

ILLINOIS POLLUTION CONTROL BOARD

January 22, 2004

IN THE MATTER OF:)
)
BROWNFIELDS SITE RESTORATION) R03-20
PROGRAM, AMENDMENTS TO 35 ILL.) (Rulemaking – Land)
ADM. CODE 740)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

Today the Board adopts amendments to 35 Ill. Adm. Code 740 of the Board's Site Remediation Program (SRP) rules. On February 18, 2003, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposal to establish procedures and standards for obtaining reimbursement of remediation costs, a program known as the Brownfields Site Restoration Program (BSRP). The Board accepted this matter for hearing on February 20, 2003.

The BSRP was created by recent amendments to Title XVII of the Environmental Protection Act (Act) (415 ILCS 5/58.15(B) (2002); *see* P.A. 92-0715, eff. July 23, 2002). The BSRP will allow a person to be reimbursed by the State for the costs of voluntarily remediating contamination at an "abandoned" or "underutilized" property if the remediation will lead to a "net economic benefit" to the State. The proposed amendments will be a new Subpart I to the Board's SRP rules (35 Ill. Adm. Code 740).

As described below, the Agency will administer the BSRP and Agency decisions may be appealed to the Board. Decisions on whether properties qualify for the BSRP, and the maximum amount of potential reimbursement, will be made by the Department of Commerce and Economic Opportunity (DCEO), formerly the Department of Commerce and Community Affairs (DCCA). By today's action, and pursuant to the Administrative Procedure Act (5 ILCS 100/1-1 *et seq.*), the Board adopts final rules and directs the Clerk to submit them to the Secretary of State's Office for publication.

PROCEDURAL HISTORY

On July 10, 2003, the Board proposed rules for first notice, which were published at 27 *Illinois Register* 11879 (July 25, 2003). The 45-day first-notice period ended September 8, 2003. The Joint Committee on Administrative Review (JCAR) filed non-substantive comments regarding grammar and format changes. On November 6, 2003, the Board proposed rules for second notice, incorporating JCAR's changes. JCAR considered the second-notice rules at its December 16, 2003 meeting and voted no objection.

Two public hearings were held in this rulemaking before the board hearing officer, Board Members, and Board staff. The first hearing was held on April 30, 2003, in Springfield. The second hearing was held on May 14, 2003, in Chicago. The Agency, represented by Judith S.

Dyer and Kimberly Geving, presented Gary King at the first hearing. Mr. King is the Manager of the Division of Remediation Management within the Agency's Bureau of Land. Mr. King was also available for questions at the second hearing. Chris Perzan, Assistant Attorney General, asked questions of Mr. King at the second hearing.

Three exhibits offered by the Agency were entered into the record at hearing: (1) the prefiled testimony of Mr. King; (2) errata sheet number one; and (3) errata sheet number two. The Board received no public comments in this proceeding. However, Mr. King's prefiled testimony included comments and questions of the Regional Commerce and Growth Association of Greater St. Louis that he received from the association on February 14, 2003.

OVERVIEW OF THE BSRP

Title XVII of the Act became law in 1995, requiring the Board to establish rules for the brownfields SRP (35 Ill. Adm. Code 740), risk-based remediation (35 Ill. Adm. Code 742), and proportionate share liability (35 Ill. Adm. Code 741). *See* 415 ILCS 5/58-58.17 (2002). The 2002 amendments to Title XVII, which added Section 58.15(B), require the Board to adopt rules to implement the BSRP. The BSRP will be part of the SRP, a program under which a "Remediation Applicant" (RA) voluntarily remediates a "brownfields" site. *See* 35 Ill. Adm. Code 740. A "brownfields" site is real property with "actual or perceived contamination and an active potential for redevelopment." 415 ILCS 5/58.2 (2002).

Because the SRP is a voluntary cleanup program, it excludes sites being cleaned up by liable parties under, for example, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), landfill closure requirements, or the Leaking Underground Storage Tank (UST) program. The SRP is codified in Board rules and administered by the Agency. Remediations of "regulated substances" (hazardous substances and petroleum products) and pesticides are based on the Board's Tiered Approach to Corrective Action Objectives (TACO) rules (35 Ill. Adm. Code 742). TACO provides risk-based remediation objectives that take into account property use and contaminant exposure pathways. Once the RA completes the Agency-approved remediation under the SRP, the Agency issues a "No Further Remediation" (NFR) Letter to the RA. The RA must record the NFR Letter in the chain of title for the site.

DISCUSSION OF ADOPTED AMENDMENTS

For BSRP reimbursement under the new Subpart I, RAs must apply to both the Agency and the DCEO, and pay associated application fees totaling from \$2,000 to \$2,500 per site. The fee is \$1,000 per site for eligibility reviews conducted by the DCEO. 415 ILCS 5/58.15(B)(c) (2002). The fee is \$1,000 fee per site per application for review of remediation costs conducted by the Agency, and \$500 per site per preliminary review of the budget plan, also conducted by the Agency. *See* 415 ILCS 5/58.15(B)(j) (2002); 35 Ill. Adm. Code 740.920.

Generally, to be eligible for reimbursement, an RA must have been issued an NFR Letter under the SRP, must have recorded the NFR Letter, and must not have materially caused or contributed to the contamination. *See* 35 Ill. Adm. Code 740.900, 740.910. The RA also must

apply for and receive a DCEO letter: (1) determining that the RA is eligible for reimbursement because the site qualifies as either “abandoned property” or “underutilized property”; (2) setting forth the remediation’s “net economic benefit” to the State based on factors such as capital investment and job creation; and (3) providing the maximum amount the RA may be reimbursed. *See* 415 ILCS 5/58.15(B)(b)(3) (2002); 35 Ill. Adm. Code 740.901. DCEO approval is required before any costs are incurred. *See* 415 ILCS 5/58.15(B)(a)-(e) (2002). “Priority must be given to sites located in areas with high levels of poverty, where the unemployment rate exceeds the State average, where an enterprise zone exists, or where the area is otherwise economically depressed as determined by [DCEO].” 415 ILCS 5/58.15(B)(b)(3) (2002).

Reimbursement is subject to funds available in the Brownfields Redevelopment Fund for the BSRP each fiscal year, and funds are distributed based on the order applications for reimbursement are received. *See* 415 ILCS 5/58.15(B)(a)(5). Only “remediation costs” that are “reasonable,” as determined by the Agency, are eligible. *See* 415 ILCS 5/58.15(B)(e), (f) (2002); 35 Ill. Adm. Code 740.915(a). In addition, an RA cannot be reimbursed more than the lowest of the following: (1) \$750,000 in remediation costs at the site; (2) 20% of the capital investment at the site; or (3) the net economic benefit to the State of the remediation. 35 Ill. Adm. Code 740.900.

The eligible remediation costs and ineligible costs for the BSRP are substantively the same as currently defined in Subpart G of Part 740, the Board rules governing applying for an environmental remediation tax credit. *See* 35 Ill. Adm. Code 740.725, 740.730, 740.925, 740.930. The only change is the specification that handling charges for subcontractor costs when the contractor has not paid the subcontractor are ineligible. 35 Ill. Adm. Code 740.930. An RA may appeal Agency disapprovals or modifications of budget plans and reimbursement requests to the Board within 35 days of receiving the Agency disapproval or modification letter. *See* 415 ILCS 5/58.15(B)(a)-(f) (2002); 35 Ill. Adm. Code 740.915(k).

Under the BSRP, the Agency must make a final determination within 60 days of receiving a reimbursement application. 35 Ill. Adm. Code 740.915. Submittal of a budget plan automatically waives the remedial action plan deadlines for an additional 60 days. *See* 35 Ill. Adm. Code 740.905(e), (g), 740.915(b)-(e). The DCEO will establish its own timeframe for making the eligibility determination. *See* 35 Ill. Adm. Code 740.901(b). Furthermore, amendments to the application or the budget plan restart the Agency’s time for review. 35 Ill. Adm. Code 740.905, 740.915.

The Agency has stated that the proposed amendments do not raise concerns over technical feasibility. Statement of Reasons at 8. The Board held a hearing on May 14, 2003, to satisfy the requirements of Section 27(b) of the Act. 415 ILCS 5/27(b) (2002). Nobody testified or commented about DCEO’s decision not to perform an economic impact study on this rulemaking. As found at first and second notice, the Board finds the proposal is both technically feasible and economically reasonable.

CONCLUSION

The Board adopts the amendments discussed above. This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Board adopts the following amendments to the Site Remediation Program regulations. The Board directs the Clerk to file the following adopted amendments with the Secretary of State.

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

SUBPART A: GENERAL

Section

- 740.100 Purpose
- 740.105 Applicability
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SUBPART B: APPLICATIONS AND AGREEMENTS FOR REVIEW AND EVALUATION
SERVICES

Section

- 740.200 General
- 740.205 Submittal of Application and Agreement
- 740.210 Contents of Application and Agreement
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- 740.235 Use of Review and Evaluation Licensed Professional Engineer (RELPE)

SUBPART C: RECORDKEEPING, BILLING AND PAYMENT

Section

- 740.300 General
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- 740.310 Request for Payment
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- 740.400 General
- 740.405 Conduct of Site Activities and Preparation of Plans and Reports by Licensed Professional Engineer (LPE)
- 740.410 Form and Delivery of Plans and Reports, Signatories and Certifications
- 740.415 Site Investigation -- General
- 740.420 Comprehensive Site Investigation
- 740.425 Site Investigation Report -- Comprehensive Site Investigation
- 740.430 Focused Site Investigation
- 740.435 Site Investigation Report -- Focused Site Investigation
- 740.440 Determination of Remediation Objectives
- 740.445 Remediation Objectives Report
- 740.450 Remedial Action Plan
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SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS

Section

- 740.500 General
- 740.505 Reviews of Plans and Reports
- 740.510 Standards for Review of Site Investigation Reports and Related Activities
- 740.515 Standards for Review of Remediation Objectives Reports
- 740.520 Standards for Review of Remedial Action Plans and Related Activities
- 740.525 Standards for Review of Remedial Action Completion Reports and Related Activities
- 740.530 Establishment of Groundwater Management Zones
- 740.535 Establishment of Soil Management Zones

SUBPART F: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section

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

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

Section

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

SUBPART H: REQUIREMENTS RELATED TO SCHOOLS

Section

740.800	General
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SUBPART I: REVIEW OF REMEDIATION COSTS FOR BROWNFIELDS SITE
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Section

<u>740.900</u>	<u>General</u>
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<u>740.911</u>	<u>Application for Review and Payment of Remediation Costs Prior to Perfection of No Further Remediation Letter</u>
<u>740.915</u>	<u>Agency Review of Application for Payment of Remediation Costs</u>
<u>740.920</u>	<u>Fees and Manner of Payment</u>
<u>740.925</u>	<u>Remediation Costs</u>
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740.APPENDIX A	Target Compound List
740.TABLE A	Volatile Organics Analytical Parameters
740.TABLE B	Semivolatile Organic Analytical Parameters
740.TABLE C	Pesticide and Aroclors Organic Analytical Parameters
740.TABLE D	Inorganic Analytical Parameters
740.APPENDIX B	Review and Evaluation Licensed Professional Engineer Information

AUTHORITY: Implementing Sections 58 through 58.8 and 58.10 through 58.15 and authorized by Sections 58.5, 58.6, 58.7, 58.11 58.14, and 58.15 of the Environmental Protection Act [415 ILCS 5/58 through 58.8 and 58.10 through 58.15].

SOURCE: Adopted in R97-11 at 21 Ill. Reg. 7889, effective July 1, 1997; amended in R98-27 at 22 Ill. Reg.19580, effective October 26, 1998; amended in R01-27 and R01-29 at 26 Ill. Reg. 7197, effective April 25, 2002; amended in R03-20 at 28 Ill. Reg. _____, effective _____.

NOTE: Italics denote statutory language.

SUBPART A: GENERAL

Section 740.100 Purpose

The ~~purpose~~ purposes of this Part is are:

- a) ~~to~~ To establish ~~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~~ *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* ~~(Section 58.1(a)(1) of the Act)~~[415 ILCS 5/58.1(a)(1)];
- b) ~~The purpose of this Part is also to~~ To establish procedures to be followed to obtain Illinois Environmental Protection Agency review and approval of remediation costs before applying for the environmental remediation tax credit under Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]; ~~and~~;
- c) To establish and administer a program for the payment of remediation costs to be known as the Brownfields Site Restoration Program whereby the Agency, with the assistance of the Department of Commerce and Economic Opportunity (DCEO) through the program, shall provide remediation applicants with financial assistance for the investigation and remediation of abandoned or underutilized properties. [415 ILCS 5/58.15(B)(a)(1)]

(Source: Amended at 28 Ill. Reg. _____, effective _____)

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 definitions 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.

"Abandoned property" means real property previously used for, or that has the potential to be used for, commercial or industrial purposes that reverted to the ownership of the State, a county or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default, or settlement, including conveyance by deed in lieu of foreclosure; or privately owned property that has been vacant for a period of not less than 3 years from the time an application is made to the Department of Commerce and Economic Opportunity. [415 ILCS 5/58.15(B)(b)(2)]

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

"Agency" means the Illinois Environmental Protection Agency. [415 ILCS 5/3.01]

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

"Agrichemical facility" means a site on which agricultural pesticides are stored or handled, or both, in preparation for end use, or distributed. The term does not include basic manufacturing facility sites. [415 ILCS 5/58.2]

"ASTM" means the American Society for Testing and Materials. [415 ILCS 5/58.2]

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

"Board" means the Pollution Control Board.

"Contaminant of concern" or *"regulated substance of concern"* means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. [415 ILCS 5/58.2]

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

"DCEO" means the Department of Commerce and Economic Opportunity (previously known as the Department of Commerce and Community Affairs).

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

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

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

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

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

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

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

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

"Licensed Professional Engineer" or "LPE" means a person, corporation or partnership licensed under the laws of this State to practice professional engineering. [415 ILCS 5/58.2]

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

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

"Person" means individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, including the United States

Government and each department, agency and instrumentality of the United States. [415 ILCS 5/58.2]

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

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. [415 ILCS 60/4]

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

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

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

"Regulated substance" means any hazardous substance as defined under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or

synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). [415 ILCS 5/58.2]

"Regulated substance of concern" or "contaminant of concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. [415 ILCS 5/58.2]

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer or such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and the normal application of fertilizer. [415 ILCS 5/3.33]

"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. [415 ILCS 5/58.2]

"Remediation Applicant" or "RA" means any person seeking to perform or performing investigative or remedial activities under Title XVII of the Act, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site. [415 ILCS 5/58.2]

"Remediation costs" means reasonable costs paid for investigating and remediating regulated substances of concern consistent with the remedy selected for the site. For purposes of ~~Subpart~~ Subparts G and I of this Part, "Remediation Costs" shall not include costs incurred prior to January 1, 1998, costs incurred after the issuance of a No Further Remediation Letter under Subpart F of this Part, or costs incurred more than 12 months prior to acceptance into the Site Remediation Program under this Part. [415 ILCS 5/58.2]

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

"Remediation site" means the single location, place, tract of land, or parcel or portion of any parcel of property, including contiguous property separated by a

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

"Residential property" means any real property that is used for habitation by individuals, 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. [415 ILCS 5/58.2]

"Review and Evaluation Licensed Professional Engineer" or "RELPE" means the licensed professional engineer with whom a Remediation Applicant 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. [415 ILCS 5/58.2] This term also includes, but is not limited to, all buildings and improvements present at that location, place or tract of land.

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

"Underutilized property" means real property of which less than 35% of the commercially usable space of the property and improvements thereon are used for their most commercially profitable and economically productive uses. [415 ILCS 5/58.15(B)(b)(2)]

(Source: Amended at 28 Ill. Reg. _____, effective _____)

SUBPART I: REVIEW OF REMEDIATION COSTS FOR BROWNFIELDS SITE RESTORATION PROGRAM

Section 740.900 General

- a) This Subpart sets forth the procedures an RA must follow to obtain Agency review, a final determination and payment of remediation costs under the Brownfields Site Restoration Program. It contains procedures for preliminary reviews of estimated remediation costs and final reviews of remediation costs actually incurred, establishes fees for the Agency's reviews, provides for appeals of Agency determinations, and includes listings of eligible and ineligible costs.
- b) For each State fiscal year in which funds are made available to the Agency for payment under this Subpart, the Agency must, subject to the availability of funds, allocate 20% of the funds to be available to Remediation Applicants within counties with populations over 2,000,000. The remaining funds must be made available to all other Remediation Applicants in the State. [415 ILCS

5/58.15(B)(a)(2)] Brownfields Site Restoration Program funds shall be subject to availability of funding and distributed based on the order of receipt of applications satisfying all the requirements of this Subpart.

- c) The total payment to be made to an applicant must not exceed an amount equal to 20% of the capital investment at the site. [415 ILCS 5/58.15(B)(a)(3)]
- d) Only those remediation projects for which a No Further Remediation Letter is issued after December 31, 2001 are eligible to participate in the Brownfields Site Restoration Program. The program does not apply to any sites for which a No Further Remediation Letter is issued on or prior to December 31, 2001 or to costs incurred prior to DCEO approving a site eligible for the Brownfields Site Restoration Program. [415 ILCS 5/58.15(B)(a)(4)]
- e) Except as provided in Section 740.911, an application for review of remediation costs must not be submitted until:
 - 1) A No Further Remediation Letter has been issued by the Agency or has issued by operation of law; and
 - 2) The No Further Remediation Letter, or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law, has been recorded in the chain of title for the site in accordance with Subpart F of this Part. [415 ILCS 5/58.15(B)(e)]
- f) The Agency must not approve payment in excess of \$750,000 to a Remediation Applicant for remediation costs incurred at a remediation site. [415 ILCS 5/58.15(B)(a)(3)]
- g) Brownfields Site Restoration Program funds shall be subject to availability of funding and distributed based on the order of receipt of applications satisfying all applicable requirements as set forth in the Act and this Part. [415 ILCS 5/58.15(B)(a)(5)]

(Source: Added at 28 Ill. Reg. _____, effective _____)

Section 740.901 Pre-application Assessment and Eligibility Determination

- a) Prior to submitting an application to determine eligibility to DCEO, a Remediation Applicant shall first submit to the Agency its proposed remediation costs. The Agency shall make a pre-application assessment, which is not to be binding upon DCEO or upon future review of the project, relating only to whether the Agency has adequate funding to reimburse the applicant for the remediation costs if the applicant is found to be eligible for reimbursement of remediation costs. [415 ILCS 5/58.15(B)(b)]

- b) *If the Agency determines that it is likely to have adequate funding to reimburse the applicant for remediation costs, the Remediation Applicant may then submit to DCEO an application for review of eligibility. [415 ILCS 5/58.15(B)(b)] To be eligible for payment, an RA must have a minimum capital investment in the redevelopment of the site. Procedures for applying for eligibility and for obtaining a determination from DCEO must be obtained from DCEO.*
- c) Once DCEO has determined that an RA is eligible, the RA may submit an application to the Agency in accordance with Section 740.910 or Section 740.911 of this Part.
- d) The Agency must rely on DCEO's decision as to eligibility. The maximum amount of the payment to be made to the RA for remediation costs may not exceed the "net economic benefit" to the State of the remediation project, as determined by DCEO, based on factors including, but not limited to, the capital investment, the number of jobs created, the number of jobs retained if it is demonstrated the jobs would otherwise be lost, capital improvements, the number of construction-related jobs, increased sales, material purchases, other increases in service and operational expenditures. [415 ILCS 5/58.15(B)(b)(3)]

(Source: Added at 28 Ill. Reg. _____, effective _____)

Section 740.905 Preliminary Review of Estimated Remediation Costs

- a) *A Remediation Applicant may obtain a preliminary review of estimated remediation costs for the development and implementation of a Remedial Action Plan, required under Section 740.450 of this Part, by submitting a budget plan along with the Remedial Action Plan. [415 ILCS 5/58.15(B)(i)(1)] The Agency shall not accept a budget plan unless a Remedial Action Plan satisfying the requirements of Section 740.450 of this Part also has been submitted.*
- b) The budget plan must be set forth on forms prescribed and provided by the Agency and must include, but is not limited to, the following information:
- 1) Identification of applicant and remediation site, including:
 - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
 - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site and the date of acceptance of the site into the Site Remediation Program; and

C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA.

2) Line item estimates of the costs that the RA anticipates will be incurred for the development and implementation of the Remedial Action Plan, including but not limited to:

A) Site investigation activities:

- i) Drilling costs;
- ii) Physical soil analysis;
- iii) Monitoring well installation; and
- iv) Disposal costs.

B) Sampling and analysis activities:

- i) Soil analysis costs;
- ii) Groundwater analysis costs;
- iii) Well purging costs; and
- iv) Water disposal costs.

C) Remedial activities:

- i) Groundwater remediation costs;
- ii) Excavation and disposal costs;
- iii) Land farming costs;
- iv) Above-ground bio-remediation costs;
- v) Land application costs;
- vi) Low temperature thermal treatment costs;
- vii) Backfill costs; and
- viii) In-situ soil remediation costs.

D) Report preparation costs.

- 3) A certification, signed by the RA or authorized agent and notarized, as follows:

I, [name of RA, if individual, or authorized agent of RA], hereby certify that neither ["T" if RA is certifying or name of RA if authorized agent is certifying], nor any related party (as described in Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]), nor any person whose tax attributes ["T" if RA is certifying or name of RA if authorized agent is certifying] have [has] succeeded to under Section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) that are identified and addressed in the Remedial Action Plan submitted for the site identified above.

- 4) The original signature of the RA or authorized agent acting on behalf of the RA.

- c) The RA must submit the applicable fee, as provided in Section 740.920 of this Subpart, with the budget plan, except as provided in subsections (f) and (i)(4) of this Section.
- d) Budget plans must be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered must be delivered during the Agency's normal business hours.
- e) *Submittal of a budget plan must be deemed an automatic 60-day waiver of the Remedial Action Plan deadlines set forth in the Act and Section 740.505 of this Part. [415 ILCS 5/58.15(B)(i)(4)]*
- f) *If the Remedial Action Plan is amended by the Remediation Applicant or as a result of Agency action, the corresponding budget plan must be revised accordingly and resubmitted. [415 ILCS 5/58.15(B)(i)(2)] No additional fee shall be required for this review.*
- g) The following rules apply to the Agency's review period for budget plans:
- 1) The Agency's review period begins on the date of receipt of the budget plan by the Agency. The Agency's record of the date of receipt of a budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
 - 2) In reviewing budget plans and the Remedial Action Plans they accompany, the Agency is subject to the deadlines set forth in Section 740.505 of this Part with an additional 60 days, due to the automatic waiver, in accordance with subsection (e) of this Section.

- 3) Submittal of an amended plan restarts the time for review.
 - 4) The RA may waive the time line for review upon a request from the Agency or at the RA's discretion.
- h) The Agency must review the budget plan along with the Remedial Action Plan to determine whether the estimated costs submitted are remediation costs and whether the costs estimated for the activities are reasonable. [415 ILCS 5/58.15(B)(i)(1)]
- i) Upon completion of the review, the Agency must issue a letter to the Remediation Applicant approving, disapproving or modifying the estimated remediation costs submitted in the budget plan. [415 ILCS 5/58.15(B)(i)(5)] The following rules apply regarding Agency determinations:
- 1) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have been made on the postmarked date that the notice is mailed.
 - 2) The Agency may combine the notification of its final determination on a budget plan with the notification of its final determination on the corresponding Remedial Action Plan.
 - 3) If a budget plan is disapproved or approved with modification of estimated remediation costs, the written notification shall contain the following information as applicable:
 - A) An explanation of the specific type of information or documentation, if any, that the Agency finds the RA did not provide;
 - B) The reasons for the disapproval or modification of estimated remediation costs; and
 - C) Citations to statutory or regulatory provisions upon which the determination is based.
 - 4) If the Agency disapproves a Remedial Action Plan or approves a Remedial Action Plan with conditions, in accordance with Subpart E of this Part, the Agency may return the corresponding budget plan to the RA without review. If the Remedial Action Plan is amended in response to Agency action, the RA may submit a revised budget plan for review. No additional fee shall be required for this review.

- 5) Within 35 days after receipt of an Agency letter disapproving or modifying a budget plan or expiration of the Agency deadline, the Remediation Applicant may appeal the Agency's decision or the Agency's failure to issue a final determination to the Board in the manner provided for the review of permits in Section 40 of the Act. [415 ILCS 5/58.15(B)(i)(6)]

(Source: Added at 28 Ill. Reg. _____, effective _____)

Section 740.910 Application for Final Review and Payment of Remediation Costs Following Perfection of No Further Remediation Letter

- a) The RA for any site enrolled in the Site Remediation Program may submit an application for final review and payment of remediation costs following perfection of a No Further Remediation Letter.
- b) The application must be submitted on forms prescribed and provided by the Agency and must include, at a minimum, the following information:
- 1) Identification of RA and remediation site, including:
 - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
 - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site;
 - C) The date of acceptance of the remediation site into the Site Remediation Program; and
 - D) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA;
 - 2) A true and correct copy of the No Further Remediation Letter, or affidavit(s) under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law, for the remediation site, as recorded in the chain of title for the site and certified by the appropriate County Recorder or Registrar of Titles;
 - 3) A true and correct copy of DCEO's letter approving eligibility, including the net economic benefit of the remediation project [415 ILCS 5/58.15(B)(e)(4)];
 - 4) Itemization and documentation of remediation activities for which payment is sought and of remediation costs incurred, including invoices,

billings and dated, legible receipts with canceled checks or other Agency-approved methods of proof of payment;

- 5) A certification, signed by the RA or authorized agent and notarized, as follows:

I, _____ [name of RA, if individual, or authorized agent of RA], hereby certify that:

The site for which this application for payment is submitted is the site for which the No Further Remediation Letter was issued;

All the costs included in this application were incurred at the site and for the regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued;

The costs incurred are remediation costs as defined in the Act and rules adopted thereunder;

The costs submitted were paid by _____ [“me” if RA is certifying or name of RA if authorized agent is certifying] and are accurate to the best of my knowledge and belief;

None of the costs were incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program; and

_____ [“I” if RA is certifying or name of RA if authorized agent is certifying] did not cause or contribute in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued.

- 6) The original signature of the RA or of the authorized agent acting on behalf of the RA.
- c) The application for final review must be accompanied by the applicable fee for review as provided in Section 740.920 of this Subpart. Applications must be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered must be delivered during the Agency’s normal business hours.
- d) The Agency’s acceptance of a certification that the RA did not cause or contribute in any material respect to the release or substantial threat of a release for which the payment is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

(Source: Added at 28 Ill. Reg. _____, effective _____)

Section 740.911 Application for Review and Payment of Remediation Costs Prior to Perfection of No Further Remediation Letter

- a) An application for review of remediation costs may be submitted to the Agency prior to the issuance of a No Further Remediation Letter (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law) if the Remediation Applicant has a Remedial Action Plan approved by the Agency under Section 740.450 of this Part under the terms of which the Remediation Applicant will remediate groundwater for more than one year. [415 ILCS 5/58.15(B)(f)]
- b) The application must be on forms prescribed and provided by the Agency, shall be accompanied by the applicable fee for review as provided in Section 740.920(b) of this Subpart, and must include, at a minimum, the following information:
- 1) Identification of RA and remediation site, including:
 - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
 - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site;
 - C) The date of acceptance of the remediation site into the Site Remediation Program; and
 - D) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA;
 - 2) A true and correct copy of the Agency letter approving the Remedial Action Plan [415 ILCS 5/58.15(B)(f)(2)];
 - 3) A true and correct copy of DCEO's letter approving eligibility, including the net economic benefit of the remediation project [415 ILCS 5/58.15(B)(f)(4)];
 - 4) Itemization and documentation of remediation activities for which payment is sought and of remediation costs incurred, including invoices, billings and dated, legible receipts with canceled checks or other Agency-approved methods of proof of payment;

5) A certification, signed by the RA or authorized agent and notarized, as follows:

I, _____ [name of RA, if individual, or authorized agent of RA], hereby certify that:

The site for which this application for payment is submitted is the site for which the Remedial Action Plan referenced in subsection (a) of this Section was approved;

All the costs included in this application were incurred at the site for which the Remedial Action Plan referenced in subsection (a) of this Section was approved;

The costs incurred are remediation costs as defined in the Act and rules adopted thereunder;

The costs submitted were paid by _____ [“me” if RA is certifying or name of RA if authorized agent is certifying] and are accurate to the best of my knowledge and belief;

None of the costs were incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program; and

_____ [“I” if RA is certifying or name of RA if authorized agent is certifying] did not cause or contribute in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) for which the Remedial Action Plan was approved.

6) The original signature of the RA or of the authorized agent acting on behalf of the RA.

c) *Until the Agency issues a No Further Remediation Letter for the site (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law), no more than 75% of the allowed payment may be claimed by the Remediation Applicant. The remaining 25% may be claimed following the issuance by the Agency of a No Further Remediation Letter (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law) for the site [415 ILCS 5/58.15(B)(g)].*

d) The Agency’s acceptance of a certification that the RA did not cause or contribute in any material respect to the release or substantial threat of a release for which the payment is requested shall not bind the Agency or the State and shall not be

used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

(Source: Added at 28 Ill. Reg. _____, effective _____)

Section 740.915 Agency Review of Application for Payment of Remediation Costs

- a) The Agency must review each application submitted pursuant to Section 740.910 or Section 740.911 to determine, in accordance with Sections 740.925 and 740.930 of this Part, whether the costs submitted are remediation costs and whether the costs incurred are reasonable. [415 ILCS 5/58.15(B)(e), (f)]
- b) Within 60 days after receipt by the Agency of an application meeting the requirements of Section 740.910 or Section 740.911, the Agency must issue a letter to the RA approving, disapproving, or modifying the remediation costs submitted in the application. [415 ILCS 5/58.15(B)(h)(1)]
- c) The Agency's review period begins on the date of receipt of the budget plan by the Agency. The Agency's record of the date of receipt of a budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- d) The RA may waive the time for review.
- e) Submittal of an amended application restarts the time for review.
- f) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have been made on the postmarked date that the notice is mailed.
- g) If a preliminary review of a budget plan has been obtained under Section 740.905 of this Part, the Remediation Applicant may submit, with the application, applicable fee under Section 740.920 of this Part, and supporting documentation under Section 740.910 or Section 740.911 of this Part, a copy of the Agency's final determination on the budget plan accompanied by a certification, signed by the RA or authorized agent and notarized, stating as follows:
 - I, _____ [name of RA, if individual, or name of authorized agent of RA], hereby certify that the actual remediation costs incurred at the site for line items [list line items to which certification applies] and identified in the application for final review of remediation costs are equal to or less than the costs approved for the corresponding line items in the attached budget plan determination.
- h) If the budget plan determination and certification are submitted pursuant to subsection (g) of this Section, the Agency may conduct further review of the certified line item costs and may approve such costs as submitted. The Agency's

further review shall be limited to confirmation that costs approved in the Agency's budget plan determination were actually incurred by the RA in the development and implementation of the Remedial Action Plan.

- i) If the certification in subsection (g) of this Section does not apply to all line items as approved in the budget plan, the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved. In its review, the Agency shall not reconsider the appropriateness of any activities, materials, labor, equipment, structures or services already approved by the Agency for the development or implementation of the Remedial Action Plan.
- j) If an application is disapproved or approved with modification of remediation costs, the written notification to the RA must 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) The reasons for the disapproval or modification of remediation costs; and
 - 3) Citations to statutory or regulatory provisions upon which the determination is based.
- k) Within 35 days after receipt of an Agency letter disapproving or modifying an application for approval of remediation costs, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act. [415 ILCS 5/58.15(B)(h)(3)]

(Source: Added at 28 Ill. Reg. _____, effective _____)

Section 740.920 Fees and Manner of Payment

- a) The fee for the preliminary review of estimated remediation costs conducted under Section 740.905 of this Part shall be \$500 for each remediation site reviewed. (Derived from 415 ILCS 5/58.15(B)(j)(2))
- b) The fee for the final review of remediation costs under Section 740.910 or Section 740.911 of this Part shall be \$1000 for each remediation site reviewed. (Derived from 415 ILCS 5/58.15(B)(j)(1))
- c) The fee for a review under this Subpart shall be in addition to any other fees, payments or assessments under Title XVII of the Act and this Part.
- d) All fees shall be paid by check or money order made payable to "Treasurer – State of Illinois, for deposit in the Brownfields Redevelopment Fund". The check or money order shall include the Illinois inventory identification number and the Federal Employer Identification Number (FEIN) or social security number (SSN) of the RA.

(Source: Added at 28 Ill. Reg. _____, effective _____)

Section 740.925 Remediation Costs

- a) Activities, materials, labor, equipment, structure and service costs that may be approved by the Agency as remediation costs for payment under this Subpart include, but are not limited to, the following:
- 1) Preparation of bid documents and contracts for procurement of contractors, subcontractors, analytical and testing laboratories, labor, services and suppliers of equipment and materials;
 - 2) Engineering services performed in accordance with Section 58.6 of the Act and implementing regulations at Sections 740.235 and 740.405 of this Part;
 - 3) Site assessment and remedial investigation activities conducted in accordance with Sections 740.410, 740.415, 740.420 and 740.430 of this Part;
 - 4) Report or plan preparation conducted in accordance with Sections 740.425, 740.435, 740.445, 740.450 and 740.455 of this Part;
 - 5) Collection, analysis or measurement of site samples in accordance with Section 740.415(d) of this Part;
 - 6) Groundwater monitoring well installation, operation, maintenance and construction materials;
 - 7) Removal, excavation, consolidation, preparation, containerization, packaging, transportation, treatment or off-site disposal of wastes, environmental media (e.g., soils, sediments, groundwater, surface water, debris), containers or equipment contaminated with regulated substances or pesticides at concentrations exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part. Activities must be in compliance with all applicable State or federal statutes and regulations;
 - 8) Clean backfill materials in quantities necessary to replace soils excavated and disposed of off-site that were contaminated with regulated substances or pesticides at levels exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part;

- 9) Transportation, preparation and placement of clean backfill materials pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 10) Design, testing, permitting, construction, monitoring and maintenance of on-site treatment systems pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 11) Engineering costs associated with preparation of a budget plan in accordance with Section 740.905 of this Subpart or an application for review and payment of remediation costs in accordance with Section 740.910 or Section 740.911 of this Subpart if prepared before the issuance of the No Further Remediation Letter (by the Agency or by operation of law);
 - 12) Removal or replacement of concrete, asphalt or paving to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 13) Clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 14) Placement of clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 15) Destruction or dismantling and reassembly of above-grade structures to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
 - 16) Costs associated with obtaining a special waste generator identification number not to exceed \$100.
- b) An RA may submit a request for review of remediation costs that includes an itemized accounting and documentation of costs associated with activities, materials, labor, equipment, structures or services not identified in subsection (a) of this Section if the RA submits detailed information demonstrating that those items are necessary for compliance with this Part 740, 35 Ill. Adm. Code 742 and the approved Remedial Action Plan.

(Source: Added at 28 Ill. Reg. _____, effective _____)

Section 740.930 Ineligible Costs

Costs ineligible for payment include, but are not limited to, the following:

- a) Costs not incurred by the RA, including:
 - 1) Costs incurred for activities, materials, labor or services relative to remediation at a site other than the site for which the No Further Remediation Letter was issued;
 - 2) Costs for remediating a release or substantial threat of a release of regulated substances or pesticides that was caused or contributed to in any material respect by the RA;
- b) Costs incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program;
- c) Costs associated with material improvements to the extent that such improvements are not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- d) Costs or losses resulting from business interruption;
- e) Costs incurred as a result of vandalism, theft, negligence or fraudulent activity by the RA or the agent of the RA;
- f) Costs incurred as a result of negligence in the practice of professional engineering as defined in Section 4 of the Professional Engineering Practice Act of 1989 [225 ILCS 325/4];
- g) Costs incurred as a result of negligence by any contractor, subcontractor, or other person providing remediation services at the site;
- h) Costs associated with replacement of above-grade structures destroyed or damaged during remediation activities to the extent such destruction or damage and such replacement is not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- i) Attorney fees;
- j) Purchase costs of non-consumable materials, supplies, equipment or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment or tools;

- k) Costs for repairs or replacement of equipment or tools due to neglect, improper or inadequate maintenance, improper use, loss or theft;
- l) Costs associated with activities that violate any provision of the Act or Board, Agency or Illinois Department of Transportation regulations;
- m) Costs associated with improperly installed or maintained groundwater monitoring wells;
- n) Costs associated with unnecessary, irrelevant or improperly conducted activities, including, but not limited to, data collection, testing, measurement, reporting, analysis, modeling, risk assessment or sample collection, transportation, measurement, analysis or testing;
- o) Stand-by or demurrage costs;
- p) Interest or finance costs charged as direct costs;
- q) Insurance costs charged as direct costs;
- r) Indirect costs for personnel, labor, materials, services or equipment charged as direct costs;
- s) Costs associated with landscaping, vegetative cover, trees, shrubs and aesthetic considerations;
- t) Costs associated with activities, materials, labor, equipment, structures or services to the extent they are not necessary for compliance with this Part 740, 35 Ill. Adm. Code 742 and the approved Remedial Action Plan;
- u) Costs determined to be incorrect as a result of a mathematical, billing or accounting error;
- v) Costs that are not adequately documented;
- w) Costs that are determined to be unreasonable;
- x) Handling charges for subcontractor costs when the contractor has not paid the subcontractor.

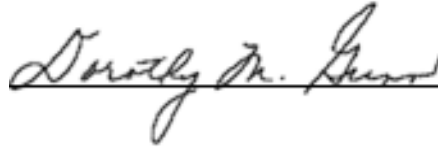
(Source: Added at 28 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the

order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 22, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board