

ILLINOIS POLLUTION CONTROL BOARD
October 15, 1998

IN THE MATTER OF:)
)
REVIEW OF REMEDIATION COSTS FOR) R98-27
ENVIRONMENTAL REMEDIATION TAX) (Rulemaking - Land)
CREDIT (AMENDMENTS TO 35 ILL.)
ADM. CODE 740))

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey, C.A. Manning, and M. McFawn):

In 1997, the Illinois General Assembly adopted legislation creating the environmental remediation tax credit (tax credit). The tax credit allows taxpayers to credit against their Illinois income tax liability a portion of the costs that the taxpayer has spent to clean up certain contaminated properties (or “brownfields”). The tax credit is intended to give taxpayers an incentive to clean up and redevelop brownfields.

A taxpayer who wishes to claim the tax credit must first submit to the Illinois Environmental Protection Agency (Agency) an application for review of its cleanup (or “remediation”) costs. The proposal that the Board adopts today establishes the procedures and standards under which the Agency will consider these applications.

In this final opinion and order, the Board discusses procedural matters; the background and overview of the proposal; and two substantive changes to the proposed rules necessitated by legislative developments that occurred after the Board’s opinion and order at second notice. Readers seeking a detailed discussion of issues that the Board decided at first or second notice should consult the Board’s opinions and orders at first and second notice. See Review of Remediation Costs for Environmental Remediation Tax Credit (Amendments to 35 Ill. Adm. Code 740) (July 8, 1998), R98-27; Environmental Remediation Tax Credit (April 16, 1998), R98-27.

PROCEDURAL MATTERS

Effective July 21, 1997, the Illinois General Assembly adopted Public Act 90-123. See Pub. Act 90-123, eff. July 21, 1997. This bill amended two statutes: the Illinois Income Tax Act (Income Tax Act), 35 ILCS 5/101 *et seq.* (1996), which the bill amended by adding Section 201(l), a provision creating the tax credit; and the Illinois Environmental Protection Act (Environmental Protection Act), 415 ILCS 5/1 *et seq.* (1996), which the bill amended by adding Section 58.14, a provision regarding the Agency’s review of remediation costs eligible for the tax credit.

Section 58.14 of the Environmental Protection Act required the Agency to propose rules for its review of environmental remediation costs within six months after the effective date of Public Act 90-123. Section 58.14 also required the Board to adopt those rules for second notice within six months after the Board received the Agency's proposed rules.

On January 21, 1998, the Agency filed proposed rules, along with a motion for acceptance, a Statement of Reasons, and an Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking. On January 22, 1998, the Board accepted this matter for hearing.

The Board held three public hearings in this matter: the first, in Chicago, on February 24, 1998; the second, in Springfield, on February 27, 1998; and the third, also in Springfield, on March 17, 1998. At the February 24 hearing, several witnesses testified: Mr. Gary King, manager of the Division of Remediation Management in the Agency's Bureau of Land; Mr. Lawrence Eastep, manager of the Remedial Project Management Section of the Agency's Bureau of Land; Mr. Douglas Oakley, an Agency employee who manages and reviews claims for Underground Storage Tank remedial costs; and Dr. Shirley Baer, an Agency employee who works in the Agency's Voluntary Site Remediation Unit. Dr. Baer also coordinated the Agency's efforts on this proposal with the Department of Revenue (DOR) and the Department of Commerce and Community Affairs (DCCA). Tr.1 at 9-11.¹

At the February 27 hearing, all of these Agency witnesses again testified, along with Ms. Melissa Pantier of DCCA. In addition, Ms. Kelsey Lundy, Director of Community Affairs of the St. Louis Regional Commerce and Growth Association (RCGA), testified about the proposal. The RCGA represents business and industries in the St. Louis metropolitan area, including five counties in southwestern Illinois. Tr.2 at 62. Mr. Eric Voyles, a member of the RCGA, also testified, as did Mr. Eugene Schmittgens, attorney for the RCGA.

The March 17 hearing was held to receive testimony on DCCA's decision, under Public Act 90-489, effective January 1, 1998, not to perform an economic impact study on the Agency's proposed rules. No one testified at that hearing.

At the first and second hearings, the hearing officer accepted into the record the following exhibits:

Exhibit 1: Prefiled Testimony of Gary King of the Agency;

Exhibit 2: Illinois Environmental Protection Agency Draft of Revisions to Proposed Amendments to Part 740 in Response to Questions from Pollution Control Board Hearing of 2/24/98;

¹ The transcript of the February 24, 1998 hearing is cited as "Tr.1 at ___;" the transcript of the February 27, 1998 hearing is cited as "Tr.2 at ___."

Exhibit 3: Draft of DCCA's Proposed Amendments to 14 Ill. Adm. Code 520 (Enterprise Zone Program);

Exhibit 4: Agency's Bureau of Land Inventory Data Input Form for Generator Identification Number; and

Exhibit 5: Testimony of Kelsey Lundy on behalf of the RCGA.

Following the hearings, the hearing officer established a deadline for interested persons to file public comments. The Board received the following public comments:

Public Comment #1: Comments of Kelsey Lundy on behalf of the RCGA;

Public Comment #2: Comments of the Agency; and

Public Comment #3: Comments of Kelsey Lundy on behalf of the RCGA.

The Board proposed the rules for first notice on April 16, 1998, and the proposed rules were published in the *Illinois Register* on May 1, 1998. After publication, the Board received three additional public comments:

Public Comment #4: Comments of the Agency;

Public Comment #5: Comments of Kelsey Lundy on behalf of the RCGA; and

Public Comment #6: Comments of Senator Frank Watson.

In order to meet the statutory deadline imposed by Section 58.14 of the Environmental Protection Act, the Board had to proceed to second notice on or before July 21, 1998. The Board met that requirement with its July 8, 1998 opinion and order at second notice.

After the Board issued its opinion and order at second notice, Governor Jim Edgar signed two bills that necessitated substantive changes to the proposed rules. The Board discusses the two bills, Senate Bill (SB) 1291 and SB 1705, in greater detail below in the "Discussion" portion of this opinion. As the Board noted at second notice, the Board could not change the rules to address the two bills at that time because the Governor had not signed the bills. However, the Board noted that it could make appropriate changes to the rules at the request of the Joint Committee on Administrative Rules (JCAR) if the Governor signed the bills before the Board's final adoption of the rules. See Environmental Remediation Tax Credit (July 8, 1998), R98-27 at 7, 10-11.

For JCAR's consideration, Board staff proposed rule changes necessitated by these legislative developments. With these changes and other minor modifications, JCAR considered the rules at its August 18, 1998 meeting. JCAR issued a certificate of no objection.

BACKGROUND AND OVERVIEW OF PROPOSAL

Public Act 90-123 established two programs to provide financial incentives for brownfields remediation. The first program, directed at the public sector, is the Brownfields Redevelopment Program. Under that program, the Agency issues grants to municipalities to investigate and assess brownfields sites. The Agency's proposed rules for that program appeared in the *Illinois Register* on June 19, 1998.

The second program, directed at the private sector, is the tax credit that is the subject of this rulemaking. Generally, that program provides taxpayers who remediate brownfields a tax credit equal to 25% of the taxpayer's remediation costs over \$100,000 per site. Tr.1 at 13-14. The \$100,000 threshold is waived for sites in certain areas. See Pub. Act 90-123, eff. July 21, 1997 (added 35 ILCS 5/201(l)). The total credit allowed will not exceed \$40,000 per year, with a maximum total of \$150,000 per site. *Id.* Taxpayers may carry forward unused credits for five taxable years. *Id.*

The tax credit is not available "if the taxpayer or any related party caused or contributed to, in any material respect, a release of regulated substances on, in, or under" the site. Pub. Act 90-123, eff. July 21, 1997 (added 35 ILCS 5/201(l)). Furthermore, the tax credit is available only to taxpayers who remediate sites under the Site Remediation Program (SRP). The SRP is a voluntary program under which participants may clean up sites where contaminants are present. It allows participants to use risk-based cleanup objectives that take into account current and anticipated uses of sites. The SRP also establishes procedures for the Agency's review and approval of site cleanup activities. Readers interested in a more thorough discussion of the SRP should consult the Board's opinion in Site Remediation Program and Groundwater Quality (35 Ill. Adm. Code 740 and 35 Ill. Adm. Code 620) (June 5, 1997), R97-11.

Three agencies have roles to play regarding the tax credit. First, DCCA identifies those areas that are not subject to the \$100,000 remediation cost threshold. See Pub. Act 90-123, eff. July 21, 1997 (added 35 ILCS 5/201(l)); see also Tr.1 at 13-14. Second, the Agency must determine what costs are considered "remediation costs" and therefore eligible to be applied to the tax credit. See Pub. Act 90-123, eff. July 21, 1997 (added 415 ILCS 5/58.14). Finally, DOR will take the information that it receives from DCCA and the Agency and implement the tax credit. Tr.1 at 14-15; see also Pub. Act 90-123, eff. July 21, 1997 (added 35 ILCS 5/201(l)).

To implement its role regarding the tax credit, the Agency proposes that the Board add to Part 740 a new Subpart G entitled "Review of Remediation Costs for Environmental Remediation Tax Credit." The proposed Subpart G contains seven sections. Section 740.700 (General) generally describes the contents of Subpart G. Section 740.705 (Preliminary Review of Estimated Remediation Costs) establishes an optional procedure for obtaining a preliminary review of estimated remediation costs set forth in a budget plan. If actual remediation costs are equal to or less than those the Agency approved under the preliminary review procedure, the Agency is not required to further review those costs and may approve the costs as submitted. If the Agency does further review these costs, the review is limited to confirming

that the Remediation Applicant actually incurred the approved costs to develop and implement the Remedial Action Plan.

To be eligible for the tax credit, a Remediation Applicant must submit an application for final review of remediation costs to the Agency and have the Agency approve the application. Section 740.710 (Application for Final Review of Remediation Costs) sets forth the information required in the application. Section 740.715 (Agency Review of Application for Final Review of Remediation Costs) establishes standards and procedures for the Agency's review of the application. Section 740.720 (Fees and Manner of Payment) addresses the fees that a Remediation Applicant must submit with its budget plan and application for final review.

Section 740.725 (Remediation Costs) provides a nonexhaustive list of examples of costs that the Agency may approve as remediation costs. It also provides that additional costs not listed may be considered remediation costs in certain circumstances. Section 740.730 (Ineligible Costs) provides a nonexhaustive list of examples of costs that are not considered remediation costs.

In addition to the new Subpart G, the Agency proposes minor changes to several existing sections of Part 740: Section 740.100 (Purpose), Section 740.120 (Definitions), and Section 740.505 (Reviews of Plans and Reports). These changes are necessary to accommodate Subpart G.

DISCUSSION

The Board makes two substantive changes to the rules it adopted for second notice on July 8, 1998. The changes are necessary because of two bills (SB 1291 and SB 1705) that the Governor signed after the Board issued its opinion and order at second notice. The Board discusses these bills and the resulting rule changes below.

In addition, the Board makes a few minor changes to the rules at JCAR's request. These changes are not substantive and do not merit discussion. However, all changes from the proposed rules at second notice are double-underlined in the order that follows this opinion.

SB 1291

SB 1291 (Pub. Act 90-717, eff. August 7, 1998) amends Section 201(l) of the Income Tax Act. Before the amendment, costs deducted under, or used for an environmental remediation credit under, the Internal Revenue Code were ineligible for the Illinois tax credit. Under the amendment, these federal deductions and credits are now eligible for the Illinois tax credit. This legislative change required changes in the proposed rules at Sections 740.710 and 740.730.

Section 740.710

To be eligible for the tax credit, a Remediation Applicant must submit an application for final review of remediation costs (application) to the Agency and have the Agency approve the application. Tr.1 at 54-55. Section 740.710 sets forth the information required in the application. At second notice, subsection (a)(4) of this section required certification that none of the costs included in the application had been or will be deducted under, or taken into account for an environmental remediation credit under, the Internal Revenue Code. In light of SB 1291, the Board revises Section 740.710(a)(4) as follows:

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 an environmental remediation tax credit is submitted is the same site as 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 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 included in this application were incurred before January 1, 1998, or more than 12 months before the enrollment of the site in the Site Remediation Program, or after the date of issuance of the No Further Remediation Letter;

~~None of the costs included in this application have been or will be deducted at any time under the Internal Revenue Code or taken into account in calculating an environmental remediation credit granted against a tax imposed under the provisions of the Internal Revenue Code;~~

Neither _____ [“I” 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 _____ [“I” 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) for which the No Further Remediation Letter was issued.

Section 740.730

Section 740.730 contains a nonexhaustive list of examples of costs that are not considered remediation costs. At second notice, subsection (e) of this section listed costs deducted under, or used for an environmental remediation credit under, the Internal Revenue Code. The Board deletes that language from the rules to make them consistent with SB 1291.

SB 1705

SB 1705 (Pub. Act 90-792, eff. January 1, 1999) amends Section 201(l) of the Income Tax Act and Section 58.14(b) of the Environmental Protection Act. The amendment eliminates one of the geographical requirements for sites to receive more beneficial treatment under the tax credit program. Before SB 1705, to receive the more beneficial treatment, sites had to be located in (1) an enterprise zone and (2) a census tract in a minor civil division and place or county that contains a majority of households consisting of low and moderate income persons. SB 1705 eliminates the latter requirement. Sites still must be in an enterprise zone to receive the more beneficial treatment.

The more beneficial treatment under the tax credit program is two-fold. First, a site in an enterprise zone is not subject to the \$100,000 remediation cost threshold. The proposed rules do not address this threshold, so no rule changes are necessary for this aspect SB 1705. Second, a site in an enterprise zone that has total remediation costs of \$100,000 or less can have the \$500 fee for review of the budget plan waived and the \$1,000 fee for final review of the application reduced to \$250. The required fees are addressed in Section 740.720, which must be changed to incorporate the changes that SB 1705 requires.

Because SB 1705 did not specify an effective date, it is not effective until January 1, 1999. See 5 ILCS 75/1(a) (1996). Accordingly, the Board makes the following changes to Section 740.720(c):

To obtain the fee waiver under subsection (a)(2) of this Section or the reduced fee under subsection (b)(2) of this Section:

- 1) The total remediation costs for the site must be \$100,000 or less; and
- 2) The RA must submit written certification in accordance with regulations of the Department of Commerce and Community Affairs (DCCA) that the remediation site is located entirely within an enterprise zone as defined in the Illinois Enterprise Zone Act [20 ILCS 655] and entirely within one or more census tracts that have been determined by DCCA to contain a majority of households consisting of low and moderate income persons. The certification shall be submitted with the budget plan or application for final review and shall clearly identify the remediation site by name, address, tax parcel identification number(s) and Illinois inventory identification number. Effective January 1, 1999, the requirement of this subsection that the certification provide that the

remediation site is located entirely within one or more census tracts that have been determined by DCCA to contain a majority of households consisting of low and moderate income persons shall not apply.

CONCLUSION

The Board finds that the Agency's proposal, with the Board's revisions, is economically reasonable and technically feasible. The Board adopts the revised proposal as a final rule.

ORDER

The Board adopts as a final rule the following amendments to 35 Ill. Adm. Code 740. Deletions from second notice are double-underlined and stricken through. Additions from second notice are double-underlined. The Board directs the Clerk of the Board to file the following revised proposal with the Secretary of State for publication as a final rule.

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

PART 740
SITE REMEDIATION PROGRAM

SUBPART A: GENERAL

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

SUBPART B: APPLICATIONS AND AGREEMENTS FOR REVIEW AND EVALUATION SERVICES

Section	
740.200	General
740.205	Submittal of Application and Agreement
740.210	Contents of Application and Agreement
740.215	Approval or Denial of Application and Agreement
740.220	Acceptance and Modification of Application and Agreement
740.225	Termination of Agreement by the Remediation Applicant (RA)
740.230	Termination of Agreement by the Agency

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

SUBPART C: RECORDKEEPING, BILLING AND PAYMENT

Section

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

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

Section

740.400 General
 740.405 Conduct of Site Activities and Preparation of Plans and Reports by 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
 740.455 Remedial Action Completion Report

SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS

Section

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

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
740.625	Voidance of No Further Remediation Letter

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

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

Appendix A	Target Compound List
Table A	Volatile Organics Analytical Parameters and Required Quantitation Limits
Table B	Semivolatile Organic Analytical Parameters and Required Quantitation Limits
Table C	Pesticide and Aroclors Organic Analytical Parameters and Required Quantitation Limits
Table D	Inorganic Analytical Parameters and Required Quantitation Limits
Appendix B	Review and Evaluation Licensed Professional Engineer Information

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

SOURCE: Adopted in R97-11 at 21 Ill. Reg. 7889, effective July 1, 1997; amended in R98-27 at 22 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 THE ESTABLISH PROCEDURES FOR THE INVESTIGATIVE INVESTIGATION AND REMEDIAL ACTIVITIES 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) The purpose of this Part is also 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)].

(Source: Amended at 22 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 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].

“Agency” means the Illinois Environmental Protection Agency.

~~"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 ~~that 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 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 DESSICCANT. (Illinois Pesticide Act [415 ILCS 60/4])

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

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

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

“REGULATED SUBSTANCE” MEANS ANY HAZARDOUS SUBSTANCE AS DEFINED UNDER SECTION 101(14) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (P.L. 96-510) AND PETROLEUM PRODUCTS, INCLUDING CRUDE OIL OR ANY FRACTION THEREOF, NATURAL GAS, NATURAL GAS LIQUIDS, LIQUEFIED NATURAL GAS, OR SYNTHETIC GAS USABLE FOR FUEL (OR MIXTURES OF NATURAL GAS AND SUCH SYNTHETIC GAS). (Section 58.2 of the Act)

“REGULATED SUBSTANCE OF CONCERN” or “contaminant of concern” MEANS ANY CONTAMINANT THAT IS EXPECTED TO BE PRESENT

AT THE SITE BASED UPON PAST AND CURRENT LAND USES AND ASSOCIATED RELEASES THAT ARE KNOWN TO THE REMEDIATION APPLICANT BASED UPON REASONABLE INQUIRY. (Section 58.2 of the Act)

“RELEASE” MEANS ANY SPILLING, LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING, INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING INTO THE ENVIRONMENT, BUT EXCLUDES (A) ANY RELEASE WHICH RESULTS IN EXPOSURE TO PERSONS SOLELY WITHIN A WORKPLACE, WITH RESPECT TO A CLAIM WHICH SUCH PERSONS MAY ASSERT AGAINST THE EMPLOYER ~~OF~~ SUCH PERSONS; (B) EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE, ROLLING STOCK, AIRCRAFT, VESSEL, OR PIPELINE PUMPING STATION ENGINE; (C) RELEASE OF SOURCE, BYPRODUCT, OR SPECIAL NUCLEAR MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS ARE DEFINED IN THE ~~federal~~ ~~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 (D) THE NORMAL APPLICATION OF FERTILIZER. (Section 3.33 of the Act)

“REMEDIAL ACTION” MEANS ACTIVITIES ASSOCIATED WITH COMPLIANCE WITH THE PROVISIONS OF SECTIONS 58.6 AND 58.7 of the Act, including, but not limited to, the conduct of site investigations, preparation of work plans and reports, removal or treatment of contaminants, construction and maintenance of engineered barriers, and/or implementation of institutional controls. (Section 58.2 of the Act)

“REMEDICATION APPLICANT” ~~or~~ ~~OR~~ “RA” MEANS ANY PERSON SEEKING TO PERFORM OR PERFORMING INVESTIGATIVE OR REMEDIAL ACTIVITIES UNDER ~~Title~~ ~~TITLE~~ XVII of the Act, ~~OF THE ACT~~ INCLUDING THE OWNER OR OPERATOR OF THE SITE OR PERSONS AUTHORIZED BY LAW OR CONSENT TO ACT ON BEHALF OF OR IN LIEU OF THE OWNER OR OPERATOR OF THE SITE. (Section 58.2 of the Act)

“REMEDICATION COSTS” MEANS REASONABLE COSTS PAID FOR INVESTIGATING AND REMEDIATING REGULATED SUBSTANCES OF CONCERN CONSISTENT WITH THE REMEDY SELECTED FOR THE SITE. FOR PURPOSES OF Subpart G of this Part, “REMEDICATION 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. (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~~ OR where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas. (Section 58.2 of the Act)

“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.

(Source: Amended at 22 Ill. Reg. ____, effective _____)

SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS

Section 740.505 Reviews of Plans and Reports

- a) ALL REVIEWS carried out under this ~~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~~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 and Section 740.705(c) of this Part, 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 in writing, 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 in writing.
 - 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 ~~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 ~~with~~ 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)

(Source: Amended at 22 Ill. Reg. _____, effective _____)

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

Section 740.700 General

This Subpart sets forth the procedures to be followed by an RA to obtain 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)]. 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 examples of remediation costs and ineligible costs.

(Source: Added at 22 Ill. Reg. _____, effective _____)

Section 740.705 Preliminary Review of Estimated Remediation Costs

- a) The RA for any remediation site enrolled in the Site Remediation Program may request a preliminary review of estimated remediation costs by submitting a budget plan along with the Remedial Action Plan required under Section 740.450 of this Part. No budget plan shall be accepted for review by the Agency unless a Remedial Action Plan satisfying the requirements of Section 740.450 of this Part also has been submitted. The budget plan shall be submitted on forms prescribed and provided by the Agency and shall include, but not be limited to, the following information:
- 1) Identification of applicant and remediation site:
 - 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 for which the environmental remediation tax credit is being sought and the date of acceptance of the site into the Site Remediation Program;

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;
- iv) Disposal costs.

B) Sampling and analysis activities:

- i) Soil analysis costs;
- ii) Groundwater analysis costs;
- iii) Well purging costs;
- 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;
- 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 _____ ["I" 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 _____ ["I" 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.

b) The budget plan shall be accompanied by the applicable fee for review as provided in Section 740.720 of this Subpart. Budget plans 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.

c) The time for the Agency to review the budget plan begins on the date that the Agency receives the budget plan. The Agency's record of the date of receipt of the budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from registered or certified mail. The RA may waive the time for review. The time frames for the Agency review are:

1) If the budget plan is submitted with the Remedial Action Plan, the submission of the budget plan shall be deemed an automatic 60-day waiver of the applicable review period for the Remedial Action Plan, as set forth in Section 740.505(d) of this Part. In this instance, the Agency shall have 120 days from its receipt of the two documents to make a final determination on the two documents.

2) If the budget plan is not submitted with the Remedial Action Plan, the budget plan may not be submitted until after the Agency has made a final determination on the Remedial Action Plan. If the budget plan is submitted after the Agency has approved, or approved with conditions, the Remedial Action Plan, the Agency shall have 60 days from its

receipt of the budget plan to make a final determination on the budget plan.

3) If an amended Remedial Action Plan or amended budget plan is submitted before an Agency final determination on the Remedial Action Plan and budget plan, the Agency shall have 120 days from its receipt of the amended document to make a final determination on the two documents.

4) If an amended budget plan is submitted without an amended Remedial Action Plan and after the Agency's final determination on the Remedial Action Plan, the Agency shall have 60 days from its receipt of the amended budget plan to make a final determination on the amended budget plan.

d) The Agency shall review the budget plan and the Remedial Action Plan to determine, in accordance with Sections 740.725 and 740.730 of this Part, whether the estimated costs are remediation costs. Upon completion of the preliminary review, the Agency shall notify the RA in writing of its final determination to approve, disapprove or modify the estimated remediation costs submitted in the budget plan.

1) 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 deems the RA did not provide;

B) The reasons for the disapproval or modification of estimated remediation costs;

C) Citations to statutory or regulatory provisions upon which the determination is based.

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) 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 taken place on the postmarked date that the notice is mailed.

e) Revision and Resubmission

- 1) 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 as a result of the Agency action, the RA may submit a revised budget plan for review. No additional fee shall be required for this review.
 - 2) If the Remedial Action Plan is amended by the RA and the RA intends to submit the Agency's final determination on the budget plan in accordance with Section 740.715(c) of this Subpart, the budget plan shall be revised accordingly and resubmitted for Agency review. No additional fee shall be required for this review.
- f) If the Agency disapproves or modifies the budget plan or fails to issue a final determination within the applicable review period, the RA may, within 35 days after receipt of the final determination or expiration of the deadline, 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.

(Source: Added at 22 Ill. Reg. ____, effective _____)

Section 740.710 Application for Final Review of Remediation Costs

- a) The RA for any remediation site enrolled in the Site Remediation Program may submit an application for final review of remediation costs. No application shall be submitted until a No Further Remediation Letter has been issued and 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, all in accordance with Title XVII of the Act and Subpart F of this Part. The application shall be submitted on forms prescribed and provided by the Agency and shall include, but not be limited to, the following information:
- 1) Identification of applicant and remediation site:
 - 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 for which the environmental remediation tax credit is being

sought and the date of acceptance of the site into the Site Remediation Program;

C) 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(s) (or affidavit(s) under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter(s) 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) Itemization and documentation of remediation activities at the remediation site for which the environmental remediation tax credit is sought and for the costs of remediation incurred by the RA at the site, including invoices, billings and dated, legible receipts along with canceled checks or other Agency-approved methods of proof of payment;

4) 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 an environmental remediation tax credit is submitted is the same site as 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 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 included in this application were incurred before January 1, 1998, or more than 12 months before the enrollment of the site in the Site Remediation Program, or after the date of issuance of the No Further Remediation Letter;

~~None of the costs included in this application have been or will be deducted at any time under the Internal Revenue Code or taken into~~

account in calculating an environmental remediation credit granted against a tax imposed under the provisions of the Internal Revenue Code;

Neither _____ ["I" 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 _____ ["I" 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) for which the No Further Remediation Letter was issued.

- 5) The original signature of the RA or of the authorized agent acting on behalf of the RA.
- b) The application for final review shall be accompanied by the applicable fee for review as provided in Section 740.720 of this Subpart. Applications 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.
- c) The Agency's acceptance of a certification that neither the RA, 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 the RA 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 for which the environmental remediation tax credit 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 22 Ill. Reg. _____, effective _____)

Section 740.715 Agency Review of Application for Final Review of Remediation Costs

- a) The Agency shall review the application for final review of remediation costs to determine, in accordance with Sections 740.725 and 740.730 of this Part, whether the costs incurred are remediation costs.
- b) The Agency shall have 60 days after the receipt of an application for final review to make a final determination on the application. The Agency's record of the date of receipt of the application shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from registered or certified mail. The RA may waive the time for review. Submittal of an amended application restarts the time for review.

c) Further Review by the Agency

- 1) If a preliminary review of a budget plan has been obtained under Section 740.705 of this Subpart, the RA may submit, along with the application, supporting documentation, and the applicable fee under Section 740.720 of this Subpart, 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, 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.

- 2) If the budget plan determination and certification are submitted pursuant to subsection (c)(1) of this Section, the Agency may, but is not required to, conduct further review of the certified line item costs incurred for development and implementation of the Remedial Action Plan and may approve such costs as submitted. The Agency's further review shall be limited to confirming that costs approved in the Agency's budget plan determination were actually incurred by the RA for development and implementation of the Remedial Action Plan.

- 3) If the certification in subsection (c)(1) 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 that 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 and implementation of the Remedial Action Plan.

d) Upon completion of the final review, the Agency shall notify the RA in writing of its final determination to approve, disapprove or modify the remediation costs submitted in the application. If an application is disapproved or approved with modification of remediation costs, 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) The reasons for the disapproval or modification of remediation costs;

- 3) Citations to statutory or regulatory provisions upon which the determination is based.
- e) 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 taken place on the postmarked date that the notice is mailed.
- f) If the Agency disapproves or modifies the application for final review or fails to issue a final determination within the applicable review period, the RA may, within 35 days after receipt of the final determination or expiration of the deadline, 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.

(Source: Added at 22 Ill. Reg. ____, effective _____)

Section 740.720 Fees and Manner of Payment

- a) The fee for the preliminary review of estimated remediation costs conducted under Section 740.705 of this Subpart shall be as follows:
 - 1) Except as provided in subsection (a)(2) of this Section, the fee for the preliminary review shall be \$500 for each remediation site reviewed.
 - 2) There shall be no fee for a preliminary review if the requirements of subsection (c) of this Section are satisfied.
- b) The fee for the final review of remediation costs under Section 740.715 of this Subpart shall be as follows:
 - 1) Except as provided in subsection (b)(2) of this Section, the fee for the final review shall be \$1,000 for each remediation site reviewed.
 - 2) The fee for the final review shall be \$250 if the requirements of subsection (c) of this Section are satisfied.
- c) To obtain the fee waiver under subsection (a)(2) of this Section or the reduced fee under subsection (b)(2) of this Section:
 - 1) The total remediation costs for the site must be \$100,000 or less; and
 - 2) The RA must submit written certification in accordance with regulations of the Department of Commerce and Community Affairs (DCCA) that the remediation site is located entirely within an enterprise zone as

defined in the Illinois Enterprise Zone Act [20 ILCS 655] and entirely within one or more census tracts that have been determined by DCCA to contain a majority of households consisting of low and moderate income persons. The certification shall be submitted with the budget plan or application for final review and shall clearly identify the remediation site by name, address, tax parcel identification number(s) and Illinois inventory identification number. Effective January 1, 1999, the requirement of this subsection that the certification provide that the remediation site is located entirely within one or more census tracts that have been determined by DCCA to contain a majority of households consisting of low and moderate income persons shall not apply.

- d) The fee for a review under this Subpart G shall be in addition to any other fees, payments or assessments under Title XVII of the Act and this Part. The fee shall be paid 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 (FEIN) or Social Security Number (SSN) of the RA.

(Source: Added at 22 Ill. Reg. ____, effective _____)

Section 740.725 Remediation Costs

- a) Activities, materials, labor, equipment, structure and service costs that may be approved by the Agency as remediation costs for the environmental remediation tax credit under Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)] 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 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 740.705 of this Subpart or an application for final review of remediation costs in accordance with Section 740.710 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 22 Ill. Reg. ____, effective _____)

Section 740.730 Ineligible Costs

Costs ineligible for the environmental remediation tax credit under Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)] include, but are not limited to, the following:

- a) Costs not incurred by the RA;
- b) 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;
- c) 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, any related party (as described in Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]) or any person whose tax attributes the RA has succeeded to under Section 381 of the Internal Revenue Code;
- d) Costs incurred before January 1, 1998, or more than 12 months before enrollment of the site in the Site Remediation Program, or after the date of issuance of a No Further Remediation Letter issued pursuant to Section 58.10 of the Act and Subpart F of this Part;

- e) Costs that have been or will be deducted at any time under the Internal Revenue Code or taken into account in calculating an environmental remediation credit granted against a tax imposed under the provisions of the Internal Revenue Code;
- ef) 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;
- fg) Costs or losses resulting from business interruption;
- gh) Costs incurred as a result of vandalism, theft, negligence or fraudulent activity by the RA or the agent of the RA;
- hi) 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];
- ij) Costs incurred as a result of negligence by any contractor, subcontractor, or other person providing remediation services at the site;
- jk) 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;
- kl) Attorney fees;
- lm) 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;
- mn) Costs for repairs or replacement of equipment or tools due to neglect, improper or inadequate maintenance, improper use, loss or theft;
- no) Costs associated with activities that violate any provision of the Act or Board, Agency or Illinois Department of Transportation regulations;
- op) Costs associated with improperly installed or maintained groundwater monitoring wells;
- pq) 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;

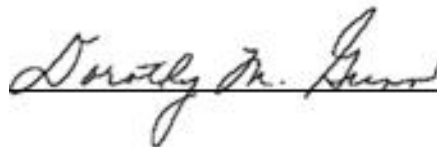
- qr) Stand-by or demurrage costs;
- rs) Interest or finance costs charged as direct costs;
- st) Insurance costs charged as direct costs;
- tu) Indirect costs for personnel, labor, materials, services or equipment charged as direct costs;
- uv) Costs associated with landscaping, vegetative cover, trees, shrubs and aesthetic considerations;
- vw) 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;
- wx) Costs determined to be incorrect as a result of a mathematical, billing or accounting error;
- xy) Costs that are not adequately documented;
- yz) Costs that are determined to be unreasonable.

(Source: Added at 22 Ill. Reg. ____, effective _____)

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 15th day of October 1998 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board