

ILLINOIS POLLUTION CONTROL BOARD

April 17, 1997

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

Proposed Rule. Second Notice.

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

This rulemaking concerns a proposal that sets forth the 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 (eff. December 15, 1995), and amended by P.A. 89-443 (eff. July 1, 1996).) The Illinois Environmental Protection Agency (Agency) filed this proposal on September 16, 1996.

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 under the proposed rules in Tiered Approach to Corrective Action Objectives, (35 Ill. Adm. Code 742), R97-12 (TACO). The TACO objectives take 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.)

On February 6, 1997, the Board proceeded to first notice on the Agency's proposal for the Site Remediation Program (35 Ill. Adm. Code 740), as modified by the Board, pursuant to the Illinois Administrative Procedure Act (APA) (5 ILCS 100/1-1 *et seq.* (1994).) The Board also proceeded to first notice on some conforming amendments to 35 Ill. Adm. Code 620. Subsequently, on February 21, 1997, Part 740 and the amendments to Part 620 were published in the *Illinois Register* (21 Ill. Reg. 2562, 2571), upon which a 45-day public comment period began (hereinafter referred to as the first notice comment period). The first notice comment period ended on April 7, 1997. Consistent with the statutory deadline for final adoption of these rules imposed by Title XVII, the Board today adopts the proposed Part 740 and amendments

to Part 620 for the purpose of second notice pursuant to the APA. The rule and amendments now will be filed with the Joint Committee on Administrative Rules (JCAR) for its consideration.¹

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 requires the Board to determine, define and implement the environmental control standards applicable in the State of Illinois. (415 ILCS 5/5(b) (1994).) 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.

The Agency filed its proposed Part 740 rules (proposal), along with a Statement of Reasons pursuant to 35 Ill. Adm. Code 102.121(b) 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 which was granted by the Board on February 6, 1997. 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.

P.A. 89-431, (eff. December 15, 1995), as amended by P.A. 89-443 (eff. July 1, 1996) requires that the Board complete its rulemaking on or before June 16, 1997.² 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 Corrective Action 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 and Part 620 amendments effective on July 1, 1997, the same date that we expect the proposed Part 742 rules to become effective.

¹ As of today's date, JCAR staff has undertaken a preliminary review of the text of today's proposal. Based on that review, JCAR has suggested several typographical changes in the wording of the first notice text. These changes are incorporated into today's second notice text.

² The Board's last regularly scheduled Board meeting before that date is on June 5, 1997. On that date, the Board expects to vote on the final adoption of the Part 740 rules and Part 620 amendments.

The Board received prefiled testimony and/or questions from various interested persons, including: Shirley Baer, Gary King, Robert O Hara, Richard D. Lucas and Lawrence W. Eastep of the Agency; Emmett Dunham and Frederick Feldman on behalf of the Metropolitan Water Reclamation District (MWRD); Randy Muller of Bank of America, N.T. & S.A., on behalf of the Illinois Bankers Association and the Site Remediation Committee (SRAC); David Rieser of Ross & Hardies on behalf of the Illinois Petroleum Council (IPC) 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 and 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.

Thirteen 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 the MWRD.
- 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 and 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. Huff and Mr. Feldman.
- Exhibit #14 (Ex. 14) Example of Statement of Agency 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 MWRD filed on January 13, 1997, regarding the Agency s Errata Sheet Number 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 Lewis Putnam 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.
- PC 9 Comment of John H. Turner of Browning-Ferris Industries (BFI) filed on March 4, 1997 on Section 740.105.
- PC 10 Comment of Emmett E. Dunham on behalf of the MWRD filed on April 7, 1997 on Section 740.120.
- PC 11 Agency s Comments to the Board s First Notice filed on April 7, 1997 on Sections 740.120, 740.215(d), 740.220(d), 740.415(d)(1), 740.430, 740.440(c), 740.515(a), 740.530, 740.620(d) and 740.Appendix A.
- PC 12 Comments of Lewis Putnam of Gardner, Carton & Douglas on behalf of the SRP Coalition to Board s First Notice filed on April 7, 1997 on Sections 740.120, 740.215(d), 740.220(d) and 740.310(c).
- PC 13 Comments of David Piech of Ross & Hardies on behalf of the IPC filed on April 9, 1997 on Section 740.120.³

³ The IPC filed a motion to file its public comment instanter, along with its public comment, on April 9, 1997. Although the first notice comment period ended on April 7, 1997, IPC states that no party will be prejudiced by this late filing. The Board grants the motion and accepts the IPC s public comment.

In the first notice opinion and order, the Board set forth the procedural history of the proposed rules to date, gave an overview of the SRP, discussed the economic and technical justification for the program, analyzed each of the six subparts of the rule, addressed comments received on sections within each subpart, and set forth the text of the rule as modified by the Board. The Board concluded that the proposal, as modified, warranted proceeding to first notice on February 6, 1997. In this second notice opinion and order, the Board will give a brief overview of the SRP and address the issues raised during the first notice comment period. The Board will not address changes that have already been addressed in the first notice opinion and order and on which the Board no additional issues were raised.

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.⁴ (415 ILCS 5/58.1(a)(1).)

The proposal, as modified by the Board, allows appeals of various Agency decisions in connection with a site remediation. 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 (Section 740.310(d)), disapproval or approval with conditions of any of four plans or reports (Section 740.505(h)), and avoidance of No Further Remediation Letters (Section 740.625(a)).

The SRP is voluntary; any person performing site investigation or remediation may elect to proceed under the SRP. However, certain sites may not enter the SRP, including but not limited to sites on the National Priorities List; 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. However, any person may use the procedures of the SRP at these excluded sites to the extent allowed by federal law, federal authorization, or other federal approval.

⁴ As noted in the first notice opinion and order, the SRP is similar to the Agency's Pre-Notice Site Cleanup Program (PNSCP), which began in 1989 under the authority of Sections 22.2(m) and (n) of the Act, which were repealed in 1995. (P.A. 89-431, eff. December 15, 1995.) The first notice opinion and order details the differences between the PNSCP and the SRP. (See Site Remediation Program and Groundwater Quality (35 Ill. Adm. Code 740 and 35 Ill. Adm. Code 620) (February 6, 1997), R97-11, slip op. 5-6.)

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 or pesticide 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. In some cases, other remediation measures also may be necessary. 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 a release from further responsibilities under [the] Act in performing the approved remedial action (*Id.*) The site must be used in accordance with the terms of the NFR Letter. (*Id.*) The NFR Letter applies in favor certain entities identified in Section 58.10(d) of the Act, including, among others, the owner or operator of the site, transferees of the owner of the site and successors in interest of the owner of the site. Finally, the NFR Letter is voidable in certain circumstances.

ANALYSIS

The proposal is divided into six subparts and two appendices. Set forth below is a brief description of each subpart of the proposal, along with the Board's resolution of any issues remaining from first notice and any other issues that arose during the first notice comment period.⁵

Subpart A: General

Subpart A sets forth the general provisions of Part 740. These provisions address the applicability of the SRP, permit waivers, authority of the Agency, definitions and incorporations by reference.

At first notice, the Board discussed Sections 740.100 (purpose), 740.105 (applicability), 740.115 (Agency authority), 740.120 (definitions) and 740.125 (incorporations by reference). Issues considered during the first notice comment period pertain to Sections 740.105 (applicability), 740.115 (Agency authority), and 740.120 (definitions of authorized agent, recognized environmental condition, and residential property).

Section 740.105 Applicability. During the first notice comment period, BFI submitted a comment on the applicability of these rules. (PC 9.) BFI supports the promulgation of the rules, but notes that the relationship between the new regulations and the rules pertaining to municipal solid waste landfills has not been addressed. BFI states in part:

An Agency position that the benefits of the 620/740 Program will not occur with regard to municipal solid waste disposal facilities that remained open beyond October 9, 1993 except in instances in which an MCL is not applicable would defeat the purpose of the new regulations. There are a number of approaches that could be utilized to square the proposed regulations with the Part 258 and IEPA MSWLF regulations. For example, since the MCLs are drinking water standards, if the groundwater in question is not actually or potentially likely used as a source of drinking water, then the groundwater could readily be classified in [a] manner such that the Part 740 standards would apply.

We do not believe that it was the intention of the U.S. EPA, or the Board in fashioning the Illinois MSWLF regulations, to permanently reject the utilization of risk-based programs such [as] the proposed regulations.

⁵ The six subparts of the SRP are more thoroughly discussed in the Board's February 6, 1997 first notice opinion and order. (See generally Site Remediation Program and Groundwater Quality (February 6, 1997), R97-11, slip op.).

(PC 9 at 1.)

The Board is not persuaded by BFI's comment that a change in the rule is necessary. The Agency indicated at the first hearing that the rules developed in this proceeding will not apply to landfills (Tr. 1 at 47-51)⁶ and the Board agrees. The regulations developed by the Board and USEPA regarding landfills and the closure of landfills were carefully considered over several years. (See Development, Operating, and Reporting Requirements for Non-Hazardous Waste Landfills (August 17, 1990), R88-7, slip op.) The Board does not believe that the adoption of the SRP by the legislature was intended to supplant the regulations adopted by the Board governing landfill closure. Further, the landfill regulations are protective of the environment and fully provide for remediation necessary as a result of landfill operations. For example, the landfill regulations require closure and post-closure care, and require that funds be available for that care. In addition, while the SRP does not apply to landfill closures, the SRP does not preclude the Agency from using risk-based criteria in any further amendments to the landfill rules.

Section 740.115 Agency Authority. This section generally provides that Part 740 does not limit the authority of the Agency to proceed under Section 4(q) of the Act or to take certain other actions under the Act. It also provides that the Agency may use Part 740 procedures at remediation sites at which an RA is seeking a release pursuant to Section 4(y) of the Act. The Agency had proposed that this Board Note follow Section 740.115:

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 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.

While the Board generally agrees with the content of the proposed Board Note, the Board does not believe it necessary to include this information in a Board Note. Accordingly, the Board has stricken the proposed Board Note.

⁶ The transcript of the hearing on November 25 and 26, 1996 is cited as Tr. 1 at __; the transcript of the hearing on December 17 and 19, 1996 is cited as Tr. 2 at __.

Section 740.120 Definitions. Most of the definitions in this section are identical to those provided 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.

At first notice, the Board requested comment on authorized agent, recognized environmental condition, and residential property. During the first notice comment period, the Board received comments on each of these definitions, as discussed below.

The Agency's original proposal used the term duly authorized agent and gave 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 struck the three examples from the definition. The Board also struck the term duly as redundant; an agent not duly authorized is simply not authorized. Additionally, the Board made conforming changes to Sections 740.210 and 740.410.

In its comments on the Board's first notice opinion and order, the Agency states that it does not object to the Board's deletion of the word duly, nor does the Agency object to the Board's deletion of the three examples accompanying the definition. (PC 11 at 1.) The Agency notes, however, that its originally proposed definition was consistent with the Board's regulations for solid waste landfills, compost facilities, and potentially infectious medical waste facilities (35 Ill. Adm. Code 812.104, 831.105, and 822.106). (PC 11 at 1.) The Agency additionally points out that the word duly remains at Section 740.620(d). (PC 11 at 1.)

The Board concludes that the definition of authorized agent given in the first notice opinion and order should remain unchanged. For consistency, the Board also removes the word duly from Section 740.620(d).

The Board also received comments on the definition of recognized environmental condition. This term is based on 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 18-20.)

The Board also sought further comment on three aspects of the definition of residential property. 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 proposed definition read 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.

The Board noted that the Agency's proposed definition equated related uses with playgrounds. The Board queried whether the Agency's construction of related uses is too narrow. The Board further sought 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.

In its public comment, the Agency responds that the use of any broader terms would encompass too many locations. (PC 11 at 4.) The Agency explains that playgrounds includes locations in addition to educational, health care or child care facilities where children are likely to be exposed to soil and where children may be potentially be exposed to contaminants through inhalation or ingestion. (PC 11 at 4.) The Agency understands the Board's concern with this part of the definition and does not object to any revisions as long as such revisions do not expand the definition to include too many locations. (PC 11 at 4.)

Second, at first notice the Board questioned why the facilities listed in the latter part of this definition are residential property only if *children* have the opportunity for exposure to contaminants through ingestion or inhalation at such facilities. The Board stated that Title XVII makes no such distinction and the Board requested that the Agency provide comment on its justification for this distinction. The Board also sought 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.

The Agency responds that person could be substituted for children without affecting the inhalation and soil ingestion remediation objectives under Tier One for residential exposures, because those objectives are based on the effect of such exposure on children. (PC 11 at 4-5.) The Agency believes, however, that exposure to children is a better focus in the context of what this portion of the definition was attempting to protect. (PC 11 at 5.)

Third, the Board stated at first notice that it was not clear why the Agency added the phrase by ingestion or inhalation after exposure to contaminants. The Board questioned whether the added phrase is intended to exclude some pathway for exposure; if so, the Board sought comment on the rationale for such an exclusion.

In its public comment, the Agency responds that the excluded pathway is groundwater ingestion. (PC 11 at 5.) For this pathway the most conservative

exposure factors are not based on exposure during childhood but rather an entire lifetime of consumption. (*Id.*) Because children are referenced, the Agency states, this part of the definition was not expanded beyond the soil inhalation or soil ingestion exposure routes. (*Id.*)

The Agency's public comment also includes two other points on the definition of residential property. First, the Agency asserts that there is not a bright line between playgrounds, education, health care and child care facilities and industrial/commercial facilities, especially where exposure of adults is concerned. Therefore, the Agency believes that an expansion of the definition may cause facilities of a commercial nature to be classified as residential. (PC 11 at 5.) Second, the Agency suggests that if such an expansive change is made, the definition must also change in the proposed Part 742 regulations. (*Id.*)

The MWRD also comments on the definition of residential property. The MWRD believes that the word playgrounds should be kept in the definition as an example of what the term related uses means. (PC 10 at 1.) The MWRD further asserts that the [d]evelopment of an all inclusive list of uses that might be related, however, would be a futile effort. (PC 10 at 1.) The MWRD suggests that other related uses might include little league baseball fields and soccer fields. The MWRD states that the inclusion of a phrase such as related uses in this definition would allow for the future inclusion of uses not envisioned by the parties before the Board in this rulemaking. (PC 10 at 2.)

The IPC comments that many of the uses listed in the statute -- such as education, health care, and child care -- are closer to commercial than residential uses. (PC 13 at 1.) The IPC continues:

The risk associated with residential uses are the long term exposures associated with living at the same place for many years and the presence of sensitive populations of infants and children.

These types of risk issues would not be present at these types of facilities absent potential for actual exposure. For example, a childcare facility or doctor's office on the second floor of a downtown Chicago building, should not render that building a residential use. Yet a childcare facility in a single story strip mall with an outdoor playground is another matter and should be evaluated more closely. In discussions between SRAC and the Agency, it was determined that the best approach would be to focus on the likely pathways of exposure for the most sensitive population.

(PC 13 at 1-2.) The IPC strongly urges the Board not to expand the definition beyond that which is proposed. (PC 13 at 2.)

After carefully considering these comments, the Board has decided to retain the Agency's proposed definition with the following modifications. First, the Board will substitute "outdoor recreational areas" for "playgrounds." The Board remains concerned that the term "playgrounds" is too narrow and could be construed to exclude many areas where children regularly play, including parks, soccer fields and theme parks. The Board also believes that "outdoor recreational areas" is broad enough to encompass recreational uses not envisioned during this rulemaking, and therefore addresses the MWRD's concerns as well. The requirement that the recreational area be an outdoor area, on the other hand, addresses the concerns of both the IPC and the Agency that the definition not be expanded to include recreational facilities where there is little threat of exposure (*e.g.*, indoor recreational facilities).

Second, the Board accepts the Agency's rationale for excluding the groundwater ingestion pathway. However, the Board has added the word "soil" before the phrase "ingestion or inhalation" in the definition. As noted, it was the Agency's intent to exclude the groundwater ingestion pathway through this phrase. (PC 11 at 5.) However, because the Agency's definition included the word "ingestion," it did not clearly exclude groundwater ingestion. The Board believes that the addition of "soil" makes the exclusion clear.

The Board further notes that the Agency's position is consistent with the basis for the groundwater remediation objectives established in Tiers 1, 2, and 3 under Part 742. Tier 1 groundwater cleanup standards do not depend on land use (*i.e.*, residential or industrial/commercial), but on the classification of the groundwater at issue as Class I or II groundwater under Part 620. Tier 2 groundwater remediation objectives also do not turn on the use of the property at issue; in Tier 2 the groundwater must meet the applicable Tier 1 groundwater remediation objective at the point of human exposure, along with other criteria. Under Tier 3, groundwater remediation objectives must account for site-specific factors and are based in part upon a formal risk assessment that demonstrate[s] that contaminants of concern at a site do not pose a significant risk to any human receptor. (35 Ill. Adm. Code 742.915 (proposed).) Because groundwater remediation objectives either do not turn on the use of property (under Tier 1 and 2), or account for site-specific risks (under Tier 3), it is not appropriate to distinguish between residential and industrial/commercial property on the basis of potential exposure to contaminants in groundwater.

With the changes described above, the definition reads 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 soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas playgrounds.

This revised definition is included in the attached order. An identical definition is included in Part 742.

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 (application). 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 (agreement).

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.

At first notice, the Board discussed the following sections under Subpart B: Sections 740.210 (contents of application and agreement), 740.215 (approval or denial of application and agreement), 740.220 (acceptance and modification of Agreement), 740.225 (termination of agreement by the RA) and 740.230 (termination of agreement by the Agency). Comments were received during the first notice comment period on Sections 740.215 (approval or denial of application or agreement) and 740.220 (acceptance and modification of agreement). A discussion of these issues follows. Additionally, the Board discusses Sections 740.210 (contents of application and agreement) and 740.230 (termination of agreement by the Agency).

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

The Agency's original proposal included a Board Note stating that statutory restrictions prevented the Agency from refunding payments. In response to the Board's concern that the note did not identify the statutory restrictions, the Agency then proposed eliminating the reference and adding language that the State of Illinois did not authorize payments or refunds without legislative appropriation, and that advance partial payments accompanying applications may be forfeited by the Agency if the application is denied. (PC 3 at 1-2.)

At first notice, the Board deleted the Board Note at the end of Section 740.210(c)(5)(B) altogether on the grounds that internal Agency procedures appear to determine whether advance partial payments accompanying applications will be forfeited when an application is denied. The Board stated that it was inappropriate to

place the Board Note in the regulations without identifying the standard upon which decisions regarding forfeitures are made. The Board received no comments on the changes made to Section 740.210(c) during the first notice comment period and will proceed to second notice with this change. The Board also notes that Section 740.210 contains several references to a No Further Remediation determination. The Board changes this phrase to No Further Remediation Letter to make this section consistent with the remainder of Part 740 and Section 58 of the Act.

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. At first notice, the Board also added language to Section 740.215(d) to allow two options in addition to the appeal rights. The new options allow an RA to either resubmit an application or agreement to the Agency or for the RA and the Agency to file a joint request for a 90 day extension of the appeal period in the manner provided for extensions of permit decisions in Section 40 of the Act. The Board found that these additions will make Part 740 more consistent with the Part 732 rules,⁷ which allow the same options when a plan or report is reviewed by the Agency. The Board requested comment on the language change to Section 740.215(d).

The Agency does not object to the Board's addition of these options. (PC 11 at 6.) The SRP Coalition also supports the language added to Section 740.215(d). (PC 12 at 2.) The SRP Coalition believes that these options make the Part 740 rules more consistent with the alternatives to appeal provided in the Part 732 rules. (PC 12 at 3.)

The Board notes that while an RA may resubmit an application or agreement in lieu of an appeal, the same application or agreement may not be submitted more than once (unless the application or agreement was denied by operation of law). If the RA is not willing to change an application or agreement denied by the Agency, the RA may appeal.

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. Modifications shall be in writing and become effective upon signing by the RA and acceptance by the Agency unless another date is identified in the modification.

At first notice, the Board struck the Agency's proposed Section 740.220(d) and substituted language proposed by Ms. Huff for Section 740.220(d). Ms. Huff believed that the Agency's proposed Section 740.220(d) did not provide the RA with any

⁷ The Part 732 rules refer to the Regulation of Petroleum Underground Storage Tanks (35 Ill. Adm. Code 732), recent amendments to which are docketed before the Board as R97-10.

recourse in the event the Agency denied the requested modifications. (Ex. 10 at 6-7.) In order to maintain consistency with the Part 732 rules and 740.215(d), which allow an RA to resubmit documents or seek a joint 90-day extension of the appeal period in lieu of an immediate appeal, the Board also added these options to the end of Section 740.220(d). The Agency does not object to the Board's addition of new subsection (d) to Section 740.220. (PC 11 at 6.) The SRP Coalition also supports the Board's revisions. The SRP Coalition states that the right to appeal the Agency's denial of a request to modify an agreement is important to provide Remediation Applicants with recourse in the event that the Agency denies such a request. (PC 12 at 3.)

Section 740.230 Termination of Agreement by the Agency. This section provides for termination of an agreement in specified circumstances. The Board has added a provision to Section 740.230(d) that will allow the RA and the Agency to file a joint request for a 90-day extension of the appeal period. The addition makes this section consistent with the other appeal provisions in Part 740.

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 payment and the manner of payment. At first notice, the Board discussed Section 740.310 (request for payment). During the first notice comment period, the Board received comment on Section 740.310, as discussed below.

Section 740.310 Request for Payment. This section sets forth the procedures under which the Agency will request payment for services provided under the Review and Evaluation Service Agreement. At first notice, the Board added language in subsection (c) that allows for the appeal of Agency requests for payment on the grounds that the Agency's costs for services are unreasonable. The allowance of such appeal rights is consistent with appeal rights granted elsewhere in the Board's rules. In comments submitted during the first notice comment period, the SRP Coalition supports this change. (PC 12 at 3.)

The Board also has added a provision to Section 740.310(c) that allows the RA and the Agency to file a joint request for a 90-day extension of the appeal period. The addition makes this section consistent with other appeal provisions in Part 740.

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

Subpart D sets forth the proposed elements of and data quality objectives for and site remedial activities to be 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 threat to human health and the environment or warrant further remediation

under the Act. Subpart D contains procedures and requirements for site investigations and remedial actions in comprehensive site investigations, in which all recognized environmental conditions at the remediation site are investigated, and in focused site investigations, in which only selected recognized environmental conditions or contaminants may be addressed. Furthermore, Subpart D requires that all site activities, investigations, plans or reports be conducted by or prepared under the supervision of a Licensed Professional Engineer (LPE), as required by Section 58.6 of the Act.

At first notice, the Board addressed issues pertaining to Sections 740.415 (site investigation - general), 740.420 (comprehensive site investigation), 740.425 (site investigation report - comprehensive site investigation report), 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). Questions and issues were raised during the first notice comment period on Sections 740.415 (site investigation - general), 740.420 (comprehensive site investigation), 740.430 (focused site investigation), 740.435 (site investigation report - focused site investigation), 740.440 (determination of remediation objectives), and 740.445 (remediation objectives report). A discussion of these issues follows.

740.415 Site Investigation General. At first notice, the Board adopted the suggestion of Ms. Huff to add references in Section 740.415(d)(1) to certain USEPA or ASTM procedures. The Board stated that it also would modify this section to require that Agency approval be obtained for the use of such methods. In its comments on the first notice, the Agency agrees to this change but notes that the first notice order does not incorporate the requirement for Agency approval, as the Board had intended. (PC 11 at 6.) The Agency states that it has always been the Agency's intent to have pre-approval authority over methods other than those contained in SW-846. (*Id.*) The attached order now incorporates the requirement that the Agency approve the use of methods other than those in SW-846.

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.

Before first notice, several participants questioned the proposed incorporation of the ASTM Standard. At first notice, the Board found the use of the ASTM Standard appropriate. (Site Remediation Program and Groundwater Quality (February 6, 1997), R97-11, slip op. 24.) The Board agreed with the Agency 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.

Ms. Sharkey and Ms. Huff had raised related questions regarding the definition of recognized environmental concern, a term used in both the ASTM Standard and Part 740. Both Ms. Sharkey and Ms. Huff noted that the Agency's proposed definition of recognized environmental condition did not include the *de minimis* exception contained in the ASTM Standard. Both Ms. Huff and Ms. Sharkey believed that the definition of recognized environmental condition was overbroad and vague, in part because it did not include an exemption for *de minimis* conditions. (PC 8 at 5-6; PC 2 at 6.)

At first notice, the Board agreed with the Agency's rationale for excluding that portion of the ASTM Standard *de minimis* exemption for conditions that generally would not be the subject of an enforcement action. For several reasons, however, the Board was not persuaded by the Agency's argument for excluding that portion of the ASTM Standard *de minimis* exemption for conditions that generally do not present a material risk of harm to public health or the environment. As the Board interpreted the ASTM Standard, the Agency has the opportunity to review the basis for the LPE's conclusion. The Board found it unclear how an RA could rely on a *de minimis* exemption contained in the ASTM Standard definition but absent from the definition in Part 740. Accordingly, the Board 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 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 sought comment from the Agency and the public on the changes made to Section 740.420. In response, the SRP Coalition states that [w]e believe that by adding this language to the definition of recognized environmental condition, the Board has addressed the concern that the previous definition was overbroad and vague. (PC 12 at 2.) The SRP Coalition agrees that the additional language makes this definition consistent with the ASTM Standards referenced in Part 740. (PC 12 at 2.)

In its public comment, the Agency notes that it originally opposed adding a *de minimis* exclusion because it did not interpret the ASTM Standard to require that the LPE describe conditions determined to be *de minimis* in the site investigation report. (PC 11 at 2.) The Agency states that if such conditions and the rationale for their exclusion under the *de minimis* language are not included in the Site Investigation Report then the decision is made unilaterally by the LPE in the field. (PC 11 at 2.) The Agency states that [t]he Board seems to concur that the Agency should have a role in reviewing the LPE's *de minimis* determinations but interprets the ASTM Standard as requiring the reporting of such judgments. (PC 11 at 2, citing Site Remediation Program and Groundwater Quality (February 6, 1997), R97-11, slip op. 26-27).

The Agency suggests adding the following language to Section 740.425(b)(5) to eliminate any uncertainty as to whether conditions determined to be *de minimis* should be described in the Site Investigation Report:

Describe all conditions the LPE has determined to be *de minimis* along with the rationale for such *de minimis* determination.

(PC 11 at 2.) The Agency believes that this language will allow the Agency an opportunity to review judgments made by the LPE in the Site Investigation Report. The Agency would have no objection to the Board's change to the definition of recognized environmental condition if this language were added.

The Board finds that the definition of recognized environmental condition as revised by the Board at first notice shall remain the same for second notice. However, the Board agrees with the Agency that the Agency's proposed language should be added to Section 740.425(b)(5). The Board agrees that language helps to eliminate any uncertainty regarding the reporting requirements for the LPE's *de minimis* determinations. Accordingly, we add the Agency's proposed language to the order attached to this opinion.

Before first notice, Ms. Sharkey suggested that the term recognized environmental concern be replaced by regulated substances of concern. At first notice, the Board sought additional comment on whether the term may be used even though the ASTM Standard has been retained and on whether additional changes would need to be made to accommodate that change.

In its comments on the first notice, the Agency opposes this suggested change. The Agency responds to comments that the term recognized environmental condition was too broad as follows:

In the context of the comprehensive site investigation, the statutory definition of regulated substance of concern requires identification of any contaminant that is expected to be present at the site based on past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. (415 ILCS 5/58.2.) The ASTM Standard for phase I site assessments is a systematic approach for identifying recognized environmental conditions potential sources of contamination under conditions that indicated a release, threatened release or suspected release based on past and current land uses. If there is any significant difference between the two terms, it is that the use of recognized environmental condition narrows rather than expands the statutory mandate. While the statutory definition of regulated substance of concern requires identification of all contaminants that may be present at the site based on past and current uses, the definition of recognized environmental condition requires identification of contaminants based on past and present uses only under conditions that indicate a release.

(PC 11 at 3.)

The Agency also argues that the use of the ASTM Standard phase I procedure will not result in guesswork, as Ms. Sharkey had suggested in her public comments. (PC 7 at 1-3.) The Agency states:

Inevitably, site assessments require the exercise of professional judgment. The Agency and LPEs may not always agree on the conclusions resulting from that exercise of judgment. However, this is not the same as guesswork. To the contrary, the Agency believes that the use of systematic investigative procedures that are widely understood and used will increase the consistency and reliability of the conclusions.

(PC 11 at 4.)

The Board declines to adopt Ms. Sharkey's proposed substitution of regulated substance of concern for recognized environmental concern. While the Board does not agree with the Agency's suggestion that the term recognized environmental condition narrows the statutory mandate, the Board agrees that the term is consistent with the statutory mandate. The Board notes that it has added a *de minimis* exclusion to the definition of recognized environmental concern, which should alleviate concerns that the term will be interpreted overbroadly. In addition, the Board believes that the ASTM Standard incorporated into the rules can be more easily applied if the ASTM Standard term recognized environmental condition is retained.

Section 740.430 Focused Site Investigation. At first notice, the Board noted that [a]lthough a focused site investigation and limited NFR letter are not expressly allowed for by the Act, the Agency testified 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. (Site Remediation Program and Groundwater Quality (February 6, 1997), R97-11, slip op. 30.)

In its comments on the first notice, the Agency notes that while the Act does not expressly provide for the focused site investigation, it certainly implies in Sections 58.2 (definition of site) and 58.10(b)(1) that such limited approaches should be available. (PC 11 at 7.) The Board agrees and makes no changes to this section.

Section 740.435 Site Investigation Report -- Focused Site Investigation. This section sets forth information required in a focused site investigation report. As proposed, subsection (b)(6)(A) requires an evaluation of exposure routes excluded under 35 Ill. Adm. Code 742.Subpart C. The Board has stricken Subpart C from this provision because exposure routes may be excluded under several subparts of Part 742.

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.

At first notice, the Board noted that Section 740.440 contains no procedure for the Agency to determine whether a remediation measure has been implemented. The Board revised Section 740.440(c) of the Agency's proposal to allow for such verification. The Board sought comment on this revision.

In its comments on the first notice, the Agency concurs with the revisions, but requests that the Board modify the fourth paragraph on page 31 of its first notice opinion as follows:

The Agency also clarified that remediation objectives must be developed ~~only~~ when there will be no reliance on institutional controls, but may be required if there is an institutional control, depending on the nature of the institutional control. For instance, with an institutional control prohibiting potable uses of groundwater on the remediation site, the compliance sampling point is moved to the boundary of the remediation site, but at that sampling point remediation objectives would be developed based on Part 742 groundwater remediation objectives. On the other hand, if a soil ingestion or inhalation exposure route can be excluded through an engineered barrier (such as a soil cap), then compliance would be determined based on whether the barrier meets design requirements and is properly maintained rather than the sampling of concentrations beyond the barrier. (PC 3 at 4-5; Tr. 2 at 324-39.)

(PC 11 at 7-8.)

The Board does not find it necessary to amend its first notice opinion. However, the Board has reviewed the Agency's discussion and finds it appropriate. The thrust of the Agency's discussion appears to be that remediation objectives may be required in cases in which an institutional control is used, depending on the nature of the institutional control. The Board agrees and did not intend to suggest otherwise in the first notice opinion.

The Board believes, however, that it is necessary for the methods of determining compliance with remediation objectives to be set forth in the institutional control. This is required because the procedures in Section 740.440(b) apply only [w]here there will be no reliance on an institutional control to achieve compliance. Thus, the procedures for determining compliance with remediation objectives must be set forth in the institutional control itself.

The Agency also requests that the Board replace the last sentence of the fourth paragraph on page 31 of its first notice opinion with the following:

For purposes of determining compliance, institutional controls include ordinances that preclude the use of groundwater and engineered barriers because engineered barriers must be accompanied by institutional controls. Where a Remediation Applicant is simply limiting site use (industrial/commercial rather than residential), compliance would be determined under subsection 740.440(b).

(PC 11 at 8.)

A potential implication of the Agency's suggested revision is that when site use is limited to industrial/commercial use rather than residential use, no institutional control is involved and compliance may be determined under subsection 740.440(b). The Board does not agree. Proposed Section 742.1000 provides in part as follows:

Institutional controls must be in place on the property when remediation objectives are based on any of the following assumptions:

1) Industrial/Commercial property use

Thus, under Part 742, a limitation to industrial/commercial property use will require an institutional control. Compliance cannot be determined under Section 740.440(b) as proposed by the Agency, however, because that section applies only [w]here there will be no reliance on an institutional control to achieve compliance. To allow compliance with remediation objectives for industrial/commercial property to be determined under Section 740.440(b), as the Agency suggests, the Board adds the following language to Section 740.440(b):

Where there will be no reliance on an institutional control to achieve compliance, or where an institutional control will be relied upon to limit site use to industrial/commercial use, compliance with remediation objectives shall be demonstrated as follows:

The Board believes that this revision addresses the Agency's concern.

Section 740.445 Remediation Objectives Report. This section sets forth information required in a remediation objectives investigation report. As proposed, subsection (a) requires the RA to demonstrate that the requirements for excluding an exposure route under 35 Ill. Adm. Code 742.Subpart C have been satisfied. The Board has stricken Subpart C from this provision because exposure routes may be excluded under several subparts of Part 742.

Subpart E: Submittal and Review of Plans and Reports

Subpart E provides the procedures and the standards for review of plans and reports. 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 review and evaluation licensed professional engineer (RELPE).

This subpart also addresses the establishment and duration of groundwater management zones (GMZ). If a GMZ is in effect, the otherwise applicable groundwater quality standards of 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 of 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.

At first notice, the Board discussed 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), and 740.530 (establishment of groundwater management zones) and amendments to Part 620 (groundwater quality). Questions and issues were raised during the first notice comment period with respect to Sections 740.515 (standards for review of remediation objectives reports), 740.530 (establishment of groundwater management zones), and the amendments to Part 620 (groundwater quality), as discussed below.

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 submitted before first notice, Ms. Sharkey stated that the Agency's proposed subsection (a) allows standardless decision-making and suggested additional language to cure this defect. (PC 7 at 6.) The Board believed that Ms. Sharkey's suggestion provided a more definite standard for Agency decision-making and adopted her change at first notice by replacing 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." Because the Agency did not have an opportunity to respond to this suggestion, the Board invited the Agency to comment on this change.

In its comments on the first notice, the Agency agreed that Ms. Sharkey's proposed change provided a more precise standard of review. However, the Agency suggested two modifications: first, adding a reference to "remediation measures," in order to make this section fully consistent with Section 740.440(c) and 740.515(b)(6); and second, substituting "recognized environmental conditions" for "contaminants of

concern to make this term consistent with Section 740.120. (PC 11 at 8.) With the Agency's suggested changes, this section would provide as follows:

- 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 or remediation measures are necessary to minimize or eliminate any remaining risk presented by the ~~contaminants of concern~~ recognized environmental conditions;

(PC 11 at 8.)

The Board agrees that adding remediation measures is appropriate for the reasons given by the Agency. However, the Board does not agree that recognized environmental condition should replace contaminants of concern. The use of the phrase contaminants of concern is consistent with Section 740.440(a), which provides in part:

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

Under Section 740.440(a), remediation objectives are developed for contaminants of concern, not recognized environmental conditions. This is appropriate because an investigation of a recognized environmental concern -- *e.g.*, an area of darkened soil in an area where oil had been used -- may reveal no contaminants of concern once sampled. When the Agency reviews a remediation objectives report, then, it should determine whether other remediation objectives or measures are necessary to minimize or eliminate any remaining risk presented by the contaminants of concern.

Section 740.530 Establishment of Groundwater Management Zones. This section outlines the procedures for establishing GMZs. 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.

In a comment submitted before first notice, Ms. Sharkey suggested 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. (PC 2 at 14-15.) At first notice, the Board stated that it was 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 Board also stated that the suggested change did not seem to be appropriate unless the RA intends to remediate the entire plume. However, the Board sought further comment on Ms. Sharkey's proposed change.

In its comments on the first notice, the Agency opposes Ms. Sharkey's proposed change. The Agency states that several adverse consequences could flow from extending enforcement protection to the entire plume when an RA is not addressing an entire plume. First, the Agency notes that it would undermine the Agency's ability to protect human health and the environment. (PC 11 at 9.) Second, the Agency notes that this change would be inconsistent with Section 58.5(e) of the Act, which limits GMZs to sites undergoing remedial action. (*Id.*) The Agency notes that under Part 620 and the Agency's proposed definition, GMZs generally are three dimensional regions containing groundwater being managed to mitigate impairment from contaminants released at a site. Certainly, the GMZ should not extend across the entire contamination plume if the entire plume is not the subject of the Remediation Action Plan, and Agency-initiated enforcement should not be blocked where no remediation is planned. (*Id.*)

The Agency also argues that it is not clear how the limitation proposed by Ms. Sharkey would work administratively. The Agency argues that Ms. Sharkey's proposal would result in a double standard -- *i.e.*, suspension of Part 620 standards vis-a-vis the Agency with Part 620 standards still applicable for purposes of citizen enforcement actions and, presumably, tort claims. The Agency sees no need to adopt this bifurcated system. (PC 11 at 10.)

Finally, the Agency acknowledges that while the refusal of an affected property owner to allow the GMZ to extend beneath his or her property will prevent the extension of the GMZ with regard to that property even if the Remedial Action Plan does address the entire plume. (*Id.*) However, the Agency states that it is highly unlikely to initiate enforcement actions against SRP participants preparing to perform or performing groundwater remediation, at least for the portion of the plume covered by the Remedial Action Plan. (*Id.*) The Agency states that such an enforcement action would be a waste of resources, even if affected property owners have not consented to a GMZ in a portion of the plume covered by the Remedial Action Plan. (*Id.*, citing International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and UAW Local 974 and Citizens for a Better Environment v. Caterpillar, Inc. (August 1, 1996), PCB 94-240, slip op. 36-37 (discussing ineffectiveness of penalties in achieving compliance when development and

implementation of a corrective action plan is in progress.) On these grounds, the Agency urges the Board to reject Ms. Sharkey's proposed change. (PC 11 at 10-11.)

The Board declines to adopt Ms. Sharkey's proposed change for the reasons stated in the first notice. The Board also agrees that the proposed change is inconsistent with the Act and could pose administrative problems. The Board notes that the Agency has indicated that in exercising its enforcement discretion, the Agency will consider an RA's efforts to remediate contaminants in a plume.

In its comments submitted during the first notice comment period, the Agency also wishes to clarify that under Section 740.530(c), a GMZ remains in effect until the NFR Letter becomes effective or a Review and Evaluation Services Agreement is terminated. (PC 11 at 11.) The groundwater objectives achieved as documented in the approved Remedial Action Completion Report become the applicable groundwater quality standards within the area formerly encompassed by the GMZ once the NFR letter is effective. (*Id.*) The Agency also states that subsequent enforcement would be based on violation of the new standard or the Part 620 nondegradation standards. (*Id.*) The Board finds this description accurate.

Amendments to Part 620. In addition, at first notice the Board added language to Part 620 to make clear that GMZs may be established under Part 740. Specifically, the Board 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 generally duplicated 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 GMZs established under Part 740 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 sought comment on the proposed changes to Part 620.

In comments submitted during the first notice comment period, the Agency states that it concurs with these changes. (PC 11 at 11.) Accordingly, we shall proceed to second notice without any further revisions to Part 620.

Subpart F: No Further Remediation Letters and Recording Requirements

Subpart F describes the content of NFR Letters, the recording requirements and the conditions under 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 portion of a parcel of property, to limited environmental conditions or to specific contaminants of concern. The NFR Letter must include the information set forth in this subpart 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. If the Agency fails to issue an NFR Letter to an RA within 30 days after approval of the remedial action completion report, the NFR Letter shall issue by operation of law. NFR Letters issued by operation of law may be memorialized in an affidavit by the RA and recorded under Section 740.620.

The RA must submit the NFR Letter or affidavit to the Office of the Recorder or the Registrar of Titles of the county in which the remediation site is located. This subpart 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 memorializing the NFR Letter if the NFR Letter issues by operation of law) and accepts the terms and conditions and any land use limitations set forth in the NFR Letter. The NFR Letter is not effective until it is officially recorded. After the NFR Letter is recorded, the RA must submit to the Agency a copy of the NFR 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.

At first notice, the Board discussed Sections 740.605 (issuance 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). Questions and issues were raised during the first notice comment period on Section 740.620 (duty to record a No Further Remediation Letter).

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 (or affidavit memorializing an NFR Letter issued by operation of law) with the Office of the Recorder or the Registrar of Titles.

The Agency suggests in its comment on the first notice that the Leaking Underground Storage Tank (LUST) Program raises issues similar to those involving the non-RA property owner in the SRP. For example, the Agency notes that the owners or operators of underground storage tanks (USTs) frequently are not the owners of the properties at which releases from USTs have occurred. The Agency also notes that under the LUST program, owners or operators of UST systems may restrict future

uses of a site and require long-term maintenance of institutional controls. The Agency requests that the Board consider amending the Part 732 regulations to add a requirement similar to that set forth in Section 740.620(d), under which a property owner would certify that it accepted such restrictions. The Agency suggests that the Board could consider adding this requirement in Regulation of Petroleum Leaking Underground Storage Tanks (35 Ill. Adm. Code 732), R97-10 or Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742), R97-12. (PC 11 at 11-12.)

While the Board agrees that the Agency's suggestion is worthy of consideration, the Board declines to include such a change in this second notice for two reasons. First, this issue was not raised before first notice and is not discussed at all in the first notice. Other participants have not had an opportunity to comment on this issue. Second, the APA precludes the Board from opening an entirely new part (*i.e.*, Part 732) at second notice. (5 ILCS 100/5-40 (1994).) However, the Board would welcome a formal rulemaking proposal from the Agency with these proposed changes to the LUST program.

Appendices

Appendix A Target Compound List. In its comments on the Board's first notice, the Agency proposes adding the Chemical Abstract Systems (CAS) number for each of the listed constituents on the Target Compound List. (PC 11 at 12.) The Agency states that the CAS numbers will facilitate use of the tables. The Board agrees and accepts this change. The attached order reflects these changes.

CONCLUSION

The Board believes that the Agency's proposal, with revisions, is consistent with Title XVII. We find that the revised proposal establishes procedures and standards for the SRP that are designed to ensure cleanup of contaminated property in Illinois based on an analysis of risks associated with present and future uses of a site. The Board believes that the SRP provides new incentives to clean up abandoned or under-used properties within the State of Illinois. The Board believes that the revised 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 adoption of the revised proposal will promote cleanups that protect human health and the environment. The Board concludes that the revised proposal is technically feasible and economically reasonable.

Accordingly, we find today that the record before us justifies adopting the revised proposal for second notice. After review of the proposal and revisions by JCAR and the completion of the second notice period, the Board will vote on the final adoption of the revised proposal.

ORDER

The Board hereby directs that the second notice of the following revised proposal be submitted to the Joint Committee on Administrative Rules.

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

PART 740
SITE REMEDIATION PROGRAM

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

SOURCE: Adopted in R97-11 at 21 Ill. Reg. _____, effective _____.

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

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 subsection (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 (Section 3.01 of the Act)

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

"AGRICHEMICAL FACILITY" MEANS A SITE ON WHICH AGRICULTURAL PESTICIDES ARE STORED OR HANDLED, OR BOTH, IN PREPARATION FOR END USE, OR DISTRIBUTED. THE TERM DOES NOT INCLUDE BASIC MANUFACTURING FACILITY SITES. (Section 58.2 of the Act)

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

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

"Board" means the Pollution Control Board.

"Contaminant of concern" or "REGULATED SUBSTANCE OF CONCERN" MEANS ANY CONTAMINANT THAT IS EXPECTED TO BE PRESENT AT THE SITE BASED UPON PAST AND CURRENT LAND USES AND ASSOCIATED RELEASES THAT ARE KNOWN TO THE REMEDIATION APPLICANT BASED UPON REASONABLE INQUIRY. (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.

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 ANY RELEASE WHICH RESULTS IN EXPOSURE TO PERSONS SOLELY WITHIN A WORKPLACE, WITH RESPECT TO A CLAIM WHICH SUCH PERSONS MAY ASSERT AGAINST THE EMPLOYER OR SUCH PERSONS; EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE, ROLLING STOCK, AIRCRAFT, VESSEL, OR PIPELINE PUMPING STATION ENGINE; RELEASE OF SOURCE, BYPRODUCT, OR SPECIAL NUCLEAR MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS ARE DEFINED IN THE FEDERAL ATOMIC ENERGY ACT OF 1954, IF SUCH RELEASE IS SUBJECT TO REQUIREMENTS WITH RESPECT TO FINANCIAL PROTECTION ESTABLISHED BY THE NUCLEAR REGULATORY COMMISSION UNDER SECTION 170 OF SUCH ACT; AND THE NORMAL APPLICATION OF FERTILIZER. (Section 3.33 of the Act)

"REMEDIAL ACTION" MEANS ACTIVITIES ASSOCIATED WITH COMPLIANCE WITH THE PROVISIONS OF SECTIONS 58.6 AND 58.7 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 TITLE XVII OF THE ACT INCLUDING THE OWNER OR OPERATOR OF THE SITE OR PERSONS AUTHORIZED BY LAW OR CONSENT TO ACT ON BEHALF OF 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, the concentration of a contaminant, an engineered barrier or engineered control, or an institutional control established under Section 58.5 of the Act or Section 740.Subpart D of this Part.

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

RESIDENTIAL PROPERTY MEANS ANY REAL PROPERTY THAT IS USED FOR HABITATION BY INDIVIDUALS, OR where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas ~~playgrounds~~. (Section 58.2 of the Act)

"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.

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 Letter ~~determination~~ requested:
 - A) The statement shall indicate whether the RA is requesting a No Further Remediation Letter ~~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 ~~Letter determination~~ Letter determination as follows:
- A) If the RA is requesting a No Further Remediation ~~Letter determination~~ Letter 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 ~~Letter determination~~ Letter 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 Section 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) of the Act)
- 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 after 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 Section 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 after 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. In lieu of an immediate appeal to the Board, the RA may file a joint request for a 90-day extension of the time to file an appeal in the manner provided for extensions of permit decisions in Section 40 of the Act [415 ILCS 5/40].
- 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 after 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 after 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. In lieu of an immediate appeal to the Board, the RA may file a joint request for a 90-day extension of the time to file an appeal in the manner provided for extensions of permit decisions in Section 40 of the Act [415 ILCS 5/40].

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, determination of remediation objectives, and 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 sample collection, documentation, preparation, labeling, storage, shipment and security, quality assurance and quality control, acceptance criteria, corrective action, and decontamination procedures shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846), Vol. One, Ch. One (Quality Control) and Vol. Two (Field Manual), incorporated by reference at Section 740.125 of this Part. If

approved by the Agency, sSuch 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 equipment and instrument operation, calibration and maintenance, corrective action, and data handling shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at Section 740.125 of this Part, or with an equipment or instrument manufacturer s or vendor s published standard operating procedures.
- 3) All laboratory quantitative analysis of samples to determine concentrations of regulated substances or pesticides shall be conducted fully in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846), incorporated by reference at Section 740.125 of this Part, relative to all (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 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 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.

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

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

- A) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Adm. Code 742;
 - B) Describe all conditions the LPE has determined to be *de minimis* along with the rationale for each such *de minimis* determination;
 - ~~C~~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;
 - ~~D~~E) Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport and risk to human health, safety and the environment; and
 - ~~E~~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 chapters:
 - 1) Executive summary. This chapter shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state the recognized environmental

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

- 2) Site description.
 - A) If a phase I environmental site assessment has been completed in accordance with Section 740.420(a) of this Part, then the results may be submitted in accordance with Section 740.425 of this Part;
 - B) This subchapter shall state the method used for the evaluation of the remediation site and areas immediately adjacent to the remediation site and document the observations obtained (e.g., grid patterns or other systematic approaches used for large properties). It shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, and current and post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
 - C) Site base map(s) meeting the requirements of Section 740.210(a)(7) and including the following:
 - i) The sources or potential sources of the contaminants of concern, spill areas, and other suspected areas for the specified contaminants of concern;
 - ii) On-site and off-site injection and withdrawal wells; and
 - iii) All buildings, tanks, piles, utilities, paved areas, easements, rights-of-way and other features, including all known past and current product and waste underground tanks or piping;
 - D) A legal description or reference to a plat showing the boundaries of the remediation site;
- 3) Enforcement or response actions. This chapter shall include the following information as relevant to the recognized environmental conditions:

- A) A summary of environmental enforcement actions for the remediation site and areas immediately adjacent to the remediation site and their subsequent responses;
 - B) Any previous response actions conducted by either local, State, federal or private parties at those sites; and
 - C) A list of documents and studies prepared for those sites;
- 4) Site-specific sampling plan. This chapter shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment investigations, hydrogeological investigations, surface water investigations, and potential receptor investigations;
- 5) Documentation of field activities. This chapter shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
- A) Narrative description of the field activities conducted during the investigation;
 - B) The quality assurance project plan utilized to document all monitoring procedures (e.g., sampling, field measurements and sample analysis) performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
 - C) Presentation of the data in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 6) Endangerment Assessment. This chapter shall analyze the results of the field activities and characterize the extent of contamination (qualitative and quantitative) for contaminants of concern related to the recognized environmental conditions and compare the site information with the applicable provisions of 35 Ill. Adm. Code 742. This chapter shall:
- A) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases,

and evaluate exposure routes excluded under 35 Ill. Adm. Code 742. ~~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, or where an institutional control will be relief upon to limit site use to industrial/commercial use, 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-REMEDIATION 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.

Section 740.450 Remedial Action Plan

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 (Section 58.6(d) of the Act), including but not limited to:

- a) Executive summary. This chapter shall identify the objectives of the Remedial Action Plan and the technical approach utilized to meet such objectives. At a minimum, this chapter shall include the following elements:
 - 1) The major components (e.g., treatment, containment, removal actions) of the Remedial Action Plan;
 - 2) The scope of the problems to be addressed by the proposed remedial action(s) including the specific contaminants of concern and the physical area to be addressed by the Remedial Action Plan; and
 - 3) Schedule of activities;
- 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 Completion Report;
 - C) The scope of the problems corrected or mitigated by the proposed remedial action(s); and
 - D) The anticipated post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
 - 2) Field activities. This chapter shall provide a narrative description of the:

- A) Field activities conducted during the investigation;
 - B) Remedial actions implemented at the remediation site and the performance of each remedial technology utilized;
- 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 or remediation measures 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** (Section 58.7(e)(2) of the Act), 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 No Further Remediation Letter

- a) Except as provided in Section 740.615 below, **WITHIN 30 DAYS AFTER THE AGENCY'S APPROVAL OF A REMEDIAL ACTION COMPLETION REPORT, THE AGENCY SHALL ISSUE A NO FURTHER REMEDIATION LETTER APPLICABLE TO THE 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 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 140/1 et seq.]. (Section 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 No Further Remediation 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 after the receipt of the request for payment.

Section 740.620 Duty to Record 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 AFTER 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 140/1 *et seq.*]; 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 after recording, a copy of the letter or affidavit and the owner certification under subsection (d) below, where applicable, demonstrating that the recording requirements have been satisfied.
- c) AT NO TIME SHALL ANY 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 AFTER THE RECEIPT OF THE NOTICE OF VOIDANCE, THE RA OR CURRENT TITLE HOLDER of the remediation site MAY APPEAL THE AGENCY'S DECISION TO THE BOARD IN THE MANNER PROVIDED FOR THE REVIEW OF PERMITS IN SECTION 40 OF THIS ACT. IF THE BOARD FAILS TO TAKE FINAL ACTION WITHIN 120 DAYS, UNLESS SUCH TIME PERIOD IS WAIVED BY THE PETITIONER, THE PETITION SHALL BE DEEMED DENIED AND THE PETITIONER SHALL BE ENTITLED TO AN APPELLATE COURT ORDER PURSUANT TO SUBSECTION (d) OF SECTION 41 OF THE ACT. THE AGENCY SHALL HAVE THE BURDEN OF PROOF IN ANY SUCH ACTION. (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 AFTER 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>CAS No.</u>	<u>Compound</u>	<u>Water (µg/L)</u>	<u>Soil (µg/Kg)</u>	<u>Method</u>
<u>74-87-3</u>	Chloromethane	10	10	8260A
<u>74-83-9</u>	Bromomethane	10	10	8260A
<u>75-01-4</u>	Vinyl Chloride	10	10	8260A
<u>75-00-3</u>	Chloroethane	10	10	8260A
<u>75-09-2</u>	Methylene Chloride	10	10	8260A
<u>67-64-1</u>	Acetone	10	10	8260A
<u>75-15-0</u>	Carbon Disulfide	10	10	8260A
<u>75-35-4</u>	1,1-Dichloroethene	10	10	8260A
<u>75-34-3</u>	1,1-Dichloroethane	10	10	8260A
<u>540-59-0</u>	1,2-Dichloroethene (total)	10	10	8260A
<u>67-66-3</u>	Chloroform	10	10	8260A
<u>107-06-2</u>	1,2-Dichloroethane	10	10	8260A
<u>78-93-3</u>	2-Butanone	10	10	8260A
<u>71-55-6</u>	1,1,1-Trichloroethane	10	10	8260A
<u>56-23-5</u>	Carbon Tetrachloride	10	10	8260A
<u>75-27-4</u>	Bromodichloromethane	10	10	8260A
<u>78-87-5</u>	1,2-Dichloropropane	10	10	8260A
<u>10061-01-5</u>	cis-1,3-Dichloropropene	10	10	8260A
<u>79-01-6</u>	Trichloroethene	10	10	8260A
<u>124-48-1</u>	Dibromochloromethane	10	10	8260A
<u>79-00-5</u>	1,1,2-Trichloroethane	10	10	8260A
<u>71-43-2</u>	Benzene	10	10	8260A
<u>10061-02-6</u>	trans-1,3-Dichloropropene	10	10	8260A
<u>75-25-2</u>	Bromoform	10	10	8260A
<u>108-10-1</u>	4-Methyl-2-pentanone	10	10	8260A
<u>591-78-6</u>	2-Hexanone	10	10	8260A
<u>127-18-4</u>	Tetrachloroethene	10	10	8260A
<u>108-88-3</u>	Toluene	10	10	8260A
<u>79-34-5</u>	1,1,2,2-Tetrachloroethane	10	10	8260A
<u>108-90-7</u>	Chlorobenzene	10	10	8260A
<u>100-41-4</u>	Ethylbenzene	10	10	8260A
<u>100-42-5</u>	Styrene	10	10	8260A
<u>1330-20-7</u>	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.

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

<u>CAS No.</u>	<u>Compound</u>	<u>Water</u> <u>(µg/L)</u>	<u>Soil</u> <u>(µg/Kg)</u>	<u>Method</u>
<u>108-95-2</u>	Phenol	10	660	8270A
<u>111-44-4</u>	bis(2-Chloroethyl) ether	10	660	8270A
<u>95-57-8</u>	2-Chlorophenol	10	660	8270A
<u>95-50-1</u>	1,2-Dichlorobenzene	10	660	8270A
<u>541-73-1</u>	1,3-Dichlorobenzene	10	660	8270A
<u>106-46-7</u>	1,4-Dichlorobenzene	10	660	8270A
<u>95-48-7</u>	2-Methylphenol	10	660	8270A
<u>108-60-1</u>	2,2'-oxybis (1-chloropropane)	10	660	8270A
<u>106-44-5</u>	4-Methylphenol	10	660	8270A
<u>621-64-7</u>	N-Nitroso-di-n-propylamine	10	660	8270A
<u>67-72-1</u>	Hexachloroethane	10	660	8270A
<u>98-95-3</u>	Nitrobenzene	10	660	8270A
<u>78-59-1</u>	Isophorone	10	660	8270A
<u>88-75-5</u>	2-Nitrophenol	10	660	8270A
<u>105-67-9</u>	2,4-Dimethylphenol	10	660	8270A
<u>111-91-1</u>	bis(2-Chloroethoxy) methane	10	660	8270A
<u>120-83-2</u>	2,4-Dichlorophenol	10	660	8270A
<u>120-82-1</u>	1,2,4-Trichlorobenzene	10	660	8270A
<u>91-20-3</u>	Naphthalene	10	660	8270A
<u>106-47-8</u>	4-Chloroaniline	10	660	8270A
<u>87-68-3</u>	Hexachlorobutadiene	10	660	8270A
<u>59-50-7</u>	4-Chloro-3-methylphenol	10	660	8270A
<u>91-57-6</u>	2-Methylnaphthalene	10	660	8270A
<u>77-47-4</u>	Hexachlorocyclopentadiene	10	660	8270A
<u>88-06-2</u>	2,4,6-Trichlorophenol	10	660	8270A
<u>95-96-4</u>	2,4,5-Trichlorophenol	25	1600	8270A
<u>91-58-7</u>	2-Chloronaphthalene	10	660	8270A
<u>88-74-4</u>	2-Nitroaniline	25	1600	8270A
<u>131-11-3</u>	Dimethylphthalate	10	660	8270A
<u>208-96-8</u>	Acenaphthalene	10	660	8270A
<u>606-20-2</u>	2,6-dinitrotoluene	10	660	8270A
<u>99-09-2</u>	3-Nitroaniline	25	1600	8270A
<u>83-32-9</u>	Acenaphthene	10	660	8270A
<u>51-28-5</u>	2,4-Dinitrophenol	25	1600	8270A
<u>100-02-7</u>	4-Nitrophenol	25	1600	8270A
<u>132-64-9</u>	Dibenzofuran	10	330	8270A
<u>121-14-2</u>	2,4-Dinitrotoluene	10	330	8270A
<u>84-66-2</u>	Diethylphthalate	10	330	8270A
<u>7005-72-3</u>	4-Chlorophenyl-phenyl ether	10	330	8270A
<u>86-73-7</u>	Fluorine	10	330	8270A
<u>100-01-6</u>	4-Nitroaniline	25	1600	8270A
<u>534-52-1</u>	4,6-Dinitro-2-methylphenol	25	1600	8270A
<u>86-30-6</u>	N-nitrosodiphenylamine	10	330	8270A
<u>101-55-3</u>	4-Bromophenyl-phenyl ether	10	330	8270A
<u>118-74-1</u>	Hexachlorobenzene	10	330	8270A
<u>87-86-5</u>	Pentachlorophenol	25	1600	8270A
<u>85-01-8</u>	Phenanthrene	10	660	8270A
<u>120-12-7</u>	Anthracene	10	660	8270A
<u>86-74-8</u>	Carbazole	10	660	8270A

<u>84-74-2</u>	Di-n-butylphthalate	10	660	8270A
<u>206-44-0</u>	Fluoranthene	10	660	8270A
<u>129-00-0</u>	Pyrene	10	660	8270A
<u>85-68-7</u>	Butylbenzylphthalate	10	660	8270A
<u>91-94-1</u>	3,3'-Dichlorobenzidine	10	660	8270A
<u>56-55-3</u>	Benzo(a)anthracene	10	660	8270A
<u>218-01-9</u>	Chrysene	10	660	8270A
<u>117-81-7</u>	bis(2-Ethylhexyl)phthalate	10	660	8270A
<u>117-84-0</u>	Di-n-octylphthalate	10	660	8270A
<u>205-99-2</u>	Benzo(b)fluoranthene	10	660	8270A
<u>207-08-9</u>	Benzo(k)fluoranthene	10	660	8270A
<u>50-32-8</u>	Benzo(a)pyrene	10	660	8270A
<u>193-39-5</u>	Indeno(1,2,3-cd)pyrene	10	660	8270A
<u>53-70-3</u>	Dibenz(a,h)anthracene	10	660	8270A
<u>191-24-2</u>	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.

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

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

<u>CAS No.</u>	<u>Analyte</u>	<u>Water (µg/L)</u>	<u>Soil (mg/Kg)</u>	<u>Method</u>
<u>7429-90-5</u>	Aluminum	200	40	6010A
<u>7440-36-0</u>	Antimony	60	12	6010A
<u>7440-38-2</u>	Arsenic	10	2	7060A/7061A/ 7062
<u>7440-39-3</u>	Barium	200	40	6010A
<u>7440-41-7</u>	Beryllium	5	1	6010A
<u>7440-43-9</u>	Cadmium	5	1	6010A
<u>7440-70-2</u>	Calcium	5000	1000	6010A
<u>7440-47-3</u>	Chromium	10	2	6010A
<u>7440-48-4</u>	Cobalt	50	10	6010A
<u>7440-50-8</u>	Copper	25	5	6010A
<u>7439-89-6</u>	Iron	100	20	6010A
<u>7439-92-1</u>	Lead	3	0.6	7421
<u>7239-95-4</u>	Magnesium	5000	1000	6010A
<u>7439-96-5</u>	Manganese	15	3	6010A
<u>7439-97-6</u>	Mercury	0.2	0.04	7470A/7471A
<u>7440-02-0</u>	Nickel	40	8	6010A
<u>7440-09-7</u>	Potassium	5000	1000	6010A
<u>7782-49-2</u>	Selenium	5	1	7740A/7741A/ 7742
<u>7440-22-4</u>	Silver	10	2	6010A
<u>7440-23-5</u>	Sodium	5000	1000	6010A
<u>7440-28-0</u>	Thallium	10	2	7841
<u>7440-62-2</u>	Vanadium	50	10	6010A
<u>7440-66-6</u>	Zinc	20	4	6010A
<u>57-12-5</u>	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 RELPEs 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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620.105	Purpose
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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
620.310	Preventive Response Activities

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
- 620.510 Monitoring and Analytical Requirements

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 [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 _____.

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.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

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.

(Source: Amended at 21 Ill. Reg. _____, effective _____)

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 [225 ILCS 720] (~~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. 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 21 Ill. Reg. _____, effective
_____)

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

