

ILLINOIS POLLUTION CONTROL BOARD  
February 6, 1997

IN THE MATTER OF: )  
)  
SITE REMEDIATION PROGRAM ) R97-11  
and GROUNDWATER QUALITY ) (Rulemaking - Land)  
(35 ILL. ADM. CODE 740 and )  
35 ILL. ADM. CODE 620) )

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey, G.T. Girard and M. McFawn):

In this rulemaking, the Board considers a proposal filed by the Illinois Environmental Protection Agency (Agency) on September 16, 1996. The proposal sets forth procedures and standards for the Site Remediation Program (SRP), which was established under Title XVII of the Illinois Environmental Protection Act. (415 ILCS 5/58-58.12, as added by P.A. 89-431 (1995).)

By today's action the Board adopts the proposed amendments for the purpose of first notice, pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (1994).) This opinion and order contains the following sections: Procedural Matters; Overview of the Site Remediation Program; Economic and Technical Justification for the Site Remediation Program; Analysis; Conclusion; and Order. Publication of Part 740 in the *Illinois Register* will follow today's action, upon which an additional 45-day public comment period will begin. In order to meet the statutory deadline imposed by Title XVII, the Board must proceed to second notice at or before the regularly scheduled April 17, 1997 Board meeting.

The Illinois General Assembly established the SRP to serve several important purposes. First, the SRP provides incentives for private parties to undertake remedial action at sites where contaminants are present. Second, the SRP accomplishes this objective through an entirely voluntary program that establishes risk-based cleanup objectives that protect human health and the environment, taking into account current and anticipated uses of the land. Third, the SRP assures that if the use of the remediation site is modified, the adequacy of the remediation for the new use will be considered. Fourth, the SRP establishes expeditious alternatives for review and approval of site investigation and cleanup activities, including a privatized review process. Finally, the SRP assures that the resources of the Hazardous Waste Fund are used in a manner that protects human health and the environment, consistent with current and future uses of remediation sites. (415 ILCS 5/58.)

The Board commends the Agency, the Site Remediation Advisory Committee (SRAC) and all others who participated in this rulemaking for their excellent work. The SRP is new and raises some difficult and complex issues. The time and thought that the participants

devoted to this rulemaking gave the Board a well-developed record upon which to resolve those issues. The Board looks forward to the continued participation of these and other participants in this rulemaking.

### PROCEDURAL MATTERS

The Board's responsibility in this matter arises from the Environmental Protection Act (Act). (415 ILCS 5/1 *et seq.* (1994).) The Act charges the Board to "determine, define and implement the environmental control standards applicable in the State of Illinois." (415 ILCS 5/5(b).) More generally, the Board's rulemaking authority is based on the system of checks and balances integral to Illinois environmental governance: the Board is responsible for rulemaking and adjudication, while the Agency is primarily responsible for administering the Act and the Board's regulations.

P.A. 89-431, signed and effective December 15, 1995, requires that the Board complete its rulemaking on or before June 16, 1997.<sup>1</sup> The Board notes, however, that these rules shall not become effective until the regulations in Part 742 have been adopted. Part 742 is the Tiered Approach to Cleanup Objectives, commonly known as TACO, currently under consideration by the Board in R97-12. Due to the extensive cross-referencing to Part 742 throughout this proposed rule, we find it necessary to tie the effective date of this rule to the effective date of the Part 742 rules. Therefore, the Board will make the Part 740 rules effective on July 1, 1997, which is the same date that we expect that the proposed Part 742 rules will become effective.

The Agency filed its proposed Part 740 rules (proposal), along with a Statement of Reasons pursuant to 35 Ill. Adm. Code 102.121(b) (Agency Statement), on September 16, 1996. On September 19, 1996 the Board accepted this matter for hearing, granted the motion regarding incorporations by reference, and directed the Agency to file an economic impact form pursuant to Section 102.121(c) of the Board's rules. On October 18, 1996, the Agency filed its economic impact form and motion for acceptance of such form. The Board hereby grants the motion to accept the economic impact form.

On October 24, 1996 a pre-hearing conference was held in Springfield, Illinois. Hearings were held before Board Hearing Officer Amy Hoogasian in Chicago on November 25-26, 1996 and in Springfield on December 17-18, 1996. Testimony was presented by the Agency as the proponent of the rule. Mark Wight, on behalf of the Agency, presented the testimony of five Agency witnesses: Gary King, Lawrence Eastep, Shirley Baer, Robert O'Hara, and Rick Lucas.

The Board also received prefiled testimony and/or questions from various interested persons, including: Emmett Dunham and Frederick Feldman on behalf of the Metropolitan Water Reclamation District; Randy Muller of Bank of America, N.T. & S.A., on behalf of the Illinois Bankers Association and SRAC; David Rieser of Ross & Hardies on behalf of the

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<sup>1</sup> The Board's last regularly scheduled Board meeting before that date is on June 5, 1997.

Illinois Petroleum Council and the Illinois Steel Group; Whitney Wagner Rosen on behalf of the Illinois Environmental Regulatory Group (IERG); Glenn Sechen on behalf of the Chicagoland Chamber of Commerce; Harry Walton of Illinois Power Company on behalf of the Illinois State Chamber of Commerce as Chairman of SRAC; Patricia Sharkey of Mayer, Brown & Platt on behalf of various clients with an interest in site remediation; John Watson of Gardner, Carton & Douglas, and Linda Huff of Huff & Huff, Inc., both on behalf of the SRP Coalition, which is comprised of B.F. Goodrich Company, Commonwealth Edison Company, Hydrosol, Inc., INX International Ink Company, Northern Illinois Gas Company, W. Wrigley Jr. Company, and Woodward Governor Company.

Others also testified or asked questions at the hearings, including Steve Gobelman of the Illinois Department of Transportation; Mark Homer of the Chemical Industry Council of Illinois; and Peter Gates of Mobil Oil Corporation.

Eight public comments and 14 exhibits were filed in this rulemaking proceeding. Twelve of the exhibits offered at hearing were pre-filed testimony and the other two were technical documents, including an errata sheet and an example of an Agency billing statement. A complete list of the exhibits and public comments follows.

#### Exhibits

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| Exhibit #1 (Ex. 1) | Testimony of Lawrence W. Eastep on behalf of the Agency on Proposed Subpart A.  |
| Exhibit #2 (Ex. 2) | Testimony of Shirley Baer on behalf of the Agency on Proposed Subparts B and C.   |
| Exhibit #3 (Ex. 3) | Testimony of Robert O'Hara on behalf of the Agency on Proposed Subpart D.   |
| Exhibit #4 (Ex. 4) | Testimony of Richard D. Lucas on behalf of the Agency on Proposed Subpart E.  |
| Exhibit #5 (Ex. 5) | Testimony of Lawrence W. Eastep on behalf of the Agency on Proposed Subpart F.  |
| Exhibit #6 (Ex. 6) | Agency's Errata Sheet Number 1.   |
| Exhibit #7 (Ex. 7) | Agency's Draft of Revisions to Proposed Part 740 in Response to Prefiled Questions from PCB hearings of November 25-26, 1996. |
| Exhibit #8 (Ex. 8) | Testimony of Frederick M. Feldman of Metropolitan Water Reclamation District of Greater Chicago.                              |

- Exhibit #9 (Ex. 9) Testimony of John Watson of Gardner, Carton & Douglas on behalf of the SRP Coalition.
- Exhibit #10 (Ex. 10) Testimony of Linda L. Huff of Huff & Huff, Inc. on behalf of the SRP Coalition.
- Exhibit #11 (Ex. 11) Testimony of Randy Muller of the Bank of America, N.T. & S.A. on behalf of the Illinois Bankers Association and the SRAC.
- Exhibit #12 (Ex. 12) Testimony of Harry Walton of Illinois Power Company on behalf of the Illinois State Chamber of Commerce as Chairman of the SRAC.
- Exhibit #13 (Ex. 13) Agency's Responses Regarding Certain Revisions to Proposed Part 740 as Suggested in the Testimonies of Ms. Linda L. Huff and Mr. Frederick M. Feldman.
- Exhibit #14 (Ex. 14) Example of Statement of IEPA Costs Incurred and Paid.

#### Public Comments

- PC 1 Comments from Judson Hite of Altheimer & Gray on behalf of the Chicago Development Counsel filed on December 9, 1996, regarding Sections 740.210, 740.215, 740.235, and 740.310.
- PC 2 Prefiled Testimony of Patricia Sharkey of Mayer, Brown & Platt on behalf of various clients filed on December 17, 1996, regarding Sections 740.105, 740.120, 740.125, 740.210, 740.420, 740.440, 740.510 and 740.530
- PC 3 Agency's Errata Sheet Number 2 filed on January 9, 1997, pertaining to Sections 740.120, 740.210, 740.215, 740.230, 740.425, 740.435, 740.440, 740.445, 740.455, 740.505, 740.510, 740.515, 740.530, 740.620 and 740.625.
- PC 4 Post-hearing comments of Whitney Wagner Rosen on behalf of IERG filed on January 10, 1997, pertaining to Section 740.505.
- PC 5 Final comments of the Agency filed on January 13, 1997.

- PC 6 Post-hearing comments of Emmett Dunham on behalf of the Metropolitan Water Reclamation District filed on January 13, 1997, regarding the Agency's Errata Sheet #2.
- PC 7 Comments of Patricia Sharkey of Mayer, Brown & Platt on behalf of various clients filed on January 13, 1997, regarding Sections 740.120, 740.240, 740.440, 740.445, 740.455, 740.510, 740.515, and 740.625.
- PC 8 Final comments of Gardner, Carton & Douglas on behalf of the SRP Coalition filed on January 14, 1997, regarding Sections 740.120, 740.310, 740.415, 740.425, and 740.435.

Gardner, Carton & Douglas attached certain United States Environmental Protection Agency (USEPA) guidance documents to its final public comment, PC 8. Gardner, Carton & Douglas also filed a motion requesting that the Board waive the filing requirements of Section 101.103(b) of the Board's procedural rules by allowing it to file one copy, rather than ten copies, of the USEPA guidance documents. The Board grants the motion because the three guidance documents are voluminous.

In adopting the proposed rules for first notice, the Board has reviewed and considered all of the testimony, exhibits and comments submitted by the Agency and other participants in this rulemaking.

#### OVERVIEW OF THE SITE REMEDIATION PROGRAM

The purpose of Title XVII and the proposed Part 740 rules is to establish procedures for the investigative and remedial activities at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides or petroleum and for the review and approval of those activities. (415 ILCS 5/58.1(a)(1).) The SRP is similar to the Agency's Pre-Notice Site Cleanup Program (PNSCP). The PNSCP began operating in 1989 under the authority of Sections 22.2(m) and (n) of the Act, which were repealed in 1995. (P.A. 89-431). The PNSCP provided procedures for remediating contaminated sites. The SRP varies from the PNSCP in several ways, including in the types of plans and reports required, in the SRP's use of risk-based methods to determine the extent of remediation necessary, in the SRP's option to use a private review and evaluation licensed professional engineer and in the availability of an extensive No Further Remediation (NFR) Letter under the SRP.

In addition, the proposal, as modified by the Board, allows appeals of various Agency decisions in connection with a site remediation; the PNSCP did not allow for any appeals. In the SRP, appeals may be taken from the denial of applications and agreements (Section 740.215(d)), modifications of applications and agreements (Section 740.220(d)), Agency termination of service agreements (Section 740.230(d)), requests for payment (740.310(d)),

disapproval or approval with conditions of any of four plans or reports (Section 740.505(h)) and avoidance of NFR Letters (740.625(a)).

The SRP is voluntary; any person performing site investigation or remediation may elect to proceed under the SRP. However, sites that are being remediated under a federal court order, a United States Environmental Protection Agency (USEPA) administrative order, or sites that are subject to a federally delegated program, generally may not enter the SRP unless the Agency determines that the SRP will not conflict with the federal order or program.

The proposal requires that each SRP participant submit an application and enter into a service agreement with the Agency. The application and agreement shall set forth the objectives of the participant and the services requested from the Agency. The proposal generally requires that a participant in the SRP (referred to as a remediation applicant or RA) proceed through four stages.

First, the RA must perform a site investigation to determine the presence or likely presence of any regulated substances or pesticides under conditions that would indicate a release or threatened release. At the RA's option, the site investigation may be limited to a portion of the site or to a particular regulated substance being investigated. The RA must prepare a report on the findings of the investigation.

Second, if contamination is discovered, the RA must develop remediation objectives in accordance with 35 Ill. Adm. Code 742. Remediation objectives may include institutional controls or engineered barriers, which are subject to the Agency's approval in accordance with 35 Ill. Adm. Code 742.Subparts J and K.

Third, if remediation is necessary to achieve compliance with remediation objectives, the RA must propose a remedial action plan to the Agency. Fourth, after the remedial action plan is approved by the Agency and implemented, the RA must submit a remedial action completion report showing that the remediation objectives have been achieved.

Upon approval of a remedial action completion report, the Agency will issue a No Further Remediation (NFR) Letter to the RA. The NFR Letter must be recorded with the Office of the Recorder or the Registrar of Titles in the county in which the site is located. As Title XVII states, the NFR Letter is *prima facie* evidence that the site does not constitute a threat to human health and the environment. (415 ILCS 5/58.10(a).) The NFR Letter also signifies that no further remediation is required under the Act so long as the site is used in accordance with the terms of the NFR Letter. The NFR Letter may be transferred to subsequent owners of the site and the NFR Letter may extend to the holders of a variety of interests in the site. Finally, the NFR Letter is voidable in certain circumstances. For example, an NFR Letter that requires that the site be used only for industrial use is voidable if the site is converted to residential use.

The proposal is divided into six subparts and two appendices. A more detailed description of each subpart, along with the Board's resolution of any issues that have arisen with respect to each section, begins on page 8, *infra*.

## ECONOMIC AND TECHNICAL JUSTIFICATION OF THE SITE REMEDIATION PROGRAM

### Economic Reasonableness

The Agency discusses the economic reasonableness of the proposal at pages 19-22 of the Agency Statement. Generally, the Agency states that the SRP will have economic consequences both for the general public and persons performing remediation. The Agency believes that the general public will benefit from the return of abandoned and under-used properties to more productive uses. For persons performing remediation, the economic consequences will depend on the relative costs and benefits of the SRP. Those costs and benefits will depend on the potential liability for remediation under other provisions of the law, the economic viability of the property to be remediated, the costs of investigation, the costs of remediation, the costs of compliance with the administrative requirements and any liability protection and facilitation of property transfers that may result from the issuance of an NFR Letter.

The Agency expects that the SRP will offer participants significant savings over the PNSCP. Rather than setting strict cleanup levels applicable to all sites, the SRP uses a risk-based approach that may allow a participant to leave some contamination in place, with appropriate safeguards for human health and the environment. The Agency believes that the remediation costs in the SRP will be reduced as much as 50% to 75% for a site compared to the PNSCP.

The Agency believes that administrative costs for the Agency and participants in the SRP may be greater than they have been under the PNSCP. The Act specifies more steps in the SRP than is the case in the PNSCP, rendering the SRP less flexible than the PNSCP. The SRP has more rigid requirements than did the PNSCP in the areas of site investigation, preparation of plans and reports, and Agency and Review and Evaluation Licensed Professional Engineer (RELPE) services. The Agency expects to recover all costs for review and evaluation services from the participants. Because of the new appeal points, however, the Agency believes the Agency will also have an increase in budgetary costs due to defending appeals. Concurrently, the Board may have to allocate more resources to handle these additional appeals.

Although the proposal may result in greater administrative costs for the Agency and participants in the SRP than did the PNSCP, it also may result in more efficient and economic remediation of contaminated sites for both the Agency and participants in the SRP. The SRP also may increase the number of sites remediated.

At this time, the Board finds this proposal economically reasonable based on this information set forth above, as well as the Board's analysis of the proposal as set forth in this opinion and order. At this time, the Board also finds that the proposal will not have an adverse economic impact on the people of the State of Illinois and that proceeding to first notice is warranted.

### Technical Feasibility

The Agency discusses the technical feasibility of the proposal at pages 18-19 of the Agency Statement. Generally, the only potential technical feasibility issues in the proposal are raised by Subpart D, which specifies site investigation and remediation requirements. The site investigation may include soil and sediment investigations, hydrogeological investigations, and surface water investigations, as well as visual investigation and research into historic and current activities at the site. Techniques used to complete these investigations include soil, surface water and groundwater sampling and analysis. This subpart also establishes data quality objectives for field and laboratory operations to ensure that all data are scientifically valid.

The Agency states that these types of techniques have been previously used in the PNSCP, the Leaking Underground Storage Tank Program, state programs, federal programs, and private investigations. The Agency contends that because the requirements for site investigations, data quality objectives and remediation are common techniques used throughout other state and federal programs, the proposal raises no issues of technical feasibility.

At this time, the Board finds the proposal technically feasible for the reasons given by the Agency, as well as the Board's analysis of the proposal as detailed in this opinion and order. The Board further finds that this information warrants proceeding to first notice on the proposal, as revised.

## ANALYSIS

As noted earlier, the proposal has six subparts and two appendices. This section of the opinion and order sets forth a more thorough description of each subpart of the proposal, along with the Board's resolution of any issues that have arisen with respect to any section of the proposal.

### Subpart A: General.

Subpart A sets forth the general provisions of Part 740. First, this subpart identifies the sites for which the SRP may and may not be used. Second, this subpart provides that permit waivers are available for remedial activities undertaken in the SRP. Third, this subpart clarifies that Part 740 shall not limit the authority of the Agency to act under certain other provisions of the Act. Fourth, this subpart includes definitions for certain terms used in the proposal. (Some terms from Title XVII are not defined here, however, because they are used and defined in the rules proposed under 35 Ill. Adm. Code 742.) Finally, this subpart identifies documents incorporated by reference.



At the hearings and in public comments, issues were raised regarding Sections 740.100 (the purpose of the SRP), 740.105 (the applicability of the SRP and its exceptions), 740.115 (the Agency's authority), 740.120 (definitions) and 740.125 (incorporations). These issues, along with the Board's conclusions, are set forth below.

Section 740.100 Purpose. This section states the purpose of Part 740. Specifically, the purpose of Part 740 is to establish procedures for investigation and remediation at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides or petroleum. Further, the purpose of Part 740 is to establish procedures for the review and approval of those activities. (Ex. 1 at 2.)

Mr. Watson requests that the Board further explain the fundamental legislative purposes underlying the proposed regulations and the manner in which Part 740 is to be implemented to fulfill the statutory intent. (Tr. 2 at 38-41; Ex. 9 at 5.) Specifically, Mr. Watson believes that the SRP "provides a mechanism for discharging a Remediation Applicant's statutory liability with the State" and that it is not a purpose of the SRP "to perform remedial actions that have no relation to site risks and reasonably anticipated site uses." (Ex. 9 at 5.)

The Board does not agree that one of the purposes of the SRP is to allow an RA to discharge its statutory liability to the State. The SRP itself results in the issuance of an NFR Letter, which does not include a discharge of liability. Instead, the NFR Letter is *prima facie* evidence that the site does not constitute a threat to human health or the environment, and does not require further remediation under the Act, if the site is used according to the NFR Letter. That *prima facie* evidence can be rebutted, however, so an NFR Letter cannot be considered a discharge of liability. (See also Section 740.625, Voidance of No Further Remediation Letter.)

Title XVII does provide that one of its purposes is "to establish a risk-based system of remediation based on protection of human health and the environment relative to present and future uses of the site." (415 ILCS 5/58.) The Board does not believe it necessary, however, that Section 740.100 contain an express reference to risk-based remediation. The Board notes that there are references to risk-based remediation in the purpose section of the proposed Part 742 rules, the Part under which risk-based remediation objectives are developed. No additional reference is necessary here.

Accordingly, the purpose section remains as written and proposed by the Agency.

Section 740.105 Applicability. This section paraphrases the applicability provisions of Title XVII. Specifically, Section 740.105(a) states that the procedures in this Part are available to persons required to or electing to perform investigative or remedial activities at a site where there is a release, threatened release or suspected release of hazardous substances, pesticides or petroleum.

Section 740.105(a) lists sites ineligible to be remediated in the SRP. These exclusions ensure that the SRP will not interfere with delegated federal programs or with federal court orders or administrative orders issued by the USEPA. (Ex. 1 at 3.) At hearing, the Agency further clarified the scope of these exclusions by stating that a facility regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq.*, may not be remediated under Part 740. (Tr. 1 at 52.)

Section 740.105(b) allows any person whose site is excluded under 740.105(a) to utilize the provisions of Part 740 to the extent allowed by federal law. At hearing, questions were asked regarding the applicability of the Superfund Memorandum of Agreement (MOA) between the Agency and USEPA to the SRP. The MOA, which is in effect an addendum to the Superfund program, provides that if the Agency approved a remediation site under the PNSCP, the USEPA will not require additional remediation under the federal Superfund program, in the absence of exceptional circumstances. (Tr. 1 at 55.)

In June, 1996, the Agency submitted a proposed MOA pertaining to Part 740 to USEPA. As of the date of the hearings on Part 740, the Agency had not received any formal response from USEPA. (Tr. 1 at 56; Ex. 1 at 5.) Nonetheless, the Agency testified that the MOA will be extended to include sites remediated under the SRP. (Tr. 2 at 288-290.)

Finally, the Agency proposed some minor changes to this section to ensure that it fully reflects the Agency's intent to allow any person previously addressing a site under the PNSCP, whose site is otherwise eligible for the SRP, to opt into the SRP. (Ex. 6 at 1.; Tr. 1 at 19.) The Board finds these changes appropriate.

Section 740.115 Agency Authority. This section allows the Agency to take action as appropriate where authorized under section 4(q) of the Act<sup>2</sup> or any other provision of the Act. At hearing, the Agency confirmed that an RA that has received a 4(q) notice may opt to use Part 740 to fulfill remediation requirements under the 4(q) program. (Tr. 1 at 51.)

While none of the participants in this rulemaking have suggested additional language for this section, a brief explanation of this section's reference to Section 4(y) of the Act may be helpful to persons remediating sites in Illinois. Section 4(y) allows a person, upon written request, to obtain a discharge from further responsibility for preventive or corrective action under the Act following the successful completion of preventive or corrective action undertaken by such person. Unlike an NFR Letter, a 4(y) release does not constitute *prima facie* evidence that a site does not constitute a threat to human health or the environment. The Act allows a person to elect to obtain a release under 4(y) of the Act rather than an NFR Letter

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<sup>2</sup> Section 4(q) of the Act allows the Agency to provide notice to any person who may be liable pursuant to Section 22.2(f) of the Act for a release or substantial threat of a release of a hazardous substance or pesticide. The notice must include the identified response action and must provide an opportunity for the person receiving the notice to perform the response action.

under Part 740.<sup>3</sup> The Agency believes that there are situations in which a 4(y) release may be less costly and time-consuming to obtain than an NFR Letter. (Ex. 1 at 5-6.)

This section, coupled with the Board Note included under this section, allows the Agency to apply some Part 740 procedures at sites where participants are seeking an Agency release under Section 4(y) of the Act (415 ILCS 5/4(y)). (Ex. 1 at 6.) In its pre-filed testimony, the Agency states that this section and the Board Note are necessary to correct an oversight in Title XVII. (Ex. 1 at 6.) In particular, the Agency wishes to be able to use the service agreement structure (described in Subpart B) for sites addressed under 4(y) and the procedures for establishing remediation objectives set forth in Part 742. The Board finds this section and the Board Note acceptable for the reasons given by the Agency. The Board also accepts the Agency's typographical revision to this subsection. (Ex. 6 at 1; Tr. 1 at 20.)

Section 740.120 Definitions. Most of the definitions in this section are identical to those provided for in Title XVII. Some terms used in Title XVII are not defined here because they are used in the proposed Part 742 rules rather than in this proposal.

Most of the definitions are self-explanatory, but some of the terms need additional clarification due to issues raised during both the first and second hearings. These terms are the following: "contaminant of concern," "duly authorized agent," "groundwater management zone," "recognized environmental condition," "remediation applicant (RA)," "remediation site" and "residential property."

The definition of "contaminants of concern" in Part 740 is identical to the definition of "regulated substance of concern" given in Section 58.2 of the Act. The Agency states that these definitions have been added in Part 740 to maintain consistency with proposed Part 742. (Ex. 1 at 8.) At hearing, Ms. Sharkey questioned whether "contaminants of concern" is intended to include contaminants other than those that are known to be associated with a specific release. (Tr. 1 at 91.) In Ms. Sharkey's first public comment, she states that "the Board should make it clear in its opinion that this statutory definition is focused on known releases." (PC 2 at 6.)

The Board notes that Ms. Sharkey's discussion regarding "contaminants of concern" is closely related to Ms. Sharkey's objection to the use of the ASTM procedure, as required by Section 740.420, which is discussed elsewhere. (*See infra* at 22-28.) The definition of "contaminants of concern" is based on statutory language, and Ms. Sharkey does not suggest that the definition be changed. To the extent that Ms. Sharkey raises a question as to how "contaminants of concern" are identified, the Board emphasizes that in a comprehensive site investigation, "contaminants of concern" are identified through the procedures outlined in Section 740.420.

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<sup>3</sup> The Agency also testified, however, that a 4(y) letter would not preclude a person from later proceeding to obtain an NFR Letter. (Tr. 2 at 290-291.)

In the definition of “duly authorized agent,” there are three examples of who is authorized by written consent or by law to act on behalf of an owner, operator or RA. At hearing, the Agency agreed that if the bylaws of a corporation allowed someone else to act as a duly authorized agent, the Agency would accept that person as duly authorized. (Tr. 2 at 296-97.) Because the definition originally proposed suggests that only those listed in the examples may be authorized, the Board has stricken the three examples from the definition. The Board also has stricken the term “duly” as redundant; an agent not duly authorized is simply not authorized. The Board also makes conforming changes to Sections 740.210 and 740.410. The Board seeks comment on these proposed revisions.

The Agency added a definition of “groundwater management zone” to this section in its first errata sheet. (Ex. 6 at 1.) The term “groundwater management zone” or “GMZ” is defined as a “three dimensional region containing groundwater being managed to mitigate impairment caused by the release of contaminants of concern at a remediation site.” (Ex. 6 at 1.) Since the term “groundwater management zone” is used in the proposal, the Board agrees that adding this definition is appropriate.

Several participants in this rulemaking raised questions and concerns about the definition of “recognized environmental condition.” This term is derived from ASTM E 1527-94, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, vol. 11.04 (the ASTM Standard), which the Agency submitted as part of its original proposal. Section 740.420 requires that the ASTM Standard be used for a phase I environmental site assessment conducted as part of a comprehensive site investigation. The Board has modified the definition of “recognized environmental condition,” but defers discussion of that change, and the comments on this definition, to the Board’s discussion of Section 740.420. (See *infra* at 22-28.)

The term “remediation applicant” was discussed at hearing simply to clarify exactly who should be listed on the application for a site applying to the SRP under Part 740. The Agency testified that “remediation applicant” should include the names of other owners if the remediation site extends across property boundaries. In that case, the owner of each particular property should sign off on the application. (Tr. 1 at 129.)

The Agency testified that it is possible to be an RA entirely on someone else’s property. (Tr. 1 at 129.) The Agency states that the definition of “remediation site” was added to alleviate any ambiguity created by multiple uses of the statutory definition of “site.” (Ex. 1 at 8.) The Agency states that it added the concept of “remediation site” to specifically mean the area to be remediated regardless of property boundaries. (Ex. 1 at 8).

Ms. Huff states that because a remediation site may include only a portion of a site, the words “or portion of any parcel” should be added to the definition of “remediation site.” (Ex.

10 at 4-5.) The Agency agrees to these revisions. (PC 3 at 1.)<sup>4</sup> The Board agrees that the phrase suggested by Ms. Huff is an appropriate addition; however, the Board adds “s” to the word “portion” to make it clear that several separate portions of a parcel may be included in a remediation site.

Some changes also were proposed to the definition of “residential property.” The Agency originally defined the term as follows:

“RESIDENTIAL PROPERTY” MEANS ANY REAL PROPERTY THAT IS USED FOR HABITATION BY INDIVIDUALS or where children have the opportunity for exposure to contaminants through ingestion or inhalation at educational facilities, health care facilities, child care facilities, or playgrounds.

Ms. Huff finds this definition confusing and proposes that this confusion may be eliminated by “limiting the definition to instances where actual ingestion and inhalation pathways exist.” (Ex. 10 at 6.) The Agency objects to Ms. Huff’s proposed revision because it does not contain the notion of completed pathways as does the Agency version. The Agency finds that Ms. Huff’s revision would broaden, not limit, the definition. (Ex. 13 at 2.) Further, the Agency believes that Ms. Huff’s proposed revision would limit the investigation to what is found at the time of the investigation and would fail to consider post-remediation uses. (Ex. 13 at 2.)

The Board agrees that Ms. Huff’s proposed revision is inappropriate for the reasons stated by the Agency. However, the Board seeks further comment on three aspects of this definition. First, Title XVII defines “residential property” as “any real property that is used for habitation by individuals and other property uses defined by Board rules such as education, health care, child care and related uses.” (415 ILCS 5/58.2.) The Agency’s definition equates “related uses” with “playgrounds.” The Board queries whether the Agency’s construction of “related uses” is too narrow. The Board seeks comment from the Agency and others on whether an alternative term to “playgrounds” should be used, or whether additional terms should be added to this definition.

Second, the Board questions why the facilities listed in the latter part of this definition are “residential property” only if children -- not adults -- “have the opportunity for exposure to contaminants through ingestion or inhalation” at such facilities. Title XVII makes no such distinction, and the Board would like the Agency to provide further comment on its justification for this distinction. The Board also seeks further comment on how an RA and the Agency will determine whether a particular facility is one at which children have an opportunity for exposure to contaminants.

Third, it is not clear why the Agency has added the phrase “by ingestion or inhalation” to the term “exposure to contaminants.” The Board questions whether the added phrase is

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<sup>4</sup> Ms. Huff also suggested an additional change to which the Agency objected. After hearing the objection, Ms. Huff’s counsel withdrew the suggested language. (Tr. 2 at 172-173.) Accordingly, the Board does not address that additional change.

intended to exclude some pathway for exposure; if so, the Board seeks comment on the rationale for such an exclusion. If the phrase is not intended to exclude a pathway for exposure, it appears to be redundant.

Thus, while the Board retains the language proposed by the Agency for this first notice, the Board requests comment from the Agency and others on these three issues.

Section 740.125 Incorporations by Reference. In this section, the Agency has incorporated six materials by reference. The incorporations do not include later amendments or editions since the Secretary of State's rules prohibit subsequent editions of incorporated documents from being used. (Tr. 1 at 153.) However, this section can be later amended as necessary to include new amendments or editions. (Tr. 1 at 156.)

In Section 740.415(d) (discussed *infra* at 22), the Board discusses incorporating by reference three USEPA documents. The documents are entitled: 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); and 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). For the reasons discussed *infra*, the Board incorporates these documents in a new subsection, Section 740.125(d).

#### Subpart B: Applications and Agreements for Review and Evaluation Services

Subpart B sets forth the proposed requirements that the RA is to follow when applying for review and evaluation services under the SRP. This subpart also provides for approval or denial of such applications by the Agency, and sets forth the requirements to be followed by the RA when entering into, modifying or terminating agreements to provide evaluation services and any related services that the RA may request.

Subpart B specifies the information that the application must contain for an RA to enroll in the SRP, and sets forth the conditions for the Agency's approval or denial of the RA's application. Subpart B also contains the procedures for accepting, modifying or terminating an agreement for review and evaluation services between the RA and the Agency. Finally, Subpart B authorizes the use of private licensed professional engineers for the review and evaluation of plans and reports.

Questions and issues were raised with respect to Sections 740.210 (contents of application and agreement), 740.215 (approval or denial of application or agreement), 740.215 (approval or denial of application and agreement), 740.220 (acceptance and modification of agreement), 740.225 (termination of agreement by remediation applicant), 740.230 (termination of agreement by the Agency) and 740.235 (use of Review and Evaluation Licensed Professional Engineer). A discussion of these issues follows.

Section 740.210 Contents of Application and Agreement. This section describes the information that must be contained in the application for the RA to enroll in the SRP and the conditions that may be included in the agreement. (Ex. 2 at 3.)

With regard to Section 740.210(c)(5), the Agency testified that two payment options are made available to reduce enrollment time. (Tr. 1 at 212-13.) One option allows for the RA to submit a payment of \$500, along with the application and signed agreement which is nearly one-half of the minimum amount required for the Agency's services. (Ex. 2 at 4.) If the application and agreement are approved, services may begin immediately. This option is helpful to the RA who desires to accelerate the process and/or is submitting plans or reports along with the application and agreement. (Ex. 2 at 5.) The major disadvantage with this option is that the advance payment may be forfeited. (Ex. 2 at 5.) A denial of the application for ineligibility or lack of resources may lead to a forfeiture of the payment if the payment was submitted before the application was reviewed. (Ex. 2 at 5.)

The second option enables the RA to avoid potential forfeiture of the payment by allowing the RA to request that the Agency project the total costs of the Agency's services and assess an advance partial payment within the limits established in Section 58.7(b)(1)(E) of the Act (*i.e.*, not to exceed \$5,000 or one-half of the total anticipated costs of the Agency, whichever is less). While this option adds an additional step before actual services are commenced, it allows the Agency to make the determination of whether the RA will be accepted into the SRP before the RA's money is committed. (Ex. 2 at 5.)

In response to questions regarding refunding payments, the Agency proposes changing the Board Note at the end of what is now Section 740.210(c)(5)(B). The original text stated as follows:

BOARD NOTE: Statutory restrictions prevent the Agency from refunding payments. Payment under subsection [(c)(5)(B)] above accelerates the review process but increases the risk of forfeiting the payment if the applicant is ineligible or withdraws. Payment under subsection [(c)(5)(B)] above may result in a larger advance partial payment but allows delay of the payment until a final determination is made on the Application.

In its second errata sheet, the Agency, in an attempt to alleviate the Board's concerns about the unidentified "statutory restrictions," proposes eliminating the reference and adding the following language: "[t]he State of Illinois does not authorize payments or refunds without legislative appropriation. Therefore, advance partial payments accompanying applications may be forfeited if the application is denied." (PC 3 at 1-2.)

The Board finds that the Board Note at the end of Section 740.210(c)(5)(B) should be completely deleted. Though the Board appreciates the Agency's efforts to alleviate the Board's concerns, the Board believes that internal Agency procedures appear to determine whether advance partial payments accompanying applications should be forfeited in the situation where an application is denied. The Board finds it inappropriate to place the Board

Note in the regulations without listing the precise standard upon which a decision regarding forfeiture is made. Therefore, the Board strikes the Board Note from the proposal in its entirety.

Ms. Sharkey has a concern with this section's requirement that an RA who is not the owner of a remediation site, obtain written permission from the owner of the remediation site to perform investigative or remedial activities. Ms. Sharkey believes that the proposed language "unnecessarily inserts the Illinois EPA between property owners," who are amply protected by federal, state and common law rights. (PC 2 at 10.) Ms. Sharkey believes that this section creates a new substantive right in an adjacent property owner.

The Board finds that the language should remain as written in Section 740.210(a)(3). By requiring that the written permission of a non-owner RA be obtained at the outset of the process, the Agency ensures that it will not waste resources on sites where there is an unresolved dispute about the RA's authority to act. Requiring the permission of such owners does not create a new substantive property right, but merely ensures that the RA respects the owner's existing property rights. Accordingly, the Board retains this requirement.

Similarly, Ms. Rosen questions whether Section 740.210(a)(3) authorizes the imposition of remedial action or restrictions on a neighboring property where the RA is not the owner. (Tr. 1 at 199-200.) The Agency testified that this issue is something to be resolved between property owners, and the Agency stated that it did not believe this subsection automatically authorized the imposition of remedial action or restrictions on a neighboring property. (Tr. 1 at 200.) The Board agrees.

Section 740.215 Approval or Denial of Application and Agreement. This section provides that the Agency shall have 30 days from receipt of an application to approve or deny the application. While no specific language changes were requested, the question was posed to the Agency as to what the implications were if the Agency failed to approve or deny an application within the 30-day time period. (Tr. 2 at 279-283.) In its second errata sheet, the Agency amended Section 740.215(d) to include the following language:

If the Agency fails to make a final determination on an Application within the time frame provided under subsection (a) or (c) above, that failure shall be deemed a denial of the application, which the RA may appeal within 35 days of the expiration of the time for a final determination.

(PC 3 at 2.)

The Board finds this revision necessary and includes it in the proposed rule.

In addition, the Board has added language to Section 740.215(d) to allow two further options in addition to the appeal rights. The Board finds that these additions make Part 740



more consistent with the Part 732 rules,<sup>5</sup> which allow the same options when a plan or report is reviewed by the Agency. The additional language for Section 740.215(d) is as follows:

If the Application or Agreement is denied, in lieu of an immediate appeal to the Board, the RA may either resubmit the Application or Agreement to the Agency or file a joint request for a 90-day extension in the manner provided for extensions of permit decisions in Section 40 of the Act.

The Board requests comment on the above language change to Section 740.215(d).

Section 740.220 Acceptance and Modification of Agreement. This section mandates that the agreement shall become effective upon approval of the application by the Agency and the receipt of advance partial payment. The advance partial payment is determined by the conditions set forth in section 740.210(c). The agreement may be modified upon mutual consent of the parties. Modification shall be in writing and becomes effective upon signing by the RA and acceptance by the Agency unless another date is identified in the modification.

Mr. Feldman proposes language changes which address his concerns as to whether a non-RA owner will have any right to participate in the remediation process with the RA and the Agency. (Ex. 8 at 3-4; Tr. 2 at 109-114.) By having no recourse to withdraw or appeal, Mr. Feldman contends that the owner may have consented to devaluing his property or assuming the cost and risk of future cleanup. (Ex. 8 at 4; Tr. 2 at 109-114.) Mr. Feldman proposes language that would require the owner's consent to modifications to the scope of the remediation or the imposition of institutional controls or engineered barriers. (Ex. 8 at Attachment 1.; Tr. 2 at 109-114.)

The Agency objects to Mr. Feldman's proposed changes, again primarily on the ground that it is not the Agency's duty to get involved in potential disputes between the RA and the owner of a property. (Tr. 2 at 255-257.) The Board agrees with the Agency, and notes that the non-RA owner's interests are protected by the requirement for the owner's permission at the application stage (Section 740.210(a)(3)) and before recording of an NFR Letter (Section 740.620).

Ms. Huff is concerned that the proposed Section 740.220(d) does not provide the RA with any recourse in the event the Agency denies the requested modifications. (Ex. 10 at 6-7.) As a result, Ms. Huff proposes an entirely new subsection (d) which adds appeal language to Section 740.220(d), identical to the appeal language in Section 740.215(d):

If the Agency denies any request for modifications to the Agreement or Application, the RA may, within 35 after receipt of notice of the Agency's denial, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.

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<sup>5</sup> The Part 732 rules refer to the Regulation of Petroleum Underground Storage Tanks (35 Ill. Adm. Code 732) which is docketed before the Board as R97-10.

(Ex. 10 at 7.)

The Agency objects to this proposed language. The Agency argues that while remediation site size and contaminants of concern are appropriate for modification, other provisions are at the sole discretion of the Agency under the Act and are not appropriate for appeal. (Section 58.7(b)(1)(A)-(F) of the Act and 740.210(c) (Ex. 13 at 2-3.) The Agency also states that the RA should not have the right to unilaterally repudiate the Agreement in the situation where the Agency and the RA have reached an initial Agreement. Further, the Agency feels it should not be coerced into accepting a modification and, in doing so, limit its duty and ability to conduct a thorough review of plans and reports. (Ex. 13 at 2-3.)

The Board finds that the language proposed by Ms. Huff at Section 740.220(d) should be added to the proposal. Additionally, in order to maintain consistency with the language added under Section 740.215(d) above and the Part 732 rules, the Board adds the same language, with appropriate changes, to the end of Section 740.220(d) as it did to Section 740.215(d):

If any request for modifications to the Application or Agreement is denied, in lieu of an immediate appeal to the Board, the RA may either resubmit the request for modification to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decisions in Section 40 of the Act.

The Board has three reasons for these changes. First, the Agency agrees that some modifications -- such as to contaminants of concern -- are appropriate. Without this appeal language, however, an applicant's right to appeal the Agency's denial of such a modification would be in question. Second, although the Agency states that an RA should not be able to unilaterally repudiate an Agreement, an RA already can terminate an Agreement at any time under 740.225. The language added to 740.220 merely allows the RA to appeal the Agency's refusal to modify an agreement. Finally, the Board does not agree that an appeal route will allow RAs to "coerce" the Agency into accepting improper modifications. Appeals of permit denials are already allowed under Section 40 of the Act, and the prospect of such appeals clearly does not "coerce" the Agency to issue improper permits.

In addition, the Board adds the word "Application" to 740.220(c) to make it clear that an Application, as well as an Agreement, may be modified. For the same reason, the Board also adds "Application" to the title of this section.

The Board invites comments on all of the changes that it has made to Section 740.220.

Section 740.225 Termination of Agreement by the Remediation Applicant (RA). This section addresses termination procedures for the RA. Mr. Feldman proposes language changes to alleviate his concerns that a non-RA owner should be involved in the termination process. (Ex. 8 at 3-4, Attachment 1.) Consistent with its earlier comments, the Agency objects to Mr.

Feldman's proposed change on the grounds that it does not wish to get involved in potential disputes between the RA and the owner of a property. (Tr. 2 at 255-257.)

The Board reiterates its agreement with the Agency that the owner's certification both at the beginning and end of the SRP sufficiently protects the non-RA owner. It may be in the best interest of the RA to remain in close contact with the non-RA owner throughout the entire site remediation process; however, the Board finds that the mandated involvement of the non-RA owner at every step of the process is unnecessary.

Section 740.230 Termination of Agreement by the Agency. This section provides for termination of an agreement by the Agency.

Subsection (a) sets forth four reasons the Agency may terminate an agreement: (1) failure of the RA to comply with the requirements of Title XVII of the Act or Part 740, (2) violation of any terms or conditions or failure to fulfill any obligations of the agreement, (3) failure to proceed in a timely and appropriate manner consistent with the schedules set forth in the application, Remediation Action Plan, or as subsequently modified by the Agreement with the Agency, or (4) failure to address an imminent and substantial threat to human life, health or the environment in a timely and effective manner.

Subsection (b) provides that the Agency will provide preliminary notice to the RA of its intent to terminate. As originally proposed, the Agency may, but is not required to, provide the RA with a reasonable opportunity to correct deficiencies. Circumstances will dictate whether the Agency allows the RA to correct deficiencies. (Ex. 2 at 8.) The more urgent or egregious the failure, the less likely the Agency will allow an RA to correct the failure. (Ex. 2 at 8.)

Ms. Huff believes that the Agency should be required to provide an opportunity to cure except in cases of failure to address imminent and substantial threats to human health and the environment. (Ex. 10 at 7-8.) Accordingly, Ms. Huff proposes the following amendment to Section 740.230(b):

Except for terminations under subsection (a)(4) above, the Agency shall provide the RA with a reasonable opportunity to correct deficiencies.

Initially, the Agency agreed to this proposed language change. (Ex. 13 at 3; Ex. 7 at 1; Tr. 2 at 179.) However, the Agency further amended this section in response to concerns raised by Mr. Rieser and Mr. Watson. (PC 3 at 2; Tr. 2 at 238-239.) Ultimately, the Agency proposes that the Board adopt the language from Ms. Huff's testimony, with the caveat that the RA will be provided with a reasonable opportunity "of not less than 15 days" to correct deficiencies. (PC 3 at 2.) The Board finds this amendment appropriate and incorporates it.

Section 740.235 Use of Review and Evaluation Licensed Professional Engineer. This section provides that a review and evaluation licensed professional engineer (RELPE) may be used for the review and evaluation of plans and reports.

At hearing, the Agency testified that it does not intend to provide a list of approved RELPEs. (Tr. 1 at 243-244.) The Agency anticipates that it would be able to review the contract for services signed by the RELPE and the RA insofar as it relates to the scope of activities to be performed by the RELPE. (Tr. 1 at 246.) The Agency anticipates that the RELPE's function will be to review plans after they are submitted by the RA to the Agency. (Tr. 2 at 276-277.) The Agency does not intend for the RA and RELPE to have a close working relationship during the development of plans and reports. (Tr. 2 at 276-277.) A RELPE can be a consultant that an RA uses regularly on other projects and other sites outside of the SRP. (Tr. 2 at 284.)

The Board finds that the language in this section is appropriate and makes no changes.

### Subpart C: Recordkeeping, Billing and Payment

This subpart sets forth the requirements to be followed in requesting and submitting payments for Agency costs incurred under this Part. Specifically, this subpart addresses recordkeeping for Agency services, requests for payment, submittal of payments, and the manner of payment.

Questions and issues arose on Section 740.310, as set forth below.

Section 740.310 Request for Payment. This section details that the Agency shall prepare a written request for payment for service costs provided under this Agreement. Requests for payment shall be submitted to the RA no more than quarterly unless the request is at the termination or conclusion of the Agreement. The original subsection (a) provides that documentation of costs will be provided to the RA upon request. The original subsection (c) provides that within 35 days of receipt of a request, the RA may appeal the request, but only on the basis that the services were not provided.

Ms. Huff and Mr. Watson requested amendments to subsections (a) and (c). With regard to subpart (a), they requested that the Agency send written documentation of costs with each request for payment rather than making that information available upon request. (Ex. 10 at 9-10; PC 8 at 8.)

The Agency objects to the proposed changes to subsection (a). The Agency indicates that its invoices will provide a line item list of charges based on those items identified in Section 740.305(a). (Ex. 13 at 3-4.) The Agency claims that more extensive documentation of charges in every case would require significant resources and is unreasonable. (Ex. 13 at 3-4.) The Agency has proposed in the regulations that it would make further billing documentation available upon written request by the RA. (Ex. 13 at 3-4; Tr. 2 at 179-187.) The Agency also submitted an example of its billing statement that shows its costs for the line items set forth in Section 740.305(a). (Ex. 14.) The Agency states that this practice has been used for several years under the PNSCP with little or no problem. (PC 5 at 7.)

The Board finds that no changes should be made to Section 740.310(a). The section, as written, reflects an adequate system for cost documentation. If an RA seeks additional documentation, it will be available upon request.

Ms. Huff and Mr. Watson also requested language in subsection (c) that would allow appeal of Agency requests for payment on the grounds that the Agency costs for services are unreasonable. (Ex. 10 at 9-10; PC 8 at 8-9.) Ms. Huff and Mr. Watson would agree that the grounds for appeal should be limited to the basis that the work was not actually performed, if the costs in the aggregate do not exceed the greater of \$5,000 or the Agency's estimate. (*Id.*)

The Agency objects to broadening the appeal language to encompass whether costs are reasonable. The Agency notes that both its direct and indirect costs are tightly controlled by, among other things, regulations, labor contracts, and agreements with federal government. (Ex. 13 at 3-4; Tr. 1 at 249-51; Tr. 2 at 179-187.) Its only discretion generally extends to the number of hours that will be spent on a project, essentially an internal management decision that should not be subject to review. (PC 3 at 7; *see also* Tr. 2 at 182-187; Ex. 13 at 3-4.) The Agency also notes that indirect cost itemization is available upon written request of the RA. (Tr. 2 at 295.)

The Board finds that the grounds for appeal should be expanded as suggested by Ms. Huff and Mr. Watson. Allowing such appeals is more consistent with the appeal rights granted elsewhere in the Board's rules, including the appeal rights allowed under 35 Ill. Adm. Code 105 (Permits). Accordingly, the Board accepts the change suggested by Ms. Huff and Mr. Watson.

#### Subpart D: Site Investigations, Determination of Remediation Objectives, Preparation of Plans and Reports.

Subpart D sets forth the proposed elements, data quality objectives, and site remedial actions conducted under the SRP. The aim of these provisions is to provide a basis for the Agency to determine whether conditions at a site constitute a significant risk to human health and the environment or warrant further remediation under the Act. The Agency states that many of these procedures were routinely used in the PNSCP. (Ex. 3 at 2.)

Subpart D contains procedures and requirements for site investigation and remedial action for both a comprehensive site investigation, in which all recognized environmental conditions at the remediation site are investigated, and focused site investigations, in which only selected recognized environmental conditions or contaminants may be addressed. The elements of the investigation and the reporting requirements differ for these two types of investigations, as is appropriate for the different scope of these investigations. However, the data quality objectives, professional accountability and site remedial action reporting requirements are identical. Furthermore, Subpart D requires that all site activities be conducted by or under the supervision of a Licensed Professional Engineer (LPE), as required by Section 58.6 of the Act. It also requires that all plans and reports be prepared by or under the supervision of an LPE.

Subpart D also contains procedures and requirements for the determination of remedial objectives, and in so doing implements Section 58.5 of the Act. Finally, Subpart D contains procedures and requirements for remedial action plans and remedial action completion reports.

Questions and issues were raised with respect to Sections 740.415 (site investigation - general), 740.420 (comprehensive site investigation), Section 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) and 740.455 (remedial action completion report). A discussion of the significant questions and issues raised on sections within Subpart D follows.

Section 740.415 Site Investigation -- General. As proposed, Section 740.415 sets forth general requirements for site investigations, including both comprehensive and focused site investigations. (Ex. 3 at 9.) It is based in part upon Section 58.3 of the Act, which establishes the Site Investigation and Remedial Activities Program and provides that it is to be administered by the Agency under Title XVII and rules adopted by the Board.

Ms. Huff suggests adding references to USEPA or ASTM procedures in addition to those originally proposed by the Agency. (Ex. 10 at 10-11; Tr. 2 at 125-126.) The Agency agrees that these references should be added, but also proposes to add language requiring that the RA obtain Agency approval to use such procedures. (Ex. 13 at 4; 12/17/96 Tr. at 192) During the hearings, Mr. King testified that the purpose of the Agency approval requirement was to ensure that the methods were being used in the proper way, and that if an RA's proposed use was consistent with those identified in the documents, the Agency would approve its use. (Tr. 2 at 194-196.) The Board adopts the changes proposed by Ms. Huff, as modified by the Agency.

The Board also incorporates these additional materials by reference in Section 740.125(d). While Ms. Huff suggests that such an incorporation was not necessary because these standards continue to evolve (PC 8 at 10-11), the Illinois Administrative Procedure Act allows incorporation and that is the preferred procedure. (5 ILCS 100/5-75.) The Board further notes that Section 740.415(d) allows the Agency to approve the use of methods other than those incorporated, on a site-specific basis.

During the second public hearing, the Agency was asked whether it would be appropriate to require laboratories to meet minimum standards, such as accreditation by the American Association of Laboratory Accreditation, and to be required to carry a minimum level of errors and omissions insurance. The Agency considers the question beyond the scope of the proposal. (Tr. 2 at 277-279.) However, the Agency intends to participate in the National Environmental Laboratory Accreditation Program (NELAP) and is currently drafting rules for laboratory certification compliant with draft NELAP standards, USEPA requirements and Agency requirements. In the future, the Agency may request amendatory rules implementing the NELAP in Illinois as the standard for generating chemical quantitative

analyses for the SRP. (Ex. 3 at 7-8.) The Board agrees that it would be premature to adopt such rules at this time.

740.420 Comprehensive Site Investigation. Section 740.420 sets forth the procedures for completing a comprehensive site investigation to identify all recognized environmental conditions that may exist at a remediation site. The investigation is to be performed in two phases.

Subsection 740.420(a) provides that “phase I” of the comprehensive site investigation be designed and implemented in accordance with the “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” (ASTM E 1527-94). In its pre-filed testimony, the Agency justified its selection of this standard as follows:

The purpose of this requirement is to ensure identification of all recognized environmental conditions which might be discovered through a review of reasonably obtainable records. The results of the phase I environmental [site] assessment<sup>6</sup> may help to direct subsequent phase II environmental site assessment activities or may serve to augment or reduce site contaminants of concern. The ASTM Designation: E 1527-94 standard is adopted as a peer-reviewed and industry-wide accepted standard for identifying recognized environmental conditions from records reviews, site reconnaissance and interviews.

(Ex. 3 at 10.)

The Agency’s proposed use of the ASTM Standard was discussed at the public hearings in this rulemaking and in public comments filed with the Board. In response to questions by Mr. Rieser, Mr. Eastep testified that, where justified on a site-specific basis, the Agency would allow an RA to omit a step typically performed under an ASTM Standard. In making such allowances, the Agency would consider the ASTM Standard with respect to such omissions, as well as site characteristics, previous data collected, the quality of that data, the size of the site and the size of the cleanup. (Tr. 1 at 270-271.)

Ms. Sharkey objects to the Agency’s reliance on the ASTM Standard for several reasons. First, Ms. Sharkey notes that the ASTM Standard was prepared for use in transactional contexts, not regulatory site remediation programs. (PC 2 at 7; PC 7 at 2; Tr. 1 at 272.) Indeed, she notes, “upon questioning, the Agency could point to no other state which has a remediation program that is based on an ASTM phase I approach.” (PC 2 at 7; Tr. 1 at 272.) Ms. Sharkey also notes that terms used in the ASTM Standard are not referenced in Title XVII, and that the ASTM Standard is not required by Section 58 of the Act. (PC 2 at 7.) Ms. Sharkey believes that the use of a standard developed in a transactional context is inappropriate in the site remediation program, and notes that “the NFR letter is not a guarantee that a property is risk-free, but rather *prima facie* evidence based upon what is known about a

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<sup>6</sup> The terms “environmental site assessment” and “site investigation” appear to be used interchangeably in the proposal.

property. If those known conditions are subsequently disproved or if new facts become known, the letter will be no defense. . . . As the NFR letter provided under these rules does not extend beyond identified contamination, there is no reason a comprehensive site assessment must be interpreted as requiring a ‘fishing expedition.’” (PC 2 at 3.)

Second, Ms. Sharkey believes that the ASTM Standard may encourage an overly conservative approach to phase I environmental site assessments. The result will be “unnecessary cost and delay,” and this approach may “occasionally [kill] a Brownfields transaction” and “discourage participation in the SRP.” (PC 2 at 8, 7.) Ms. Sharkey concludes that “[t]he phase I investigation for the SRP should not be based on any ‘canned’ methodology, such as ASTM 1527-94, which has not been thoroughly explained by the Agency and which has not been tailored for use in a Brownfields context.” (PC 2 at 11-12.) In a public comment, Ms. Sharkey suggests that the Board simply incorporate the steps for a focused site investigation, which are set forth in 740.430, into 740.420. (PC 7 at 4-5.)

The Agency responds to Ms. Sharkey’s comments in PC 2 and at the hearing as follows:

Ms. Sharkey is correct when she states that the ASTM phase I was not developed for this specific purpose. The ASTM phase I was intended to guide a user in conducting an inquiry appropriate for the “innocent landowner defense” under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 *et seq.* . . . . That defense requires only that, at the time of acquisition of a property, the defendant “did not know and had no reason to know” that any hazardous substance that is the subject of a release was disposed of on, in or at the facility. In other words, the ASTM phase I is a sufficient level of inquiry to provide the prospective purchaser with deniability -- no reason to know that the substances involved in a release were at the location. . . . However, if the comprehensive site investigation is performed, Sections 58.10(a) and 58.10(b)(4) of the Act require the Agency to affirmatively state that the NFR Letter constitutes *prima facie* evidence that the site is not a threat to human health or the environment. Issuance of the letter constitutes an important representation to the public about the condition of the site and confers a significant legal advantage to the recipient. This requires a higher level of certainty that the RA and the Agency “had no reason to know” that contaminants were on the site.

((PC 3 at 3-4) (citations omitted).)

The Agency also states that it had discussed the possibility of using a step-by-step prescriptive procedure, such as Ms. Sharkey has proposed, with the SRAC. The SRAC favored using the ASTM Standard because it is well-understood in the environmental consulting community. The Agency notes that a procedure other than ASTM Standard may be used if approved by the Agency. (PC 3 at 4, n.3.)

The Board finds the proposed use of the ASTM Standard appropriate. The Board agrees that a “comprehensive” site investigation should encompass all recognized



environmental conditions based on reasonable inquiry, and the ASTM Standard provides an appropriate method of such inquiry. An RA that wishes to address only known contamination, and to avoid the cost and delay that may be associated with a comprehensive site investigation, has the option of conducting a focused site investigation addressing only that contamination or obtaining a Section 4(y) release. To term such investigations “comprehensive,” however, would be misleading and confusing.

Ms. Sharkey and Ms. Huff also raise a related question regarding the definition of “recognized environmental concern,” a term used in both the ASTM Standard and Part 740. The ASTM Standard, which Part 740 incorporates, requires that a site investigation identify “recognized environmental conditions” in connection with a site. Both Ms. Sharkey and Ms. Huff note that the Agency’s proposed definition of “recognized environmental condition” does not include the *de minimis* exception contained in the ASTM Standard. The ASTM Standard *de minimis* exception reads as follows:

The term is not intended to include *de minimis* conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

(ASTM Standard, Section 3.3.28.)

Both Ms. Huff and Ms. Sharkey believe that the definition of recognized environmental condition is overbroad and vague, in part because it does not include an exemption for *de minimis* conditions. (PC 8 at 5-6; PC 2 at 6.) Ms. Huff suggests that the exemption be added to the definition verbatim. (Ex. 10 at 3-4.) Ms. Sharkey would strike the term from Part 740 altogether; in its stead, she would substitute “regulated substances of concern.” (PC 7 at 1-3.)

At hearing, Agency witnesses testified that while the *de minimis* exemption is not in the definition of recognized environmental condition, it may be used by an LPE as he or she completes a site investigation. (Tr. 1 at 112.) The Agency objects to the addition of the *de minimis* language for two reasons: (1) the question of whether or not a “recognized environmental condition” presents a material risk of harm is one that should be made by the Agency and the LPE together; and, (2) the questions of whether or not a *de minimis* condition “generally would not be the subject of an enforcement action” is a decision for the Agency under Section 4 and Title VIII of the Act. (Ex. 13 at 1.) It should therefore, according to the Agency, not be given to the LPE in the field. (Ex. 13 at 1.) In its post-hearing comments, the Agency reiterated: “[t]he Agency acknowledges that the exception often may be appropriate, but the determination should be made in consultation with the Agency and not by rule in the field without Agency concurrence.” (PC 5 at 5, n.4.)

Gardner, Carton & Douglas believes that the Agency has failed to adequately explain “how and at what point” in the process this concept of *de minimis* conditions will be considered. (PC 8 at 5.) Because the Agency has provided no justification for its refusal to

adopt this language, Gardner, Carton & Douglas urges the Board to adopt the proposed changes as testified to by Ms. Huff. (PC 8 at 6.)

The Board agrees with the Agency's rationale for excluding that portion of the *de minimis* exemption for conditions that "generally would not be the subject of an enforcement action." The Board agrees that decision is for the Agency to make under the Act. Furthermore, given that the Agency will actually be reviewing each site investigation report, an RA need not speculate as to what conditions the Agency would consider the subject of an enforcement action. That question depends on many factors that may be beyond the LPE's ability to know, including the Agency's current enforcement policies and resources.

For several reasons, however, the Board is not persuaded by the Agency's argument for excluding that portion of the *de minimis* exemption for conditions "that generally do not present a material risk of harm to public health or the environment." First, part of the Agency's rationale is that whether a particular condition poses a risk of harm to health or the environment is a decision that should be made by the Agency, not an LPE. As the Board understands the ASTM Standard, however, the Agency will have opportunity to review the basis for the LPE's conclusion. For example, Section 8.4.4.2. of the ASTM Standard requires the environmental professional conducting the environmental site assessment to note any instances of stained soil or pavement. This information should be included in the site investigation report, and thus the Agency will be made aware of it.

Without a *de minimis* exemption, however, any minor stain on soil becomes a "recognized environmental condition," even if an LPE reasonably concludes that it presents no threat to human health or the environment. As a result, an RA must actually perform further investigation on each such minor stain, or review each minor stain with the Agency and obtain its permission not to sample further. This procedure could result in a waste of the Agency's and the RA's resources and delay the movement of sites through the SRP.

The Agency claims that it will allow an LPE to exercise its professional judgment and to use the *de minimis* concept (Tr. 1 at 112), but as Gardner, Carton & Douglas points out, the Agency has given an LPE very little guidance on how or when this judgment may be exercised. This confusion is compounded by the Agency's statements at the hearing that to the extent that Part 740 conflicts with the ASTM standard, the provisions of Part 740 control. (Tr. 1 at 163.) While the Board agrees that this is generally appropriate, it is unclear to the Board how an RA may rely on a *de minimis* exemption that is contained in the ASTM Standard definition but conspicuously absent from the definition in Part 740.

Accordingly, the Board has added to the definition of "recognized environmental condition" an exemption for "*de minimis* conditions that generally do not present a threat to human health or the environment." The Board has substituted the term "threat" for "material risk" and "human health" for "public health" to conform to the terms used elsewhere in Part 740.

The Board believes that this exemption will lessen the burden on both RAs and the Agency by not requiring either to spend resources investigating releases that present no threat to human health or the environment. Because the site investigation report should discuss all evidence of releases or threatened releases, however, the Agency will have an opportunity to review the basis for an LPE's conclusion that a particular release constitutes no threat. The Board seeks comment from the Agency and the public on this change.

With respect to Ms. Sharkey's suggestion that the term "recognized environmental concern" be replaced by "regulated substances of concern," the Board also seeks additional comment as to whether the term may be used even though the ASTM Standard has been retained, and if additional changes would need to be made to accommodate that change. After reviewing those comments, the Board will decide whether to accept Ms. Sharkey's suggestion.

Subsection 740.420(b) sets forth the required components of a phase II environmental site assessment for a comprehensive site assessment. In response to questions and comments at the public hearings, the Agency has added "geology" to the list of items that it originally proposed to be described in the site description. (Tr. 1 at 327-334.) The Board agrees that geology should be included in this list.

This subsection also requires the RA to identify the location of any "human and environmental receptors" and "sensitive habitats." (740.430(b)(4)(B) and (C).) In response to questions at the second public hearing, Mr. King testified that a "receptor" is an organism impacted by contamination. (Tr. 2 at 220.) In its post-hearing public comments, the Agency states that the definition of "sensitive habitat" is more relevant to Part 742 than Part 740. Generally, "sensitive habitat" is the physical and biological environment that is required to maintain viable populations of listed endangered or threatened species in order to ensure the survival and recovery of that species. (PC 5 at 10, citing 17 Ill. Adm. Code 1075, definition of "essential habitat.") However, the Agency has not included a definition of this term in Part 742 because the resolution of this and related issues is being deferred until more information is available. (PC 5 at 10.)

Under this section, an RA also must investigate contaminants of concern. At a minimum, the RA must sample for compounds on the Target Compound List (TCL) appended to the proposal, which is "a very small subset of thousands of potential contaminants of concern and represents hazardous substances identified by USEPA as the most commonly encountered hazardous substances at uncontrolled sites." (PC 5 at 5.) At public hearings, the Agency testified that an RA's LPE will have the ability to decide that in his or her professional judgment, certain conditions identified in a phase I site investigation need not be further investigated in a phase II site investigation. That decision will be subject to review by the Agency. (Tr. 1 at 259-260, 293-298.) However, the Agency rejects a suggestion made by Mr. Watson that would require that the Agency shall (as opposed to "may") add or delete compounds on the TCL to be sampled for based on a review of the phase I site investigation. The Agency argues that this task would require an inordinate amount of its resources if it had to be performed for every site. (Tr. 2 at 207-211.) The Board agrees that the Agency should not be mandated to undertake this inquiry in every case.

Ms. Huff suggests that the Board add language limiting the sampling, analyses, and field screening measurements to contaminants of concern “at the remediation site.” (Ex. 10 at 12-13.) She suggests adding an identical limitation to the requirement in 740.420(b)(4) for characterizing present and post-remediation exposure routes (*Id.*) She also suggests that the Board limit the characterizations of sources and extent of contaminants to contaminants of concern “at the remediation site as identified by the phase I site assessment.” (*Id.*) Ms. Huff testified that these revisions “are necessary. . . to clarify this relationship [between a phase I and a phase II site investigation] and provide adequate guidance to Site Remediation Program participants.” (Ex. 10 at 12.)

Ms. Sharkey comments that the use of the ASTM Standard would enlarge the scope of phase II site investigations “beyond areas in which there is reason to believe contamination exists.” (PC 2 at 12.) Ms. Sharkey also objects to the requirement in 740.420(b)(1) that sampling, analyses and field screening measurements be made for all TCL compounds “and any other contaminants whose presence has been indicated by the phase I environmental site assessment . . . .” Specifically, Ms. Sharkey believes that the phrase “presence is indicated” is overbroad. For compounds not on the TCL, she would limit the inquiry to “contaminants whose presence is indicated by evidence of a release which has the potential to result in an exceedance of Tier 1 remediation objecti[ves] under Part 742.” (PC 2 at 12.)

The Agency opposes Ms. Huff’s and Ms. Sharkey’s suggestions on the grounds that they would reduce the scope of the phase II site investigation without Agency involvement. Furthermore, the Agency believes that the level of certainty achieved in a phase I site investigation is not sufficient to justify the release in an NFR Letter. The Agency also notes that it is not the Agency’s intent to require “fishing expeditions,” and that the Agency will work with the RA on a case-by-case basis to reduce the scope of the phase II site investigation based on the phase I site investigation. The Agency notes that the RA has the option of appealing a denial of a report. Finally, the Agency argues that the changes suggested by Ms. Huff do not consider that the source of the contamination at the remediation site could be off-site. (Ex. 13 at 4-5; Tr. 2 at 201, 215-217.)

The Board agrees with the Agency that the proposed changes would inappropriately limit the scope of a phase II site investigation, for the reasons stated by the Agency. The Board declines to adopt the changes suggested to Section 740.420(b).

Section 740.425 Site Investigation Report -- Comprehensive Site Investigation Report. Section 740.425 sets forth the requirements for reports of phase I and II comprehensive site investigations. Under 740.425(a), the results of both the phase I and II site investigations should be combined in a single report.

Agency witnesses testified that the Agency will not review reports for sites at which no release has occurred and for which no phase II site investigation is performed. The Agency does not believe that such sites are appropriately within the SRP. The Agency does not intend for the SRP to be a program used for Agency certification of sites that are determined to be

clean. The Agency also will not issue NFR letters for such sites. (Tr. 1 at 335-349.) A site at which no phase II site investigation is performed will be terminated from the SRP.

There was some discussion at the public hearings over the effect of a termination of such a site from the SRP, which is summarized here for the benefit of the interested public. Some participants and Board members expressed a concern that this termination would leave a cloud over the status of the property, and that lenders would refuse to take such properties as collateral or otherwise insist that an NFR letter be issued. (Tr. 1 at 350- 356.) The Agency testified, however, that it was the understanding of the Agency that lenders would be satisfied with a clean phase I site investigation report, and that a termination from the SRP based on a clean phase I site investigation should not give rise to any implication that the site is contaminated. (Tr. 1 at 350, 353.)

Mr. Muller testified similarly on behalf of the Illinois Bankers Association and SRAC. According to Mr. Muller, the lending community does not view the SRP as a means of avoiding liability for simply having made a loan on a contaminated piece of property. Mr. Muller states:

[P]relending environmental due diligence is simply another means of evaluating a potential impairment to either the borrower's ability to repay the loan or to the collateral itself. In short, prelending environmental due diligence is a "valuation" issue. There is no, nor should there be, any provision under Title XVII whereby the [Agency] will opine as to the potential costs and time required to remediate a particular site. Those functions are served by either consultants to lending institutions or by an individual(s) within the financial institution.

(Ex. 11 at 3-4.)

Mr. Muller also testified that numerous factors would make it impractical for lenders to obtain NFR Letters on sites unless significant environmental issues were revealed in a phase I site assessment, including the cost and time required to obtain an NFR Letter. (Ex. 11 at 3-4.) Mr. Muller concluded: "We have no intention of requiring NFR Letters for clean sites. The process is not suited for our lending practices." (Ex. 11 at 3-4.)

A separate issue was raised on subsection 740.425(b)(5). As originally drafted, that subsection would require that the site investigation report include an endangerment assessment that in part requires the RA to compare the concentrations of contaminants of concern to "the applicable Tier I remediation objectives under 35 Ill. Adm. Code 742." Ms. Huff testified that "this comparison is irrelevant and, more importantly, potentially misleading, and should not be required at sites relying on Tier 2 or Tier 3 objectives." She reiterates this statement in a public comment. (PC 8 at 12-13.) Ms. Huff suggests changing the word "applicable" to "specific" and adding the following phrase to the end of 740.425(b)(5):

[O]r provide a statement that the Remediation Applicant elects to develop remediation objectives appropriate for the remediation site using Tier 2 or Tier 3 procedures under

35 Ill. Adm. Code 742.

In response, the Agency suggests replacing the word “applicable” with the word “corresponding” to clarify that the use of Tier 1 objectives is not mandatory at a site performing the requested comparison. (Ex. 13 at 5-6.) The Agency also states that it is “mystified by the resistance to making the comparison” to Tier I objectives. The Agency notes that the comparison is only one of four factors used in assessing potential threats, and that this comparison will enable the Agency to quickly identify the sites for which Tier 2 or 3 remediation objectives may be developed. The Board agrees with the Agency and will adopt only the Agency’s proposed change.

740.430 Focused Site Investigation. Section 740.430 sets forth the required components of a focused site investigation. As noted earlier, a focused site investigation is performed when an RA has specified limitations on the recognized environmental conditions or contaminants of concern to be covered by an NFR letter.

Although a focused site investigation and limited NFR letter are not expressly allowed for by the Act, the Agency states that its experience has shown that an RA may seek an NFR letter only for a particular release of hazardous substances. (Ex. 3 at 15.) The Board agrees that the Agency’s approach is both sensible and acceptable under Title XVII.

Section 740.435 Site Investigation Report -- Focused Site Investigation. This section requires that there be a single report on the focused site investigation. The Agency notes that the focused site investigation report is almost identical to the comprehensive site investigation report.

Ms. Huff suggested the same changes to Section 740.435 that she had suggested for Section 740.425. The Agency opposes these changes for the same reasons as it opposed the changes to Section 740.425, and the Board also rejects those changes for the reasons given earlier with respect to Section 740.425.

Section 740.440 Determination of Remediation Objectives. This section sets forth the method for determining remediation objectives. If the site investigation reveals one or more recognized environmental conditions, the RA shall develop remediation objectives under 35 Ill. Adm. Code 742 or other remediation measures as appropriate.

Ms. Huff suggests that subsection 740.440(a) be revised to clarify that remediation objectives must be developed for “contaminants of concern” rather than “recognized environmental conditions.” (Ex. 10 at 14-15.) Ms. Sharkey suggests a similar change. (Tr. 1 at 378-379.) The Agency agrees to this change (PC 3 at 4), and the Board accepts it as well.

The Agency also testified that “remediation measures” not developed under 35 Ill. Adm. Code 742 may be required under subsection 740.440(a). At the request of Mr. Rieser (Tr. 2 at 27), the Agency has added an example of a remediation measure at the end of

740.440(a): “e.g., removal of drums threatening a release.” (PC 3 at 4.) The Board agrees that the example is appropriate.

The Board notes, however, that Section 740.440 contains no procedure for the Agency to determine whether a remediation measure has been implemented. The Board has revised subsection 740.440(c) of the Agency’s proposal to allow for such verification, and that revision is set forth below.

The Agency also clarified that remediation objectives must be developed only when there will be no reliance on institutional controls. This new language encompasses both engineering barriers, which may be implemented only through an institutional control, and other institutional controls such as ordinances barring the use of groundwater. (PC 3 at 4-5; Tr. 2 at 34-39.) The Agency also moved some portions of its original subsection 740.440(b) to subsection 740.440(c) to conform with this change. In addition, the Agency revised subsection 740.440(b) to refer to institutional controls rather than engineered barriers. “Institutional controls” is a category that includes both engineered barriers and ordinances that preclude the use of groundwater for drinking water.

The Board agrees that these changes are appropriate. However, as noted above, the Agency must have some procedure for determining whether remediation measures have been implemented. Accordingly, subsection 740.440(c) reads as follows:

Where an institutional control or remediation measures will be relied upon to achieve compliance or where remediation measures have been developed, compliance shall be determined based on approval by the Agency of the institutional control or remediation measure and the timely implementation of the institutional control or remediation measure. (E.g.: if an institutional control prohibiting the use of groundwater within the boundaries of the remediation site as a potable water supply is obtained under 35 Ill. Adm. Code 742 Subpart J, sampling points shall be located at the boundary of the remediation site.)

The Agency noted that “timely implementation” is required because in some instances an institutional control will not become effective until an NFR Letter is issued and recorded. In that instance, compliance will be determined before the NFR Letter is issued, but will be conditioned on the timely recording of the NFR Letter. (PC 3 at 5.)

Section 740.445 Remediation Objectives Report. This section sets forth the required components of a remediation objectives report. The remediation objectives report should address the recognized environmental conditions and contaminants of concern.

The Agency revised its original subsection (a) to provide that if an exposure route is to be excluded, the remediation objectives report shall demonstrate that the exclusion meets the requirements of 35 Ill. Adm. Code 742. (PC 3 at 5-6.) This provides a clear standard for determining if the exclusion of an exposure route is appropriate and is consistent with suggestions at the public hearings. (Tr. 1 at 390-407; Tr. 2 at 48-49.)

Subsection (e) requires the RA to describe other remediation measures selected (such as removal of drums threatening a release) and their appropriateness. In response to questions and suggestions at the public hearings (Tr. 1 at 398-407), the Agency has inserted language into subsection (e) which clarifies that the RA must demonstrate that the measures selected prevent or eliminate threats to human health and the environment, are technically feasible and will not create additional threats, and are not inconsistent with the Act and its regulations. (PC 3 at 5-6.) The Board approves of the language inserted and adopts it.

Section 740.455 Remedial Action Completion Report. This section sets forth the required elements of a remedial action completion report. A remedial action completion report must demonstrate completion of the remedial action in compliance with the remedial action plan and successful attainment of the Agency-approved remediation objectives. (Section 58.6(e)(1) of the Act; Ex. 3 at 19-20.)

The remedial action completion report shall include a description of “other conditions appropriate for the issuance of an NFR letter.” In response to a suggestion by Ms. Sharkey, the Agency proposes to limit “other conditions” to those “necessary for protection of human health and the environment related to the issuance of an NFR Letter.” (PC 3 at 6.) The Board agrees with this change and incorporates it.

#### Subpart E: Submittal and Review of Plans and Reports

Subpart E provides the administrative procedures and the standards for review of plans and reports. This section also establishes the conditions for the rule and duration of groundwater management zones. In particular, standards of review are set forth for (1) site investigation reports and related activities, (2) remediation objective reports, (3) remedial action plans and related activities, and (4) remedial action completion reports and related activities. The standards are based on statutory standards and apply to both the Agency and the RELPE.

This subpart also addresses the establishment and duration of groundwater management zones (GMZ). A GMZ is a three-dimensional region containing groundwater being managed to mitigate contaminants of concern at a remediation site. A GMZ does not become effective until a remedial action plan has been approved by the Agency. If a GMZ is in effect, the otherwise applicable groundwater standards from 35 Ill. Adm. Code 620 shall not apply to the contaminants for which groundwater objectives have already been approved. Likewise, while the NFR Letter is in effect, the otherwise applicable groundwater quality standards from 35 Ill. Adm. Code 620 are superseded. Instead, the remediation objectives set forth in the NFR Letter become the groundwater quality standards for that area.

Questions and issues were raised on Sections 740.505 (review 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) and 740.530 (establishment of groundwater management zones).

Section 740.505 Review of Plans and Reports. Section 740.505 addresses the review of plans and reports.

The Agency proposes to amend its original proposal to add a new 740.505(d)(6). This new provision would provide that if the Agency fails to make a final determination within the period set forth in (d), the failure shall be deemed a denial and the RA may appeal within 35 days of the expiration of the deadline. (PC 3 at 6-7.) However, one of the participants in the hearing, IERG, opposes this proposal. IERG notes that under Section 740.505(h), an RA already has the right to appeal if the Agency has failed to meet a decision deadline. (PC 4 at 5.) Accordingly, IERG believes that the Agency's revision is redundant. IERG also opposes the amendment because it does not recognize that an RA may waive a decision deadline, as does Section 740.505(h). (PC 4 at 6.) In its final public comment, the Agency agrees that its proposed language is probably unnecessary. (PC 5 at 11.)

The Board agrees with IERG that the proposed amendment is unnecessary and potentially confusing. The Board will not adopt the Agency's proposed 740.505(d)(6).

Section 740.510 Standards for Review of Site Investigation Reports and Related Activities. This section sets forth the standards for review of site investigation reports and related activities. In response to various questions and comments (Tr. 1 at 425-432; Tr. 2 at 149-150; PC 2 at 13-14), the Agency submitted more specific standards for determining whether a site investigation is in compliance with Title XVII and Subpart D. Subsection (b) now requires the Agency to consider whether the site investigation complies with Sections 740.420, 740.430 and 740.515. The Board agrees that these references provide greater specificity and incorporates them into the regulation.

Section 740.515 Standards for Review of Remediation Objectives Reports. This section sets forth the items that the Agency or a RELPE shall consider when reviewing a remediation objectives report.

In a public comment, Ms. Sharkey claims that subsection (a) allows standardless decision-making. (PC 7 at 6.) She suggests that the Board replace the phrase "appropriate for the recognized environmental condition" with the phrase "necessary to minimize or eliminate any remaining . . . risk presented by the contaminants of concern." The Agency has not had an opportunity to respond to this suggestion. The Board believes that Ms. Sharkey's suggestion provides a more definite standard for Agency decision-making and adopts her change in this proposal. The Board invites the Agency to comment on this change in the public comment period that will follow this opinion and order.

In response to concerns expressed at public hearings about the standard for reviewing remediation measures under subsection 740.515(b)(6) (such as the removal of drums threatening a release), the Agency has provided a more specific standard for review. The

Board agrees that the proposed standard provides the necessary specificity and incorporates it. The Board also incorporates a minor change to subsection 740.515(b)(3)(B) suggested by Ms. Sharkey and agreed to by the Agency. (PC 3 at 8.) This change clarifies that any remediation objectives determined in accordance with Part 742 will be considered “appropriate.” (*Id.*)

Section 740.520 Standards for Review of Remedial Action Plans and Related Activities. This section sets forth the standards for review of remedial action plans by the Agency and RELPEs.

Under questioning at the first hearing, an Agency witness confirmed that the Agency would probably find that a technology would achieve remediation objectives upon evidence that a technology had worked in a similar case. (Tr. 1 at 441-442.) However, a technology could be acceptable even without such proof. (Tr. 1 at 443-444.) In addition, the need for management of risk relative to remaining contamination, and the duration for which such management is necessary, will vary with each site. (Tr. 1 at 445-449.)

Section 740.530 Establishment of Groundwater Management Zones. This section outlines the procedures for establishing GMZs. GMZs are provided for in Section 58.5(d)(4) of the Act, which states:

For regulated substances that have a groundwater quality standard established pursuant to the Illinois Groundwater Protection Act and rules promulgated thereunder, site specific groundwater remediation objectives may be proposed under the methodology established in subdivision (d)(3) of this Section [*i.e.*, Tier III objectives] at values greater than the groundwater quality standards.

The Agency modified its original proposal on this section in its first errata sheet (Ex. 6), and accordingly that is the proposal outlined here, unless otherwise noted. Subsection (a) provides that upon approval of a remedial action plan under Subpart E, groundwater that is the subject of the remedial action plan shall automatically be classified as a GMZ for the specified contaminants of concern.

Subsection (b) provides that the three dimensional area of the GMZ is coextensive with the groundwater that is the subject of the remedial action plan, although it may be modified where new information and an amended remedial action plan warrant. If a GMZ extends across property boundaries, the written permission of the owners of the affected properties shall be obtained before the GMZ becomes effective, unless the properties are already included in the remediation site. The Agency explained that “this is the appropriate starting point for the GMZ because this is the point in the process where the first clear commitment to remediate groundwater is made, where the extent of corrective action becomes reasonably clear, and where the remediation schedule is established allowing the Agency to gauge timely progress.” (Ex. 4 at 9.)

Ms. Sharkey believes that:

a GMZ should be effective across the entire groundwater contaminant plume vis a vis Agency enforcement regardless of whether another “affected property owner” has provided written consent. This would not prevent the non-consenting “affected property” owner from pursuing a citizen’s enforcement action or any other rights available under the law; but he should not have the support of the Agency in doing so.

(PC 2 at 14-15.)

The Board is disinclined to accept this change because of the Board’s concern that such a GMZ could cover a large area and impede the Agency’s ability to protect human health and the environment. The suggested change also does not seem to be appropriate unless the RA intends to remediate the entire plume. Accordingly, the Board seeks further comment on Ms. Sharkey’s proposed change.

Subsection (c) provides that a GMZ remains in effect until an NFR Letter becomes effective or an Agreement (to provide review and evaluation services) is terminated. The Agency believes that “ending the GMZ when the Remedial Action Completion Report is approved is appropriate because subsection (f) provides that the approved remediation objective for a specified contaminant of concern becomes the applicable groundwater quality standard within the GMZ once the achievement of the objective is documented and approved in the Remedial Action Completion Report. . . . Once the new objective is achieved and becomes the applicable standard within the GMZ, there is no basis for enforcement for groundwater violations.” (Ex. 4 at 10.)

In a public comment, Ms. Sharkey argues that the GMZ should extend through any post-remediation monitoring period. “Presumably post-remediation monitoring, when required, is for the purpose of verifying compliance with objectives. If there is a possibility of monitoring an exceedence, the GMZ should remain in place to provide the same legal protection which is available during remediation.” (PC 2 at 14.) The Board finds this change unnecessary in light of the changes suggested by the Agency regarding subsection (f), as discussed below.

In its second errata sheet, the Agency proposes an amended subsection (f). It provides that while the NFR letter is in effect, the otherwise applicable groundwater quality standards of 35 Ill. Adm. Code 620.Subpart D are superseded. It also provides that the applicable groundwater quality standards for the specified contaminants of concern within the area encompassed by the GMZ are the groundwater objectives achieved as documented in the Remedial Action Completion report. These changes were made in response to questions and comments on these issues at the second hearing. (Tr. 2 at 63-108, 300-309.) The Board accepts these changes, with minor changes for consistency.

The Agency states that it amended its proposal for subsection (c) in order to make clear that the groundwater quality standards of 35 Ill. Adm. Code 620.Subpart D will be superseded by the groundwater remediation objectives developed under this SRP and Part 742. (PC 3 at

8-9; Tr. 2 at 307-309.) The Agency also states that it believes that the nondegradation standards of 35 Ill. Adm. Code 620.Subpart C remain applicable to Part 740 remediation sites. The Board agrees that all provisions of 35 Ill. Adm. Code 620 apply to sites remediated under Part 740 unless specifically excluded by Part 740.

The Agency submitted a revised subsection (g) in its second errata sheet. Subsection (g) provides that while an NFR Letter is in effect, requirements for review, reporting and listing relative to groundwater remediation that would otherwise apply under 35 Ill. Adm. Code 620.250 and 620.450(a) shall not apply to the area encompassed by a GMZ and any contaminants of concern for which a GMZ was in effect under Section 740.530. The Agency explained that the changes were intended to clarify more specifically the scope and duration of the exemption from 35 Ill. Adm. Code 620. (PC 3 at 9.) This is consistent with the Board's understanding of the relationship between Part 620 and Part 740, as explained above, and the Board accepts the proposed revisions.

In addition, the Board adds language to Part 620 to make clear that groundwater management zones may be established under Part 740. Specifically, the Board has added a new Section 620.201(c); a new Section 620.250(d), (e) and (f); and a new Section 620.450(c). These changes basically duplicate the provisions of Section 740.530, and are intended simply to alert the reader of Part 620 to the relationship between Parts 620 and 740. The Board recognizes that the Agency opposed subjecting groundwater management zones to the requirements of Part 620 (PC 3 at 8-9); however, the Board's changes to Part 620 merely provide cross-references to Part 740. The Board seeks comment on the proposed changes to Part 620.

#### Subpart F: No Further Remediation Letters and Recording Requirements

Subpart F describes the content of NFR Letters, the recording requirements, and situations in which an NFR Letter may be voided. In addition, this subpart allows limiting language to be contained in the NFR Letter if the RA has decided to limit the investigation or remediation to a certain site, to limited environmental conditions or to specific contaminants of concern. The NFR Letter must include the requisite information as described in the proposal and will be issued to RAs who have completed all requirements and received final approval of the remedial action completion report by the Agency or on appeal.

The RA must submit the NFR Letter to the office of the recorder or the registrar of titles of the county in which the remediation site is located. The proposal requires that if the RA is not the sole owner of the site, the owner must certify that he or she has reviewed the contents of the NFR Letter (or affidavit if an affidavit is filed in lieu of an NFR Letter) and accepts the terms and conditions and any land use limitations set forth in the Letter (or affidavit). The NFR Letter is not effective until it is officially recorded. After the NFR Letter or affidavit is recorded, the RA must submit to the Agency a copy of the letter or affidavit, as recorded, and, in applicable situations, the owner certification, to demonstrate that the recording requirements have been satisfied. If the remediation site is not managed in

accordance with the terms of the NFR Letter, the NFR Letter may be voided by the Agency. The Agency's voidance of an NFR Letter may be appealed.

Questions and issues were raised concerning Sections 740.605 (issuance of a No Further Remediation Letter), 740.610 (contents of a No Further Remediation Letter), 740.620 (duty to record a No Further Remediation Letter) and 740.625 (voidance of a No Further Remediation Letter). A discussion of these questions and issues is set forth below.

Section 740.605 Issuance of a No Further Remediation Letter. This section is divided into three subsections. Subsection (a) provides that the Agency has 30 days to issue the NFR Letter after the approval of a Remedial Action Completion Report. (This requirement, however, does not mean that the RA must have completed post-remedial monitoring in order to have satisfied the requirements for the issuance of an NFR Letter. (Tr. 1 at 474.)) If the Agency fails to issue the NFR Letter within 30 days, the letter is deemed issued by operation of law. Subsection (b) provides that the NFR Letter shall be issued only to those RAs who have completed all requirements of the SRP and who have an approved remedial action completion report. (Ex. 5 at 3.) Subsection (c) requires the Agency to mail the NFR Letter to the RA by registered or certified mail, post-marked with a date stamp and with return receipt requested.

Mr. Feldman proposes that language be added "to remedy the problem of the land owner getting less for his consent than he bargained for." (Ex. 8 at 3.) He proposes adding a sentence in subsection (c) that would provide: "[a] copy of the NFR Letter shall be mailed simultaneously to the Owner, who is not an RA, by first class mail." (Ex. 8, Attachment 1.)

The Agency agrees to Mr. Feldman's revision to subsection (c). The Agency finds it appropriate to "close the loop" at the end of the process by sending a copy of the NFR Letter to owners who are not also RAs. (Ex. 13 at 9.) (Tr. 2 at 234.) The Board also finds it appropriate to add the revision to subpart (c) of this section, with minor revisions.

Mr. Feldman also proposed that a new subsection (d) be added under this section. His proposal reads as follows: "(d) An Owner, who is not the RA, may appeal to the Board within 35 days of the final action of the Agency the issuance of any NFR Letter that imposes land use restrictions that were not consented to by the Owner." The Agency objects to this revision, again stating that the primary responsibility of the Agency is the review and evaluation of environmental cleanup efforts, not resolving private disputes. (Ex. 13 at 8.)

The Board declines to adopt the proposed subsection (d). In addition to the reasons stated by the Agency, the Board believes that owners are sufficiently protected by the requirement that the RA obtain the consent of the owner to apply to the SRP (Section 740.210) and for the issuance of the NFR Letter (Section 740.620).

Section 740.610 Contents of a No Further Remediation Letter. The NFR Letter constitutes *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.

Regarding the specificity of the NFR Letter, the Agency stated at hearing that any contaminants of concern which remain on the site will not be specifically identified in the NFR Letter. (Tr. 2 at 260-61.) The NFR Letter will cross-reference back to the remedial action completion report rather than placing specific numbers into the NFR Letter. In some cases, however, the Agency stated that specific numbers may be included in the NFR Letter. Two situations which the Agency gave as examples included: (1) a situation where post-remediation monitoring must take place; and (2) a situation in which the RA has requested that specific numbers be included in the NFR Letter. (Tr. 2 at 261.) None of the parties offered any specific language changes or revisions to this section.

Section 740.620 Duty to Record a No Further Remediation Letter. This section addresses the steps that an RA must follow in order to record the NFR Letter with the Office of the Recorder or the Registrar of Titles.

In response to the concerns of Mr. Dunham and Mr. Feldman, the Agency added new language in subsection (d). As noted earlier, the District is concerned about the “problem of a land owner [who is not the RA] getting less for his consent [to the investigation and remediation] than he bargained for.” (Ex. 8 at 4.) To alleviate these concerns, the Agency proposes to add language requiring that when the RA is not the sole owner of the remediation site, the RA should obtain the certification of each owner of the remediation site that the owner has reviewed the NFR Letter and accepts any land use limitations and other conditions set forth in the letter (or affidavit, if an affidavit is filed in lieu of an NFR Letter). (PC 3 at 6.) This certification is to be recorded along with the NFR Letter or affidavit. (PC 3 at 6.) The Agency believes that this change, along with the requirement for the owner’s permission with the application, “should ensure that non-RA property owners are alerted to the investigative and remedial properties and can prevent the recording of NFR Letters with which they disagree.” (PC 3 at 6.) Mr. Dunham supports this change. (PC 6 at 1.)

In addition to the new subsection (d) language, the Agency added new language to subsections (a) and (b) which references the requirement in subsection (d). Specifically, in subsection (a), the Agency added a requirement that where the RA is not the sole owner of the remediation site, an owner certification must be submitted to the Office of Recorder or the Registrar of Titles. In subsection (b), the Agency added a requirement that when the RA is not the sole owner of the remediation site, the NFR Letter shall not become effective until officially recorded along with owner certification.

The Board finds that the new language proposed in the Agency’s second errata sheet should be added. It will give a non-owner RA a greater incentive to keep the owner informed throughout the entire process so as to ensure that the necessary certification is obtained at the end of the process. At the same time, it imposes a minimal additional administrative burden on participants in the SRP. The Board agrees that this proposed language should alleviate the concerns raised by many of the participants at hearing.

Ms. Huff also proposes new language in order to alleviate and clarify the current site owner's obligation to maintain any institutional controls or engineered barrier required by a recorded NFR Letter. (Ex. 10 at 15.) Specifically, Ms. Huff proposes that at the end of subsection (c), a new sentence should be added stating that "[t]he current owner of the remediation site shall be responsible for the maintenance of any land use limitations required by a recorded No Further Remediation letter." (Ex. 10 at 15.)

The Agency opposes Ms. Huff's proposed change. (Ex. 13 at 6-7.) The Agency reasons that "[w]hile it would seem common sense that one would look first to the current owner for the entity responsible for maintaining institutional controls and engineered barriers, the Agency does not wish to preclude other third party arrangements that may be parts of purchase and sale agreements, leases, and so forth." (Ex. 13 at 7.) The Agency further reasons that it does not need to know who is responsible for maintaining institutional controls and engineered barriers to initiate a voidance action for the failure to do so. (Ex. 13 at 7.) The Agency also believes that such a revision would be better placed at subsection (a)(2)(F) rather than in subsection (c). (Ex. 13 at 6.)

The Board finds that Ms. Huff's revision should not be added for the reasons stated by the Agency. For the same reasons, the Board declines to add the revision to subsection (a)(2)(F).

Section 740.625 Voidance of a No Further Remediation Letter. This section sets forth the procedures for voidance of an NFR Letter. Generally, an NFR Letter shall be voidable if the remediation site activities are not managed in full compliance with the provisions of Title XVII of the Act, Part 740, or with the approved remedial action plan or remediation objectives upon which the issuance of the NFR Letter was based. The Agency's proposal requires that if the Agency seeks to void an NFR Letter, it shall provide notice to the current title holder of the site and to the RA. (Section 58.10(f) of the Act.) The RA or current title holder may, within 35 days of receipt of the voidance, appeal the Agency's decision to the Board. If not appealed, the Agency shall ensure that the notice of voidance is recorded with the proper office.

Ms. Huff raises an issue concerning subsection (a)(6), which sets forth one of the acts or omissions that may result in voidance of the NFR Letter. Subsection (a)(6) concerns subsequent discovery of contaminants that pose a threat to human health or the environment. Specifically, Ms. Huff proposes that the word "contaminants" be changed to "recognized environmental conditions." (Ex. 10 at 16.) Ms. Huff states that this new language is consistent with the Agency's testimony that "the determination of a threat to human health or the environment would have to be made with reference to the risk assessment requirements set forth in the proposed Part 742 regulations, including the existence of any appropriate land use limitations such as engineered barriers or institutional controls." (Ex. 10 at 16.) Ms. Huff further states that her proposed revision would provide greater certainty to the regulated community and help clarify the Agency's intent. (Ex. 10 at 16.) The Agency agrees to Ms. Huff's first revision to change the word "contaminants" to "recognized environmental condition." (Ex. 13 at 7.)

However, Ms. Sharkey opposes the further use of the term “recognized environmental conditions” for the same reasons she has opposed its use elsewhere. (PC 7 at 3.) Ms. Sharkey states that because “the General Assembly used the term ‘contaminants’ in Section 58.10(e)(b) (sic), the statutory bases for this regulatory section,” the Agency’s revision is “inconsistent with the legislative intent to allow the Agency to void an NFR Letter for a fully investigated site on the basis of the discovery type of hypothetical information that could be considered a ‘recognized environmental condition’.” (PC 7 at 4.)

The Board finds that the word “contaminants” should not be replaced by “recognized environmental conditions” in Section 740.625(a)(6). “Recognized environmental conditions” are generally discovered through a phase I site investigation conducted under the ASTM Standard, and the Board believes that the subsequent discovery of contaminants in the circumstances listed in this subsection should render an NFR Letter voidable, regardless of whether the contaminants are discovered through an ASTM Standard phase I site investigation or for some other reason. The Board further notes that the original language tracks the statutory language of Section 58.10(e)(6) of Title XVII.

Ms. Huff also proposes that the phrase “as determined under 35 Ill. Adm. Code 742” be added to the end of this subsection. (Ex. 10 at 16-17.) Ms. Huff believes that this language will ensure that isolated impacts do not void an NFR Letter. (*Id.*) Ms. Sharkey shares Ms. Huff’s concern, but proposes the following language in its stead: “[h]owever, the discovery of isolated contaminants shall not constitute a basis for avoidance unless such contaminants are found to pose a threat to human health or the environment after consideration of all known site conditions and institutional controls.” (PC 7 at 4.)

The Agency believes that Ms. Huff’s proposed language is too narrow to encompass risks and releases where remediation measures beyond the scope of Part 742 might be necessary. (Ex. 13 at 7.) The Agency did not have an opportunity to comment on Ms. Sharkey’s proposed addition.

The Board finds that there should be no citation to the Part 742 rules at the end of this subsection. We agree with the Agency that remediation measures beyond the scope of Part 742 may be necessary. The Board further believes that the language that Ms. Sharkey suggests is redundant and declines to adopt it.

### CONCLUSION

The Board believes that this proposal, with revisions, is consistent with Title XVII. We find that the proposal establishes a SRP which is designed to ensure cleanup of contaminated property in Illinois based on an analysis of risks associated with the future uses of a site. We believe that this proposal competently sets forth the procedures for the investigative and remedial activities at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and for the review and approval of those activities. We further believe that the enactment of Part 740 will protect



human health and the environment. The Board observes that the SRP remains consistent with other cleanup programs within the State of Illinois. Because of the voluntary nature of the SRP, the Board believes that the SRP provides new incentives to cleanup abandoned or under-used properties within the State of Illinois.

Accordingly, we find today that the record before us justifies adopting the Agency's proposal and Board revisions for first notice. The Board will again review the record in this matter upon completion of the first notice period, and determine whether the record continues to support moving this matter toward final adoption.

### ORDER

The Board hereby proposes for first notice the following procedures and standards for 35 Ill. Adm. Code 740. The Clerk of the Board is directed to file these proposed rules with the Secretary of State.

#### TITLE 35: ENVIRONMENTAL PROTECTION SUBTITLE G: WASTE DISPOSAL CHAPTER I: POLLUTION CONTROL BOARD

#### PART 740 SITE REMEDIATION PROGRAM

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SUBPART F: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section

740.600	General
740.605	Issuance of No Further Remediation Letter
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740.Appendix A	Target Compound List
Table A	Volatile Organics Analytical Parameters and Required Quantitation Limits
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Table C	Pesticide and Aroclors Organic Analytical Parameters and Required Quantitation Limits
Table D	Inorganic Analytical Parameters and Required Quantitation Limits
740.Appendix B	Review and Evaluation Licensed Professional Engineer Information

AUTHORITY: Implementing Sections 58 - 58.12 and authorized by Sections 58.5, 58.6, 58.7, and 58.11 of the Environmental Protection Act [415 ILCS 5/58 - 58.12, 58.5, 58.6, 58.7, and 58.11]

SOURCE: Adopted in R97-11 at 21 Ill. Reg.1431 effective \_\_\_\_\_, 1997.

NOTE: Capitalization denotes statutory language.

#### SUBPART A: GENERAL

##### Section 740.100 Purpose

The purpose of this Part is to ESTABLISH PROCEDURES FOR INVESTIGATION AND REMEDIATION AT SITES WHERE THERE IS A RELEASE, THREATENED RELEASE, OR SUSPECTED RELEASE OF HAZARDOUS SUBSTANCES, PESTICIDES, OR PETROLEUM AND FOR THE REVIEW AND APPROVAL OF THOSE ACTIVITIES. (Section 58.1(a)(1) of the Act)

##### Section 740.105 Applicability

- a) The procedures set forth in this Part may be used by any person required under the Act or electing to perform investigative or remedial activities at a site where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum unless:
  - 1) The site is on the National Priorities List (Appendix B of 40 CFR 300);

- 2) The investigative and remedial activities for which Agency review, evaluation and approval are requested are required under a current state or federal solid or hazardous waste permit or are closure requirements for a solid or hazardous waste treatment, storage or disposal site under applicable state or federal laws and implementing regulations;
  - 3) The investigative and remedial activities for which Agency review, evaluation and approval are requested are required under state or federal underground storage tank laws and implementing regulations; or
  - 4) The investigative and remedial activities for which Agency review, evaluation and approval are requested are required by a federal court order or an order issued by the United States Environmental Protection Agency and compliance with this Part would be contrary to the terms of that order.
- b) Any person whose site is excluded under subsections (a) may utilize the provisions of this Part to the extent allowed by federal law, federal authorization, or by other federal approval.
  - c) Any person whose site has previously enrolled in the Agency voluntary program and whose site is otherwise eligible under Title XVII of the Environmental Protection Act ("Act") (415 ILCS 5) and this Part may elect in accordance with Section 58.1(b) of the Act to use the procedures provided in this Part. In determining compliance with Title XVII of the Act and this Part for activities at such sites, the Agency may accept any documents that are comparable to those required to be submitted under this Part.
  - d) Except for sites excluded under subsection (a), investigative or remedial activities at agricultural facilities may be performed under this Part.
  - e) All applicable requirements of this Part, including those for plans and reports, shall be satisfied prior to the issuance of a No Further Remediation Letter.

#### Section 740.110 Permit Waiver

A STATE PERMIT OR PERMIT REVISION WHICH IS NOT OTHERWISE REQUIRED BY FEDERAL LAW OR REGULATIONS SHALL NOT BE REQUIRED FOR REMEDIAL ACTIVITIES UNDERTAKEN PURSUANT TO THE PROVISIONS OF THIS Part THAT OCCUR ENTIRELY ON THE remediation SITE. (Section 58.4 of the Act.)

#### Section 740.115 Agency Authority

NOTHING IN THIS Part SHALL LIMIT THE AUTHORITY OF THE AGENCY TO PROVIDE NOTICE UNDER SUBSECTION (q) OF SECTION 4 of the Act OR TO

UNDERTAKE INVESTIGATIVE, PREVENTIVE OR CORRECTIVE ACTION UNDER ANY OTHER APPLICABLE PROVISIONS OF the ACT. (Section 58.9(e) of the Act) The Agency may use the procedures of this Part, as appropriate (e.g. service agreements, determination of remediation objectives, and recording requirements), for remediation sites where the Remediation Applicant (RA) is seeking a release pursuant to Section 4(y) of the Act.

BOARD NOTE: Under Section 4(y) of the Act, the Agency has the authority to release any person from further responsibility for preventive or corrective action under the Act following the successful completion of preventive or corrective action undertaken by such person upon written request by the person. This release is less extensive than the No Further Remediation Letter available under Section 58.10 of the Act and Subpart F of this Part. However, in some instances, the procedures required to obtain a No Further Remediation Letter are not necessary, and the Remediation Applicant may prefer a more limited approach and the release offered under Section 4(y). This Section offers Remediation Applicants the opportunity, where appropriate, to work with the Agency within the service agreement structure and to use the procedures for determining remediation objectives under 35 Ill. Adm. Code 742. The Act does not provide for the review of decisions under Section 4(y) of the Act.

#### 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 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. (Section 58.2 of the Act)

"ASTM" MEANS THE AMERICAN SOCIETY FOR TESTING AND MATERIALS. (Section 58.2 of the Act)

"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. (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.

"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.

"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.

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

"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)

"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.

"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 DESSICANT. (Section 58.2 of the Act; 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 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). (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. (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 (a) 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; (b) EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE, ROLLING STOCK, AIRCRAFT, VESSEL, OR PIPELINE PUMPING STATION ENGINE; (c) RELEASE OF SOURCE, BYPRODUCT, OR SPECIAL NUCLEAR MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS ARE DEFINED IN THE 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 (d) 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 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)

"REMEDICATION APPLICANT" OR "RA" MEANS ANY PERSON SEEKING TO PERFORM OR PERFORMING INVESTIGATIVE OR REMEDIAL ACTIVITIES UNDER THIS TITLE INCLUDING THE OWNER OR OPERATOR OF THE SITE OR PERSONS AUTHORIZED BY LAW OR CONSENT TO ACT ON BEHALF OF THE OWNER OR OPERATOR OF THE SITE. (Section 58.2 of the Act)

"Remediation objective" means a goal to be achieved in performing remedial action, including but not limited to, 1) the concentration of a contaminant, 2) an



engineered barrier or engineered control, or 3) 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 or where children have the opportunity for exposure to contaminants through ingestion or inhalation at educational facilities, health care facilities, child care facilities, or playgrounds.

"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. (Section 58.2 of the Act) This term also includes, but is not limited to, all buildings and improvements present at that location, place or tract of land.

#### 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. (215) 299-5400  

ASTM E 1527-94, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, vol. 11.04, approved 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," EPA Publication No. SW-846 [Third Edition (September, 1986), as amended by Update I (July 1992)].

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

#### Section 740.130 Severability

If any Section, subsection, sentence or clause of this Part is judged invalid, such adjudication shall not affect the validity of this Part as a whole or any section, subsection, sentence or clause thereof not judged invalid.

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

#### Section 740.200 General

This Subpart sets forth the requirements to be followed by Remediation Applicants (RA) in applying for review and evaluation services from the Agency, provides for approval or denial of applications by the Agency, and sets forth the requirements to be followed in entering into or terminating agreements to provide review and evaluation services and any related services that the RA may request.

#### Section 740.205 Submittal of Application and Agreement

Site Remediation Program Applications (“Applications”) and Review and Evaluation Services Agreements (“Agreements”) shall be submitted to the Agency on forms prescribed and provided by the Agency with attachments as necessary. Applications and Agreements may be combined into one form. Applications and Agreements shall be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered shall be delivered during the Agency’s normal business hours.

#### Section 740.210 Contents of Application and Agreement

- a) The Application shall, at a minimum, contain the following information:
  - 1) The full legal name, address, and telephone number of the RA, the remediation site owner, if different from the RA, and any authorized agents acting on behalf of the RA or remediation site owner, and any contact persons to whom inquiries and correspondence must be addressed;
  - 2) The original signature of the RA or of the authorized agent acting on behalf of the RA;
  - 3) For applicants other than the remediation site owner, written permission from the owner, or the authorized agent of the owner, for conducting investigative and remedial activities:
    - A) Where the remediation site extends across property boundaries, written permission must be obtained from the owner of each affected property;
    - B) The written permission shall clearly identify the remediation site for which services are sought;
    - C) The written permission shall contain the original signature of the owner; and
    - D) Where the RA is authorized by law to act on behalf of the owner of the remediation site, the RA shall provide written documentation of that authority;

- 4) The remediation site address, site name, the Illinois inventory identification number, if assigned, and the approximate size of the remediation site in acres;
- 5) A statement of the nature of the No Further Remediation determination requested:
  - A) The statement shall indicate whether the RA is requesting a No Further Remediation determination under Section 58.10 of the Act for:
    - i) A limited number of recognized environmental conditions and related contaminants of concern as specified by the RA and identified by a focused site investigation under Section 740.430 of this Part; or
    - ii) All recognized environmental conditions and related contaminants of concern for the remediation site as identified by a comprehensive site investigation under Section 740.420 of this Part; or
  - B) The statement shall indicate whether the RA is requesting a release under Section 4(y) of the Act;
- 6) A statement identifying the recognized environmental conditions and related contaminants of concern for which the RA is seeking the No Further Remediation determination as follows:
  - A) If the RA is requesting a No Further Remediation determination under subsection (a)(5)(A)(i) above, the RA shall specify, to the extent reasonably possible, the limited recognized environmental conditions to be addressed including the related contaminants of concern; or
  - B) If the RA is requesting a No Further Remediation determination under subsection (a)(5)(A)(ii) above, the RA shall generally state that all recognized environmental conditions and related contaminants of concern identified by the comprehensive site investigation to be conducted under Section 740.420 of this Part shall be addressed;
- 7) Site base map(s) of sufficient detail and accuracy to show all of the following:

- A) A distance of at least 1,000 feet around the remediation site at a scale no smaller than one inch equal to 200 feet;
  - B) Map scale, north arrow orientation, date, and location of the site with respect to township, range and section;
  - C) Remediation site boundary lines, with the owners of property adjacent to the remediation site clearly indicated, if reasonably identifiable; and
  - D) Surrounding land uses (e.g., residential property, industrial/commercial property, agricultural property, and conservation property);
- 8) Identification of the following:
- A) Any support services being sought from the Agency in addition to the review and evaluation services; and
  - B) Anticipated schedule;
- 9) A statement of the current use of the remediation site and of post-remediation uses;
- 10) A list of all Agency permits pertaining to the remediation site currently held by the owner and operator;
- 11) The Federal Employer Identification Number (FEIN) or social security number (SSN) of the RA; and
- 12) The signature of the RA certifying the accuracy and completeness of the application.
- b) The Agreement may include the conditions set forth in subsection (c), as well as any additional support services to be provided by the Agency, as set forth in subsection (d) and as may be requested by the RA, and any terms and conditions necessary to accomplish those services.

- c) EXCEPT FOR SITES EXCLUDED under Sections 740.105 or 740.215 of this Part, THE AGENCY SHALL, SUBJECT TO AVAILABLE RESOURCES, AGREE TO PROVIDE REVIEW AND EVALUATION SERVICES FOR ACTIVITIES CARRIED OUT PURSUANT TO THIS Part FOR WHICH THE RA REQUESTED THE SERVICES in writing. As a condition for providing services, THE AGENCY MAY REQUIRE THAT THE RA FOR A remediation SITE:
- 1) CONFORM WITH THE PROCEDURES OF the Act and this Part;
  - 2) ALLOW FOR OR OTHERWISE ARRANGE remediation SITE VISITS OR OTHER remediation SITE EVALUATION BY THE AGENCY WHEN SO REQUESTED;
  - 3) AGREE TO PERFORM THE Remedial Action PLAN AS APPROVED UNDER THIS Part;
  - 4) AGREE TO PAY ANY REASONABLE COSTS INCURRED AND DOCUMENTED BY THE AGENCY IN PROVIDING SUCH SERVICES pursuant to this Part;
  - 5) MAKE AN ADVANCE PARTIAL PAYMENT TO THE AGENCY FOR SUCH ANTICIPATED SERVICES;
    - a) An advance partial payment in the amount of \$500 may be submitted along with the Application and Agreement forms; or
    - b) The applicant may request on a form provided by the Agency that the Agency estimate the total costs to the Agency of providing the requested services and assess an advance partial payment in an amount acceptable to the Agency but not to exceed \$5,000 or one-half of the total anticipated costs of the Agency, whichever is less;
  - 6) DEMONSTRATE, IF NECESSARY, AUTHORITY TO ACT ON BEHALF OF OR IN LIEU OF THE OWNER OR OPERATOR. (Sections 58.7(b)(1)(A)-(F))
- d) In addition to review and evaluation services, the RA may request and the Agency may provide other types of support services under terms and conditions agreed to by the parties and set forth in the Agreement. Additional services offered by the Agency include but are not limited to:
- 1) Sample collection and analyses;

- 2) Assistance with community relations; and
- 3) Coordination and communication between the RA and other governmental entities.

#### Section 740.215 Approval or Denial of Application and Agreement

- a) The Agency shall have 30 days from the receipt of an Application to approve or deny the Application. The Agency's record of the date of receipt of an Application shall be deemed conclusive unless a contrary date is proved by a dated, signed receipt from the Agency or certified or registered mail. Reasons for denial of an Application shall include, but not be limited to, the following:
  - 1) The application is deemed incomplete;
  - 2) The remediation site or the investigative and remedial activities requested by the RA do not satisfy the applicability requirements set forth at Section 740.105 of this Part; or
  - 3) The Agency does not have the resources available to provide review and evaluation services as requested in the Application.
- b) The Agency shall notify the RA in writing whether the Application is approved or denied. The notification shall be made by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's final determination shall be deemed to have taken place on the post-marked date that the notice is mailed. If the Agency denies an application for services, the notice of denial shall state the reasons for the denial.
- c) The RA may agree to waive the review deadline under this Section at the request of the Agency or on its own discretion.
- d) Except for denials under subsection (a)(3) above, if the Agency denies an Application, the RA may, within 35 days after receipt of the final determination, file an appeal with the Board. If the Agency fails to make the final determination on an Application within the time frame provided under subsections (a) or (c) above, that failure shall be deemed a denial of the Application, which the RA may appeal within 35 days of the expiration of the deadline. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act. If the Application or Agreement is denied, in lieu of an immediate appeal to the Board, the RA may either resubmit the Application or Agreement to the Agency or file a joint request for a 90-day extension in the manner provided for extensions of permit decisions in Section 40 of the Act. (415 ILCS 5/40.)

### Section 740.220 Acceptance and Modification of Application and Agreement

- a) A signed Agreement shall become effective upon approval by the Agency of the Application and the receipt of the advance partial payment in an amount determined under subsection 740.210(c) of this Part.
- b) Upon approval of the Application and receipt of the signed Agreement and advance partial payment, recordkeeping for services conducted by the Agency shall be initiated as provided in Subpart C of this Part.
- c) Modifications to the Application or Agreement shall be by mutual agreement of the parties and may be initiated by the RA or the Agency at any time. All modifications to the Application or Agreement shall be in writing and shall become effective upon signing by the RA and acceptance by the Agency unless another date is provided in the modification.
- d) If the Agency denies any request for modifications to the Application or Agreement, the RA may file an appeal within 35 days after receipt of notice of the Agency's denial. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for modifications to the Application or Agreement is denied, in lieu of an immediate appeal to the Board, the RA may either resubmit the request for modification to the Agency or file a joint request for a 90-day extension in the manner provided for extensions of permit decisions in Section 40 of the Act. (415 ILCS 5/40.)

### Section 740.225 Termination of Agreement by the Remediation Applicant (RA)

- a) AN RA REQUESTING SERVICES UNDER this Part MAY, AT ANY TIME, NOTIFY THE AGENCY, IN WRITING, THAT AGENCY SERVICES PREVIOUSLY REQUESTED ARE NO LONGER WANTED. WITHIN 180 DAYS AFTER RECEIPT OF THE NOTICE, THE AGENCY SHALL PROVIDE THE RA WITH A FINAL INVOICE FOR SERVICES PROVIDED UNTIL THE DATE OF receipt of SUCH NOTIFICATION. (Section 58.7(b)(3) of the Act)
- b) Within 45 days of the receipt of a final invoice prepared under subsection (a) above and Section 740.310 of this Part, the RA shall submit full payment to the Agency for any unpaid oversight costs the Agency has identified in the invoice. Submittal and manner of payment shall be as provided under Sections 740.315 and 740.320 of this Part.



- c) Upon finding that the RA has paid all oversight costs, the Agency shall notify the RA in writing by certified mail, return receipt requested, that the Agreement is terminated.

#### Section 740.230 Termination of Agreement by the Agency

- a) The Agency may terminate the Review and Evaluation Services Agreement if the RA:
  - 1) Fails to comply with the requirements of Title XVII of the Act or this Part;
  - 2) Violates any terms or conditions or fails to fulfill any obligations of the Agreement;
  - 3) Fails to proceed in a timely and appropriate manner consistent with the schedule set forth in the Application, Remedial Action Plan, or as subsequently modified by agreement with the Agency; or
  - 4) Fails to address an imminent and substantial threat to human life, health or the environment in a timely and effective manner.
- b) Prior to termination of an Agreement the Agency shall notify the RA in writing of its intention to terminate the Agreement and the reasons for the intended termination. Except for terminations under subsection (a)(4) above, the Agency shall provide the RA with a reasonable opportunity of not less than 15 days to correct deficiencies.
- c) The Agency shall notify the RA in writing of its final decision to terminate the Agreement. The notice of termination shall be made in accordance with Section 740.215(b) of this Part. The notice of termination shall state the reasons for the termination.
- d) Except for terminations under subsection (a)(4) above, if the Agency terminates an Agreement, the RA may, within 35 days after receipt of the final determination, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.
- e) A request for payment for all unpaid costs incurred by the Agency under the Agreement to the date of termination may be included with the notice of termination or may be sent as soon thereafter as practicable, but no later than 180 days after the Agency's issuance of the notice of termination. The request for payment shall comply with Section 740.310 of this Part. Within 45 days of the receipt of the request for payment the RA shall submit full payment to the

Agency. Submittal and manner of payment shall be as provided in Sections 740.315 and 740.320 of this Part.

Section 740.235 Use of Review and Evaluation Licensed Professional Engineer (RELPE)

AN RA MAY ELECT TO CONTRACT WITH A LICENSED PROFESSIONAL ENGINEER WHO WILL PERFORM REVIEW AND EVALUATION SERVICES ON BEHALF OF AND UNDER THE DIRECTION OF THE AGENCY RELATIVE TO THE SITE ACTIVITIES. (Section 58.7(c) of the Act)

- a) Prior to entering into a contract with an RA under this Part, the Review and Evaluation Licensed Professional Engineer (RELPE) shall provide the RA with the information detailed in Part 740.Appendix B.
- b) PRIOR TO ENTERING INTO THE CONTRACT WITH THE RELPE, THE RA SHALL NOTIFY THE AGENCY OF THE RELPE TO BE SELECTED. In making the notification, the RA shall submit the information detailed in Part 740.Appendix B as provided by the RELPE. THE AGENCY AND THE RA SHALL DISCUSS THE POTENTIAL TERMS OF THE CONTRACT. (Section 58.7(c)(1) of the Act)
- c) AT A MINIMUM, THE CONTRACT WITH THE RELPE SHALL PROVIDE THAT THE RELPE WILL SUBMIT ANY plans or REPORTS DIRECTLY TO THE AGENCY, WILL TAKE HIS OR HER DIRECTIONS FOR WORK ASSIGNMENTS FROM THE AGENCY, AND WILL PERFORM THE ASSIGNED WORK ON BEHALF OF THE AGENCY. (Section 58.7(c)(2) of the Act)
  - 1) The contract with the RELPE shall set forth the scope of work for which the RA has engaged the RELPE and the effective date of the contract.
  - 2) Costs incurred by the RELPE shall be paid directly to the RELPE by the RA as provided in the contractual agreement between the RA and the RELPE.
  - 3) The Agency shall not be liable for any activities conducted by the RELPE or for any costs incurred by the RELPE.
- d) REASONABLE COSTS INCURRED BY THE AGENCY for oversight of the RELPE and its review and evaluation services SHALL BE PAID BY THE RA DIRECTLY TO THE AGENCY IN ACCORDANCE WITH THE TERMS OF THE REVIEW AND EVALUATION SERVICES AGREEMENT ENTERED INTO UNDER this Part. (Section 58.7(c)(3) of the Act)

- e) IN NO EVENT SHALL THE RELPE ACTING ON BEHALF OF THE AGENCY BE AN EMPLOYEE OF THE RA OR THE OWNER OR OPERATOR OF THE SITE OR BE AN EMPLOYEE OF ANY OTHER PERSON THE RA HAS CONTRACTED TO PROVIDE SERVICES RELATIVE TO THE SITE. (Section 58.7(c)(4) of the Act)

#### SUBPART C: RECORDKEEPING, BILLING AND PAYMENT

##### Section 740.300 General

This Subpart sets forth the requirements to be followed in requesting and submitting payments for Agency costs incurred under this Part.

##### Section 740.305 Recordkeeping for Agency Services

- a) Costs incurred by the Agency shall be tracked within the Agency by the use of site-specific codes. The following types of costs shall be documented as applicable:
- 1) Personal services costs and indirect costs;
  - 2) Agency travel costs;
  - 3) Professional and artistic services contractual costs;
  - 4) Laboratory costs;
  - 5) Other contractual costs; and
  - 6) Other costs as agreed.
- b) Vouchers associated with review and evaluation services for sites under this Part shall be identified by the assigned site-specific codes.
- c) All Agency personnel performing review and evaluation services or other support services for a site under this Part shall allocate their time to that site using the assigned site-specific codes.

##### Section 740.310 Request for Payment

- a) The Agency shall prepare a written request for payment for costs incurred for services provided under the Agreement. Costs shall be documented, and the documentation shall be made available to the RA upon written request. Requests for payment shall be submitted to the

RA no more than quarterly unless the request is at the conclusion or termination of an Agreement.

- b) The first request for payment shall reflect the deduction of any advance partial payment from the costs incurred. A request for payment shall not be sent until the advance partial payment has been depleted.
- c) Within 35 days of the receipt of a request for payment, the RA may appeal the reasonableness of any request for payment. Appeals of any request which do not exceed, in the aggregate, the Agency's cost estimate provided under Section 740.210(c)(5) or \$5,000, whichever is greater, shall be limited to the grounds that the services on which the request is based were not actually performed. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.

#### Section 740.315 Submittal of Payment

Unless appealed in accordance with Section 740.310(c) of this Part, payments for costs incurred by the Agency for the performance of services under this Part shall be submitted to the Agency within 45 days after receipt of the request for payment, except for advance partial payments, which may be submitted along with the Application and Agreement or subsequent to the receipt of the Agency's determination under Section 740.210(b)(2)(E)(ii) of this Part.

#### Section 740.320 Manner of Payment

Payment shall be made by check or money order made 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 and the federal employer identification number or social security number of the RA entering into an Agreement under this Part. Payment shall be mailed or delivered to the address designated by the Agency in the request for payment. Payments that are hand-delivered shall be delivered during the Agency's normal business hours.

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

#### Section 740.400 General

This Subpart sets forth the requirements for site investigations, the determination of remediation objectives, and for the form and content of plans and reports submitted to the Agency under this Part.

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

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.

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
  - 4) Except as provided in subsection (c) below, 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. (Section 58.6(f) of the Act)

#### 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 (i) sample collection, documentation, preparation, labeling, storage, shipment and security, (ii) quality assurance and quality control, (iii) acceptance criteria, (iv)

corrective action, and (v) 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. 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), or other procedures as approved by the Agency.

- 2) All field measurement activities relative to (i) equipment and instrument operation, (ii) calibration and maintenance, (iii) corrective action, and (iv) 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 (i) facilities, (ii) equipment and instrumentation, (iii) operating procedures, (iv) sample management, (v) test methods, (vi) equipment calibration and maintenance, (vii) quality assurance and quality control, (viii) corrective action, (ix) data reduction and validation, (x) reporting, and (xi) records management. The practical quantitation limit (PQL) of the test methods selected must be less than or equal to the PQL for the Target Compound List at Section 740.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.
- 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.

#### 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 1527-94), 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 Section 740. 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:
    - A) 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;
    - B) The locations of any human and environmental receptors and receptor exposure routes; and
    - C) 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.

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:
- 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 1527-94), 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; and
  - 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 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;
  - D) 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; and
  - 8) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.

#### Section 740.430 Focused Site Investigation

The focused site investigation shall be performed where the RA has specified limitations on the recognized environmental conditions or contaminants of concern to be covered by the No Further Remediation Letter. At a minimum the focused site investigation shall include:

- a) A remediation site evaluation to identify the following features as relevant to the focus of the investigation:
  - 1) Current and post-remediation use(s) of the remediation site and surrounding areas that are immediately adjacent to the remediation site;
  - 2) Physical setting including features relevant to geologic, hydrogeologic, hydrologic, and topographic conditions; structures or other improvements on the remediation site; public thoroughfares adjoining the remediation site, as well any roads, streets, and parking facilities on the remediation site; utilities located on or adjacent to the remediation site; source of potable water supply; and sewage disposal system;
  - 3) The presence of containers and storage tanks containing the selected contaminants of concern, including contents, and assessment of leakage or potential for leakage; and
  - 4) Any other environmental, geologic, geographic, hydrologic or physical conditions of concern at the remediation site and surrounding areas immediately adjacent to the remediation site;

- b) Review of reasonably obtainable records relevant to the recognized environmental conditions and the related contaminants of concern for the remediation site and areas immediately adjacent to the remediation site, records of environmental enforcement actions and their subsequent responses, any previous response actions conducted by either local, state, federal or private parties, and a list of documents and studies prepared for the remediation site;
- c) Characterization of sources and potential sources of recognized environmental conditions and the related contaminants of concern, identifying:
  - 1) The sources or potential sources of the contaminants of concern;
  - 2) The sampling, analyses, and field screening measurements indicating the concentrations of the contaminants of concern; and
  - 3) The statutory or regulatory classification of the contaminants of concern and contaminated materials (e.g. hazardous waste, hazardous substance, special waste);
- d) Characterization of the extent of the contaminants of concern, identifying:
  - 1) The actual contaminated medium or media of concern;
  - 2) The three-dimensional configuration of the contaminants of concern with concentrations delineated; and
  - 3) The nature, direction, and rate of movement of the contaminants of concern and degradation products;
- e) Characterization of current and post-remediation exposure routes, identifying:
  - 1) 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;
  - 2) The locations of any human and environmental receptors and receptor exposure routes; and

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

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:
  - 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; or
    - 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.Subpart C;
  - 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; and
- 9) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.

#### Section 740.440 Determination of Remediation Objectives

- a) If the site investigation reveals evidence of the existence of one or more contaminants of concern, the RA shall develop remediation objectives in accordance with 35 Ill. Adm. Code 742 or other remediation measures as appropriate (e.g., removal of drums threatening a release).



- b) Where there will be no reliance on an institutional control to achieve compliance, compliance with remediation objectives shall be demonstrated as follows:
  - 1) For groundwater remediation objectives:
    - A) Sampling points shall be located on the remediation site in areas where, following site investigation under Subpart D of this Part, concentrations of contaminants of concern exceeded remediation objectives.
    - B) Compliance with the groundwater remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.
  - 2) For soil remediation objectives:
    - A) Sampling points shall be located on the remediation site in areas where, following site investigation under Subpart D of this Part, concentrations of concern exceeded remediation objectives.
    - B) Compliance with soil remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.
- c) Where an institutional control or remediation measure will be relied upon to achieve compliance, compliance shall be determined based on approval by the Agency of the institutional control or remediation measure and the timely implementation of the institutional control or remediation measure. (E.g., If an institutional control prohibiting the use of groundwater within the boundaries of the remediation site as a potable water supply is obtained under 35 Ill. Adm. Code 742.Subpart J, sampling points shall be located at the boundary of the remediation site.)
- d) Upon completing the determination of remediation objectives, the RA shall compile the information into a Remediation Objectives Report meeting the requirements of Section 740.445 of this Part for submittal to the Agency.

#### Section 740.445 Remediation Objectives Report

The Remediation Objectives Report shall address the recognized environmental condition(s) and related contaminants of concern that were identified in the Site Investigation conducted pursuant to this Part.

- a) If an exposure route is to be excluded, the RA shall prepare a Remediation Objectives Report demonstrating that the requirements for excluding an exposure route under 35 Ill. Adm. Code 742.Subpart C have been satisfied.
- b) If the RA elects to use the Tier 1 remediation objectives under 35 Ill. Adm. Code 742, the RA shall prepare a Remediation Objectives Report stating the applicable remediation objectives for the contaminants of concern.
- c) If the RA elects to develop remediation objectives appropriate for the remediation site using Tier 2 or Tier 3 procedures under 35 Ill. Adm. Code 742, the RA shall prepare a Remediation Objectives Report demonstrating compliance with those procedures.
- d) If the RA elects to develop remediation objectives appropriate for the remediation site using the area background procedures under 35 Ill. Adm. Code 742, the RA shall prepare a Remediation Objectives Report demonstrating compliance with those procedures.
- e) If the recognized environmental condition requires remediation measures other than, or in addition to, remediation objectives determined under 35 Ill. Adm. Code 742 (e.g. removal of drums threatening a release), the Remediation Objectives Report shall describe those measures and demonstrate that the measures selected:
  - 1) Will prevent or eliminate the identified threat to human health and the environment;
  - 2) Are technically feasible and can be implemented without creating additional threats to human health and the environment; and
  - 3) Are not inconsistent with the Act and applicable regulations.
- f) IN THE EVENT THAT THE AGENCY HAS DETERMINED IN WRITING THAT THE BACKGROUND LEVEL FOR A REGULATED SUBSTANCE or pesticide POSES AN ACUTE THREAT TO HUMAN HEALTH OR THE ENVIRONMENT AT THE SITE WHEN CONSIDERING THE POST-REMEDIAL ACTION LAND USE, THE RA SHALL DEVELOP APPROPRIATE RISK-BASED REMEDIATION OBJECTIVES IN ACCORDANCE WITH subsections (a), (b) and/or (c) above. (Section 58.5(b)(3) of the Act)
- g) The Remediation Objectives Report shall contain the affirmation of a Licensed Professional Engineer(s) in accordance with Section 740.410 of this Part.

IF THE APPROVED REMEDIATION OBJECTIVES FOR ANY REGULATED SUBSTANCE of concern ESTABLISHED UNDER Sections 740.440 and 740.445 of this Part 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 remediation SITE, including but not limited to: (Section 58.6(d) of the Act)

- 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;
- 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;
- 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.

#### 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. (Section 58.6(e)(1) of the Act.) 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 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;
- 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 of the remedial action in 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; 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 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, 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 Part. (Section 58.6(e)(2) of the Act)

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

##### Section 740.500 General

This Subpart sets forth the requirements for the review of plans and reports submitted under this Part. All plans and reports shall satisfy the requirements for form and delivery set forth in Section 740.410 of this Part.

##### Section 740.505 Reviews of Plans and Reports

- a) ALL REVIEWS CARRIED OUT UNDER THIS Part SHALL BE CARRIED OUT BY THE AGENCY OR A RELPE (Review and Evaluation Licensed Professional Engineer), BOTH UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER. (Section 58.7(d) of the Act)
- b) PLANS, REPORTS AND RELATED ACTIVITIES WHICH THE AGENCY OR A RELPE MAY REVIEW INCLUDE, but are not limited to:
  - 1) SITE INVESTIGATION REPORTS AND RELATED ACTIVITIES;
  - 2) REMEDIATION OBJECTIVES REPORTS;
  - 3) REMEDIAL ACTION PLANS AND RELATED ACTIVITIES; AND
  - 4) REMEDIAL ACTION COMPLETION REPORTS AND RELATED ACTIVITIES. (Section 58.7(d)(2) of the Act)
- c) ONLY THE AGENCY SHALL HAVE THE AUTHORITY TO APPROVE, DISAPPROVE, OR APPROVE WITH CONDITIONS A PLAN OR REPORT

AS A RESULT OF THE REVIEW PROCESS, INCLUDING THOSE PLANS OR REPORTS REVIEWED BY A RELPE. (Section 58.7(d)(3) of the Act)

- d) Except as provided in subsection (d)(5) below, the Agency shall have 60 days from the receipt of any plan or report to conduct a review and make a final determination to approve or disapprove the plan or report, or approve the plan or report with conditions. All reviews shall be based on the standards set forth in this Subpart E.
- 1) The Agency's record of the date of receipt of a plan or report shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from the Agency or certified or registered mail.
  - 2) Submittal of an amended plan or report restarts the time for review.
  - 3) The RA may waive the time line for review upon a request from the Agency or at the RA's discretion.
  - 4) The Agency shall not be required to review any plan or report submitted out of the sequence for plans and reports set forth in this Part.
  - 5) If any plans or reports are submitted concurrently, the Agency's timeline for review shall increase to a total of 90 days for all plans or reports so submitted.
- e) Upon completion of the review, the Agency shall notify the RA in writing of its final determination on the plan or report. The Agency's notification shall be made in accordance with Section 740.215(b) of this Part. If the Agency disapproves a plan or report or approves a plan or report with conditions, the written notification shall contain the following information, as applicable:
- 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
  - 2) A listing of the sections of Title XVII of the Act or this Part that may be violated if the plan or report is approved as submitted;
  - 3) A statement of the specific reasons why Title XVII of the Act or this Part may be violated if the plan or report is approved as submitted;
  - 4) A statement of the reasons for conditions if conditions are required.
- f) The Agency may, to the extent consistent with review deadlines, provide the RA with a reasonable opportunity to correct deficiencies prior to sending a disapproval. However, the correction of such deficiencies by the submittal of

additional information may, in the sole discretion of the Agency, restart the time for review.

- g) If the RA has entered into a contract with a RELPE under Subpart B of this Part, the Agency shall assign plans and reports submitted by the RA to the RELPE for initial review.
- 1) The RELPE's review shall be conducted in accordance with this Subpart E.
  - 2) Upon completion of the review, the RELPE shall recommend to the Agency approval or disapproval of the plan or report or approval of the plan or report with conditions.
  - 3) Unless otherwise approved by the Agency, the RELPE shall have 30 days to complete the review of a plan or report and forward the recommendation to the Agency. If any plans or reports have been submitted concurrently to the Agency, the RELPE shall have a total of 45 days to complete the review of all plans or reports so submitted, unless otherwise approved by the Agency.
  - 4) The recommendation of the RELPE shall be in writing, shall include reasons supporting the RELPE's recommendation, and shall be accompanied by all documents submitted by the RA and any other information relied upon by the RELPE in reaching a decision.
- h) IF THE AGENCY DISAPPROVES OR APPROVES WITH CONDITIONS A PLAN OR REPORT OR FAILS TO ISSUE A FINAL DETERMINATION WITHIN THE applicable review PERIOD AND THE RA HAS NOT AGREED TO A WAIVER OF THE DEADLINE, THE RA MAY, WITHIN 35 DAYS after receipt of the final determination or expiration of the deadline, FILE AN APPEAL TO THE BOARD. APPEALS TO THE BOARD SHALL BE IN THE MANNER PROVIDED FOR THE REVIEW OF PERMIT DECISIONS IN SECTION 40 OF THE ACT. (Section 58.7(d)(5) of the Act)

#### Section 740.510 Standards for Review of Site Investigation Reports and Related Activities

When reviewing Site Investigation 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 site investigation activities;



- b) Whether the site investigation has been conducted in accordance with the procedures set forth in Title XVII of the Act and Subpart D of this Part, including but not limited to:
  - 1) Whether a comprehensive site investigation has been designed and implemented in accordance with Section 740.420 of this Part;
  - 2) Whether a focused site investigation has been designed and implemented in accordance with Section 740.430 of this Part; and
  - 3) Whether all sampling and analysis activities have been conducted in accordance with Section 740.415 of this Part; and
- c) WHETHER THE INTERPRETATIONS AND CONCLUSIONS REACHED ARE SUPPORTED BY THE INFORMATION GATHERED. (Section 58.7(e)(1) of the Act)

#### Section 740.515 Standards for Review of Remediation Objectives Reports

When reviewing Remediation Objectives Reports, 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 determine whether the remediation objectives have been determined in accordance with 35 Ill. Adm. Code 742 and whether any other remediation objectives are necessary to minimize or eliminate any remaining risk presented by contaminants of concern;
- b) WHETHER THE REMEDIATION OBJECTIVES ARE CONSISTENT WITH THE REQUIREMENTS OF THE APPLICABLE METHOD FOR SELECTING OR DETERMINING REMEDIATION OBJECTIVES, including but not limited to:
  - 1) If exposure routes have been excluded under 35 Ill. Adm. Code 742.Subpart C:
    - A) Whether the requirements for the exclusion of exposure routes under 35 Ill. Adm. Code 742 have been satisfied; and
    - B) Whether engineered barriers and institutional controls, if relied on for the exclusion of exposure routes, satisfy the requirements of 35 Ill. Adm. Code 742;
  - 2) IF THE remediation OBJECTIVES WERE BASED ON THE DETERMINATION OF AREA BACKGROUND LEVELS UNDER 35 Ill. Adm. Code 742.Subpart D:

- A) WHETHER THE REVIEW OF CURRENT AND HISTORIC CONDITIONS AT THE remediation SITE OR IN THE IMMEDIATE VICINITY OF THE SITE has been thorough; (Section 58.7(e)(2)(A) of the Act)
  - B) WHETHER THE remediation SITE SAMPLING AND ANALYSIS HAVE BEEN PERFORMED IN A MANNER RESULTING IN ACCURATE DETERMINATIONS as provided in 35 Ill. Adm. Code 742 and Section 740.415(d) of this Part; (Section 58.7(e)(2)(A) of the Act)
  - C) Whether the requirements for determining area background concentrations under 35 Ill. Adm. Code 742.Subpart D have been satisfied; and
  - D) Whether an area background level for a regulated substance of concern poses an acute threat to human health or the environment at the remediation site when considering the post-remediation property uses.
- 3) If the remediation objectives were determined under 35 Ill. Adm. Code 742.Subpart E:
- A) Whether the requirements for the use of Tier 1 under 35 Ill. Adm. Code 742 have been satisfied;
  - B) Whether the comparison of the concentrations of regulated substances of concern and the Tier 1 remediation objectives has been performed and the remediation objectives determined for the remediation site in accordance with 35 Ill. Adm. Code 742; and
  - C) Whether engineered barriers and institutional controls, if relied on in the determination of remediation objectives or for industrial/commercial property uses, satisfy the requirements of 35 Ill. Adm. Code 742.
- 4) If the remediation objectives were determined under 35 Ill. Adm. Code 742.Subparts F, G, and H:
- A) Whether the requirements for the use of Tier 2 under 35 Ill. Adm. Code 742 have been satisfied;

- B) WHETHER THE CALCULATIONS performed under 35 Ill. Adm. Code 742 WERE ACCURATELY PERFORMED; (Section 58.7(e)(2)(B) of the Act)
  - C) WHETHER THE SITE SPECIFIC DATA REFLECT ACTUAL remediation SITE CONDITIONS; (Section 58.7(e)(2)(B) of the Act)
  - D) Whether engineered barriers and institutional controls, if relied on in the determination of remediation objectives or for industrial/commercial property uses, satisfy the requirements of 35 Ill. Adm. Code 742.
- 5) If the remediation objectives were determined under 35 Ill. Adm. Code 742.Subpart I:
- A) Whether the requirements for the use of Tier 3 under 35 Ill. Adm. Code 742 have been satisfied;
  - B) WHETHER THE CALCULATIONS performed under 35 Ill. Adm. Code 742 WERE ACCURATELY PERFORMED; (Section 58.7(e)(2)(C) of the Act)
  - C) WHETHER THE SITE SPECIFIC DATA REFLECT ACTUAL remediation SITE CONDITIONS; (Section 58.7(e)(2)(C) of the Act)
  - D) Whether engineered barriers and institutional controls, if relied on in the determination of remediation objectives or for industrial/commercial property uses, satisfy the requirements of 35 Ill. Adm. Code 742.
- 6) If a recognized environmental condition requires remediation measures other than, or in addition to, remediation objectives determined under 35 Ill. Adm. Code 742 (e.g. removal of drums threatening a release), whether the remediation measures selected:
- A) Will prevent or eliminate the identified threat to human health and the environment;
  - B) Are technically feasible and can be implemented without creating additional threats to human health and the environment; and
  - C) Are not inconsistent with the Act and applicable regulations.

- 7) If there are any remaining recognized environmental conditions not addressed in the determination of remediation objectives, whether those conditions have the potential to pose a significant threat to human health or the environment.

#### Section 740.520 Standards for Review of Remedial Action Plans and Related Activities

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

- a) Whether the plan is complete and has been accompanied by the information and supporting documentation necessary to evaluate the effectiveness of the plan; and
- b) WHETHER THE PLAN WILL RESULT IN COMPLIANCE WITH Title XVII of the Act and this Part, including but not limited to:
  - 1) THE LIKELIHOOD THAT THE PLAN WILL RESULT IN THE ATTAINMENT OF THE APPLICABLE REMEDIATION OBJECTIVES; (Section 58.7(e)(3)(A) of the Act)
  - 2) WHETHER THE ACTIVITIES PROPOSED ARE CONSISTENT WITH GENERALLY ACCEPTED ENGINEERING PRACTICES; (Section 58.7(e)(3)(B) of the Act) and
  - 3) THE MANAGEMENT OF RISK RELATIVE TO ANY REMAINING CONTAMINATION, INCLUDING BUT NOT LIMITED TO, PROVISIONS FOR THE LONG-TERM ENFORCEMENT, OPERATION, AND MAINTENANCE OF INSTITUTIONAL AND ENGINEERING CONTROLS, IF RELIED ON. (Section 58.7(e)(3)(C) of the Act)

#### 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; Section 58.7(e)(4) of the Act) 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.

Section 740.530 Establishment of Groundwater Management Zones

- a) Except as provided in subsection (b) below, upon approval by the Agency of a Remedial Action Plan under Subpart E of this Part, groundwater that is the subject of the Remedial Action Plan shall automatically be classified as a groundwater management zone for the specified contaminants of concern.
- b) The three dimensional area of the groundwater management zone shall be deemed to be coextensive with the groundwater that is the subject of the Remedial Action Plan. The size of the groundwater management zone may be modified where new information and an amended and approved Remedial Action Plan warrant. Where the groundwater management zone extends across property boundaries, the written permission of the owners of the affected properties shall be obtained before the groundwater management zone becomes effective unless the affected properties already are included within the remediation site.
- c) Groundwater management zones designated under this Section shall remain in effect until a No Further Remediation Letter becomes effective under this Part or an Agreement is terminated.
- d) While a groundwater management zone is in effect, the otherwise applicable standards from 35 Ill. Adm. Code 620 shall not be applicable to the contaminants of concern for which groundwater remediation objectives have been approved in the Remediation Objectives Report.
- e) If implementation of an approved Remedial Action Plan fails to achieve the remediation objectives developed under Section 740.440 of this Part, alternative groundwater objectives may be developed under Section 740.440 of this Part.
  - 1) Upon the development of alternative groundwater objectives, the Remediation Objectives Report shall be amended accordingly and submitted for review and approval.
  - 2) Upon approval of the amended Remediation Objectives Report, the Remedial Action Plan shall be amended and submitted for review and approval unless the RA can demonstrate that the alternative groundwater objectives already have been achieved. In that case, the RA shall submit

a Remedial Action Completion Report documenting the achievement of the alternative groundwater objectives.

- f) While the No Further Remediation Letter is in effect, the otherwise applicable groundwater quality standards from 35 Ill. Adm. Code 620.Subpart D are superseded. The applicable groundwater quality standards for the specified contaminants of concern within the area formerly encompassed by the GMZ are the groundwater objectives achieved as documented in the approved Remedial Action Completion Report.
- g) While the No Further Remediation Letter is in effect, requirements for review, reporting and listing relative to groundwater remediation that may otherwise be applicable under 35 Ill. Adm. Code 620.250 and 620.450(a) shall not apply to the area formerly encompassed by the groundwater management zone and any contaminants of concern for which the groundwater management zone was formerly in effect under this Section.

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

##### Section 740.600 General

Subpart F provides for the issuance of No Further Remediation Letters following the satisfactory completion of investigative and remedial activities in accordance with Title XVII of the Act and this Part. Subpart F also sets forth the fee for the No Further Remediation Letter, the recording requirements, and the circumstances under which the letter may be voidable.

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

- a) Except as provided in Section 740.615 below, WITHIN 30 DAYS OF 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. (Section 58.10(b) of the Act) 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.

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

- a) Except as provided in subsection (b) below, A NO FURTHER REMEDIATION LETTER ISSUED PURSUANT TO Section 58.10 of the Act SHALL BE LIMITED TO AND INCLUDE ALL OF THE FOLLOWING:
- 1) AN ACKNOWLEDGMENT THAT THE REQUIREMENTS OF THE REMEDIAL ACTION PLAN AND THE REMEDIAL ACTION COMPLETION REPORT WERE SATISFIED;
  - 2) A DESCRIPTION OF THE remediation site BY ADEQUATE LEGAL DESCRIPTION OR BY REFERENCE TO A PLAT SHOWING the BOUNDARIES;
  - 3) 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 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 if 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 remediation 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 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;
  - 7) THE RECORDING OBLIGATIONS PURSUANT 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 Title XVII of the Act AND Section 740.620(c) of this Part; and
  - 9) 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). (Sections 58.10 (b)(1) - (9) of the Act)
- b) IF ONLY A PORTION OF THE SITE OR ONLY SELECTED REGULATED SUBSTANCES or pesticides AT A SITE WERE THE SUBJECT OF CORRECTIVE ACTION, the NFR Letter may contain ANY OTHER PROVISIONS AGREED TO BY THE AGENCY AND THE RA. (Section 58.10(b)(10) of the Act)

Section 740.615 Payment of Fees

- a) THE AGENCY MAY DENY A NO FURTHER REMEDIATION LETTER IF FEES APPLICABLE UNDER THE REVIEW AND EVALUATION SERVICES AGREEMENT HAVE NOT BEEN PAID IN FULL. (Section 58.10(c) of the Act) 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 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 Agreement. (Section 58.10(g) of the Act)



- 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 of the receipt of the request for payment.

Section 740.620 Duty to Record a No Further Remediation Letter

- a) 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, 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 remediation SITE IS LOCATED WITHIN 45 DAYS OF RECEIPT OF THE LETTER. (Section 58.8(a) of the Act)
  - 1) 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. (Section 58.8(a) of the Act)
  - 2) 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 record AN AFFIDAVIT STATING THAT THE LETTER ISSUED BY OPERATION OF LAW. (Section 58.8(d) of the Act) 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) Any 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) A NO FURTHER REMEDIATION LETTER or the affidavit filed under subsection (a)(2) above 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 of 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 remediation SITE FOR WHICH A LAND USE LIMITATION HAS BEEN IMPOSED AS A RESULT OF REMEDIATION ACTIVITIES UNDER THIS TITLE 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 Title XVII of the Act and this Part. (Section 58.8(c) of the Act)
- 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 duly 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"].

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

- a) THE NO FURTHER REMEDIATION LETTER SHALL BE VOIDABLE IF THE remediation 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:
- 1) 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;
  - 3) 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 Title XVII of the Act and Section 740.620 of this Part;
  - 5) 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;
  - 7) 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)
  - 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.
- 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. (Section 58.10(f) of the Act)
- 1) THE NOTICE SHALL SPECIFY THE CAUSE FOR THE VOIDANCE AND DESCRIBE FACTS IN SUPPORT OF THAT CAUSE. (Section 58.10(f) of the Act)
  - 2) The Agency shall mail notices of voidance by registered or certified mail, date stamped with return receipt requested.

- c) WITHIN 35 DAYS OF 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. (Section 58.10(f)(1) of the Act)
- 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. (Section 58.10(f)(3) of the Act)
- 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 remediation 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)
- 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 OF RECEIPT OF THE FINAL DECISION OF THE BOARD OR THE COURTS. (Section 58.10(f)(4) of the Act)
- 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. 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)

## Section 740.APPENDIX A Target Compound List

## Section 740. Table A

Volatile Organics Analytical Parameters and Required Quantitation Limits			
<u>Compound</u>	<u>Water</u> <u>(µg/L)</u>	<u>Soil</u> <u>(µg/Kg)</u>	<u>Method</u>
Chloromethane	10	10	8260A
Bromomethane	10	10	8260A
Vinyl Chloride	10	10	8260A
Chloroethane	10	10	8260A
Methylene Chloride	10	10	8260A
Acetone	10	10	8260A
Carbon Disulfide	10	10	8260A
1,1-Dichloroethene	10	10	8260A
1,1-Dichloroethane	10	10	8260A
1,2-Dichloroethene (total)	10	10	8260A
Chloroform	10	10	8260A
1,2-Dichloroethane	10	10	8260A
2-Butanone	10	10	8260A
1,1,1-Trichloroethane	10	10	8260A
Carbon Tetrachloride	10	10	8260A
Bromodichloromethane	10	10	8260A
1,2-Dichloropropane	10	10	8260A
cis-1,3-Dichloropropene	10	10	8260A
Trichloroethene	10	10	8260A
Dibromochloromethane	10	10	8260A
1,1,2-Trichloroethane	10	10	8260A
Benzene	10	10	8260A
trans-1,3-Dichloropropene	10	10	8260A
Bromoform	10	10	8260A
4-Methyl-2-pentanone	10	10	8260A
2-Hexanone	10	10	8260A
Tetrachloroethene	10	10	8260A
Toluene	10	10	8260A
1,1,2,2-Tetrachloroethane	10	10	8260A
Chlorobenzene	10	10	8260A
Ethylbenzene	10	10	8260A
Styrene	10	10	8260A
Xylenes (total)	10	10	8260A

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.

Semivolatile Organic Analytical Parameters and Required Quantitation Limits			
<u>Compound</u>	<u>Water</u> <u>(µg/L)</u>	<u>Soil</u> <u>(µg/Kg)</u>	<u>Method</u>
Phenol	10	660	8270A
bis(2-Chloroethyl) ether	10	660	8270A
2-Chlorophenol	10	660	8270A
1,2-Dichlorobenzene	10	660	8270A
1,3-Dichlorobenzene	10	660	8270A
1,4-Dichlorobenzene	10	660	8270A
2-Methylphenol	10	660	8270A
2,2'-oxybis (1-chloropropane)	10	660	8270A
4-Methylphenol	10	660	8270A
N-Nitroso-di-n-propylamine	10	660	8270A
Hexachloroethane	10	660	8270A
Nitrobenzene	10	660	8270A
Isophorone	10	660	8270A
2-Nitrophenol	10	660	8270A
2,4-Dimethylphenol	10	660	8270A
bis(2-Chloroethoxy) methane	10	660	8270A
2,4-Dichlorophenol	10	660	8270A
1,2,4-Trichlorobenzene	10	660	8270A
Naphthalene	10	660	8270A
4-Chloroaniline	10	660	8270A
Hexachlorobutadiene	10	660	8270A
4-Chloro-3-methylphenol	10	660	8270A
2-Methylnaphthalene	10	660	8270A
Hexachlorocyclopentadiene	10	660	8270A
2,4,6-Trichlorophenol	10	660	8270A
2,4,5-Trichlorophenol	25	1600	8270A
2-Chloronaphthalene	10	660	8270A
2-Nitroaniline	25	1600	8270A
Dimethylphthalate	10	660	8270A
Acenaphthalene	10	660	8270A
2,6-dinitrotoluene	10	660	8270A
3-Nitroaniline	25	1600	8270A
Acenaphthene	10	660	8270A
2,4-Dinitrophenol	25	1600	8270A
4-Nitrophenol	25	1600	8270A

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 nonsurrogate components, tentatively identified by library search, conducted per the guidelines contained in the analytical method.

## Section 740.APPENDIX A Table B (cont.)

Semivolatile Organic Analytical Parameters and Required Quantitation Limits			
<u>Compound</u>	<u>Water</u> <u>(µg/L)</u>	<u>Soil</u> <u>(µg/Kg)</u>	<u>Method</u>
Dibenzofuran	10	330	8270A
2,4-Dinitrotoluene	10	330	8270A
Diethylphthalate	10	330	8270A
4-Chlorophenyl-phenyl ether	10	330	8270A
Flourine	10	330	8270A
4-Nitroaniline	25	1600	8270A
4,6-Dinitro-2-methylphenol	25	1600	8270A
N-nitrosodiphenylamine	10	330	8270A
4-Bromophenyl-phenyl ether	10	330	8270A
Hexachlorobenzene	10	330	8270A
pentachlorophenol	25	1600	8270A
Phenanthrene	10	660	8270A
Anthracene	10	660	8270A
Carbazole	10	660	8270A
Di-n-butylphthalate	10	660	8270A
Fluoranthene	10	660	8270A
Pyrene	10	660	8270A
Butylbenzylphthalate	10	660	8270A
3,3'-Dichlorobenzidine	10	660	8270A
Benzo(a)anthracene	10	660	8270A
Chrysene	10	660	8270A
bis(2-Ethylhexyl)phthalate	10	660	8270A
Di-n-octylphthalate	10	660	8270A
Benzo(b)fluoranthene	10	660	8270A
Benzo(k)fluoranthene	10	660	8270A
Benzo(a)pyrene	10	660	8270A
Indeno(1,2,3-cd)pyrene	10	660	8270A
Dibenz(a,h)anthracene	10	660	8270A
Benzo(g,h,i)perylene	10	660	8270A

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.



Pesticide and Aroclors Organic Analytical Parameters and Required Quantitation Limits			
<u>Compound</u>	<u>Water</u> <u>(µg/L)</u>	<u>Soil</u> <u>(µg/Kg)</u>	<u>Method</u>
alpha-BHC	0.05	8.0	8081
beta-BHC	0.05	8.0	8081
delta-BHC	0.05	8.0	8081
gamma-BHC	0.05	8.0	8081
Heptachlor	0.05	8.0	8081
Aldrin	0.05	8.0	8081
Heptachlor epoxide	0.05	8.0	8081
Endosulfan I	0.05	8.0	8081
Dieldrin	0.10	16.0	8081
4,4'-DDE	0.10	16.0	8081
Endrin	0.10	16.0	8081
Endosulfan II	0.10	16.0	8081
4,4'-DDD	0.10	16.0	8081
Endosulfan sulfate	0.10	16.0	8081
4,4'-DDT	0.10	16.0	8081
Methoxychlor	0.50	80.0	8081
Endrin ketone	0.10	16.0	8081
endrin aldehyde	0.10	16.0	8081
alpha-Chlordane	0.50	80.0	8081
gamma-Chlordane	0.50	80.0	8081
Toxaphene	1.0	160.0	8081
Aroclor - 1016	0.50	80.0	8081
Aroclor - 1221	0.50	80.0	8081
Aroclor - 1232	0.50	80.0	8081
Aroclor - 1242	0.50	80.0	8081
Aroclor - 1248	0.50	80.0	8081
Aroclor - 1254	1.0	160.0	8081
Aroclor - 1260	1.0	160.0	8081

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.  
See Section 1.4 for description of circumstances for the analyses of these compounds at these detection limits.

Section 740.APPENDIX A Table D

Inorganic Analytical Parameters and Required Quantitation Limits			
Analyte	Water ( $\mu\text{g/L}$ )	Soil ( $\text{mg/Kg}$ )	Method
Aluminum	200	40	6010A
Antimony	60	12	6010A
Arsenic	10	2	7060A/7061 A/ 7062
Barium	200	40	6010A
Beryllium	5	1	6010A
Cadmium	5	1	6010A
Calcium	5000	1000	6010A
Chromium	10	2	6010A
Cobalt	50	10	6010A
Copper	25	5	6010A
Iron	100	20	6010A
Lead	3	0.6	7421
Magnesium	5000	1000	6010A
Manganese	15	3	6010A
Mercury	0.2	0.04	7470A/7471 A
Nickel	40	8	6010A
Potassium	5000	1000	6010A
Selenium	5	1	7740A/7741 A/ 7742
Silver	10	2	6010A
Sodium	5000	1000	6010A
Thallium	10	2	7841
Vanadium	50	10	6010A
Zinc	20	4	6010A
Cyanide	10	2	9012

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.

See Section 1.4 for description of appropriate circumstances for the analyses of these analytes at these detection limits.

## Section 740.APPENDIX B

## Review and Evaluation Licensed Professional Engineer Information

- Firm name.
- Address.
- Telephone/fax.
- Principal officials and titles.
- Number of full-time employees.
- Business structure (corporation, partnership, LLP, LLC, PSC)
- Licensed by Secretary of State? # \_\_\_\_\_
- Licensed by Dept. of Professional Regulation? # \_\_\_\_\_
- Name of Illinois Registered Managing Agent.
- Names of insurance carriers and amount of coverage:
  - Worker's Compensation: \_\_\_\_\_
  - General Liability: \_\_\_\_\_
  - Professional Liability: \_\_\_\_\_
- Does the stated professional liability policy include coverage for "environmental" claims related to release of Pollutants? If not covered, or covered by a different carrier or in a different amount, so state.
- Has the firm or owners ever filed bankruptcy? If "yes," state when and explain.
- Is the firm an outgrowth, result, continuation or organization of a former business? If "yes," explain background.
- List RELPE's and other key full-time employees that will participate on this project with the RELPE. Provide resumes for each, including Illinois P.E. License #, certifications, project role, years of experience in related work and education.
- List five projects similar in nature and identify the role of the RELPE.
- Are employees to be assigned to the project in compliance with 29 CFR 1910.120 (HAZWOPER training and medical surveillance) as applicable to their role on the project?

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE F: PUBLIC WATER SUPPLIES  
CHAPTER I: POLLUTION CONTROL BOARD

PART 620  
GROUNDWATER QUALITY

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620.110	Definitions
620.115	Prohibition
620.125	Incorporations by Reference
620.130	Exemption from General Use Standards and Public and Food Processing Water Supply Standards
620.135	Exclusion for Underground Water in Certain Man-Made Conduits

SUBPART B: GROUNDWATER CLASSIFICATION

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620.201	Groundwater Designations
620.210	Class I: Potable Resource Groundwater
620.220	Class II: General Resource Groundwater
620.230	Class III: Special Resource Groundwater
620.240	Class IV: Other Groundwater
620.250	Groundwater Management Zone
620.260	Reclassification of Groundwater by Adjusted Standard

SUBPART C: NONDEGRADATION PROVISIONS FOR APPROPRIATE  
GROUNDWATERS

Section	
620.301	General Prohibition Against Use Impairment of Resource Groundwater
620.302	Applicability of Preventive Notification and Preventive Response Activities
620.305	Preventive Notification Procedures
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## SUBPART D: GROUNDWATER QUALITY STANDARDS

Section	
620.401	Applicability
620.405	General Prohibitions Against Violations of Groundwater Quality Standards
620.410	Groundwater Quality Standards for Class I: Potable Resource Groundwater
620.420	Groundwater Quality Standards for Class II: General Resource Groundwater
620.430	Groundwater Quality Standards for Class III: Special Resource Groundwater
620.440	Groundwater Quality Standards for Class IV: Other Groundwater
620.450	Alternative Groundwater Quality Standards

## SUBPART E: GROUNDWATER MONITORING AND ANALYTICAL PROCEDURES

Section	
620.505	Compliance Determination
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## SUBPART F: HEALTH ADVISORIES

Section	
620.601	Purpose of a Health Advisory
620.605	Issuance of a Health Advisory
620.610	Publishing Health Advisories
620.615	Additional Health Advice for Mixtures of Similar-Acting Substances
Appendix A	Procedures for Determining Human Threshold Toxicant Advisory Concentration for Class I: Potable Resource Groundwater
Appendix B	Procedures for Determining Hazard Indices for Class I: Potable Resource Groundwater for Mixtures of Similar-Acting Substances
Appendix C	Guidelines for Determining When Dose Addition of Similar-Acting Substances in Class I: Potable Resource Groundwaters is Appropriate
Appendix D	Confirmation of an Adequate Corrective Action Pursuant to 35 Ill. Adm. Code 620.250(a)(2)

AUTHORITY: Implementing and authorized by Section 8 of the Illinois Groundwater Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 7458) [415 ILCS 55/8].

SOURCE: Adopted in R89-14(B) at 15 Ill. Reg. 17614, effective November 25, 1991; amended in R89-14(C) at 16 Ill. Reg. 14667, effective September 11, 1992; amended at 18 Ill. Reg. 14084, effective August 24, 1994; amended in R97-11 at 21 Ill. Reg. \_\_\_\_, effective \_\_\_\_\_, 1997.

## SUBPART B: GROUNDWATER CLASSIFICATION

### Section 620.201 Groundwater Designations

All groundwaters of the State are designated as:

- a) One of the following four classes of groundwater in accordance with Sections 620.210 through 620.240:
  - 1) Class I: Potable Resource Groundwater
  - 2) Class II: General Resource Groundwater;
  - 3) Class III: Special Resource Groundwater;
  - 4) Class IV: Other Groundwater; ~~or~~
- b) A groundwater management zone in accordance with Section 620.250; or
- c) A groundwater management zone as defined in 35 Ill. Adm. Code 740.120 and established under 35 Ill. Adm. Code 740.530.

### Section 620.250 Groundwater Management Zone

- a) Within any class of groundwater, a groundwater management zone may be established as a three dimensional region containing groundwater being managed to mitigate impairment caused by the release of contaminants from a site:
  - 1) That is subject to a corrective action process approved by the Agency; or
  - 2) For which the owner or operator undertakes an adequate corrective action in a timely and appropriate manner and provides a written confirmation to the Agency. Such confirmation must be provided in a form as prescribed by the Agency.
- b) A groundwater management zone is established upon concurrence by the Agency that the conditions as specified in subsection (a) are met and groundwater management continues for a period of time consistent with the action described in that subsection.

- c) A groundwater management zone expires upon the Agency's receipt of appropriate documentation which confirms the completion of the action taken pursuant to subsection (a) and which confirms the attainment of applicable standards as set forth in Subpart D. The Agency review the on-going adequacy of controls and continued management at the site if concentrations of chemical constituents, as specified in Section 620.450(a)(4)(B), remain in groundwater at the site following completion of such action. The review must take place no less often than every 5 years and the results shall be presented to the Agency in a written report.
- d) Notwithstanding subsections (a) and (b) above, a groundwater management zone as defined in 35 Ill. Adm. Code 740.120 may be established in accordance with the requirements of 35 Ill. Adm. Code 740.530 for sites undergoing remediation pursuant to the Site Remediation Program. Such a groundwater management zone shall remain in effect until the requirements set forth at 35 Ill. Adm. Code 740.530(c) are met.
- e) While the groundwater management zone established in accordance with 35 Ill. Adm. Code 740.530 is in effect, the otherwise applicable standards as specified in Subpart D of this Part shall not be applicable to the "contaminants of concern," as defined at 35 Ill. Adm. Code 740.120, for which groundwater remediation objectives have been approved in accordance with the procedures of 35 Ill. Adm. Code 740.
- f) Notwithstanding subsection (c) above, the review requirements concerning the on-going adequacy of controls and continued management at the site shall not apply to groundwater within a three-dimensional region formerly encompassed by a groundwater management zone established in accordance with 35 Ill. Adm. Code 740.530 while a No Further Remediation Letter issued in accordance with the procedures of 35 Ill. Adm. Code 740 is in effect.

## SUBPART D: GROUNDWATER QUALITY STANDARDS

## Section 620.450 Alternative Groundwater Quality Standards

- a) Groundwater Quality Restoration Standards
  - 1) Any chemical constituent in groundwater within a groundwater management zone is subject to this Section.
  - 2) Except as provided in subsections (a)(3) or (a)(4) below, the standards as specified in Sections 620.410, 620.420, 620.430, and 620.440 apply to any chemical constituent in groundwater within a groundwater management zone.
  - 3) Prior to completion of a corrective action described in Section 620.250(a), the standards as specified in Sections 620.410, 620.420, 620.430, and 620.440 are not applicable to such released chemical constituent, provided that the initiated action proceeds in a timely and appropriate manner.
  - 4) After completion of a corrective action as described in Section 620.250(a), the standard for such released chemical constituent is:
    - A) The standard as set forth in Section 620.410, 620.420, 620.430, or 620.440, if the concentration as determined by groundwater monitoring of such constituent is less than or equal to the standard for the appropriate class set forth in those sections; or
    - B) The concentration as determined by groundwater monitoring, if such concentration exceeds the standard for the appropriate class set forth in Section 620.410, 620.420, 620.430, or 620.440 for such constituent, and:
      - i) To the extent practicable, the exceedence has been minimized and beneficial use, as appropriate for the class of groundwater, has been returned; and
      - ii) Any threat to public health or the environment has been minimized.
  - 5) The Agency shall develop and maintain a listing of concentrations derived pursuant to subsection (a)(4)(B) above. This list shall be made available to the public and be updated periodically, but no less frequently than semi-annually. This listing shall be published in the Environmental Register.



b) Coal Reclamation Groundwater Quality Standards

- 1) Any inorganic chemical constituent or pH in groundwater, within an underground coal mine, or within the cumulative impact area of groundwater for which the hydrologic balance has been disturbed from a permitted coal mine area pursuant to the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.1 et seq., as amended) and 62 Ill. Adm. Code 1700 through 1850, is subject to this Section.
- 2) Prior to completion of reclamation at a coal mine, the standards as specified in Sections 620.410(a) and (d), 620.420(a) and (e), 620.430 and 620.440 are not applicable to inorganic constituents and pH.
- 3) After completion of reclamation at a coal mine, the standards as specified in Sections 620.410(a) and (d), 620.420(a), 620.430, and 620.440 are applicable to inorganic constituents and pH, except:
  - A) The concentration of total dissolved solids (TDS) must not exceed:
    - i) The post-reclamation concentration or 3000 mg/L, whichever is less, for groundwater within the permitted area; or
    - ii) The post-reclamation concentration of TDS must not exceed the post-reclamation concentration or 5000 mg/L, whichever is less, for groundwater in underground coal mines and in permitted areas reclaimed after surface coal mining if the Illinois Department of Mines and Minerals and the Agency have determined that no significant resource groundwater existed prior to mining (62 Ill. Adm. Code 1780.21(f) and (g)); and
  - B) For chloride, iron, manganese and sulfate, the post-reclamation concentration within the permitted area must not be exceeded.
  - C) For pH, the post-reclamation concentration within the permitted area must not be exceeded within Class I: Potable Resource Groundwater as specified in Section 620.210(a)(4).
- 4) A refuse disposal area (not contained within the area from which overburden has been removed) is subject to the inorganic chemical constituent and pH requirements of:

- A) 35 Ill. Adm. Code 302.Subparts B and C, except due to natural causes, for such area that was placed into operation after February 1, 1983, and before the effective date of this Part, provided that the groundwater is a present or a potential source of water for public or food processing;
  - B) Section 620.440(c) for such area that was placed into operation prior to February 1, 1983, and has remained in continuous operation since that date; or
  - C) Subpart D of this Part for such area that is placed into operation on or after the effective date of this Part.
- 5) For a refuse disposal area (not contained within the area from which overburden has been removed) that was placed into operation prior to February 1, 1983, and is modified after that date to include additional area, this Section applies to the area that meets the requirements of subsection (b)(4)(C) and the following applies to the additional area:
- A) 35 Ill. Adm. Code 302.Subparts B and C, except due to natural causes, for such additional refuse disposal area that was placed into operation after February 1, 1983, and before the effective date of this Part, provided that the groundwater is a present or a potential source of water for public or food processing; and
  - B) Subpart D for such additional area that was placed into operation on or after the effective date of this Part.
- 6) A coal preparation plant (not located in an area from which overburden has been removed) which contains slurry material, sludge or other precipitated process material, is subject to the inorganic chemical constituent and pH requirements of:
- A) 35 Ill. Adm. Code 302.Subparts B and C, except due to natural causes, for such plant that was placed into operation after February 1, 1983, and before the effective date of this Part, provided that the groundwater is a present or a potential source of water for public or food processing;
  - B) Section 620.440(c) for such plant that was placed into operation prior to February 1, 1983, and has remained in continuous operation since that date; or

- C) Subpart D for such plant that is placed into operation on or after the effective date of this Part.
- 7) For a coal preparation plant (not located in an area from which overburden has been removed) which contains slurry material, sludge or other precipitated process material, that was placed into operation prior to February 1, 1983, and is modified after that date to include additional area, this Section applies to the area that meets the requirements of subsection (b)(6)(C) and the following applies to the additional area:
- A) 35 Ill. Adm. Code 302.Subparts B and C, except due to natural causes, for such additional area that was placed into operation after February 1, 1983, and before the effective date of this Part, provided that the groundwater is a present or a potential source of water for public or food processing; and
- B) Subpart D for such additional area that was placed into operation on or after the effective date of this Part.
- (c) Groundwater Quality Standards for Certain Groundwater Subject to a No Further Remediation Letter under Part 740. While a No Further Remediation Letter is in effect for a region formerly encompassed by a groundwater management zone established under 35 Ill. Adm. Code 740.530, the groundwater quality standards for "contaminants of concern" as defined in 35 Ill. Adm. Code 740.120 within such area shall be the groundwater objectives achieved as documented in the approved Remedial Action Completion Report.

(Source: Amended at 16 Ill. Reg. 14667, effective September 11, 1992; amended in R97-11 at 21 Ill. Reg. \_\_\_\_, effective \_\_\_\_\_, 1997.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the \_\_\_\_ day of \_\_\_\_\_, 1997 by a vote of \_\_\_\_\_.

\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board