the Act~~) [415 ILCS 5/58.2] This term also includes, but is not limited to, all buildings and improvements present at that location, place or tract of land.

"Soil management zone" or "SMZ" means a three dimensional region containing soil being managed to mitigate contamination caused by the release of contaminants at a remediation site.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 740.125      Incorporations by Reference

The Board incorporates the following material by reference. These incorporations include no later amendments or editions.

- a) ASTM. American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103. (610) 832-9500  
ASTM E 1527-00 ~~1527-94~~, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, vol. 11.04, approved May 10, 2000. ~~April 15, 1994~~.
- b) U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. (202) 783-3238  
"Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," USEPA Publication No. SW-846 (Third Edition (September 1986), as amended by Updates I, II, III, and IIIA (April 1998)). Doc. No. 955-001-00000-1.I (~~July 1992~~).
- c) NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. (703) 605-6000 or 1-800-553-6847 ~~(703) 487-4600~~

"Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010 (June 1991);

"Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111 (May 1994);

"Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039 (December 1988) (revised July 1991);

"Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129 (August 1992);

"Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131 (August 1995).

- d) United States Environmental Protection Agency, Office of Emergency and Remedial Response, Washington, D.C. 20460.

"A Compendium of Superfund Field Operations Methods," EPA/540/0-87-001, OSWER Directive 9355.0-14 (December 1987);

"Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume I: Solids and Ground Water, Appendices A and B," EPA/625/R-93/003a (May 1993);

"Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume II: The Vadose Zone, Field Screening and Analytical Methods, Appendices C and D," EPA/625/R-93/003b (May 1993).

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### SUBPART D: SITE INVESTIGATIONS, DETERMINATION OF REMEDIATION OBJECTIVES, PREPARATION OF PLANS AND REPORTS

Section 740.405      Conduct of Site Activities and Preparation of Plans and Reports by Licensed Professional Engineer (LPE)

- a) All remediation site activities shall be conducted by, or under the supervision of, a Licensed Professional Engineer (LPE). ~~All plans and reports submitted for review and evaluation shall be prepared by, or under the supervision of, an LPE.~~
- b) To the extent authorized by the Professional Geologist Licensing Act [225 ILCS 745], a Licensed Professional Geologist (LPG) may conduct remediation activities under the supervision of an LPE.

- c) All plans and reports submitted for review and evaluation shall be prepared by, or under the supervision of, an LPE.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.410 Form and Delivery of Plans and Reports, Signatories and Certifications

- a) All plans and reports prepared under this Part shall be submitted to the Agency on forms prescribed and provided by the Agency with attachments and accompanying documentation as necessary. Plans and reports shall be mailed or delivered to the address designated by the Agency on the forms. Plans and reports that are hand-delivered to the Agency shall be delivered during the Agency's normal business hours.
- b) All plans and reports submitted to the Agency shall include:
  - 1) The full legal name, address and telephone number of the Remediation Applicant (RA) or any authorized agent acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
  - 2) The original signature of the RA or of any authorized agent acting on behalf of the RA;
  - 3) ~~The name of the LPE responsible for site activities and preparation of the plan or report, the date of preparation, registration number, license expiration date, and professional seal; and~~
  - 3) The names, registration numbers, license expiration dates, and professional seals of:
    - i) the LPE and/or LPG performing the remediation site activities and preparing the plan or report; and
    - ii) the LPE responsible for supervising the remediation site activities and preparing the plan or report.
  - 4) Except as provided in subsection (c) ~~below~~of this Section, the LPE responsible for the site investigations, remedial activities, and preparation of the plans or reports shall affirm by original signature as follows:  
I attest that all site investigations or remedial activities that are the subject of this plan or report were performed under my direction and this document and all attachments were prepared under my direction or reviewed by me, and, to the best of my knowledge and belief, the work described in the plan or report has been designed or completed in accordance with the Act, 35 Ill. Adm. Code 740, and generally accepted

engineering practices, and the information presented is accurate and complete.”

- c) If the investigation relies in whole or in part upon investigations or remedial activities conducted before the affirming LPE's assumption of responsibility for site activities, then the LPE is not required to affirm that those portions of the investigation or remedial activities were carried out under his or her direction. However, the LPE shall review the documentation of the prior investigations or remedial activities and evaluate their suitability for compliance with Title XVII of the Act and this Part. Such information may be submitted to the Agency for consideration along with the LPE's written evaluation of suitability, but the Agency shall not be required to accept the information as evidence of compliance with any requirements of the Act or this Part.
- d) The *RA may elect to prepare and submit for review and approval any and all reports and plans required under this Part individually following the completion of each such activity or concurrently following the completion of all activities, or in any other combination.* [415 ILCS 5/58.6(f)] ~~RA MAY ELECT TO PREPARE AND SUBMIT FOR REVIEW AND APPROVAL ANY AND ALL REPORTS AND PLANS REQUIRED UNDER THIS PART INDIVIDUALLY FOLLOWING THE COMPLETION OF EACH SUCH ACTIVITY OR CONCURRENTLY FOLLOWING THE COMPLETION OF ALL ACTIVITIES, OR IN ANY OTHER COMBINATION (Section 58.6(f) of the Act)~~

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### Section 740.415 Site Investigation -- General

A site investigation shall be performed under this Part to identify, as indicated within the RA's application for review and evaluation services, all or specified recognized environmental conditions existing at the remediation site, the related contaminants of concern, and associated factors that will aid in the identification of risks to human health, safety and the environment, the determination of remediation objectives, and the design and implementation of a Remedial Action Plan.

- a) If the RA has elected under the application for review and evaluation services to obtain a No Further Remediation Letter covering all recognized environmental conditions and related contaminants of concern for the remediation site, then the procedures provided under Sections 740.420 and 740.425 of this Part shall be followed.
- b) If the RA has elected under the application for review and evaluation services to obtain a No Further Remediation Letter covering a limited number of recognized environmental conditions and related contaminants of concern as specified by the RA, then the procedures at Sections 740.430 and 740.435 of this Part shall be followed.

- c) The RA may revise an election at anytime by initiating a modification of the Review and Evaluation Services Agreement under Section 740.220 of this Part and performing the appropriate site investigation, if necessary.
- d) Site investigations shall satisfy the following data quality objectives for field and laboratory operations to ensure that all data is scientifically valid and of known precision and accuracy:
  - 1) All field sampling activities relative to sample collection, documentation, preparation, labeling, storage, shipment and security, quality assurance and quality control, acceptance criteria, corrective action, and decontamination procedures shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control) and Vol. Two (Field Manual), incorporated by reference at Section 740.125 of this Part. If approved by the Agency, such activities also may be conducted in accordance with ASTM standards, methods identified in "A Compendium of Superfund Field Operations Methods" (EPA/540/0-87-001, OSWER Directive 9355.0-14, December 1987), "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume I: Solids and Ground Water, Appendices A and B" (EPA/625/R-93/003a, May 1993), "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume II: The Vadose Zone, Field Screening and Analytical Methods, Appendices C and D" (EPA/625/R-93/003b, May 1993), incorporated by reference at Section 740.125 of this Part, or other procedures.
  - 2) All field measurement activities relative to equipment and instrument operation, calibration and maintenance, corrective action, and data handling shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at Section 740.125 of this Part, or with an equipment or instrument manufacturer's or vendor's published standard operating procedures.
  - 3) All laboratory quantitative analysis of samples to determine concentrations of regulated substances or pesticides shall be conducted fully in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), incorporated by reference at Section 740.125 of this Part, relative to all facilities, equipment and instrumentation, operating procedures, sample management, test methods, equipment calibration and maintenance, quality assurance and quality control, corrective action, data reduction and validation, reporting, and records management. The practical quantitation limit (PQL) of the test methods selected must be less than or equal to the most protective Tier 1 soil remediation objectives in 35 Ill. Adm. Code 742.Appendix B, applicable groundwater remediation objectives under 35 Ill. Adm Code

~~742.Appendix B, or, if already determined, PQL for the Target Compound List at Appendix A of this Part, or, if the site remediation objective concentrations have been determined, the PQL must be less than or equal to the remediation objective concentrations for the site. If a contaminant of concern is not identified in Part 742 or the remediation objectives for the site have not been determined, the PQL shall equal the lowest concentration that reliably can be achieved within specified limits of precision and accuracy during routine laboratory operating conditions but shall not be greater than ten times the method detection limit.~~

- 4) All field or laboratory measurements of samples to determine physical or geophysical characteristics shall be conducted in accordance with ASTM standards or other procedures as approved by the Agency.
- 5) All laboratory quantitative analyses of samples to determine concentrations of any regulated substances or pesticides that require more exacting detection limits or cannot be analyzed by standard methods identified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), incorporated by reference at Section 740.125 of this Part, shall be conducted in accordance with analytical protocols developed in consultation with and approved by the Agency.
- 6) Effective January 1, 2003, all quantitative analyses of samples collected on or after that date 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: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### Section 740.420      Comprehensive Site Investigation

The comprehensive site investigation is designed to identify all recognized environmental conditions and all related contaminants of concern that may be expected to exist at a remediation site. The comprehensive site investigation shall be performed in two phases as set forth below.

- a) Unless an alternative is approved by the Agency, the phase I environmental site assessment shall be designed and implemented in accordance with the procedures for such assessments set forth in "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-00 ~~4527-94~~), incorporated by reference at Section 740.125 of this Part.
- b) The phase II environmental site assessment shall determine the nature, concentration, direction and rate of movement, and extent of the contaminants of concern at the remediation site and the significant physical features of the remediation site and vicinity that may affect contaminant fate and transport and

risk to human health, safety and the environment. At a minimum, the phase II environmental site assessment shall include:

- 1) Sampling, analyses, and field screening measurements indicating the concentrations of contaminants, if any, from the Target Compound List at Appendix A of this Part and any other contaminants whose presence has been indicated by the phase I environmental site assessment. Based on the phase I environmental site assessment, the Agency may add or delete contaminants from the Target Compound List for sampling, analyses, and field screening measurements;
- 2) Characterization of sources and potential sources of recognized environmental conditions and the related contaminants of concern, identifying:
  - A) The sources or potential sources of contamination;
  - B) The contaminants of concern;
  - C) Statutory or regulatory classification of the contaminants of concern and contaminated materials (e.g., hazardous waste, hazardous substance, special waste);
- 3) Characterization of the extent of contaminants of concern, identifying:
  - A) The actual contaminated medium or media;
  - B) The three-dimensional configuration of contaminants of concern with concentrations delineated; and
  - C) The nature, direction, and rate of movement of the contaminants of concern;
- 4) Characterization of present and post-remediation exposure routes, identifying:
  - D) All natural and man-made pathways that are on the remediation site, in rights-of-way attached to the remediation site, or in any areas surrounding the remediation site that may be adversely affected as a result of a release (from the recognized environmental conditions) and whether there is evidence of migration of contaminants of concern, in either solution or vapors, along such pathways that may potentially threaten human or environmental receptors or that may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other spaces;
  - E) The locations of any human and environmental receptors and receptor exposure routes; and

- F) Current and post-remediation uses of affected or potentially affected land, groundwater, surface water, and sensitive habitats; and
- 5) Characterization of significant physical features of the remediation site and vicinity that may affect contaminant fate and transport and risk to human health, safety and the environment.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### Section 740.425 Site Investigation Report -- Comprehensive Site Investigation

- a) Site investigation results for both phase I and phase II of the comprehensive site investigation shall be combined into one Site Investigation Report.
- b) A Site Investigation Report for a comprehensive site investigation shall include, but not be limited to, the following chapters:
  - 1) Executive summary. This chapter shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state whether recognized environmental conditions were identified and the data limitations in the assessment;
  - 2) Site characterization. This chapter shall include the compilation of all sources reviewed and information obtained as a result of the site investigation under Section 740.420 of this Part, including but not limited to:
    - A) Sources consulted or reviewed. This subchapter shall contain a list of reference documents used in completing the site investigation;
    - B) Site history. This subchapter shall present a chronological summary of the historic uses of the remediation site as prescribed by "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-00 ~~1527-94~~), incorporated by reference at Section 740.125 of this Part;
    - C) Site description. This subchapter shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, existing and potential migration pathways and exposure routes, and current and post-remediation uses of the remediation site and surrounding areas that are immediately adjacent to the remediation site;
    - D) Site base map(s) meeting the requirements of Section 740.210(a)(7) and including the following:

- i) The sources or potential sources of the contaminants of concern, spill areas, and other suspected areas for any or all contaminants of concern;
  - ii) On-site and off-site injection and withdrawal wells; and
  - iii) All buildings, tanks, piles, utilities, paved areas, easements, rights-of-way and other features, including all known past and current product and waste underground tanks or piping; and
- E) A legal description or reference to a plat showing the boundaries of the remediation site;
- 3) Site-specific sampling plan. This chapter shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment investigations, hydrogeological investigations, surface water investigations, and potential receptor investigations;
- 4) Documentation of field activities. This chapter shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
    - A) Narrative description of the field activities conducted during the investigation;
    - B) The quality assurance project plan utilized to document all monitoring procedures (e.g., sampling, field measurements and sample analyses) performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
    - C) Presentation of the data in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 5) Endangerment assessment. This chapter shall analyze the results of the field activities and characterize the extent of contamination (qualitative and quantitative) for contaminants of concern and compare the remediation site information with the applicable provisions of 35 Ill. Adm. Code 742. This chapter shall:
    - A) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Adm. Code 742;

- B) Describe all conditions the LPE has determined to be de minimis along with the rationale for each such de minimis determination;
  - C) Describe the nature, concentration and extent of contaminants of concern within all environmental media at the remediation site and assess the observed and potential contaminant fate and transport;
  - D) Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport and risk to human health, safety and the environment; and
  - E) Compare the concentrations of the contaminants of concern with the corresponding Tier 1 remediation objectives under 35 Ill. Adm. Code 742;
- 6) Conclusion. This chapter shall assess the sufficiency of the data in the report and recommend future steps;
- 7) Appendices. References and data sources, including but not limited to field logs, well logs, and reports of laboratory analyses, shall be incorporated into the appendices with reports containing laboratory analyses of samples collected on or after January 1, 2003, including the following: and
- A) Accreditation status of the laboratory performing the quantitative analyses;
  - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of accreditation; and
- 8) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.435 Site Investigation Report -- Focused Site Investigation

- a) Data and results from the focused site investigation shall be combined into one Site Investigation Report.
- b) A Site Investigation Report for the focused site investigation shall include the results and methodologies of the investigation performed pursuant to Section 740.430 of this Part and the following chapters:
  - 1) Executive summary. This chapter shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state the recognized environmental conditions and related

contaminants of concern specified by the RA and the data limitations in the assessment;

- 2) Site description.
  - A) If a phase I environmental site assessment has been completed in accordance with Section 740.420(a) of this Part, then the results may be submitted in accordance with Section 740.425 of this Part;
  - B) This subchapter shall state the method used for the evaluation of the remediation site and areas immediately adjacent to the remediation site and document the observations obtained (e.g., grid patterns or other systematic approaches used for large properties). It shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, and current and post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
  - C) Site base map(s) meeting the requirements of Section 740.210(a)(7) and including the following:
    - i) The sources or potential sources of the contaminants of concern, spill areas, and other suspected areas for the specified contaminants of concern;
    - ii) On-site and off-site injection and withdrawal wells; and
    - iii) All buildings, tanks, piles, utilities, paved areas, easements, rights-of-way and other features, including all known past and current product and waste underground tanks or piping;
  - D) A legal description or reference to a plat showing the boundaries of the remediation site;
- 3) Enforcement or response actions. This chapter shall include the following information as relevant to the recognized environmental conditions:
  - A) A summary of environmental enforcement actions for the remediation site and areas immediately adjacent to the remediation site and their subsequent responses;
  - B) Any previous response actions conducted by either local, State, federal or private parties at those sites; and
  - C) A list of documents and studies prepared for those sites;
- 4) Site-specific sampling plan. This chapter shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment investigations, hydrogeological

investigations, surface water investigations, and potential receptor investigations;

- 5) Documentation of field activities. This chapter shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
  - A) Narrative description of the field activities conducted during the investigation;
  - B) The quality assurance project plan utilized to document all monitoring procedures (e.g., sampling, field measurements and sample analysis) performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
  - C) Presentation of the data in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 6) Endangerment assessment. This chapter shall analyze the results of the field activities and characterize the extent of contamination (qualitative and quantitative) for contaminants of concern related to the recognized environmental conditions and compare the site information with the applicable provisions of 35 Ill. Adm. Code 742. This chapter shall:
  - A) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Adm. Code 742;
  - B) Describe the nature, concentration and extent of contaminants of concern within all environmental media at the remediation site and assess the observed and potential contaminant fate and transport;
  - C) Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport and risk to human health, safety and the environment; and
  - D) Compare the concentrations of the contaminants of concern with the corresponding Tier 1 remediation objectives under 35 Ill. Adm. Code 742;
- 7) Conclusion. This chapter shall assess the sufficiency of the data in the report and recommend future steps;

- 8) Appendices. Supporting documentation, references and data sources, including, but not limited to, field logs, well logs, and reports of laboratory analyses, shall be incorporated into the appendices with reports containing laboratory analyses of samples collected on or after January 1, 2003, including the following: and
- A) Accreditation status of the laboratory performing the quantitative analyses;
  - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of accreditation; and
- 9) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.450      Remedial Action Plan

*If the approved remediation objectives for any regulated substance ~~IF THE APPROVED REMEDIATION OBJECTIVES FOR ANY REGULATED SUBSTANCE~~ of concern established under ~~ESTABLISHED UNDER~~ Sections 740.440 and 740.445 of this Part ~~are less than the levels at the~~ ~~ARE LESS THAN THE LEVELS AT THE~~ remediation site prior to any remedial action, the RA shall prepare a Remedial Action Plan. The plan shall describe the proposed remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the SITE PRIOR TO ANY REMEDIAL ACTION, THE RA SHALL PREPARE A REMEDIAL ACTION PLAN. THE PLAN SHALL DESCRIBE THE PROPOSED REMEDY AND EVALUATE ITS ABILITY AND EFFECTIVENESS TO ACHIEVE THE REMEDIATION OBJECTIVES APPROVED FOR THE remediation site SITE (Section 58.6(d) of the Act)[415 ILCS 5/58.6(d)], including but not limited to:*

- a) Executive summary. This chapter shall identify the objectives of the Remedial Action Plan and the technical approach utilized to meet such objectives. At a minimum, this chapter shall include the following elements:
  - 1) The major components (e.g., treatment, containment, removal actions) of the Remedial Action Plan;
  - 2) The scope of the problems to be addressed by the proposed remedial action(s) including the specific contaminants of concern and the physical area to be addressed by the Remedial Action Plan; and
  - 3) Schedule of activities with estimated dates of completion through the recording of the No Further Remediation Letter or execution of an IDOT MOA under Section 740.621 of this Part or a LUC MOA under Section 740.622 of this Part;

- b) Statement of remediation objectives or reference to Remediation Objectives Report;
- c) Remedial technologies selected. This chapter shall describe how each major remedial technology identified in the Remedial Action Plan fits into the overall strategy for addressing the recognized environmental conditions at the remediation site, including but not limited to:
  - 1) Feasibility of implementation;
  - 2) Whether the technologies will perform satisfactorily and reliably until the remediation objectives are achieved; and
  - 3) Whether remediation objectives will be achieved within a reasonable period of time;
  - 4) If applicable, a request for a soil management zone under Section 740.535 of this Part describing the steps that will be taken to ensure compliance with the requirements for soil management zones;
- d) Confirmation sampling plan. This chapter shall describe how the effectiveness of the remedial action will be measured. At a minimum, a site-specific sampling plan and quality assurance project plan must be prepared in accordance with the provisions set forth in Section 740.415(d) of this Part;
- e) Current and post-remediation use of the property;
- f) Applicable engineered barriers, institutional controls, and groundwater monitoring. This chapter shall describe any such controls selected or relied upon in determining or achieving remediation objectives, including long-term reliability, operating and maintenance plans, and monitoring procedures;
- g) Appendices. References and other informational sources should be incorporated into the appendices; and
- h) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### Section 740.455      Remedial Action Completion Report

- a) Except as provided in subsection (b) below, upon completion of the Remedial Action Plan, the RA shall prepare a Remedial Action Completion Report. The report shall demonstrate whether the remedial action was completed in accordance with the approved Remedial Action Plan and whether the remediation objectives, as well as any other requirements of the plan, have been attained.  
**UPON COMPLETION OF THE REMEDIAL ACTION PLAN, THE RA SHALL**

~~PREPARE A REMEDIAL ACTION COMPLETION REPORT. THE REPORT SHALL DEMONSTRATE WHETHER THE REMEDIAL ACTION WAS COMPLETED IN ACCORDANCE WITH THE APPROVED REMEDIAL ACTION PLAN AND WHETHER THE REMEDIATION OBJECTIVES, AS WELL AS ANY OTHER REQUIREMENTS OF THE PLAN, HAVE BEEN ATTAINED. (Section 58.6(e)(1) of the Act)[415 ILCS 5/58.6(e)(1)]~~ The report shall include, but not be limited to:

- 1) Executive summary. This chapter shall identify the overall objectives of the remedial action and the technical approach utilized to meet those objectives, including:
  - A) A brief description of the remediation site, including the recognized environmental conditions, the contaminants of concern, the contaminated media, and the extent of contamination;
  - B) The major components of the Remedial Action Completion Report;
  - C) The scope of the problems corrected or mitigated by the proposed remedial action(s); and
  - D) The anticipated post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
- 2) Field activities. This chapter shall provide a narrative description of the:
  - A) Field activities conducted during the investigation;
  - B) Remedial actions implemented at the remediation site and the performance of each remedial technology utilized; and
  - C) Measures that were taken to ensure compliance with the requirements for soil management zones under Section 740.535 of this Part, if a soil management zone was used;
- 3) Special conditions. This chapter shall provide a description of any:
  - A) Engineered barriers utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives;
  - B) Institutional controls accompanying engineered barriers or industrial/commercial property uses in accordance with Section 740.450 of this Part and 35 Ill. Adm. Code 742, including a legible copy of any such controls, as appropriate;
  - C) Post-remedial monitoring, including:

- i) Conditions to be monitored;
  - ii) Purpose;
  - iii) Locations;
  - iv) Frequency; and
  - v) Contingencies in the event of an exceedence; and
- D) Other conditions, if any, necessary for protection of human health and the environment that are related to the issuance of a No Further Remediation Letter;
- 4) Results. This chapter shall analyze the effectiveness of the remedial actions by comparing the results of the confirmation sampling with the remediation objectives prescribed in the Agency-approved Remedial Action Plan. The data shall state the remediation objectives or reference the Remediation Objectives Report and be presented in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 5) Conclusion. This chapter shall identify the success meeting objectives. This chapter shall assess the accuracy and completeness of the data in the report and, if applicable, future work;
- 6) Appendices. References, data sources, and a completed environmental notice form as provided by the Agency shall be incorporated into the appendices. Field logs, well logs and reports of laboratory analyses shall be organized and presented logically with reports of laboratory analyses of samples collected on or after January 1, 2003, including the following: and
- A) Accreditation status of the laboratory performing the quantitative analyses;
  - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of accreditation; and
- 7) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.
- b) If the approved remediation objectives for the regulated substances of concern established under IF THE APPROVED REMEDIATION OBJECTIVES FOR THE REGULATED SUBSTANCES OF CONCERN ESTABLISHED UNDER Sections 740.440 and 740.445 of this Part are equal to or above the levels existing at the site prior to any remedial action, notification and documentation of

~~such, ARE EQUAL TO OR ABOVE THE LEVELS EXISTING AT THE SITE PRIOR TO ANY REMEDIAL ACTION, NOTIFICATION AND DOCUMENTATION OF SUCH,~~ including a description of any engineered barriers, institutional controls, and post-remedial monitoring, *shall constitute the entire Remedial Action Completion Report for purposes of this SHALL CONSTITUTE THE ENTIRE REMEDIAL ACTION COMPLETION REPORT FOR PURPOSES OF THIS Part.* (Section 58.6(e)(2) of the Act)[415 ILCS 5/58.6(e)(2)]

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS

##### Section 740.525 Standards for Review of Remedial Action Completion Reports and Related Activities

When reviewing Remedial Action Completion Reports and related activities, the Agency or the RELPE shall consider:

- a) Whether the report is complete and has been accompanied by the information and supporting documentation necessary to evaluate the implementation of the Remedial Action Plan and the attainment of the applicable remediation objectives;
- b) *Whether the remedial activities have been completed in accordance with the approved Remedial Action Plan and whether the applicable remediation objectives have been attained* ~~WHETHER THE REMEDIAL ACTIVITIES HAVE BEEN COMPLETED IN ACCORDANCE WITH THE APPROVED REMEDIAL ACTION PLAN AND WHETHER THE APPLICABLE REMEDIATION OBJECTIVES HAVE BEEN ATTAINED~~ (Section 58.7(e)(4) of the Act)[415 ILCS 5/58.7(e)(4)]; and
- c) If engineered barriers and institutional controls have been relied on, or if monitoring is required, whether the long-term maintenance, operation and enforcement provisions have been established; and .
- d) If a soil management zone was used, whether the requirements for the use of soil management zones have been satisfied.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

##### Section 740.535 Establishment of Soil Management Zones

- a) 1) The purpose of a soil management zone (SMZ) is to allow consideration and approval of on-site solutions to on-site soil contamination without violating the solid waste disposal regulations at 35 Ill. Adm. Code 807 or 811 - 815.

- 2) The uses of soil management zones include, but are not limited to, the following:
- A) Placement of contaminated soils for structural fill or land reclamation;
  - B) Consolidation of contaminated soils within a remediation site; and
  - C) Removal and re-deposit of contaminated soils following on-site treatment that has reduced contaminant concentrations.
- b) Upon approval by the Agency of a Remedial Action Plan under Subpart E of this Part, soil that is the subject of a request for a soil management zone shall be classified as a soil management zone if the Remedial Action Plan demonstrates that the following requirements will be satisfied:
- 1) All contaminants of concern within the remediation site shall be identified by a comprehensive site investigation under Section 740.420 of this Part;
  - 2) The horizontal and vertical dimensions of the soil management zone shall be defined;
  - 3) The uses of the soil management zone shall be defined;
  - 4) All contaminants of concern within the soil management zone shall satisfy the requirements of 35 Ill. Adm. Code 742.305(a) through (f);
  - 5) All applicable requirements of 35 Ill. Adm. Code 742 shall be satisfied within the soil management zone, (e.g., all exposure routes must be addressed; institutional controls and engineered barriers shall be in full compliance with 35 Ill. Adm. Code 742. Subparts J and K);
  - 6) The soil management zone shall be constructed, operated and maintained in a manner that:
    - A) Prevents odor from occurring;
    - B) Minimizes fugitive emissions of particulate matter in accordance with 35 Ill. Adm. Code 212. Subpart K and dust generation;
    - C) Prevents the generation of potentially contaminated runoff; and
    - D) Does not provide a breeding place or food source for vectors;
  - 7) Within the soil management zone, management of soil containing hazardous wastes shall comply with the applicable requirements of the Resource Conservation and Recovery Act (42 USCA § 6901 - 6992k) and 35 Ill. Adm. Code 700 - 730; and

- 8) Soil containing contaminants of concern above the concentrations in 35 Ill. Adm. Code 742.Appendix B, Table A (Tier 1 objectives for residential properties) or approved by the Agency pursuant to 35 Ill. Adm. Code 742.510(c) may not be treated or placed in any area where all contaminants of concern within the remediation site are at or below the concentrations in 35 Ill. Adm. Code 742.Appendix B, Table A (Tier 1 objectives for residential properties) or approved by the Agency pursuant to 35 Ill. Adm. Code 742.510(c).
- c) The three-dimensional boundaries of the soil management zone shall be as defined in the approved Remedial Action Plan. The size of the soil management zone may be modified in an amended Remedial Action Plan. The soil management zone may not extend beyond the boundaries of the remediation site.
- d) Soil management zones designated under this Section shall remain in effect for the shortest of the following:
- 1) A period of time as set forth by the Agency in the Remedial Action Plan approval letter based on the schedule of activities provided under Section 740.425(a)(3). The time may be revised in an amended Remedial Action Plan as approved by the Agency;
  - 2) Until an Agreement is terminated under Sections 740.225 or 740.230 of this Part; or
  - 3) Until the NFR Letter is perfected in accordance with Section 740.620 of this Part.
- e) In addition to any other legal remedies available under the Act and implementing regulations, the Agency may terminate a soil management zone and require alternative remediation plans to be submitted in an amended Remedial Action Plan upon a failure to comply with any requirements of subsection (b) of this Section.
- 1) Notice of the termination shall be in accordance with Section 740.215(b) of this Part and shall state the reasons for the termination.
  - 2) The RA may file an appeal to the Board within 35 days after receipt of the notice. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.
- f) If implementation of an approved Remedial Action Plan with a soil management zone fails to achieve the remediation objectives developed under Section 740.440 of this Part, alternative soil remediation objectives, and, if necessary, an amended Remedial Action Plan, shall be developed under Subpart D of this Part.

- 1) Upon the development of alternative soil remediation objectives, the Remediation Objectives Report shall be amended accordingly and submitted to the Agency for review and approval.
  - 2) Upon approval of the Remediation Objective Report, the Remedial Action Plan shall be amended and submitted to the Agency for review and approval unless the RA can demonstrate that the alternative soil remediation objectives have been achieved. In that case, the RA shall submit a Remedial Action Completion Report documenting the achievement of the alternative soil remediation objectives.
- g) Any otherwise applicable standards or requirements under 35 Ill. Adm. Code 807 or 811 through 815 shall not be applicable to the management of contaminated soil that is the subject of the soil management zone if:
- 1) The SMZ is in effect and management of the contaminated soil within the SMZ is in compliance with the requirements of this Section and the approved Remedial Action Plan; or
  - 2) A No Further Remediation Letter addressing the contaminants that were the subject of the SMZ has been perfected under Section 740.620 of this Part and remains in effect and management of the contaminated soil within the area formerly encompassed by the SMZ is in compliance with the terms of that No Further Remediation Letter.

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### SUBPART F: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

##### Section 740.605 Issuance of No Further Remediation Letter

- a) Except as provided in Section 740.615 below, within 30 days after the Agency's approval of a Remedial Action Completion Report, the Agency shall issue a No Further Remediation Letter applicable to the ~~WITHIN 30 DAYS AFTER THE AGENCY'S APPROVAL OF A REMEDIAL ACTION COMPLETION REPORT, THE AGENCY SHALL ISSUE A NO FURTHER REMEDIATION LETTER APPLICABLE TO THE~~ remediation site. In the event that the Agency fails to issue the No Further Remediation Letter within 30 days after approval of the Remedial Action Completion Report, the No Further Remediation Letter shall issue by operation of law. ~~IN THE EVENT THAT THE AGENCY FAILS TO ISSUE THE NO FURTHER REMEDIATION LETTER WITHIN 30 DAYS AFTER APPROVAL OF THE REMEDIAL ACTION COMPLETION REPORT, THE NO FURTHER REMEDIATION LETTER SHALL ISSUE BY OPERATION OF LAW.~~ (Section 58.10(b) of the Act)[415 ILCS 5/58.10(b)] The No Further Remediation Letter shall have the legal effect prescribed in Section 58.10 of the Act.

- b) The No Further Remediation Letter shall be issued only to Remediation Applicants who have completed all requirements and received final approval of the Remedial Action Completion Report by the Agency or on appeal.
- c) The Agency shall mail the No Further Remediation Letter by registered or certified mail, post-marked with a date stamp and with return receipt requested. If the RA is not the sole owner of the Remediation Site, the Agency shall send a copy of the No Further Remediation Letter simultaneously to the owner(s) by first class mail. Final action shall be deemed to have taken place on the post-marked date that the letter is mailed.
- d) The Agency at any time may correct errors in No Further Remediation Letters arising from oversight, omission or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency shall mail the corrected letter to the RA, the property owner(s), or both as set forth in subsection (c) of this Section. The corrected letter shall become effective and shall be perfected as provided in Sections 740.620 or 740.621 of this Part.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### Section 740.610      Contents of No Further Remediation Letter

- a) Except as provided in subsection (b) below, a No Further Remediation Letter issued pursuant to A NO FURTHER REMEDIATION LETTER ISSUED PURSUANT TO Section 58.10 of the Act shall be limited to and include all of the following~~SHALL BE LIMITED TO AND INCLUDE ALL OF THE FOLLOWING:~~
  - 1) an acknowledgement that the requirements of the remedial action plan and the remedial action completion report were satisfied~~AN ACKNOWLEDGEMENT THAT THE REQUIREMENTS OF THE REMEDIAL ACTION PLAN AND THE REMEDIAL ACTION COMPLETION REPORT WERE SATISFIED;~~
  - 2) A description of the A DESCRIPTION OF THE remediation site by adequate legal description or by reference to a plat showing BY ADEQUATE LEGAL DESCRIPTION OR BY REFERENCE TO A PLAT SHOWING the boundaries, BOUNDARIES or by other means sufficient to identify site location with particularity;
  - 3) The level of the remediation objectives, specifying, as appropriate, any land use limitation imposed as a result of such remediation efforts~~THE LEVEL OF THE REMEDIATION OBJECTIVES, SPECIFYING, AS APPROPRIATE, ANY LAND USE LIMITATION IMPOSED AS A RESULT OF SUCH REMEDIATION EFFORTS;~~
  - 4) A statement that the agency's issuance of the No Further Remediation Letter signifies a release from further responsibilities under~~A~~

~~STATEMENT THAT THE AGENCY'S ISSUANCE OF THE NO FURTHER REMEDIATION LETTER SIGNIFIES A RELEASE FROM FURTHER RESPONSIBILITIES UNDER the *act in performing the approved remedial action and shall be considered prima facie evidence that the site does not constitute a threat to human health and the environment and does not require further remediation under the act ACT IN PERFORMING THE APPROVED REMEDIAL ACTION AND SHALL BE CONSIDERED PRIMA FACIE EVIDENCE THAT THE SITE DOES NOT CONSTITUTE A THREAT TO HUMAN HEALTH AND THE ENVIRONMENT AND DOES NOT REQUIRE FURTHER REMEDIATION UNDER THE ACT if utilized in accordance with the terms of the No Further Remediation Letter UTILIZED IN ACCORDANCE WITH THE TERMS OF THE NO FURTHER REMEDIATION LETTER.*~~ If the remediation site includes a portion of a larger parcel of property or if the RA has elected to limit the recognized environmental conditions and related contaminants of concern to be remediated, or both, the No Further Remediation Letter shall be limited accordingly by its terms;

- 5) *The prohibition against the use of any THE PROHIBITION AGAINST THE USE OF ANY remediation site in a manner inconsistent with any land use limitation imposed as a result of such remediation efforts without additional appropriate remedial activities SITE IN A MANNER INCONSISTENT WITH ANY LAND USE LIMITATION IMPOSED AS A RESULT OF SUCH REMEDIATION EFFORTS WITHOUT ADDITIONAL APPROPRIATE REMEDIAL ACTIVITIES;*
- 6) *A description of any preventive, engineering, and institutional controls A DESCRIPTION OF ANY PREVENTIVE, ENGINEERING, AND INSTITUTIONAL CONTROLS or monitoring required in the approved remedial action plan and notification that failure to manage the controls REQUIRED IN THE APPROVED REMEDIAL ACTION PLAN AND NOTIFICATION THAT FAILURE TO MANAGE THE CONTROLS or monitoring in full compliance with the terms of the remedial action plan may result in voidance of the No Further Remediation Letter IN FULL COMPLIANCE WITH THE TERMS OF THE REMEDIAL ACTION PLAN MAY RESULT IN VOIDANCE OF THE NO FURTHER REMEDIATION LETTER;*
- 7) *The recording obligations pursuant to THE RECORDING OBLIGATIONS PURUSANT TO Title XVII of the Act and Section 740.620 of this Part;*
- 8) *The opportunity to request a change in the recorded land use pursuant to THE OPPORTUNITY TO REQUEST A CHANGE IN THE RECORDED*

~~LAND USE PURSUANT TO~~ Title XVII of the Act AND Section 740.620(c) of this Part; and

- 9) *Notification that further information regarding the NOTIFICATION THAT FURTHER INFORMATION REGARDING THE remediation site can be obtained from the agency through a request under the freedom of information act SITE CAN BE OBTAINED FROM THE AGENCY THROUGH A REQUEST UNDER THE FREEDOM OF INFORMATION ACT [5 ILCS 140]. (Section 58.10(b)(1)-(9) of the Act) [415 ILCS 5/58.10(b)(1)-(9)]*

- b) *If only a portion of the site or only selected regulated substances IF ONLY A PORTION OF THE SITE OR ONLY SELECTED REGULATED SUBSTANCES or pesticides at a site were the subject of corrective action AT A SITE WERE THE SUBJECT OF CORRECTIVE ACTION, the No Further Remediation Letter may contain any other provisions agreed to by the agency and the RA ANY OTHER PROVISIONS AGREED TO BY THE AGENCY AND THE RA. (Section 58.10(b)(10) of the Act)[415 ILCS 5/58.10(b)(10)]*

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### Section 740.615 Payment of Fees

- a) *The Agency may deny THE AGENCY MAY DENY or void a No Further Remediation Letter if fees applicable under the Review and Evaluation Services Agreement have not been paid in full A NO FURTHER REMEDIATION LETTER IF FEES APPLICABLE UNDER THE REVIEW AND EVALUATION SERVICES AGREEMENT HAVE NOT BEEN PAID IN FULL. (Section 58.10(e) of the Act)[415 ILCS 5/58.10(c)]* The manner of payment shall be in accordance with Section 740.320 of this Part.
- b) In addition to the fees applicable under the Review and Evaluation Services Agreement, *the recipient of the THE RECIPIENT OF THE* No Further Remediation Letter shall forward to the Agency a No Further Remediation Assessment in the amount of the lesser of \$2500 or an amount equal to the costs incurred for the site by the Agency under the LETTER SHALL FORWARD TO THE AGENCY A NO FURTHER REMEDIATION ASSESSMENT IN THE AMOUNT OF THE LESSER OF \$2500 OR AN AMOUNT EQUAL TO THE COSTS INCURRED FOR THE SITE BY THE AGENCY UNDER THE Agreement. (Section 58.10(g) of the Act)[415 ILCS 5/58.10(g)]
- 1) The No Further Remediation Assessment shall be mailed or delivered to the Agency at the address designated by the Agency on the request for payment service forms no later than 45 days following the receipt of the request for payment. Payments that are hand-delivered shall be delivered during the Agency's normal business hours.

- 2) The No Further Remediation Assessment shall be made by check or money order payable to "Treasurer - State of Illinois for Deposit in the Hazardous Waste Fund." The check or money order shall include the Illinois inventory identification number as assigned and the Federal Employer Identification Number or Social Security Number of the RA.
- 3) The No Further Remediation Letter shall be voidable in accordance with Section 740.625 if the No Further Remediation Assessment is not paid within 45 days after the receipt of the request for payment.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.620      Duty to Record No Further Remediation Letter

- a) Except as provided in Sections 740.621 and 740.622 of this Part, the RA receiving a No Further Remediation Letter from the Agency pursuant to THE RA RECEIVING A NO FURTHER REMEDIATION LETTER FROM THE AGENCY PURSUANT TO Title XVII of the Act and this Subpart F shall submit the letter SHALL SUBMIT THE LETTER, and, where the RA is not the sole owner of the remediation site, an owner certification in accordance with subsection (d) below, to the Office of the Recorder or the Registrar of Titles of the county in which the TO THE OFFICE OF THE RECORDER OR THE REGISTRAR OF TITLES OF THE COUNTY IN WHICH THE remediation site is located within 45 days after receipt of the letter SITE IS LOCATED WITHIN 45 DAYS AFTER RECEIPT OF THE LETTER. (Section 58.8(a) of the Act)[415 ILCS 5/58.8(a)]
- 1) The Office of the Recorder or the Registrar of Titles shall accept and record that letter THE OFFICE OF THE RECORDER OR THE REGISTRAR OF TITLES SHALL ACCEPT AND RECORD THAT LETTER and, where applicable, the owner certification under subsection (d) below in accordance with Illinois law so that it forms a permanent part of the chain of title for the site. BELOW IN ACCORDANCE WITH ILLINOIS LAW SO THAT IT FORMS A PERMANENT PART OF THE CHAIN OF TITLE FOR THE SITE. (Section 58.8(a) of the Act)[415 ILCS 5/58.8(a)]
- 2) In the event that a No Further Remediation Letter issues by operation of law pursuant to IN THE EVENT THAT A NO FURTHER REMEDIATION LETTER ISSUES BY OPERATION OF LAW PURSUANT TO Title XVII of the Act and this Subpart F, the RA may THE RA MAY record an affidavit stating that the letter issued by operation of law AN AFFIDAVIT STATING THAT THE LETTER ISSUED BY OPERATION OF LAW. (Section 58.8 (d) of the Act)[415 ILCS 5/58.8(d)] Attached to the affidavit shall be the following information:

- A) An acknowledgment that the requirements of the Remedial Action Plan and the Remedial Action Completion Report were satisfied;
- B) A description of the location of the remediation site by adequate legal description or by reference to a plat showing its boundaries;
- C) The level of the remediation objectives, specifying, as appropriate, any land use limitation imposed as a result of such remediation efforts;
- D) A statement that the No Further Remediation Letter signifies a release from further responsibilities under the Act in performing the approved remedial action and shall be considered *prima facie* evidence that the following, as identified in the scope of work and the approved Remedial Action Plan, does not constitute a threat to human health and the environment and does not require further remediation under the Act if utilized in accordance with the terms of the No Further Remediation Letter:
  - i) The remediation site;
  - ii) Selected recognized environmental conditions and related contaminants of concern at the remediation site; and
  - iii) A combination of (D)(i) or (D)(ii) above;
- E) The prohibition against the use of any remediation site in a manner inconsistent with any property use limitation imposed as a result of such remediation efforts without additional appropriate remedial activities;
- F) A description of any preventive, engineering, and institutional controls or monitoring required in the approved Remedial Action Plan and notification that failure to manage the controls or monitoring in full compliance with the terms of the Remedial Action Plan may result in voidance of the No Further Remediation Letter;
- G) The opportunity to request a change in the recorded land use pursuant to Title XVII of the Act and subsection (c) below;
- H) Notification that further information regarding the remediation site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140] ; and
- I) An owner certification in accordance with subsection (d) below, where applicable.

- b) Except as provided in Sections 740.621 and 740.622 of this Part, a No Further Remediation Letter A NO FURTHER REMEDIATION LETTER or the affidavit filed under subsection (a)(2) above shall be perfected upon the date of the official recording of the letter or affidavit. An unperfected No Further Remediation Letter is effective only as between the Agency and the Remediation Applicant. The Agency may, pursuant to Section 740.625 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. shall not become effective until officially recorded along with the owner certification under subsection (d) below, where applicable, in accordance with subsection (a) above. (Section 58.8(b) of the Act) The RA shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter or affidavit and the owner certification under subsection (d) below, where applicable, demonstrating that the recording requirements have been satisfied.
- c) At no time shall any AT NO TIME SHALL ANY remediation site for which a land use limitation has been imposed as a result of remediation activities under Title XVII of the Act be used in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use and a new SITE FOR WHICH A LAND USE LIMITATION HAS BEEN IMPOSED AS A RESULT OF REMEDIATION ACTIVITIES UNDER TITLE XVII OF THE ACT BE USED IN A MANNER INCONSISTENT WITH THE LAND USE LIMITATION UNLESS FURTHER INVESTIGATION OR REMEDIAL ACTION HAS BEEN CONDUCTED THAT DOCUMENTS THE ATTAINMENT OF OBJECTIVES APPROPRIATE FOR THE NEW LAND USE AND A NEW No Further Remediation Letter obtained and recorded in accordance with LETTER OBTAINED AND RECORDED IN ACCORDANCE WITH Title XVII of the Act and this Part. (Section 58.8(c) of the Act)[415 ILCS 5/58.8(c)]
- d) Where the RA is not the sole owner of the remediation site, the RA shall obtain the certification by original signature of each owner, or the authorized agent of the owner(s), of the remediation site or any portion thereof who is not an RA. The certification shall be recorded in accordance with this Section, along with the No Further Remediation Letter or an affidavit under subsection (a)(2) above. The certification shall read as follows:

I hereby certify that I have reviewed the attached No Further Remediation Letter [or "affidavit" if filed under subsection (a)(2) above], and that I accept the terms and conditions and any land use limitations set forth in the letter [or "affidavit"].

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.621

Requirements for No Further Remediation Letters Issued to Illinois Department of Transportation Remediation Sites Located in Rights-of-Way

- a) To perfect a No Further Remediation Letter for a remediation site of the Illinois Department of Transportation (IDOT) located in whole or in part in an IDOT right-of-way, IDOT shall enter into a Memorandum of Agreement (MOA) with the Agency. If IDOT and the Agency have entered into a master MOA, the parties' addition of the site to the master agreement shall satisfy the requirements of this Section. The MOA shall include, but is not limited to:
- 1) The name of the remediation site, if any, and any IDOT and Agency identifiers (e.g., incident number, Illinois inventory identification number);
  - 2) The address of the remediation site (or other description sufficient to identify the location of the site with certainty);
  - 3) A copy of the NFR Letter for each site subject to the MOA;
  - 4) Procedures for tracking remediation 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 remediation site;
  - 5) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the remediation 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:
    - A) Upon creation of a deed, the recording of the NFR Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742 with copies of the recorded instruments sent to the Agency within 30 days of recording;
    - B) 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 Remedial Action Plan and the NFR Letter;
    - C) 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 Remedial Action Plan and NFR Letter; and
  - 6) Provisions for notifying the Agency if any actions taken by IDOT or its permittees at the remediation site result in the failure or inability to restore the remediation site to meet the requirements of the Remedial Action Plan and the NFR Letter.

- b) An NFR Letter issued to an IDOT remediation site in an IDOT right-of-way shall be incorporated into a MOA within 45 days after its receipt.
- c) At no time shall any remediation site for which a land use limitation has been imposed as a result of remediation activities under Title XVII of the Act be used in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use and a new No Further Remediation Letter obtained. If title to the remediation site remains with IDOT, the new No Further Remediation Letter shall be incorporated into the MOA and the MOA amended accordingly.
- d) In addition to any other legal remedies that may be available, failure to comply with the requirements of this Section may result in voidance of the No Further Remediation Letter in accordance with Section 740.625 of this Part.

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.622 Requirements for Perfection of No Further Remediation Letters Issued to Federal Landholding Entities Without Authority to Record Institutional Controls

- a) For sites on Federally Owned Property subject to this Part 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 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 of 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 simply 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 with confirmation of recording provided to the Agency; 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 restrictions on future land use(s), 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.
- b) 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.

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### Section 740.625 Voidance of No Further Remediation Letter

- a) *The No Further Remediation Letter shall be voidable if the THE NO FURTHER REMEDIATION LETTER SHALL BE VOIDABLE IF THE remediation site activities are not managed in full compliance with the provisions of SITE ACTIVITIES ARE NOT MANAGED IN FULL COMPLIANCE WITH THE PROVISIONS OF Title XVII of the Act, this Part, or the approved Remedial Action Plan or 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 OR THE APPROVED REMEDIAL ACTION PLAN OR 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 violation of institutional controls or land use restrictions, if applicable*~~ ANY VIOLATION OF INSTITUTIONAL CONTROLS OR LAND USE RESTRICTIONS, IF APPLICABLE;
- 2) ~~*The failure of the owner, operator, RA, or any subsequent transferee to operate and maintain preventive or engineering controls or to comply with a groundwater monitoring plan, if applicable*~~ THE FAILURE OF THE OWNER, OPERATOR, RA, OR ANY SUBSEQUENT TRANSFEE TO OPERATE AND MAINTAIN PREVENTIVE OR ENGINEERING CONTROLS OR TO COMPLY WITH A GROUNDWATER MONITORING PLAN, IF APPLICABLE;
- 3) ~~*The disturbance or removal of contamination that has been left in place in accordance with the Remedial Action Plan.*~~ THE DISTURBANCE OR REMOVAL OF CONTAMINATION THAT HAS BEEN LEFT IN PLACE IN ACCORDANCE WITH THE REMEDIAL ACTION PLAN. Access to soil contamination may be allowed if, during and after any access, public health and the environment are protected consistent with the Remedial Action Plan;
- 4) ~~*The failure to comply with the recording requirements of*~~ THE FAILURE TO COMPLY WITH THE RECORDING REQUIREMENTS OF Title XVII of the Act and Section 740.620 of this Part;
- 5) ~~*Obtaining the No Further Remediation Letter by fraud or misrepresentation*~~ OBTAINING THE NO FURTHER REMEDIATION LETTER BY FRAUD OR MISREPRESENTATION;
- 6) ~~*Subsequent discovery of contaminants not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based, that pose a threat to human health or the environment*~~ SUBSEQUENT DISCOVERY OF CONTAMINANTS NOT IDENTIFIED AS PART OF THE INVESTIGATIVE OR REMEDIAL ACTIVITIES UPON WHICH THE ISSUANCE OF THE NO FURTHER REMEDIATION LETTER WAS BASED, THAT POSE A THREAT TO HUMAN HEALTH OR THE ENVIRONMENT;
- 7) ~~*The failure to pay the No Further Remediation Assessment required under*~~ THE FAILURE TO PAY THE NO FURTHER REMEDIATION ASSESSMENT REQUIRED UNDER Section 740.615(b) of this Part; (Section 58.10(e) of the Act)[415 ILCS 5/58.10(e)]

- 8) The failure to pay in full the applicable fees under the Review and Evaluation Services Agreement within 45 days after receiving a request for final payment under Section 740.310 of this Part;
  - 9) The failure to comply with the requirements of Section 740.621 of this Part for No Further Remediation Letters issued to remediation sites of the Illinois Department of Transportation (IDOT) located in IDOT rights-of-way;
  - 10) The failure to comply with the requirements of Section 740.622 of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 740.622 within 45 days following 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
  - 11) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1010(b)(3), 742.1015(b)(5) or 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 remediation site and to the RA at his or her last known address.~~IF THE AGENCY SEEKS TO VOID A NO FURTHER REMEDIATION LETTER, IT SHALL PROVIDE NOTICE TO THE CURRENT TITLE HOLDER OF THE REMEDIATION SITE AND TO THE RA AT HIS OR HER LAST KNOWN ADDRESS. (Section 58.10(f) of the Act)[415 ILCS 5/58.10(f)]~~
- 1) The notice shall specify the cause for the voidance and describe facts in support of that cause.~~THE NOTICE SHALL SPECIFY THE CAUSE FOR THE VOIDANCE AND DESCRIBE FACTS IN SUPPORT OF THAT CAUSE.~~(Section 58.10(f) of the Act)[415 ILCS 5/58.10(f)]
  - 2) The Agency shall mail notices of voidance by registered or certified mail, date stamped with return receipt requested.
- c) Within 35 days after the receipt of the Notice of Voidance, the RA or current title holder~~WITHIN 35 DAYS AFTER THE RECEIPT OF THE NOTICE OF VOIDANCE, THE RA OR CURRENT TITLE HOLDER~~ of the remediation site may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of this Act. 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 any such action.~~MAY APPEAL THE AGENCY'S DECISION TO THE BOARD IN THE MANNER PROVIDED FOR THE REVIEW OF PERMITS IN SECTION 40 OF THIS ACT. 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 ANY SUCH ACTION (Section 58.10(f)(1) of the Act)[415 ILCS 5/58.10(f)(1)]~~

- 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 reached by the Board or courts.* ~~IF THE AGENCY'S ACTION IS APPEALED, THE ACTION SHALL NOT BECOME EFFECTIVE UNTIL THE APPEAL PROCESS HAS BEEN EXHAUSTED AND A FINAL DECISION REACHED BY THE BOARD OR COURTS.~~ (Section 58.10(f)(3) of the Act)~~[415 ILCS 5/58.10(f)(3)]~~
- 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.* ~~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.~~ 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. (Section 58.10(f)(4) of the Act)~~[415 ILCS 5/58.10(f)(4)]~~
- 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.* ~~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.~~ (Section 58.10(f)(4) of the Act)~~[415 ILCS 5/58.10(f)(4)]~~
- 2) *If the Agency's action is not appealed, 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.* ~~IF THE AGENCY'S ACTION IS NOT APPEALED, 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. (Section 58.10(f)(2) of the Act)[415 ILCS 5/58.10(f)(2)]~~

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

#### SUBPART H: REQUIREMENTS RELATED TO SCHOOLS

##### Section 740.800 General

- a) The purpose of Subpart H is to ensure that children and the general public are not exposed to harmful pollutants at a remediation site intended for future use as a school that has been enrolled in the Site Remediation Program, thereby protecting human health and the environment.
- b) For the purposes of this Subpart, the term “school” means any public educational facility in Illinois, including grounds and/or campus, consisting of students, comprising one or more grade groups or other identifiable groups, organized as one unit with one or more teachers to give instruction of a defined type. Public educational facility includes, but is not limited to, primary and secondary (kindergarten – 12th grade), charter, vocational, alternative, and special education schools. Public educational facility does not include junior colleges, colleges, or universities.

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

##### Section 740.805 Requirements Prior to Public Use

A remediation site, or any building or structures contained within the boundary lines of the site, that is enrolled in the Site Remediation Program and is intended for future use as a school shall not be made available for use by the general public without first completing its Remedial Action Plan and receiving a NFR Letter from the Agency. This section shall not be construed to exempt a RA from any additional requirements set forth in Section 58.15 of the Environmental Protection Act [415 ILCS 5/58.15].

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

##### Section 740.810 Engineered Barriers and Institutional Controls

- a) The RA or any subsequent transferee of a remediation site subject to this Subpart H shall arrange with an LPE for an inspection of the remediation site within 120 days before every fifth anniversary of the date of issuance of the NFR Letter. The purpose of the inspection shall be to determine whether or not the effectiveness of all engineered barriers and institutional controls required by the Remedial Action Plan and the NFR Letter has been maintained.

- 1) The LPE shall prepare a report on the results of the inspection, itemizing each engineered barrier and institutional control and whether or not the effectiveness of each engineered barrier and institutional control has been maintained. If the effectiveness of any engineered barrier or institutional control has been compromised, the LPE shall describe the nature of the defects.
  
- 2) The LPE responsible for the site inspection and preparation of the report shall affirm by original signature as follows:

"I attest that the inspection of the remediation site to confirm the effectiveness of the engineered barriers and institutional controls required by the Remedial Action Plan and the NFR Letter was performed under my direction and that:

  - A) This document and all attachments were prepared under my direction or reviewed by me, and;
  
  - B) To the best of my knowledge and belief, the work and conclusions described in this report are in accordance with the requirements of 35 Ill. Adm. Code 740 and 742, the site's Remedial Action Plan and NFR Letter, and generally accepted engineering practices; and
  
  - C) The information presented is accurate and complete.
  
- 2) The LPE's report shall be submitted to the Agency no later than every fifth anniversary of the date of issuance of the NFR Letter.
  
- b) The Agency may void the NFR Letter in accordance with Section 740.625 if:
  - 1) An LPE's report is not submitted to the Agency by any fifth anniversary of the date of issuance of the NFR Letter; or
  
  - 2) The LPE's report indicates that the effectiveness of any engineered barrier or institutional control has not been maintained.
  
- c) The requirements of this Section shall not apply to a remediation site if no engineered barriers or institutional controls were required under the Remedial Action Plan and the NFR Letter, or if the remediation site is no longer used as a school site.
  
- d) If the site is transferred to a third-party, the transferor of the site is required to notify the Agency of such changes.

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.815      Public Notice of Site Remedial Action Plan

- a) No later than 10 days after receipt of the Agency's notice of acceptance into the Site Remediation Program of a remediation site intended for future use as a school, the RA shall mail written notice to interested and affected persons, public officials and organizations of the site's enrollment into the program. For assistance in determining who an interested and affected person may be, an RA may look to the Agency guidance document on community relations, "Community Relations in the Site Remediation Program".
- b) The notice shall, at a minimum, contain the following information:
  - 1) Name and address of the RA;
  - 2) The location and boundary lines of the remediation site;
  - 3) A description of the intended use of the site (e.g., building, playgrounds, athletic fields);
  - 4) A description of the surrounding land uses;
  - 5) A description of the site history including past uses;
  - 6) To the extent known, the nature and extent of the recognized environmental conditions and related contaminant of concern identified at the remediation site;
  - 7) A statement that the site has been enrolled in the Site Remediation Program, will be undergoing environmental site investigations, and may require environmental remediation prior to use as a school site;
  - 8) The name of a contact person and telephone number where that person may be reached; and
  - 9) The location and hours of the repository established pursuant to Section 740.820 of this Part.

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.820      Establishment of Document Repository

No later than 10 days after receipt of the Agency's notice of acceptance into the Site Remediation Program of a remediation site intended for future use as a school, the RA shall establish a repository where documents prepared by the RA for the Agency and by the Agency for the RA may be viewed and/or copies obtained. The repository shall be located and open to the public at a place and at times convenient to interested and

affected persons. The RA shall update the repository promptly and continuously as documents are generated throughout the remediation process.

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.825 Fact Sheet

No later than 10 days after submission to the Agency of a Remedial Action Plan for a remediation site intended for future use as a school, the RA shall mail to interested and affected persons, public officials, and organizations a Fact Sheet. For assistance in determining who an interested and affected person may be, an RA may look to the Agency guidance document on community relations, "Community Relations in the Site Remediation Program". The Fact Sheet shall contain the following information:

- a) The location and boundary lines of the remediation site;
- b) A site history;
- c) A description of the intended use of the site (e.g., buildings, playgrounds, athletic fields);
- d) A description of the surrounding land uses;
- e) The nature and extent of the recognized environmental conditions and related contaminants of concern identified at the remediation site;
- f) A description of the steps that are proposed in the Remedial Action Plan to address the recognized environmental conditions and related contaminants of concern;
- g) The nature of the NFR Letter requested (e.g., focused or comprehensive, reliance on engineered barriers or institutional controls);
- h) The name of a contact person and telephone number where that person may be reached to answer questions and to arrange for meetings with concerned members of the community; and
- i) The location and hours of the repository established pursuant to Section 740.820 of this Part.

(Source: Added at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 740.APPENDIX A Target Compound List

### Section 740.Table A Volatile Organics Analytical Parameters and Required Quantitation Limits

<u>CAS No.</u>	<u>Compound</u>	<u>Water (µg/L)</u>	<u>Soil (µg/Kg)</u>	<u>Method</u>
74-87-3	Chloromethane	10	10	<u>8260B 8260A</u>
74-83-9	Bromomethane	10	10	<u>8260B 8260A</u>
75-01-4	Vinyl Chloride	10	10	<u>8260B 8260A</u>
75-00-3	Chloroethane	10	10	<u>8260B 8260A</u>
75-09-2	Methylene Chloride	10	10	<u>8260B 8260A</u>
67-64-1	Acetone	10	10	<u>8260B 8260A</u>
75-15-0	Carbon Disulfide	10	10	<u>8260B 8260A</u>
75-35-4	1,1-Dichloroethene	10	10	<u>8260B 8260A</u>
75-34-3	1,1-Dichloroethane	10	10	<u>8260B 8260A</u>
540-59-0	1,2-Dichloroethene (total)	10	10	<u>8260A</u>
156-59-2	<u>Cis-1,2-Dichloroethene</u>			<u>8260B</u>

<u>156-60-5</u>	<u>Trans-1,2-Dichloroethene</u>			<u>8260B</u>
67-66-3	Chloroform	+0	+0	<u>8260B 8260A</u>
107-06-2	1,2-Dichloroethane	+0	+0	<u>8260B 8260A</u>
78-93-3	2-Butanone	+0	+0	<u>8260B 8260A</u>
71-55-6	1,1,1-Trichloroethane	+0	+0	<u>8260B 8260A</u>
56-23-5	Carbon Tetrachloride	+0	+0	<u>8260B 8260A</u>
75-27-4	Bromodichloromethane	+0	+0	<u>8260B 8260A</u>
78-87-5	1,2-Dichloropropane	+0	+0	<u>8260B 8260A</u>
10061-01-5	cis-1,3-Dichloropropene	+0	+0	<u>8260B 8260A</u>
79-01-6	Trichloroethene	+0	+0	<u>8260B 8260A</u>
124-48-1	Dibromochloromethane	+0	+0	<u>8260B 8260A</u>
79-00-5	1,1,2-Trichloroethane	+0	+0	<u>8260B 8260A</u>
71-43-2	Benzene	+0	+0	<u>8260B 8260A</u>
10061-02-6	trans-1,3-Dichloropropene	+0	+0	<u>8260B 8260A</u>
75-25-2	Bromoform	+0	+0	<u>8260B 8260A</u>
1634-04-4	<u>Methyl Tertiary-Butyl Ether</u>			<u>8260B</u>
108-10-1	4-Methyl-2-pentanone	+0	+0	<u>8260B 8260A</u>
591-78-6	2-Hexanone	+0	+0	<u>8260B 8260A</u>
127-18-4	Tetrachloroethene	+0	+0	<u>8260B 8260A</u>
108-88-3	Toluene	+0	+0	<u>8260B 8260A</u>
79-34-5	1,1,2,2-Tetrachloroethane	+0	+0	<u>8260B 8260A</u>
108-90-7	Chlorobenzene	+0	+0	<u>8260B 8260A</u>
100-41-4	Ethylbenzene	+0	+0	<u>8260B 8260A</u>
100-42-5	Styrene	+0	+0	<u>8260B 8260A</u>
1330-20-7	Xylenes (total)	+0	+0	<u>8260B 8260A</u>

~~Required Quantitation Limits for soil are based on wet weight. Normally data is reported on a dry weight basis; therefore, Reporting Limits will be higher, based on the percent dry weight in each sample. The laboratory shall report nonsurrogate components, tentatively identified by library search conducted per the guidelines contained in the analytical method.~~

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.Table B      Semivolatile Organic Analytical Parameters and Required Quantitation Limits

CAS No.	Compound	Water ( $\mu\text{g/L}$ )	Soil ( $\mu\text{g/Kg}$ )	Method
108-95-2	Phenol	+0	660	<u>8270C 8270A</u>
111-44-4	bis(2-Chloroethyl) ether	+0	660	<u>8270C 8270A</u>
95-57-8	2-Chlorophenol	+0	660	<u>8270C 8270A</u>
95-50-1	1,2-Dichlorobenzene	+0	660	<u>8270C 8270A</u>
541-73-1	1,3-Dichlorobenzene	+0	660	<u>8270C 8270A</u>
106-46-7	1,4-Dichlorobenzene	+0	660	<u>8270C 8270A</u>
95-48-7	2-Methylphenol	+0	660	<u>8270C 8270A</u>
108-60-1	2,2'-oxybis (1-chloropropane)	+0	660	<u>8270C 8270A</u>
106-44-5	4-Methylphenol	+0	660	<u>8270C 8270A</u>
621-64-7	N-Nitroso-di-n-propylamine	+0	660	<u>8270C 8270A</u>
67-72-1	Hexachloroethane	+0	660	<u>8270C 8270A</u>
98-95-3	Nitrobenzene	+0	660	<u>8270C 8270A</u>
78-59-1	Isophorone	+0	660	<u>8270C 8270A</u>
88-75-5	2-Nitrophenol	+0	660	<u>8270C 8270A</u>

105-67-9	2,4-Dimethylphenol	10	660	8270C 8270A
111-91-1	bis(2-Chloroethoxy) methane	10	660	8270C 8270A
120-83-2	2,4-Dichlorophenol	10	660	8270C 8270A
120-82-1	1,2,4-Trichlorobenzene	10	660	8270C 8270A
91-20-3	Naphthalene	10	660	8270C 8310 8270A
106-47-8	4-Chloroaniline	10	660	8270C 8270A
87-68-3	Hexachlorobutadiene	10	660	8270C 8270A
59-50-7	4-Chloro-3-methylphenol	10	660	8270C 8270A
91-57-6	2-Methylnaphthalene	10	660	8270C 8270A
77-47-4	Hexachlorocyclopentadiene	10	660	8270C 8270A
88-06-2	2,4,6-Trichlorophenol	10	660	8270C 8270A
95-96-4	2,4,5-Trichlorophenol	25	1600	8270C 8270A
91-58-7	2-Chloronaphthalene	10	660	8270C 8270A
88-74-4	2-Nitroaniline	25	1600	8270C 8270A
131-11-3	Dimethylphthalate	10	660	8270C 8270A
208-96-8	Acenaphthylene Acenaphthalene	10	660	8270C 8310 8270A
606-20-2	2,6-dinitrotoluene	10	660	8270C 8270A
99-09-2	3-Nitroaniline	25	1600	8270C 8270A
83-32-9	Acenaphthene	10	660	8270C 8310 8270A
51-28-5	2,4-Dinitrophenol	25	1600	8270C 8270A
100-02-7	4-Nitrophenol	25	1600	8270C 8270A
132-64-9	Dibenzofuran	10	330	8270C 8270A
121-14-2	2,4-Dinitrotoluene	10	330	8270C 8270A
84-66-2	Diethylphthalate	10	330	8270C 8270A
7005-72-3	4-Chlorophenyl-phenyl ether	10	330	8270C 8270A
86-73-7	Fluorene Fluorine	10	330	8270C 8310 8270A
100-01-6	4-Nitroaniline	25	1600	8270C 8270A
534-52-1	4,6-Dinitro-2-methylphenol	25	1600	8270C 8270A
86-30-6	N-nitrosodiphenylamine	10	330	8270C 8270A
101-55-3	4-Bromophenyl-phenyl ether	10	330	8270C 8270A
118-74-1	Hexachlorobenzene	10	330	8270C 8270A
87-86-5	Pentachlorophenol	25	1600	8270C 8270A
85-01-8	Phenanthrene	10	660	8270C 8310 8270A
120-12-7	Anthracene	10	10	8270C 8310 8270A
86-74-8	Carbazole	10	660	8270C 8270A
84-74-2	Di-n-butylphthalate	10	660	8270C 8270A
206-44-0	Fluoranthene	10	660	8270C 8310 8270A
129-00-0	Pyrene	10	660	8270C 8310 8270A
85-68-7	Butylbenzylphthalate	10	660	8270C 8270A
91-94-1	3,3'-Dichlorobenzidine	10	660	8270C 8270A
56-55-3	Benzo(a)anthracene	10	660	8270C 8310 8270A
218-01-9	Chrysene	10	660	8270C 8310 8270A
117-81-7	bis(2-Ethylhexyl)phthalate	10	660	8270C 8270A
117-84-0	Di-n-octylphthalate	10	660	8270C 8270A
205-99-2	Benzo(b)fluoranthene	10	660	8270C 8310 8270A
207-08-9	Benzo(k)fluoranthene	10	660	8270C 8310 8270A
50-32-8	Benzo(a)pyrene	10	660	8310 8270A

193-39-5	Indeno(1,2,3-c,d)pyrene	+0	660	<u>8270C 8310</u> <u>8270A</u>
53-70-3	Dibenz(a,h)anthracene	+0	660	<u>8310 8270A</u>
191-24-2	Benzo(g,h,i)perylene	+0	660	<u>8270C 8310</u> <u>8270A</u>

~~Required Quantitation Limits for soil are based on wet weight. Normally data is reported on a dry weight basis; therefore, Reporting Limits will be higher, based on the percent solids in each sample. This is based on a 30 gram sample and GPC cleanup. The laboratory shall report non surrogate components, tentatively identified by library search conducted per the guidelines contained in the analytical method.~~

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.Table C Pesticide and Aroclors Organic Analytical Parameters and Required Quantitation Limits

<u>CAS No.</u>	<u>Compound</u>	<u>Water (µg/L)</u>	<u>Soil (µg/Kg)</u>	<u>Method</u>
319-84-6	alpha-BHC	0.05	8.0	<u>8081A</u> <u>8081</u>
319-85-7	beta-BHC	0.05	8.0	<u>8081A</u> <u>8081</u>
319-86-8	delta-BHC	0.05	8.0	<u>8081A</u> <u>8081</u>
58-89-9	gamma-BHC	0.05	8.0	<u>8081A</u> <u>8081</u>
76-44-8	Heptachlor	0.05	8.0	<u>8081A</u> <u>8081</u>
309-00-2	Aldrin	0.05	8.0	<u>8081A</u> <u>8081</u>
1024-57-3	Heptachlor epoxide	0.05	8.0	<u>8081A</u> <u>8081</u>
959-98-8	Endosulfan I	0.05	8.0	<u>8081A</u> <u>8081</u>
60-57-1	Dieldrin	0.10	16.0	<u>8081A</u> <u>8081</u>
72-55-9	4,4'-DDE	0.10	16.0	<u>8081A</u> <u>8081</u>
72-20-8	Endrin	0.10	16.0	<u>8081A</u> <u>8081</u>
33213-65-9	Endosulfan II	0.10	16.0	<u>8081A</u> <u>8081</u>
72-54-8	4,4'-DDD	0.10	16.0	<u>8081A</u> <u>8081</u>
1031-07-8	Endosulfan sulfate	0.10	16.0	<u>8081A</u> <u>8081</u>
50-29-3	4,4'-DDT	0.10	16.0	<u>8081A</u> <u>8081</u>
72-43-5	Methoxychlor	0.50	80.0	<u>8081A</u> <u>8081</u>
53494-70-5	Endrin ketone	0.10	16.0	<u>8081A</u> <u>8081</u>
7421-93-4	Endrin aldehyde	0.10	16.0	<u>8081A</u> <u>8081</u>
5103-71-9	alpha-Chlordane	0.50	80.0	<u>8081A</u> <u>8081</u>
5566-34-7	gamma-Chlordane	0.50	80.0	<u>8081A</u> <u>8081</u>
8001-35-2	Toxaphene	1.0	160.0	<u>8081A</u> <u>8081</u>
12674-11-2	Aroclor - 1016	0.50	80.0	<u>8082</u> <u>8081</u>
11104-28-2	Aroclor - 1221	0.50	80.0	<u>8082</u> <u>8081</u>
11141-16-5	Aroclor - 1232	0.50	80.0	<u>8082</u> <u>8081</u>
53469-21-9	Aroclor - 1242	0.50	80.0	<u>8082</u> <u>8081</u>
12672-29-6	Aroclor - 1248	0.50	80.0	<u>8082</u> <u>8081</u>
11097-69-1	Aroclor - 1254	1.0	160.0	<u>8082</u> <u>8081</u>
111096-82-5	Aroclor - 1260	1.0	160.0	<u>8082</u> <u>8081</u>

Required Quantitation Limits for soil are based on wet weight. Normally data is reported on a dry weight basis; therefore, Reporting Limits will be higher, based on the percent solids in each sample.

(Source: Amended at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 740.Table D Inorganic Analytical Parameters and Required Quantitation Limits

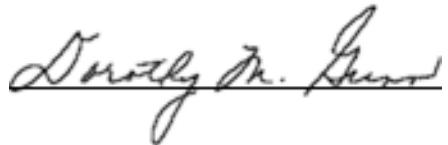
<u>CAS No.</u>	<u>Compound</u>	<u>Water (<math>\mu\text{g/L}</math>)</u>	<u>Soil (<math>\mu\text{g/Kg}</math>)</u>	<u>Method</u>
7429-90-5	Aluminum	200	40	<u>6010B/6020</u> <u>6010A</u>
7440-36-0	Antimony	60	12	<u>6010B/6020</u> <u>6010A</u>
7440-38-2	Arsenic	10	2	<u>6020/7060A/</u> <u>7061A/7062</u>
7440-39-3	Barium	200	40	<u>6010B</u> <u>6010A</u>
7440-41-7	Beryllium	5	1	<u>6010B/6020</u> <u>6010A</u>
7440-43-9	Cadmium	5	1	<u>6010B/6020</u> <u>6010A</u>
7440-70-2	Calcium	5000	1000	<u>6010B</u> <u>6010A</u>
7440-47-3	Chromium	10	2	<u>6010B/6020</u> <u>6010A</u>
7440-48-4	Cobalt	50	10	<u>6010B/6020</u> <u>6010A</u>
7440-50-8	Copper	25	5	<u>6010B/6020</u> <u>6010A</u>
7439-89-6	Iron	100	20	<u>6010B</u> <u>6010A</u>
7439-92-1	Lead	3	0.6	<u>6020/7421</u>
7239-95-4	Magnesium	5000	1000	<u>6010B</u> <u>6010A</u>
7439-96-5	Manganese	15	3	<u>6010B/6020</u> <u>6010A</u>
7439-97-6	Mercury	0.2	0.04	7470A/7471A
7440-02-0	Nickel	40	8	<u>6010B/6020</u> <u>6010A</u>
7440-09-7	Potassium	5000	1000	<u>6010B</u> <u>6010A</u>
7782-49-2	Selenium	5	1	7740A/7741A/ 7742
7440-22-4	Silver	10	2	<u>6010B/6020</u> <u>6010A</u>
7440-23-5	Sodium	5000	1000	<u>6010B</u> <u>6010A</u>
7440-28-0	Thallium	10	2	<u>6020/7841</u>
7440-62-2	Vanadium	50	10	<u>6010B</u> <u>6010A</u>
7440-66-6	Zinc	20	4	<u>6010B/6020</u> <u>6010A</u>
57-12-5	Cyanide	10	2	<u>9012A</u> <u>9012</u>

Required Quantitation Limits for soil are based on wet weight. Normally data is reported on a dry weight basis; therefore, Reporting Limits will be higher, based on the percent dry weight in each sample.

(Source: Amended 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.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn". The signature is fluid and cursive, with a horizontal line underneath it.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board