ILLINOIS POLLUTION CONTROL BOARD
December 1, 2005

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| IN THE MATTER OF: | ) | |
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| PROPOSED AMENDMENTS TO: | ) | R04-22(A) |
| REGULATION OF PETROLEUM LEAKING | ) | (UST Rulemaking) |
| UNDERGROUND STORAGE TANKS (35 | ) | |
| ILL. ADM. CODE 732) | ) | |

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| PROPOSED AMENDMENTS TO: | ) | R04-23(A) |
| REGULATION OF PETROLEUM LEAKING | ) | (UST Rulemaking) |
| UNDERGROUND STORAGE TANKS (35 | ) | Consolidated |
| ILL. ADM. CODE 734) | ) | |

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On January 13, 2004, the Illinois Environmental Protection Agency (Agency) filed two proposals for rulemaking. On January 22, 2004, the Board accepted and consolidated the proposals for hearing. The Board held numerous hearings and received substantial comment before proceeding to first notice on February 17, 2005, pursuant to the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-5 *et. seq.* (2004). After an additional hearing and numerous comments, the Board today adopts a second-notice proposal and opens a subdocket B in this rulemaking, to address ongoing issues involving scope of work and reimbursement for professional consulting services.

The Board's authority in rulemaking proceedings stems from Section 5(b) of the Environmental Protection Act (Act) (415 ILCS 5/5 (2004)), which provides that the Board "shall determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of the Act." 415 ILCS 5/5(b) (2004). Title VII of the Act sets forth the statutory parameters for rulemaking by the Board. 415 ILCS 5/26-29 (2004). The Board may adopt a rule after hearing and determination of the economic reasonableness and technical feasibility of the rule. *See* 415 ILCS 5/27 (2004). The Board's decision is based on the record before the Board including all testimony and comments filed with the Board. 35 Ill. Adm. Code 102.418.

## SUMMARY OF TODAY'S ACTION

The Board today adopts the proposal for second notice pursuant to the IAPA (5 ILCS 100/5-5 *et. seq.* (2004). Due to the comments received after the first notice began and in consideration of the prior comments in this rulemaking, the second notice differs from the first

notice proposal in one major aspect. That difference is in the reimbursement of professional consulting services, which the Board will propose for second notice to be reimbursed on a time and materials basis.

The Board also in this opinion opens a subdocket B for the purpose of developing scopes of work to be used in reimbursing professional consulting services in the remediation of underground storage tank (UST) sites in Illinois. Subdocket B will also examine issues surrounding the hourly payment amounts and hours of work for professional services. The Board will, at a future meeting, propose language for consideration on each of these issues. The Board will hold at least one additional hearing on the language before proceeding to first notice with an appropriate rule.

In addition to opening a subdocket, the Board today makes several changes to the proposed rule in response to the comments. Some of the more significant changes include allowing for reimbursement of handling charges for a subcontractor if the primary contractor has a financial interest in the subcontractor and removing professional services from eligibility for bidding. The Board also determines that some changes requested by the participants are not necessary or supported by the record, such as adding mobilization charges for drill rigs and adjusting maximum payment amounts for abandonment and removal of tanks.

The Board finds that the rule, as proposed for second notice, is economically reasonable and technically feasible. The Board further finds that any negative economic impact has been minimized by removal of the professional service lump sum payments to subdocket B. Finally, the Board finds that the record supports the Board's decision to proceed to second notice with the remainder of the rule language.

## BACKGROUND

On January 13, 2004, the Illinois Environmental Protection Agency (Agency) filed two proposals for rulemaking. The proposal docketed as R04-22 amends Part 732 of the Board's leaking underground storage tank rules (UST rules). 35 Ill. Adm. Code 732. The proposal docketed as R04-23 is a new Part 734 of the Board's UST rules. On January 22, 2004, the Board accepted and consolidated the proposals for hearing.

On February 18, 2004, the Board requested, pursuant to Section 27(b) of the Act (415 ILCS 5/27(b) (2004)), that the Department of Commerce and Economic Opportunity (DCEO) conduct a study of the economic impact of the proposed rules. On April 2, 2004, DCEO notified that Board that based on a review of the proposed rules and continued fiscal constraints DCEO would not be performing an economic impact study. The response by DCEO was entered into the Board's record on that date.

Five groups of hearings were held before Board Hearing Officer Marie Tipsord. The purpose of each set of hearings was to hear testimony and gather information concerning the technical merits and economic impacts of the proposed rules. The first hearing was held on March 15, 2004, in Chicago (Tr.1). The second group of hearings was held on May 25, 2004, in Bloomington (Tr.2) and May 26, 2004, in Springfield (Tr.3). The third group of hearings was an

additional two days held on June 21, 2004 (Tr.4) and June 22, 2004, (Tr.5) in Springfield. The fourth and fifth groups were single days of hearing in Springfield on July 6, 2004 (Tr.6) and August 9, 2004 (Tr.7). During those hearings the Board heard testimony from over 15 witnesses. In addition, the Board received nine public comments in this proceeding before proceeding to first notice.

On February 17, 2005, the Board proceeded to first notice with a rule that differed from the Agency's proposal in some aspects, while adopting the Agency's proposal in total in other aspects. Proposed Amendments to Leaking Underground Storage Tanks (35 Ill. Adm. Code 732, 734), R04-22, 23 (Feb. 17, 2005). The proposal was published in the *Illinois Register* on March 11, 2005 (29 Ill. Reg. 3538 (Part 732) and 3705 (Part 734)).

In the first-notice opinion, the Board asked for input from the public as to whether another hearing was necessary in this rulemaking. R04-22, 23 (Feb. 17, 2005) at 83. The Board received several requests for an additional hearing and the Board held the sixth group of hearings on July 27, 2005, (Tr.8) in Carbondale. On July 27, 2005, the Board heard testimony from the Agency, CSD Environmental Services, Inc. (CSD), CW$^3$M Company (CW$^3$M) and United Science Industries (USI). At the close of hearing, the date for final comments to be filed was established as September 23, 2005. Tr. 8 at 212.

After publication of the first notice, the Board received 63 additional public comments. A list of all the public comments follows. The Board has received over 70 public comments since the inception of this rulemaking. The following is merely a list of the comments. Later in this opinion, the Board will summarize the comments received by the Board after the proposal was adopted for first notice, which address the substance of the proposal.

PC 1 Bill Fleischli of Illinois Petroleum Marketers Association and Illinois Association of Convenience Stores
PC 2 Jay P. Koch, President of United Science Industries, Inc.
PC 3 Daniel J. Goodwin, P.E., on behalf of the American Council of Engineering Companies of Illinois
PC 4 Illinois Environmental Protection Agency
PC 5 Nikki Loya of Maurer-Stutz, Inc.
PC 6 Professionals of Illinois for the Protection of the Environment
PC 7 Michael W. Rapps Engineering & Applied Science, Inc.
PC 8 Replaces PC 2 from Jay Koch, President of United Science Industries, Inc.
PC 9 CW$^3$M Company
PC 10 Robert J. Pulfrey
PC 11 Daniel R. Rurak
PC 12 Lori K. Echols
PC 13 Sarah Blades
PC 14 Marvin Johnson
PC 15 Melanie Martin
PC 16 Rhonda McCowen
PC 17 Lisa Watson
PC 18 Monica A. Piasecki

PC 19 Mark Owens
PC 20 Jay P. Koch
PC 21 Beth Giacomo
PC 22 Todd A. Piper
PC 23 Barry F. Sink
PC 24 Connie L. Connaway
PC 25 Dennis L. Schweigert
PC 26 Tyler Sink
PC 27 Duplicate
PC 28 Linda Tomaszewski
PC 29 Matthew P Cherry
PC 30 Jean Germann
PC 31 Sallie Minks
PC 32 Duane Doty
PC 33 Jim Bowling
PC 34 Ross Bunton
PC 35 Dan King
PC 36 Dennis Hillen
PC 37 Illinois Environmental Protection Agency
PC 38 Attorney General's Office, Jennifer A. Tomes, Assistant Attorney General, Illinois
PC 39 Raymond T. Reott
PC 40 United Science Industries, Inc. (comments of 18 employees)
PC 41 Michael R. Oltman of Nokomis Tire & Auto Repair
PC 42 Wilma Schleifer of Schleifer Petroleum Co., Inc.
PC 43 Chris A. Barnes, President, Spectrulite Consortium, Inc.
PC 44 Kent and Hal Devore, former owners of Devore Marina, Inc.
PC 45 Bob Foerster, President, Bob's Service Center
PC 46 Jay Koch
PC 47 Daniel King
PC 48 Duane Doty
PC 49 Tom Mueller
PC 50 Kevin Majors of R. L. Hoener Company
PC 51 Greg Courson of Advanced Environmental Drilling & Contracting, Inc.
PC 52 Kevin Saylor, P.E., Environmental Division Manager of HDC Engineering and clients of HDC Engineering
PC 53 John Komocar
PC 54 Becky Canty, Superintendent of Elverado Unit PC 196, Elkville, Illinois
PC 55 United Science Industries
PC 56 Gary R. Perkowitz, P.G. Manager, Environmental Services, Clayton Group Services
PC 57 Don McNutt of Midwest Petroleum
PC 58 David E. Kennedy, Executive Director, American Council of Engineering Companies of Illinois
PC 59 United Science Industries
PC 60 United Science Industries

PC 61 Jay P. Koch
PC 62 Illinois Environmental Protection Agency
PC 63 CW$^3$M Company
PC 64 CSD Environmental Services, Inc. by Cindy S. Davis, P.G., and Joseph Truesdale, P.E., P.G.
PC 65 Senator John Sullivan of the 47th District
PC 66 United Science Industries comments of various entities
PC 67 United Science Industries comments and revised language
PC 68 United Science Industries sample budget and billing forms
PC 69 United Science Industries comments received from Senators Chris Lauzen, Gary Dahl, Arthur Wilhelmi, Frank Watson, John Jones, David Luechtefeld
PC 70 Professionals of Illinois for the Protection of the Environment
PC 71 United Science Industries response to Illinois Environmental Protection Agency
PC 72 CD copy of United Science Industries' comments docketed as PC 61, PC 66, PC 67, PC 68, and PC 69

## SUMMARY OF TESTIMONY AND COMMENTS

This section of today's opinion will summarize the testimony from the Board's July 27, 2005 hearing, held in Carbondale, Illinois. Also in this section, the Board will summarize the comments filed post-hearing by the testifiers at the July 27, 2005 hearing.

### Illinois Environmental Protection Agency Testimony

Prior to the July 27, 2005 hearing in this proceeding, the hearing officer directed the participants to prefile questions for the Agency. Several participants prefiled questions for the Agency including Mr. Dan King (Exh. 95) and Mr. Jay Koch (Exh. 96) from USI, Ms. Cindy S. Davis and Mr. Joseph W. Truesdale from CSD (Exh. 97), and CW$^3$M (Exh. 94). The Agency prefiled the answers to those questions (Exh. 98). Rather than summarize the answers to those questions here, the answers will be discussed in connection with follow-up comments where relevant. The Agency's public comment (PC 62) will be summarized *infra* at 41.

### Cindy S. Davis and Joseph W. Truesdale

Ms. Davis and Mr. Truesdale presented prefiled testimony jointly (Exh. 99) on behalf of CSD, which will be referenced as CSD's testimony. Ms. Davis and Mr. Truesdale both amended the prefiled testimony (Exh. 100 and Exh. 101) at hearing and those will be referenced individually. In addition, CSD filed a final public comment concerning this rulemaking (PC 64). The following discussion will summarize the joint prefiled testimony and then the amended testimony of Ms. Davis and Mr. Truesdale. Finally, the public comment will be summarized.

#### Joint Testimony (Exh. 99)

**Handling Charges.** CSD owns Heartland Drilling (HDR) and has been denied handling charges due to the direct financial interest of CSD. Exh. 99 at 1. CSD states the problem is that

HDR does not own the landfill, backfill, trucking or supply companies used and HDR only provides labor and equipment. *Id*. CSD indicates that if HDR included charges from the other companies on invoice for HDR services, the Agency denies handling charges for HDR. *Id*. CSD points out that the definition of handling charges include administrative, insurance, interest costs, and a reasonable profit for procurement, oversight and payment of subcontracts and field purchases. *Id*. CSD concedes that when hiring HDR "much of the cost of procurement for HDR provided labor and equipment" is eliminated; however, the costs for administrative, insurance, interest costs and reasonable profit for oversight and payment of subcontractors and field purchases is not eliminated. *Id*.

CSD asserts that the professional liability insurance premium paid by CSD is based on total sales of the company, which includes the costs of the subcontractors. Exh. 99 at 1. CSD's insurance company informed CSD that the costs of subcontractors are included because the insurance company assumes a risk for those subcontractors under the professional policy. Exh. 99 at 1-2.

CSD maintains that any prime contractor should be entitled to a handling charge for any subcontractor costs for which the prime contractor is responsible for administrative, insurance, interest costs, and a reasonable profit for oversight and payment of subcontractors regardless of whether there is a direct financial interest in the subcontractor. Exh. 99 at 2. CSD argues that CSD is responsible for paying all subcontractors hired for the job. *Id*. CSD states that large sums of money are borrowed to complete the job and pay subcontractors. If CSD provides the Agency with proof that the subcontractor is paid, CSD should be entitled to "recoup" costs for administrative, insurance, interest costs. *Id*.

**Financing.** CSD also comments on the issue of financing of cleanups and indicated that the Board should be aware that many consultants provide financing to their clients for cleanups. Exh. 99 at 2. CSD testifies that many sites would not be remediated or even be going through the remediation process if consultants did not offer this service. *Id*. According to CSD, many of the clients are small businesses that lack the capital to pay for the services of consultants without reimbursement from the leaking UST Fund. *Id*. CSD states that the financing arrangements are simple and generally the consultant will wait for payment until reimbursement from the leaking UST Fund is received and the consultant will not charge the owner/owners for costs which are not reimbursed from the leaking UST Fund.[1] *Id*. CSD indicates that in some cases, subcontractors also agree to wait for reimbursement before being paid, while in other cases, the consultant may pay the subcontractor. *Id*. To keep costs down, CSD notes that time is of the essence concerning reimbursement. *Id*. CSD states that the longer the consultant must wait for payment the more the consultant must borrow on the consultant's line of credit to make payroll. *Id*.

CSD states that the implementation of maximum lump sum payments as proposed at first notice will cut profit margins for many consultants to such an extent that consultants will no

[1] At hearing, Ms. Davis testified that CSD is no longer offering contracts that do not charge for costs not reimbursed because of potential shortcomings in the reimbursement process. Tr.8 at 140.

longer be able to provide upfront financing. Exh. 99 at 2. CSD opines that if upfront financing is eliminated, noncompliance will increase among small businesses and those with limited financial means. *Id*. CSD testifies that this will result in more properties being subject to the Brownfield's initiative with additional encumbrances on that program. *Id*.

**Threshold value.** CSD understands the need to control costs and CSD does not oppose maximum lump sum payments that are fair and equitable, and if consultants know exactly what is required to be submitted to achieve compliance. Exh. 99 at 2. CSD suggests that the Board adopt the proposed maximum lump sum payments as threshold values. Exh. 99 at 3. CSD recommends that budgets and reimbursement requests that are at or below these threshold values would then be approved by the Agency without significant review. *Id*. CSD would still require the owner/operator to submit actual costs for Agency review and approval. *Id*.

CSD notes that the Agency would use the information on actual costs submitted in a triennial review to determine if threshold values need to be adjusted. Exh. 99 at 2. CSD opines that the threshold values will provide incentive to the owner/operator and consultant because if the project is completed at or below the threshold value, the costs will be more expeditiously approved and reimbursed. *Id*. CSD suggests that if an owner/operator's costs exceed the threshold value, the owner/operator would be required to submit additional information to support the increased costs and would be subject to a longer more detailed review by the Agency. *Id*.

**Scope of Work.** The Board's rules at Section 732.110(a)/734.135(a) require that "[a]ll plans, budgets, and reports must be submitted to the Agency on forms prescribed and provided by the Agency." CSD asks that the Board require the Agency to revise the forms to provide a comprehensive list on each form of the tasks to be completed, including the expected minimum number of maps, cross sections, *etc*. to be included in each report. Exh. 99 at 3. CSD also requests that at anytime the Agency modifies the form, Subpart H maximum payments be adjusted accordingly. *Id*.

In regards to Section 732.845/734.845, CSD notes that the Agency, throughout the responses to the prefiled questions, indicted that tasks were included in Section 732.845/734.845. Exh. 99 at 6. CSD asserts that the tasks have never been presented during this rulemaking process in their entirety. *Id*. CSD opines that one of the goals of this rulemaking should be to develop a fair system, transparent and open to the public, in an effort to streamline the leaking UST program. *Id*. CSD suggests that the Board require the Agency to provide any and all task lists, unit costs and quantity estimates used by the Agency to develop the maximum lump sum prices proposed in Subpart H. *Id*.

**Bidding for Professional Services.** CSD notes that professional services are not normally bid and owners/operators of many gasoline stations do not employ environmental professionals to help comply with regulations. Exh. 99 at 3. CSD states that smaller owner/operators hire consultants and engineers to assist with the regulations. *Id*. CSD opines that the bidding process for professional services does not seem feasible and should be reserved for UST compliance costs other than professional services. *Id*.

**Abandonment Slurry.** CSD believes that the costs for abandonment slurry (flowable fill) as required by Office of State Fire Marshal (OSFM) regulations concerning abandonment of USTs should be further evaluated. Exh. 99 at 3. CSD offers that the labor costs for abandonment of a UST is similar to labor costs for removal. *Id*. CSD notes that a current project being undertaken would require a cost of $5,035 for the flowable fill alone and pursuant to Subpart H the total reimbursement costs would be $9,450. Exh. 99 at 4. CSD recommends revising Section 732.810/734.810 using the *RS Means Environmental Costs Handling Options and Solutions* (*RS Means*) published costs for UST closure and the localization factor for Illinois. Exh. 99 at Attach. A. Specifically CSD suggests Section 732.810/734.810 be amended as follows:

a) Payment of costs associated with demolishing surface structures or pavement over the tank(s); draining the tank(s); purging the tank(s) of vapors; excavating the tank cover; removing the tank(s) and disposing of the tank(s) or preparing the tank(s) for abandonment in place shall be based on the following:

| UST Volume | Threshold Payment Amount Per UST |
|---|---|
| 1-2,000 gal. | $1,838.00 |
| 2,001-5,000 gal. | $3,826.00 |
| 5,001-15,000gal | $5,826.00 |
| 15,001-20,000 gal. | $6,836.00 |
| 20,001-30,000 gal. | $8,610.00 |

b) In addition to the payment amounts specified in 732.810(a)/734.810(a) for UST abandonment in-place, the following threshold payment amount of $0.24 per gallon shall apply for equipment, labor and materials associated with filling the tank(s) with inert material as specified in 41 Ill. Adm. Code 170.670(d).

c) Payment of costs associated with material purchase, transportation and backfilling the void left after removing and disposing of the tank(s) shall be established in accordance with 732.825(b)/734.825(b), based on the volume of the tank(s) removed.

d) Payment of costs associated with the replacement of concrete, asphalt, and paving following removal or abandonment of tank(s) shall be established in accordance with 732.840(b)/734.840(b). *Id*.

**Section 732.845/734.845.** CSD raises three separate issues specifically concerning the rates proposed in Section 732.845/734.845. The first is the sufficiency of the half-day rate for advancing soil borings and installing monitoring wells. The second is whether the rates are sufficient for multiple submissions of reimbursement applications. The third is the sufficiency of the rates for amending a plan due to unforeseen circumstances. Each of these will be summarized in turn below.

CSD expresses concern with the $390 per half day, plus travel costs, for advancing soil borings and installing monitoring wells. Exh. 99 at 4. CSD wishes to make the Board aware that after soil logging, sampling and installation of monitoring wells, the wells must be developed and casing elevations surveyed, the wells must also be purged, gauged and have groundwater samples collected. *Id*. CSD maintains that these activities do not take place on the same day as installations. *Id*. CSD further notes that hydraulic conductivity testing is performed only on one or more wells and the field costs for hydraulic conductivity should only apply to the well on which the testing is performed. *Id*. CSD suggests adding a rate for conducting each hydraulic conductivity test to the rule, based on *RS Means*. *Id*.

CSD takes issue with the Agency's responses to two prefiled questions concerning whether or not the Agency included a particular number of applications for payment under Section 732.845/734.845. Exh. 99 at 5. The Agency in response to CSD's question indicates that the Agency did not include a particular number of applications for payment under this section and that the Agency included costs for application preparation in the maximum payment amounts in Section 732.845/734.845. Exh. 98 at 34. The Agency then responded to a second question that they did include costs for completion of applications for partial and final payment every 90 days under this section. *Id*. CSD believes that the Agency's responses are contradictory. Exh. 99 at 5. CSD asserts that for the Agency to have included costs for completion of applications for partial or final payment every 90 days, the maximum payment amount under professional consulting services would have had to estimate the time required to complete each subsection and assign a particular number of applications for payment. Exh. 99 at 6.

CSD also questioned the Agency response to a question concerning Section 732.845(f)/734.845(f). The Agency indicates that the rate was developed based on eight hours of personnel time multiplied by the hourly rate. Exh. 98 at 34. CSD asked that, if a plan and the budget must be amended due to unforeseen circumstances, wouldn't that amendment fall under the unusual or extraordinary circumstances provision in Section 732.860/734.860? Exh. 99 at 6. The Agency's response was that the sum of $640 was derived based on amending a plan due to unforeseen circumstances and based upon eight hours of personnel time. Exh. 99 at 6. CSD queries that if the amendment is truly unforeseen how could the Agency possibly foresee that the circumstances will typically take eight hours to address. *Id*. CSD suggests a change to the rule that would require reimbursement of amending plans or budgets because of unforeseen circumstance pursuant to Section 732.850/734.850, on time and materials basis.

**Triennial Review.** CSD suggests that the Agency's procedures for conducting the triennial review of costs in Subpart H should be available to the public. Exh. 99 at 4. CSD asks that the Board require the Agency to develop written procedures for conducting the triennial review and make those procedures public information. *Id*.

**Alternative Technology.** CSD sought clarification through prefiled questions regarding the Agency's position on allowing the submission of alternative technologies in phases. Exh. 99 at 5. CSD is concerned that a significant amount of design costs could be expended to prepare cost comparisons and submit the alternative technology to the Agency without having the Agency's review of the cost comparisons. *Id*. CSD opines that if the alternative technology

corrective action plan were divided into phases, the Agency would have the opportunity in the early planning stages to evaluate the technology being proposed. *Id.* CSD notes that this would give the Agency the opportunity to offer guidance as to what the Agency may be looking for when granting final approval. *Id.*

**Standard of Review.** CSD believes that the Agency should develop a written standard for the review of applications for reimbursement by Agency project managers. Exh. 99 at 6. CSD opines that a written standard of review, available to both Agency staff and the public, will streamline the UST program and ensure consistency in the program. *Id.*

**Amended Testimony (Exhibits 100 and 101)**

**PIPE.** Ms. Davis testifies that she is the Acting Chairperson for the Board of Directors for PIPE. Ms. Davis states that PIPE is not being represented at the July 27, 2005 hearing due to "financial restraints in hiring representation as a group." Exh. 101 at 1. Ms. Davis indicates that instead, individual members of PIPE have chosen to proceed with testimony at the hearing on their own. *Id.*

**Petitions.** Ms. Davis amended her testimony to include signed petitions from clients of CSD. Exh. 101 at 1. The petitions ask the Board to adopt regulations that assure the UST Fund will continue to provide financial responsibility to cover all cost of environmental cleanup incurred in order to: (1) comply with the UST regulations; (2) compensate environmental professionals fairly; and (3) establish maximum payment amounts based on statistically valid review of detailed and standardized scopes of work. Exh. 101 at 1-2; Attach. A. The signed petitions also ask that the Board adopt a program that is transparent and allows all data and information to be fully disclosed to the public. *Id.*

**Task List.** Ms Davis testifies that she was a member of the American Consulting Engineers Council of Illinois (ACECI) *ad hoc* group[2] that worked with the Agency prior to the Agency proposing these amendments. Exh. 101 at 2. Ms. Davis states that the *ad hoc* group provided to the Agency a list of reports that could be considered for lump sum payments. *Id.* Ms. Davis indicated that the list of reports included a list of tasks for each report and an estimate of the number of hours required to complete the tasks. *Id.* Ms. Davis notes that Mr. Chappel's testimony acknowledges that the Agency relied on the information provided by the *ad hoc* group. *Id.*

Ms. Davis argues that the Agency did not rely on the Agency's own experience to establish some of the maximum payment amounts for professional services. Exh. 101 at 2. Rather, Ms. Davis testifies, the Agency relied on the *ad hoc* group's recommendations about the hours necessary to complete the tasks, while ignoring the task lists provided by the *ad hoc* group.

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[2] Ad Hoc Work Group on LUST Reimbursement Reform that was formed by ACECI and IPMA at the request of the Agency. The Ad Hoc Work Group comprised of member firms of the two organizations having substantial working experience with the LUST program, including reimbursement, as it has actually been implemented over the last 10 years. Exh. 74 at 3. The Work Group is referred to as ACECI in this discussion.

*Id*. Ms. Davis asserts that when the Agency "disregarded a critical part" of the *ad hoc* group's recommendation, the proposal was rendered invalid. *Id*. Ms. Davis maintains that the purpose of the task list was to provide a detailed listing of the work that needed to be accomplished for each report and to account for the hours needed to accomplish each task. Exh. 101 at 2-3.

Ms. Davis points to certain recommendations made by the *ad hoc* group to support her position. Exh. 101 at 3. Specifically, Ms. Davis notes that the *ad hoc* group estimated that preparation of a conventional high priority corrective action plan would take 64 hours, as would the preparation of a corrective action completion report. *Id*. Ms. Davis states that the *ad hoc* group estimated the completion of a reimbursement request would require an additional 32 hours. *Id*. However, Ms. Davis maintains that the Agency's proposal, estimating 64 hours, includes the reimbursement request. *Id*. Ms. Davis argues that for this reason the *ad hoc* group never intended that the Agency should use the estimated hours without the task list. *Id*.

Ms. Davis's amended testimony ( Exh. 101 at 3.) asks that the Board:

1. require for those maximum payment amounts derived from the *ad hoc* group that the task list be added to the rule;

2. allow reimbursement to be billed separately so that an owner/operator may request reimbursement every 90 days as allowed by the statute;

3. allow any additional tasks the Agency requests above and beyond the task list added to the rule to be treated as an extraordinary condition; and

4. provide that the maximum rates be threshold values. Exh. 101 at 3.

**Agency Experience.** Ms. Davis's amended testimony includes a list of maximum rates which she states are based on the Agency's "experience" and not on consultation with ACECI. Exh. 101 at 4; Attach. C. Ms Davis states that she has "no knowledge" of any employee in the UST section, other than Mr. Chappel, who has ever been employed as an environmental consultant to perform UST work in Illinois. Exh. 101 at 4. Ms. Davis questions the Agency's basis for establishing the maximum rates, and she notes that it is the owner/operator and the environmental consultant that will suffer if the maximum rates are incorrect. *Id*. Ms. Davis urges the DCEO to evaluate the financial impact of this rulemaking. *Id*.

Ms. Davis's amended testimony asks that the Board require the Agency to provide the task list used by the Agency in estimating the costs to conduct the work items listed in Attachment C of Ms. Davis' testimony. Exh. 101 at 5.

**Other States.** Mr. Truesdale offers testimony challenging conclusions made by Mr. Harry Chappel regarding states that Mr. Chappel indicated had similar programs to Illinois. Exh. 100 at 1. Mr. Truesdale agrees that the six states discussed (Texas, Arizona, Oklahoma, South Carolina, Indiana, and Colorado) do have "some type of 'fund' based reimbursement schedules somehow memorialized in regulations or other guidance within each respective program." *Id*.

Mr. Truesdale testifies that scopes of work or task lists are included in at least two of the states, Texas and South Carolina. Exh. 100 at 2.

**Public Comment**

CSD filed a final comment with the Board addressing the alternatives proposed by $CW^3M$ and USI. PC 64. CSD stated that both proposals are excellent and superior to the Board's first-notice proposal. PC 64 at 1. CSD offered specific comments in several specific areas which will be discussed below. In addition, CSD offered general comments concerning this rulemaking process and those will also be discussed below.

**Expedited Threshold Values vs. Agency's Proposed Maximum Payments.** CSD notes that USI's statistical analysis concluded that the Agency's proposed maximum payment amounts were significantly lower that the amounts historically reimbursed by the Agency. PC 64 at 1. CSD points out that they too testified that the maximums were 50% below what had been historically reimbursed. PC 64 at 1-2. CSD also notes that the Agency's testimony indicated the maximums were averages in some cases. PC 64 at 2. CSD states that using average numbers, as the maximum payment amount is inappropriate. *Id.*

CSD supports the concept, discussed at the July 27, 2005 hearing, of using the proposed amounts as expedited or threshold amounts. PC 64 at 2. CSD believes that such a system provides an incentive to consultants and contractors to try and complete the work at that expedited or threshold level. *Id.* In return, CSD comments that the consultant or contractor is rewarded with a quicker turn around for review and payment. *Id.* CSD does not believe that actual numbers should be placed in regulations to allow for more flexibility. *Id.* However, the method for developing the numbers should be in the rules according to CSD. *Id.* CSD supports the wording proposed by $CW^3M$ for determining expedited and maximum payment amounts. *Id.*

**Scope of Work/Typical Site.** CSD comments that at the July 27, 2005 hearing, the consulting community presented many different site scenarios to the Agency. PC 64 at 3. CSD indicates that this was done in an attempt to demonstrate that without a definition of typical, consultants will be unable to determine if circumstances are unusual or extraordinary for purposes of Section 734.860. *Id.* CSD asks that this rulemaking establish a procedure to determine what is typical. *Id.* CSD suggests that the Board combine the suggestions of USI and $CW^3M$ and provide for a generic task list. *Id.* CSD then suggests that the scope of work be outlined in regulations to be developed by the LUST Advisory Committee, and posted on the Agency's web site. *Id*

**LUST Advisory Committee.** As proposed, CSD points out that the LUST Advisory Committee is made up of ten members, and CSD believes the number should be an odd one. PC 64 at 3. CSD recommends adding two seats for members of PIPE to the Advisory Committee. *Id.* CSD also suggests that the Advisory Committee be responsible for developing standardized forms for submittals, guidance documents, and evaluation of expedited and maximum rates to ensure the rates reflect prevailing market rates. PC 64 at 4. CSD opines that giving such responsibility to the Advisory Committee will force the Agency and consultants to repair the strained relationship resulting from this rulemaking. *Id.*

**Due Process.** CSD opines that the regulations as proposed at first notice do not provide due process for owner/operators who cannot afford to appeal an Agency decision to the Board. PC 64 at 4. CSD notes that in one instance alone, the cost of the appeal to the Board was over $45,000 and most owner/operators cannot afford to spend this sum to appeal to the Board. *Id*. CSD recommends that the Board adopt an alternative formal procedure for decision regarding reimbursement other than filing an appeal with the Board. *Id*. CSD suggests that if the Board does not include such alternative in the rule, legislative action may be necessary. *Id*.

**Costs Incurred After Issuance of a No Further Remediation Letter (NFR).** CSD supports addition of four items to Section 734.630(gg) as proposed by $CW^3M$. PC 64 at 4. These four items include incremented costs incurred by a highway authority, costs associated with a previously unknown migration pathway, costs of contamination beyond previously defined contamination plumes, and costs associated with properties where access was previously denied. PC 64 at 45.

**Mobilization Charges for Drill Rigs.** CSD does not believe the maximum payment amount proposed in Section 734.820 is adequate to allow for mobilization of two pieces of equipment. PC 64 at 5. CSD notes that both $CW^3M$ and USI proposals add mobilization as a separate item to the drilling charge, and CSD supports this change. *Id*.

**Proof of Payment.** CSD reiterates concerns regarding the proof of payment to a subcontractor. PC 64 at 5. CSD states that a subcontractor will often wait for payment if a consultant is financing the remediation until reimbursement. *Id*. If proof of payment is required, a consultant may have to borrow money to complete remediation. *Id*.

**General Comments.** CSD comments that they have spent numerous hours in hearings, testifying and preparing comments in this rulemaking and yet CSD feels that the time has been to no avail. PC 64 at 5. CSD feels that the rulemaking proceeding has been frustrating considering the testimony presented challenging the Agency's proposal. *Id*. CSD does not understand how such a rule can proceed to second notice when there is no support for the rule in the regulated community. *Id*. CSD states that if the Board adopts the rule, CSD will have no choice but to seek help from the legislature and file any and all appeals necessary. PC 64 at 6.

## $CW^3M$ Company

$CW^3M$ prefiled testimony and appeared at the July 27, 2005 hearing to present that testimony. On behalf of $CW^3M$, Mr. Vince Smith, Ms. Carol Rowe, and Jeffrey Weinhoff appeared to respond to any questions (Tr.8 at 101). $CW^3M$ also filed a final public comment concerning this rulemaking (PC 63). In the following paragraphs, the Board will first summarize the testimony and then the final comment. The summary will begin with a general discussion of $CW^3M$'s testimony and then a more detailed account of the suggested changes to the proposed rule will follow.

### General Testimony

CW$^3$M testified generally in six areas. First, CW$^3$M expressed disappointment that the Board's first notice proposal did not reflect more of the comments from industry including members of PIPE and CW$^3$M. Second, CW$^3$M takes issue with the Agency's stated intent to produce savings using the proposed rule, especially absent a defined scope of work in the rules. Third, CW$^3$M believes that the proposed rules will result in a poorly designed system. Fourth, CW$^3$M takes issue with the Agency's statements that lengthy reviews are generally the fault of incomplete applications. Fifth, CW$^3$M continues to maintain that the OSHA requirements are applicable to work performed at a UST site. Sixth, CW$^3$M points to apparent contradictions in the Agency's answers to prefiled questions concerning information to be filed with a reimbursement request for a lump sum payment. The Board will summarize each of these six issues in turn.

**Board's First Notice.** CW$^3$M testifies that the company has expended considerable amounts of time researching environmental cost data from numerous sources in preparing testimony for this proceeding. Exh. 106 at 2. CW$^3$M intended, with its prior submissions in this proceeding, to provide "credible supported data to illustrate flaws in the rates initially proposed by the Agency and subsequently published by the Board" for first notice. *Id.* CW$^3$M states: "[i]t is most disturbing to us that the data presented by CW$^3$M, PIPE and other experienced consultants representing hundreds of years of experience was largely ignored in favor of adopting the Agency's proposal that was recognized as based only on the Agency's experience in reviewing reports." *Id.*

CW$^3$M notes that the Agency admitted that Mr. Chappel was the only employee involved with the UST program who had worked in the private sector and he only worked for six years in the private sector. Exh. 106 at 2. CW$^3$M is even more disturbed by the Board publishing rates which are not "based on any scientifically or statistically recognized methods" especially after the Agency testimony "was proven to be incorrect" asserts CW$^3$M. *Id.* CW$^3$M alleges that because the Agency and the regulated community did not approach this proceeding in unison, the Board "felt it had no choice but to defer" to the Agency. *Id.*

CW$^3$M concedes that the Agency does have "some experience" in reviewing budgets and payment requests. Exh. 106 at 2. However, CW$^3$M asserts that the Agency does not have experience in the business of conducting or costing the planned work or anticipating and resolving problems in the field. *Id.* CW$^3$M argues that the collective experience of PIPE, ACECI and the other participants should be taken into consideration for "good government" to prevail in this proceeding. *Id.*

CW$^3$M also argues that there is a major inconsistency within the testimony and the proposed rates that has not been resolved. Exh. 106 at 2. That inconsistency, according to CW$^3$M, is the notion that the proposed rates are consistent with rates historically or currently deemed reasonable by the Agency. *Id.* CW$^3$M notes that the Agency's testimony indicated that the proposed rates would be inclusive of ninety percent of the costs of sites remediated in Illinois. *Id.* However, CW$^3$M asserts that the Agency has provided no "scientifically valid data to support this assertion" and the Agency did not use a statistically unbiased, randomly selected data as a basis for the proposed rates. Exh. 106 at 2-3. In contrast, CW$^3$M offers a list of contracts awarded by the Illinois Department of Transportation (IDOT) for corrective action at

leaking UST sites. Exh. 106 at 3; App.C. CW$^3$M indicates that the contracts were awarded after competitive bidding, and using the proposed rates in this rulemaking only 11 out of 39 projects would be deemed reasonable. Exh. 106 at 3.

CW$^3$M also points out that numerous professional service providers have testified that the Agency's proposed rates are substantially less than the rates that have historically been deemed reasonable and reimbursed. *Id.* CW$^3$M asserts that if the proposed rates were reflective of the current market and were consistent with historically reimbursed rates, these proceedings would have been less controversial. *Id.*

**Cost Savings/Scope of Work.** Another contradiction according to CW$^3$M in this proceeding is the Agency's statements that the proposal is necessary to protect the UST Fund. Exh. 106 at 3. CW$^3$M asks that if the rates are consistent with current or historically approved payment amounts, where is the savings? *Id.* CW$^3$M also asks how the average rates or median costs become maximum payment amounts? *Id.* CW$^3$M opines that the Agency wants to save costs by forcing industry to accept substantially less than prevailing market rates for work at a UST site. *Id.* CW$^3$M also opines that the Agency is forcing the industry to comply with "secret or undefined" scopes of work. *Id.*

CW$^3$M argues that now that the rate structure has been proposed, without a defined scope of work, the Agency will attempt to force fit additional tasks into lump sum rates. Exh. 106 at 3. To support this argument, CW$^3$M points to the Agency's response to prefiled questions for the July 27, 2005 hearing. CW$^3$M asserts that the Agency "has refused to disclose" what tasks were included when the rates were developed. *Id.* Further, CW$^3$M opines that either the Agency lacks the experience necessary to develop a scope of work or the Agency intends that any task that may come up will be included in the lump sum payment. *Id.*

CW$^3$M characterizes the general theme of the Agency's responses to questions regarding the addition of a defined scope of work as "that any additional task should automatically be assumed to be included." Exh. 106 at 8. CW$^3$M asserts that during earlier hearings, the Agency's summaries of 45-Day report fees did not include the cost for preparing early action reimbursement claims in the lump sum payment. *Id.* CW$^3$M asserts that now the reimbursement process is a part of the lump sum payment. *Id.* CW$^3$M maintains that the list of tasks continues to grow. *Id.*

CW$^3$M strongly urges the Board to develop scopes of work for identified tasks or to adopt procedures which will standardize the Agency's review. Exh. 106 at 7. CW$^3$M testifies that throughout this proceeding PIPE and others have argued for inclusion of a defined scope of work, because without such definition the rules would be vague. Exh. 106 at 6. CW$^3$M states that there is nothing in the rule to prevent an Agency reviewer from requiring more detail or information beyond the items required for each report. *Id.* CW$^3$M testifies that based on CW$^3$M's experience the identical types of content or level of detail are not treated the same by each Agency reviewer. *Id.* CW$^3$M states that submittals are often tailored to the individual reviewer. *Id.*

**Design of the System.** CW$^3$M believes that a poorly designed system of determining maximum rates can have a serious impact on owners/operators and consultants with little impact on how the Agency does business. Exh. 106 at 4. CW$^3$M interprets the Board's first-notice opinion as the Board relying on the use of bidding and the unusual and extraordinary circumstances provisions in the rule to adjust for flawed rates. *Id.* However, CW$^3$M argues that the Agency has testified that there will be very few reasons to accept or approve unusual or extraordinary circumstances. *Id.*

CW$^3$M argues that the futures of the businesses participating in this rulemaking are at stake. Exh. 106 at 4. CW$^3$M notes that the Agency compared the UST reimbursement program with the problems facing the health care industry; however, CW$^3$M believes the Agency's rates will create the same problems facing health care. *Id.* CW$^3$M argues that there will be insufficient insurance to cover costs of cleanup and service providers will be driven out of Illinois. *Id.* CW$^3$M believes that sites might not be cleaned up because the cost of cleanup not covered by the UST Fund will be so great that owner/operators will not be able to pay for cleanup. *Id.* Furthermore, CW$^3$M believes the Agency's intent with these proposed rules is to interrupt free enterprise and force owner/operators to choose the closest consultant. Exh. 106 at 10.

CW$^3$M asserts that a review of the record indicates that the Agency's rate structure is not supported because there are too many holes in the data used to develop the rates. Exh. 106 at 4-5. CW$^3$M maintains that "good government" implies that changes impacting businesses should be carefully and properly evaluated. Exh. 106 at 4. These proposed rules include rates based on pulling a "few non-representative files" and conducting a "subjective" review, according to CW$^3$M. *Id.*

**Length of Review.** CW$^3$M takes issue with the Agency's assertion that review time is largely based upon the quality of the submittal. Exh. 106 at 7, citing R04-22, 23 (Feb. 17, 2005) at 17. Based on CW$^3$M's experience, the time a review takes is dependant on the Agency reviewer. Exh. 106 at 7. CW$^3$M states that certain Agency reviewers complete their review quickly while others typically use the entire review time. *Id.* CW$^3$M also claims that there have been numerous denials based on missing information that was actually included in the application. *Id.* The application must then be resubmitted or the location of the information brought to the attention of the Agency reviewer. This increases CW$^3$M's costs through no fault of CW$^3$M and the rules for lump sum payments do not address this situation. *Id.*

CW$^3$M refers to the Agency's response to prefiled questions that the maximum payment amounts will encourage submission of complete plans and reports. Exh. 106 at 8. CW$^3$M asserts that they and others who do UST work have being doing so for years and the consultants know full well what constitutes a complete report. *Id.* However, CW$^3$M feels the approval rate of applications is largely based on whom the Agency reviewer may be. *Id.* CW$^3$M offers statistics to support this proposition and notes that the persons with the lowest approval rates are the individuals who helped to develop this proposal. Exh. 106 at 8; App. E.

**OSHA Requirements.** CW$^3$M insists that under the requirements of OSHA, two consulting personnel are required on-site for field tasks and all the proposed rates must be

adjusted to reflect the OSHA requirements. Exh. 106 at 10. $CW^3M$ argues that under 29 C.F.R. §1910.120, a "buddy system" is required for hazardous waste operations. Exh. 106 at 9. $CW^3M$ agrees that under CERCLA, petroleum products are not considered a hazardous substance. *Id.* However, $CW^3M$ argues that petroleum products are a hazardous waste under the provisions of OSHA. *Id*, citing 29 C.F.R. §1910.120.

**Information in Reimbursement Requests.** $CW^3M$ expresses confusion over potentially conflicting statements by the Agency in response to prefiled questions. Exh. 106 at 10. For lump sum payments, the Agency responded to a prefiled question by CSD that for a lump sum payment for soil removal and disposal, consultants will be required to submit invoices that identify the work performed, parties that conducted the work and dates the work was performed. Exh. 98 at 30. According to $CW^3M$ this contradicts a statement from the August 9, 2004 hearing wherein the Agency indicated that only an invoice stating the task completed is required. Exh. 106 at 10, citing Tr.8 at 109-10. $CW^3M$ asserts that any reimbursement request requiring a greater level of detail should be reimbursed on a time and material basis rather than a lump sum payment. *Id.*

**Suggestions for Specific Rule Changes**

In addition to the comments from $CW^3M$ generally discussing provisions of the proposed rules, $CW^3M$ offered specific suggestions for changes to the proposed rule. The following paragraphs will describe those proposed changes and the reasons for $CW^3M$ suggesting the changes.

**Section 734.100.** $CW^3M$ suggests clarifying amendments to subsection (a) and the addition of subsection (d). Exh. 106 at 11. $CW^3M$ included subsection (d) to clarify that the proposed rules should not be used as final rules until the rules are adopted pursuant to the Act and the IAPA. *Id.*

**Section 734.135.** $CW^3M$ proposed language to allow for documentation of reports delivered by hand or private delivery service to the Agency. Exh. 106 at 12.

**Section 734.320(b)(2)(A) and 734.330(a)(1).** $CW^3M$ suggests adding the word "projected" before the phrase "post-remediation use of the property" in both sections. Exh. 106 at 12. $CW^3M$ "objects to the need to characterize the post-remediation uses of the site and the surrounding properties." *Id.* $CW^3M$ believes that only in limited instances will the owner of the site know the future uses of the property. *Id.* If the site is an active fuel station and the owner/operator plans to continue to use the site for fuel sales, the future use is definable. *Id.* However, if the site is closed or about to be closed and the owner plans to sell the site, future use is not definable. *Id.* $CW^3M$ also believes that defining the use of surrounding properties would be difficult. *Id.*

$CW^3M$ argues that the decision to conduct remediation or rely upon land use or institutional controls should be decisions left to the owner and not the Agency. Exh. 106 at 12. $CW^3M$ asserts that property owners should not be "discriminated against" or disallowed remediation by the Agency based solely on potential future use of the property. *Id.*

**Section 734.340(b).** CW$^3$M suggests changes to "reflect that more than one alternative technology may not always be available." Exh. 106 at 13. CW$^3$M notes that depending on site characteristics two additional alternative technologies may not be available to be implemented. *Id.* CW$^3$M argues that if there are not additional alternative technologies available, the available alternatives should be cost compared. *Id.* CW$^3$M opines that a list of alternatives considered could be provided along with explanations as to why the alternatives were eliminated from consideration. *Id.*

**Section 734.505.** CW$^3$M suggests adding language "to attempt to eliminate the standard response of the Agency" that something "exceeds the minimum requirements of the Act" in denials. Exh. 106 at 13. CW$^3$M asserts that such language does not provide an owner/operator with an explanation of the Agency's decision and limits the owner/operator's ability to respond. *Id.* CW$^3$M argues that with a more specific Agency response, the owner/operator should be able to provide a more focused response and reduce the number of additional submittals. *Id.*

**Section 734.510.** CW$^3$M suggests changes to this section to ensure that the Agency documents and maintains records of the Agency's technical and fiscal review. Exh. 106 at 14. CW$^3$M's suggested language further seeks to ensure that those records are a part of the record of the site. *Id.*

**Section 734.605.** CW$^3$M suggests that proof of payment of a subcontractor when requesting handling charges be eliminated. Exh. 106 at 14. CW$^3$M maintains that requiring proof of payment is unduly burdensome because of the number of projects, subcontractors, and payments managed by CW$^3$M. *Id.* Further, CW$^3$M asserts that the requirement will increase the costs necessary to perform the work. *Id.* CW$^3$M argues that the owner/operator or the prime contractor is responsible for defining terms of payment, not the Agency. *Id.*

CW$^3$M opines that a proof of payment requirement could also increase the number of reimbursement preparations and submittals to the Agency. Exh. 106 at 14. CW$^3$M notes that particularly with larger projects during the corrective action phase of the site remediation, reimbursement requests are made almost immediately for some or all of the work to minimize financing costs. *Id.* CW$^3$M asserts that obtaining proof of payment prior to such immediate submittals would be difficult and result in additional submittals for handling charges. *Id.*

***Section 734.605(j).*** CW$^3$M recommends revisions to subsection (j) to allow for submissions for reimbursement requests later than one year after an NFR letter has been issued. CW$^3$M asserts these changes are proposed to accommodate owners/operators experiencing uncontrollable situations creating delays and the Agency's need to archive files and maintain an accounting of future liabilities. Exh. 106 at 14. CW$^3$M opines that the proposed language will accomplish the intent of the Agency's proposal while allowing exceptions for rare circumstances. Exh. 106 at 15.

CW$^3$M argues that the proposed one-year submittal limitation may cause "severe hardship" for owners/operators or their beneficiaries. Exh. 106 at 15. CW$^3$M indicated that in CW$^3$M's experience appeals to the Board may be pending and settlement negotiations in

progress and final disposition of a case may take more than a year. *Id.* CW$^3$M asserts that in such cases the owner/operator would be prevented from submitting claims until the appeal is settled or a decision by the Board is reached. *Id.* Another instance where a delay in submittals may occur, according to CW$^3$M, is if an owner/operator is incapacitated, has an illness, bankruptcy, or even a death. *Id.*

**<u>Section 734.625.</u>** CW$^3$M suggests adding additional eligible costs. Exh. 106 at 16. Specifically, CW$^3$M suggests that governmental fees are often unavoidable and as such should be reimbursable. *Id.* CW$^3$M further suggests that compaction costs should be added as an eligible cost for reimbursement because compaction during the backfill process can return the site to one with a stable foundation suitable for redevelopment. *Id.* Finally, CW$^3$M suggests adding a specific provision for payment of handling charges incurred for field and other direct expenses. *Id.*

**<u>Section 734.630.</u>** CW$^3$M offers several suggestions to this section. The Board will address each in turn below.

***<u>Subsection (gg).</u>*** CW$^3$M recommends including costs incurred: (1) by a Highway Authority Agreement after issuance of an NFR letter; (2) because of corrective action after closure necessitated by discovery of unknown contaminants, migratory pathways, or access to property previously denied; (3) for remediation needed to reinstate an NFR letter after a prior NFR letter was voided by the Agency due to no fault of the property owner. Exh. 106 at 17. CW$^3$M believes that reimbursement from the UST Fund should be allowed, even though an NFR letter was issued, in each of the above-mentioned circumstances. *Id.* As to the Highway Authority Agreement, CW$^3$M indicates that the owner could be in a no win situation because remediation beneath a roadway might not have been allowed. *Id.* However, if the highway authority incurs corrective action costs after closure and issuance of an NFR, the owner is expected to reimburse the highway authority. *Id.*

CW$^3$M also believes that access to the UST Fund should be allowed if necessitated by discovery of unknown contaminants or migratory pathways. Exh. 106 at 17. CW$^3$M argues that modeling may fail and contamination left in place could require additional remediation. *Id.*

CW$^3$M lists two situations where an NFR letter might become void through no fault of the property owner. Exh. 106 at 17-18. First, if there is a subsequent discovery of contaminants. Exh. 106 at 18. Second, an Agency approved plan to leave contaminants in place failed and the contamination becomes a threat to human health. *Id.*

***<u>Subsection (oo).</u>*** CW$^3$M recommends that this subsection be deleted and payment for handling charges for subcontractors be allowed where the primary contract has a financial interest be allowed. Exh. 106 at 18. CW$^3$M asserts that there are "handling charges" incurred by a prime contractor who has a financial interest in the subcontractor. *Id.* CW$^3$M indicates that banks do not discount interest rates because of a financial interest in a subcontractor and insurance companies do not give a discount. *Id.* Administrative and oversight costs also do not change when the prime contractor has a financial interest in a subcontractor, according to

$CW^3M$. *Id.* $CW^3M$ notes that the definition of financial interest is so broad that the ownership of the subcontractor by the prime contractor could even be a minority interest. *Id.*

***Subsection (ccc).*** $CW^3M$ suggests deleting the provision requiring the use of a groundwater ordinance if one is in place. Exh. 106 at 19. $CW^3M$ asserts that the Agency did not consider the effect on property values if the Agency "forces" an owner/operator to leave contamination in place and not reimburse for groundwater remediation. *Id.* $CW^3M$ opines that this could have a major effect on a property owner and an owner/operator should have the option to remediate the contamination and be reimbursed for the costs. *Id.*

**Section 734.665.** $CW^3M$ offers language changes to the auditing provision. Exh. 106 at 19. These changes are offered, according to $CW^3M$, to assure that the Agency's audits do not exceed the Agency's statutory authority and to assure that the audits are consistent with audits performed in other Agency programs. *Id.* $CW^3M$ agrees that the Agency has the authority to perform audits under the Act. *Id.* However, $CW^3M$ believes that authority is limited to reviewing portions of the plans and reports submitted to the Agency. *Id.*

**Subpart H.** $CW^3M$ offers language changes in Subpart H, which $CW^3M$ believes more accurately reflect the testimony, regarding how the Agency intends to apply Subpart H. Exh. 106 at 20. $CW^3M$ asserts that the costs proposed by $CW^3M$ are based on costs actually experienced by PIPE members, and the aggregate experience of hundreds of person years, IDOT competitively bid projects, and *RS Means* or the National Construction Estimator. Exh. 106 at 21. $CW^3M$ offers several suggestions to this Subpart. The Board will address each in turn below.

***Section 734.810.*** $CW^3M$ argues that the costs provided by the Agency foe the removal and abandonment of tanks are outdated considering 2003 revisions to OSFM rules. Exh. 106 at 21. Among the new requirements in the OSFM rules are additional safety equipment and the removal of all product piping as part of the tank removal. *Id.* $CW^3M$ also believes the Agency collected data on tank removal regardless of whether or not there had been a release. *Id.* $CW^3M$ asserts that cost for removal of a tank without release is lower than removal of a tank with a release. *Id.*

***Section 734.820.*** $CW^3M$ suggests that a drilling contractor should be allowed travel expenses similar to professional consulting personnel. Exh. 106 at 21. $CW^3M$ argues that larger equipment is less economical to move than passenger vehicles. *Id.*

***Section 734.825.*** $CW^3M$ offers an alternative rates for soil removal and disposal. Exh. 106 at 22. These rates, according to $CW^3M$, are based on rates paid for excavation and disposal at sites where IDOT bid the project. *Id.* $CW^3M$ argues that the bids were given competitively and were presumably the lowest bid. Exh. 106 at 23.

***Section 734.830.*** $CW^3M$ suggests adding the word non-hazardous to clarify instances where the costs for drum disposal would be appropriate. Exh. 106. at 25. $CW^3M$ also recommends adding a mobilization fee or "stop fee" for a drum disposal contractor in this section. *Id.*

***Section 734.840.*** CW$^3$M asserts that the testimony provided by CW$^3$M prior to the Board adopting the first-notice proposal demonstrates the numerous flaws with the proposed rates in this section. Exh. 106 at 25. CW$^3$M offers rates which CW$^3$M claims are "consistent with prevailing rates, and include *all* work and oversight necessary to complete the task." *Id.*

***Section 734.845.*** CW$^3$M proposes rates using the same total number of hours to prepare reports as the Agency used; however, CW$^3$M further broke down the hours into "a more realistic distribution of the type of personnel who work on the project." Exh. 106 at 25. CW$^3$M used the same hourly rates as the Agency used as well. *Id.* CW$^3$M asserts that the rates contained in the proposal more accurately reflect the costs and distribution of work to complete the reports. *Id.*

CW$^3$M notes that the rates reflect the presence of two consulting professionals as required by OSHA and travel rates have been revised to reflect distance further from the site. Exh. 106 at 26. CW$^3$M has added rates for determining the rate of movement of groundwater at a site. *Id.* CW$^3$M also suggests lowering the excavated rate to 200 cubic yards per half day because the half-day was reduced from five hours to four hours. *Id.*

**Public Comment**

CW$^3$M's final comment reiterates many of the arguments made in CW$^3$M's prefiled testimony for the July 27, 2005 hearing. PC 63. In addition CW$^3$M offers comments on the proposal filed by USI. *Id.* The following paragraphs summarize CW$^3$M's comment.

CW$^3$M has modified the alternative rulemaking language submitted for the July 27, 2005 hearing in response to the testimony offered at that hearing; however, CW$^3$M was not able to file a joint proposal with the other participants. PC 63 at 1-2. CW$^3$M states that a joint proposal could violate antitrust laws and therefore, the consultants have filed separate final comments. PC 63 at 2. CW$^3$M believes that the July 27, 2005 hearing demonstrates that all the consultants are aligned regarding the first-notice proposal's problems and the solutions to those problems. *Id.* CW$^3$M notes that the consultants have differing approaches as to how the regulations should be developed to correct rate deficiencies. *Id.*

CW$^3$M has modified the alternative rulemaking language to allow the proceedings to move forward while providing for long-term rate establishment by the UST program that is fair and reasonable. PC 63 at 3. Further, CW$^3$M believes that the modified language will protect the ongoing remediation of UST sites in Illinois. *Id.* CW$^3$M concedes that neither USI nor CW$^3$M has developed the perfect rule; however, CW$^3$M opines that both proposals are closer to a fair and equitable rule than the Agency's proposal. *Id.* CW$^3$M notes that the alternative rulemaking language needs some polishing and re-crafting to enable the language to work within the entire framework of the regulations. *Id.* CW$^3$M believes that the concept of threshold or expedited and maximum rate development needs additional thought and input from the Board and Agency to convert the concept into rules. *Id.* CW$^3$M also believes however that the solution can satisfy the needs of the parties and the needs of the program. *Id.*

CW$^3$M comments that a "carrot" to entice consultants into attempting to perform a task at the "threshold" rate would be the speeding up of the review process. PC 63 at 4. CW$^3$M opines that speeding up the review process would allow reimbursement to move at a quicker pace. *Id.* CW$^3$M presents language that will allow the Agency to develop an expedited review process for budget requests that meet the threshold or expedited values. *Id.* CW$^3$M offers that initially the Agency's proposed rates be used as interim threshold or expedited values until a process is in place to collect and evaluate program cost data. *Id.* CW$^3$M maintains that the Agency's rates are seriously flawed and do not represent true costs and CW$^3$M is not endorsing the rates. PC 63 at 4-5. However, CW$^3$M believes that Agency's rates can be used on an interim basis. PC 63 at 5.

CW$^3$M comments that the phase totals presented by USI at the July 27, 2005 hearing indicate a deficit exceeding 60% for consultant services over the life of a project. PC 63 at 5. CW$^3$M opines that USI's data "invalidates the credibility of the entire Agency rate structure" and the Agency's experience in the UST program. *Id.* CW$^3$M asserts that every entity, including CW$^3$M, who have offered opinions on Subpart H throughout this proceeding have tried to make this point. *Id.* CW$^3$M points out that the Agency's experience was questioned concerning the issue of OSHA regulations, which CW$^3$M reiterated in the testimony for the July 27, 2005 hearing. PC 63 at 5-6. Also, CW$^3$M agrees that while bidding may be an option in some cases, bidding adds unnecessary time delays and expense to the UST program through the bid procedure. PC 63 at 6. CW$^3$M believes that bidding for consulting services is not practical, nor is bidding for turnkey consultants who can do the work themselves. *Id.*

CW$^3$M opines that if the rates were reflective of the market and consistent with rates previously deemed reasonable by the Agency, these proceedings would not have been as controversial. PC 63 at 6. CW$^3$M comments that the Agency may even have secured the support of the industry. *Id.* CW$^3$M maintains that to move these proceedings forward and lessen the animosity between industry and the Agency, the rates that are developed must be real and reasonable rates. *Id.*

CW$^3$M points out that the Act requires that all reasonable costs be reimbursed. PC 63 at 6. CW$^3$M opines that developing lump sum payments may be in violation of the Act. *Id.* CW$^3$M believes that payment requests, particularly for personnel costs, should be submitted on time and material basis. CW$^3$M notes that if consultants are required to cap submittals at the maximum payment amount, but have incurred costs more than that amount, the consultant will clearly be on the losing side of lump sum payments. PC 63 at 6-7. Alternatively, CW$^3$M argues that if a lump sum maximum payment is reimbursed where the costs incurred are not actually at the maximum payment amount, the reimbursement may be more than the reasonable cost. PC 63 at 7.

CW$^3$M opines that the Agency wants to realize a cost savings in the UST Fund by forcing industry to accept substantially less reimbursement than prevailing market rates or even rate previously deemed reasonable. PC 63 at 7. CW$^3$M maintains that the impetus to include rates in a rulemaking was the invalidation of the Agency's rate sheets. *Id.* CW$^3$M asserts that now that the rate structure has been invalidated, without a defined scope of work, the Agency will attempt to force fit additional tasks into the lump sum rates. *Id.* CW$^3$M asserts that the Agency has refused to disclose what tasks were included when developing the rates or what should be

included. *Id.* CW$^3$M argues that either the Agency lacks the experience to define the scope of work or the Agency intends that any task that may come up will be deemed a part of the lump sum payment. *Id.*

CW$^3$M has included in the alternative rulemaking language task lists and scopes of work. PC 63 at 8. However, CW$^3$M believes that final task lists and scopes of work would best be developed jointly by the Agency and the LUST Advisory Committee. *Id.* CW$^3$M further believes that the task lists and scopes of work should be published periodically by the Agency outside the confines of the rules to allow modification without a rulemaking proceeding. *Id.* CW$^3$M also believes the rate structure should be managed in the same way. *Id.* CW$^3$M asserts that this would allow for a rate structure that can reflect temporary costs increases. *Id.*

CW$^3$M interprets the Board's first-notice opinion to mean that with bidding and the unusual and extraordinary circumstances provisions the rates can be adjusted to market conditions. PC 63 at 8. CW$^3$M concedes that this could be plausible; however, the Agency has testified that there will be few reasons for them to accept or approve unusual or extraordinary circumstances. *Id.* CW$^3$M reiterates that bidding is not practical. PC 63 at 8-9. For these reasons CW$^3$M argues alternative rates need to be provided. PC 63 at 9.

CW$^3$M asserts that a failure to adopt adequate rates will not impact how the Agency does business, but can have a serious impact on owners/operators and consultants. PC 63 at 9. CW$^3$M maintains that the future of CW$^3$M's business is at stake. *Id.* CW$^3$M comments that the UST Fund was established to protect the environment and assist owners/operators. *Id.* CW$^3$M argues that the UST Fund was not created to establish a "bureaucratic regime" in Illinois. *Id.*

**Agency's Proposed Rates.** CW$^3$M interprets the Board's first-notice adoption of the Agency's rates, not as an endorsement of the rates but as the only alternative available. PC 63 at 10. CW$^3$M notes that significant testimony was presented, prior to the adoption of the first-notice opinion, indicating that only limited input from industry was used for developing rates for professional consulting services. *Id.* Further, CW$^3$M asserts the testimony establishes that the information was misused by the Agency. *Id.* CW$^3$M had hoped to provide alternative rates; however, CW$^3$M does not believe enough data exists to quantify personnel costs on a per task basis. *Id.*

CW$^3$M argues that the testimony presented by USI at the July 27, 2005 hearing confirms that the Agency's proposed rates are inadequate and severely flawed. PC 63 at 10. CW$^3$M maintains that the data relied upon by the Agency cannot be converted into rates and defended by any acceptable statistical analysis. PC 63 at 10-11. CW$^3$M notes that USI was able to successfully extract relevant and defensible data for the phases of UST remediation; however, CW$^3$M was unable to use the data prepared by USI to develop the normal technical situation to correspond to each phase of UST remediation. *Id.* Thus, CW$^3$M argues the importance of a scope of work in developing rates. *Id.*

**CW$^3$M's Proposal.** CW$^3$M believes that the alternative rulemaking language proposed by CW$^3$M utilizes the basic framework proposed by the Agency. PC 63 at 11. However, CW$^3$M believes that the alternative rulemaking language offers an opportunity to create a rule that meets

the requirements of the Act, allows owners/operators to be fairly reimbursed, and establishes a forum for the Agency and affected parties to work together to refine the process. *Id.* CW$^3$M argues that the gap between the Agency and the owners/operators and consultants has been apparent at every stage of this proceeding and the gap represents payment of reasonable costs. *Id.* CW$^3$M argues that the Agency's rates will force many consultants out of business because consultants cannot operate at a loss and owners/operators cannot or will not assume the financial liability for costs when the Act guarantees reimbursement. PC 63 at 11-12.

**USI's Proposal.** CW$^3$M comments that CW$^3$M could accept USI's proposal or a melding of the two proposals by the Board. PC 63 at 13. CW$^3$M proposed using the Agency's rates as expedited interim rates; however, CW$^3$M believes that USI's rates are much closer to real world and actual market conditions. *Id.* Further, CW$^3$M believes that USI's rates reflect unit rates historically and currently deemed reasonable by the Agency. *Id.*

**Summary.** CW$^3$M feels that the rule as proposed is not ready for second notice. PC 63 at 14. CW$^3$M maintains that there has been no support of the Agency's proposal or the Board's first-notice proposal. *Id.* CW$^3$M argues that the Board needs to be more responsive to the numerous public comments and testimony. *Id.* CW$^3$M opines that the Board has the authority to "direct the Agency to re-evaluate" the proposed rates and the alternative rate structure. *Id.* CW$^3$M asserts that the record confirms the Agency's rates are flawed and without proper evaluation of the real UST data, maximum rates should not be established. PC 63 at 14-15. CW$^3$M argues that in the time that has passed since the first hearing, the data could have been collected and analyzed. P 63 at 15.

CW$^3$M asserts that if the Board fails to respond to the testimony and the record, owner/operators and consultants will seek legislative intervention to correct the flaws in the proposed rule. PC 63 at 15. CW$^3$M argues that the Board should:

1. Utilize the alternative proposals submitted by USI and CW$^3$M, along with information presented in hearing and the public comment period to reconfigure Subpart H, and bring the revised proposal through First Notice again, or

2. Utilize the alternative proposals submitted by USI and CW$^3$M to reconfigure Subpart H, remove all rates and present a method for which the rates can be developed using properly collected and analyzed data and bring this revision through First Notice again, or

3. Sever Subpart H and proceed with its redevelopment while finalizing the technical portions of [Part] 732 and [Part] 734 and redirect the participants to work together to come forward with a more appropriate rule, which has public support outside the Agency. PC 63 at 16.

**United Science Industries, Inc.**

Mr. Jay Koch, President and CEO of USI, presented the bulk of the testimony on behalf of USI. In addition to Mr. Koch, Mr. John Hundley, Mr. Duane Doty, Mr. Barry Sink, Mr. Dan Ruark, Mr. Dan King, Mr. Ross Bunton, Mr. Cory Eversgerd, and Mr. Steve Rigdon appeared and helped in development of the prefiled testimony and exhibits presented at hearing. Tr.8 at 116-17. The following will summarize the testimony by topic with references to the relevant testifier where appropriate. In addition, USI responded in writing to questions posed by the Agency after the July 27, 2005 hearing (PC 59). The answers to those questions as well as USI's final comments will be included under the appropriate topics. Finally, any new issues raised in response to the Agency's questions or in the final comments will be discussed.

**General Comments**

Mr. Koch testifies that he is speaking not only on behalf of USI and USI's clients but also "for a class of underground storage tank owner/operator" that have been absent from this proceeding. Exh. 109 at 2. Mr. Koch claims that this "class" of UST owners/operators consist of "small business person, the retiree, the estate, the widow, the school district, the church, the agricultural cooperative, etc." that have one or two incidents to remediate. *Id.* Mr. Koch states that this group owns 88% of all leaking USTs in the State with nearly 62% of those yet to be remediated. *Id.* Mr. Koch opines that these citizens and small businesses are typically not well capitalized or well represented. *Id.*

Mr. Koch states that the small owner/operator has several special needs, but there are three things which are most immediate. Exh. 109 at 3. First, the small owner/operator needs to have the record "set straight" in this proceeding. *Id.* Second, the small owner/operator needs the Board to listen closely to the testimony challenging the Agency's position. *Id.* Third, the small owner/operator, who is the real beneficiary of this rule, wants the Board to understand and to act. Exh. 109 at 4.

Mr. Koch states that USI and its employees "are with the small owner/operator" and always have been. Exh. 109 at 5. Mr. Koch claims that inherent in USI's mission is the protection of the small owner/operator's well-being, property values, and peace of mind. *Id.* Mr. Koch testifies that over 100 owners/operators from throughout the State have signed a petition expressing a desire for a fair and objective rule. *Id.* In addition to having signed a petition, more than 80 owners/operators signed and sent to USI "Requests for Representation" that are attached to USI's testimony. Exh. 109 at 5; Attach. 4.

The Agency questioned USI concerning the petitions and requests for representation attached to USI's testimony. PC 59 at 11. USI states that each owner/operator individually reviewed the petition and signed of their own accord. *Id.* USI did not inquire nor does USI believe it to be their responsibility to inquire, how each owner/operator decided to sign the petitions. *Id.* USI points out that the Board concluded that the proposed rates were not developed based on a statistically defensible method and the Agency admits that the some maximum payment amounts are averages. *Id.* As to the parties that signed the request for representation, USI notes that the parties reviewed most of the testimony although some portions of the testimony were amended at the last moment. PC 59 at 12.

**Small Owner/Operator**

USI provides testimony "to quantify and highlight the critical importance and unique characteristics" of the small owner/operator. Exh. 109 at 7. USI testifies that they will present evidence to validate the importance and need: (1) for reducing overall leaking UST liabilities in the State for the small owner/operator; (2) for promulgating UST regulations that address the specialized needs of the small owner/operator; and (3) for the unique role of consultants in managing small owner/operator sites. *Id*.

**Breakdown of Small Owner/Operator.** USI testifies that the Agency's database lists a total of 8,566 open incidents with a potentially responsible party (PRP) listed and 895 open incidents without a PRP. Exh. 109 at 8. The database, according to USI, indicates that 5,620 PRPs are responsible for one or more incidents and there is a total of 4,991 small owners/operators responsible for 5,342 open incidents. *Id*. Based on these figures, USI asserts that small owners/operators are the largest single group of PRPs remaining in the program and are responsible for the majority of all remaining leaking UST environmental liabilities in the State. *Id*.

**Unique Characteristics of Small Owner/Operator.** USI opines that the small owner/operator has numerous distinctive characteristics. Exh. 109 at 8. For example, USI notes that over 19% of the small owners/operators discussed above are listed as individuals; while a majority, 67% are small to medium sized businesses. Exh. 109 at 9. The remainder of the group consists of school districts, government, church, and small to medium sized communities. *Id*. Based on USI's experience, additional key characteristics of the small owner/operator include: 1) limited financial resources, and management and technical resources; 2) the property is considered a valuable asset; and, 3) they want to address their environmental liabilities. *Id*.

USI asserts that small owners/operators are highly dependent on the financial resources of the UST Fund as compared to larger PRP groups. Exh. 109 at 11. USI maintains that this dependence includes both the need for 100% reimbursement of approved items and the need for timely payment. *Id*. Furthermore, USI argues that the site property is an important asset and the small owner/operator and the regulations must allow for the preservation of that asset. *Id*.

**Unique Role of Consultants.** USI states that, based on the Agency's database, USI is the consultant on 328 open incidents and 204 of those are owned or operated by the small owner/operator group. Exh. 109 at 12. USI has "operated successfully" in the leaking UST market for over 15 years and USI states that they have "a deep understanding" of the leaking UST market. *Id*. USI argues that the role of consultant for a small owner/operator is "significantly different" than for a larger PRP. *Id*.

USI asserts that the key components of the unique relationship between the small owner/operator and the consultant include that the consultant is often the "sole source" for the duration of the project. Exh. 109 at 13. USI maintains that the consultant typically manages all aspects of the work and discussions with the Agency. *Id*. USI testifies that the consultant will discuss optional approaches, but implements approaches which protect property values. *Id*. USI asserts that the consultants "very carefully schedule and manage" all activities to achieve 100%

reimbursement due to the financial hardships experienced by small owner/operators. *Id*. Finally, according to USI, consultants wait on payment from the leaking UST Fund to pay the ongoing cost of cleanup. *Id*.

USI asserts that the small owner/operator is highly dependant on their consultant when compared to larger PRPs. Exh. 109 at 14. The relationship is often trust based with the small owner/operator and the consultant is relied upon to ensure that regulatory requirements are met. *Id*. USI argues that the regulatory process must recognize the unique needs of the small owner/operator. *Id*.

**Reasons for Rulemaking**

According to USI, the Agency's "most notable" reason for this rulemaking is a need to reform the budgeting and reimbursement procedures. Exh. 109 at 22, citing R04-22, 23 (Feb. 17, 2005) at 15, 22, 24. USI asserts that the Agency's statement raises the questions of what is the need and what reforms are needed. Exh. 109 at 22. USI asserts that the Agency has convinced the Board that these reforms are needed for nine reasons. Exh. 109 at 22-23. Those reasons are:

1. To streamline the preparation and review of budgets and applications for payment. Exh. 109 at 22, citing R04-22, 23 (Feb. 17, 2005) at 15;

2. To make the program more cost effective. Exh. 109 at 22, citing R04-22, 23 (Feb. 17, 2005) at 26;

3. To reduce the time spent on reviewing budget an reimbursement issues by Agency personnel. *Id*;

4. To improve consistency in Agency decisions. Exh. 109 at 23, citing R04-22, 23 (Feb. 17, 2005) at 17;

5. To control cleanup expenses. Exh. 109 at 23, citing R04-22, 23 (Feb. 17, 2005) at 27;

6. To expedite cleanups. *Id*;

7. To reimburse owners/operators in a more timely fashion. *Id*;

8. To reduce the amount of time consultants will need to prepare budgets and payment applications. *Id*;

9. To reduce "abuses of the system" the Agency believes are occurring. Exh. 109 at 23, citing R04-22, 23 (Feb. 17, 2005) at 27

USI concedes that each of these nine reasons seem reasonable on the surface; however USI believes a closer examination is warranted. Exh. 109 at 23. USI notes that the reasons numbered one, three, six, seven, and eight above, all express a goal of streamlining, creating

efficiency, expediting or reducing processing time. *Id.* USI argues that the Agency's motives are questionable, because the Agency has rejected proposals from industry that would also achieve the goal of streamlining, creating efficiency, expediting or reducing processing time. Exh. 109 at 23-24. USI points to three examples of the Agency's rejection of proposals which would assist in streamlining, creating efficiency, expediting or reducing processing time. Exh. 109 at 24. Those examples are all three suggestions from PIPE and include developing a database, reducing review time to less than 120 days, and issuing a "draft denial letter" to an applicant. *Id.*

USI believes that the addition of a bidding process in the Agency's third *errata* sheet demonstrates that the Agency's real motive is not streamlining and expediting. Exh. 109 at 24. USI asserts that anyone with knowledge or experience in bid preparation knows that the introduction of competitive bidding will add "levels of complexity and administration" to the reimbursement process. Exh. 109 at 25. USI also believes that the "blasé approach" that the Agency used to develop the rates proposed in Subpart H belies the Agency's stated goals. *Id.* USI argues that the leaking UST section is scientifically orientated and such an approach does not reflect the scientific orientation of the UST section. *Id.*

USI questions the Agency's stated "motives" numbered two and five above, relating to cost effectiveness and control, when the Agency has not performed an analysis of the anticipated cost savings. Exh. 109 at 25. USI asserts that if there is a genuine desire for cost savings, one would want to analyze and forecast the savings if only for one's own curiosity. *Id.* USI opines that "it also seems reasonable that if one was genuinely concerned about cost reduction or the control of cleanup expenses" one would want to be in a position to defend the proposal. *Id.* USI argues that the Agency's failure to analyze cost savings or use a statistically reliable means to develop maximum payments belies the Agency's goal of cost effectiveness and control. *Id.*

USI maintains that while the Agency's failure to analyze cost savings or use a statistically reliable means to develop maximum payments "calls into question" whether the Agency's "true objective" is cost reduction, the Agency's "outright rejection" of requests to define a scope of work, in the context of the provisions for bidding, "is an absolute formula for financial disaster for the" UST program. Exh. 109 at 26. USI argues that increasing levels of risk will increase the costs of products and services and it is only logical to assume that the Agency's refusal to define a scope of work increases the level of uncertainty and risk in the bidding process. *Id.* USI asserts that this will drive bid prices higher and escalate total costs for the UST Fund. Exh. 109 at 26-27. Furthermore, USI asserts that without the scope of work defined, each consultant will prepare bid specifications uniquely and the cost of Agency review will also increase. Exh. 109 at 27. USI asserts that the Agency's refusal to define a scope of work along with the addition of a provision for bidding is not only inconsistent with the Agency's stated goals, but also counter-productive. *Id.*

USI goes on to argue that the Agency's refusal to define a scope of work is inconsistent with the Agency's stated goal of achieving consistency in Agency decisions. Exh. 109 at 27. USI ponders how straightforward review of a bidding specification by the Agency will proceed without a defined scope of work. *Id.* USI asserts that the only consistency in a system so poorly designed will be consistent chaos and appeals. *Id.* USI asserts that as long as the Agency

maintains that a defined scope of work is not needed for each task, the Agency cannot "claim" a desire for consistency. *Id.*

USI states that having refuted eight of the Agency's "motives" for this rulemaking proposal, USI next considers the Agency's concerns about the perceived abuses of the system (number nine above). Exh. 109 at 28. USI finds this concern, voiced by Mr. King, a "baffling comment" to be made by someone of Mr. King's stature because the Agency has been given the responsibility to oversee the UST program and determine the reasonableness of reimbursement requests. Exh. 109 at 28. USI states that considering the program requires pre-approvals of budgets and work plans before reimbursement claims can be processed and the Agency has the authority to audit all data, reports, plans, documents, and budgets, USI finds "it almost impossible to conclude" that the Agency cannot already stop abuses of the system. *Id.*

Given the Agency's actions and testimony during this proceeding, USI opines that rationalizing the Agency's motives is difficult if not impossible. Exh. 109 at 29. Furthermore, USI offers one additional Agency "motive" for the rulemaking and that is the UST Fund deficit of approximately $25 million a year. *Id.* USI notes that all the parties to this proceeding are aware of transfers from the UST Fund in recent years, so USI asserts the Agency's testimony regarding the transfers should not be "weighted too heavily" in this proceeding. *Id.* And if there were truly a funding crisis, USI asks why the Agency has not notified owner/operators as required by 35 Ill. Adm. Code 732.503(h)? *Id.*

USI states that, within industry circles, other motives for this rulemaking have been discussed. Exh. 109 at 29. One motive, suggests USI, is that the Agency has been asked to reduce expenditures so the UST Fund monies can be siphoned off to other state programs. *Id.* Another motive recited by USI is that "regulators view the UST Fund as their 'cash cow'" and want to protect the fund to protect the regulators' jobs. *Id.* USI also suggests that one of the Agency employees "is driving these changes as means of settling a vendetta against former competitors." *Id.* Perhaps the Agency is opposed to business practices of some consultants and the Agency wants to use this rule to diminish those consultants, suggests USI. Exh. 109 at 29-30. Whatever the true "motives" for this rulemaking, USI argues that the Agency must keep the needs of the small owner/operator at the forefront. Exh. 109 at 30.

The Agency asks USI to explain whether USI believes that any of these motives are true and if so to provide evidence to support the USI's belief. PC 59 at 5. USI states that the "fundamentally flawed" portions of the Agency's proposal are "highly irrational and without merit." *Id.* USI opines that the Agency's defense of the proposal in light of facts disclosed at the July 27, 2005 hearing is "highly peculiar" and if the Agency continues to rigidly defend the proposal "such unfounded obstinacy would certainly support the theories that are circulating" within the industry. *Id.*

**<u>Historical Administration of UST Fund</u>**

USI opines that a close examination of the Board's first-notice opinion and order "leaves little doubt" that absent competitive bidding and unusual and extraordinary circumstances provisions, the Board would have been reluctant to accept the maximum payment amounts

offered by the Agency. Exh. 109 at 31. USI points to the Board's language concerning reimbursement for bid preparation on a time and material basis and asserts that the Board indirectly acknowledges the potential insufficiency of the maximum payment amounts by adopting the bidding process. *Id.* USI maintains that the Board's decision to reject the Agency's proposed lump sum for bid preparation and review "speaks volumes" concerning the entire rate structure. Exh. 109 at 32.

USI points out that in the Board's first-notice opinion and order, the Board indicated a willingness to consider alternative rates if they had been presented. Exh. 109 at 32. USI states that USI and other members of PIPE were "cautioned prior to the 2004 hearings to not discuss rates amongst one another for legal reasons." *Id.* Therefore, USI and other members of PIPE refrained from discussion alternative rates and instead used other solutions such as *RS Means*. *Id.* USI, however, agrees with the Board that rates should be based on actual experience in the UST program in Illinois and *RS Means* and other sources "do not specifically track costs" associated with the UST program in Illinois. *Id.*

The Agency further questioned USI's statements regarding the decision by PIPE not to provide alternative rates prior to the July 27, 2005 hearing. PC 59 at 7. USI stated that legal counsel advised against discussing prices and rates as a group and PIPE decided to follow that advice. PC 59 at 8-9. USI states that individual competitors can address price issues and USI has submitted and will continue to submit USI's own views on pricing. PC 59 at 9.

USI notes that the Agency's testimony indicated that the rates proposed by the Agency were developed using the Agency's experience as a basis and the Agency believes the rates will be inclusive of over 90% of the sites in Illinois. Exh. 109 at 32. USI states that: "USI is not objectionable to most of the rates provided in [Sections] 734.810 through 734.840." *Id.* As to the rates USI does not object to, USI states that USI's experience in UST work in Illinois indicates that the billing methods, units of measure and prices are "not highly inconsistent with those prevailing in the market today." Exh. 109 at 32-33. USI goes on to state that to the extent the maximum rates are inconsistent with prevailing market rates or insufficient, the scope of work for these activities is defined to accommodate the competitive bidding provisions and the unusual or extraordinary circumstances provisions in Section 734.855 and 734.860. Exh. 109 at 33.

USI does take issue with the maximum rates in Section 734.845 and argues that the record "is significantly in error" as the record pertains to the consistency of maximum payment amounts in that section. Exh. 109 at 33. USI opines that the Agency's experience in administering the UST program is of little value for developing maximum rates, except for the labor rates proposed in Appendix E. *Id.*

USI's experience in UST work is significant and from 2002 through 2004, USI submitted, on behalf of clients, over 14% of all reimbursement claims to the Agency. Exh. 109 at 33. USI notes that historically, USI's reimbursement rate is well above the statewide average. *Id.* USI claims that USI's fee schedule items are "routinely and consistently" approved by the Agency in budget proposals and reimbursement requests. *Id.* Because of this experience, USI has observed numerous examples where the maximum payment amounts proposed by the

Agency deviate from the rates currently and historically approved by the Agency. *Id.* USI included in their testimony a fee schedule for rates currently being reimbursed. Exh. 109 at 33-34; Attach. 9. According to USI, this fee schedule included charges for professional instrumentation, equipment and materials, and supplies; items that have been omitted from the Agency's proposed maximum payment amounts. Exh. 109 at 34. USI suggests adding payment amounts for instrumentation, equipment and materials, and supplies that are routinely used by professionals. *Id.*

USI performed a review of the professional costs associated with 69 randomly selected sites to evaluate the current and historical reimbursement practices of the Agency on projects other than those performed by USI. Exh. 109 at 34. USI obtained records for the sites using the Freedom of Information Act (5 ILCS 140/1 *et. seq.* (2004)). *Id.* USI selected sites which had received NFR letters after January 1, 2003. Exh. 109 at 296. USI asserts that the results of this survey "prove that the maximum payment amounts for professional services" proposed by the Agency are "not even close to being consistent with the costs that the Agency currently approves." Exh. 109 at 34. USI maintains that the maximum payment amounts in Subpart H would dramatically reduce the number of professional service hours and the costs that the Agency currently considers reasonable and necessary. Exh. 109 at 34-35.

In preparing the data from the survey, USI reports the data by total professional service hours and charge per phase of the project. Exh. 109 at 35. USI presents the data in this fashion because a task-by-task analysis would be meaningless. *Id.* USI maintains that the Agency has never implemented a standardized task structure against which costs must be reported and historically consultants have grouped varying work activities into tasks. *Id.* According to USI, there is no conformity in the Agency's files for this grouping and in fact, USI found 145 "task conventions" associated with early action, 382 "task conventions" associated with the site classification phase, and 516 "task conventions" associated with corrective action in the survey. *Id.* USI argues that as a result of this lack of standardization the only "accurate means of assessing professional service cost" is to assess on a project level or phase-by-phase. *Id.*

USI notes that Subpart H created 28 "tasks" for professional services while USI uses 98 distinct tasks in the current billing procedures for UST Fund projects. Exh. 109 at 35-36. Further, USI points out that in the 69 projects reviewed by USI, there were 900 unique task conventions associated with professional services alone. Exh. 109 at 36. USI concedes that consolidation and standardization of tasks may have merit; however, the Agency's approach was flawed, inaccurate, and inconsistent with current Agency practices. *Id.*

USI asserts that the Agency has attempted to establish that the tasks associated with the maximum payment amounts requires a similar level of effort from one project to the next and this is simply not the case. Exh. 109 at 36. USI has provided documentation from two separate incidents that were remediated using conventional techniques. Exh. 109 at 36; Attach X. The level of required correspondence, documentation and professional consulting effort and the amount reimbursed by the Agency are substantially different due to the variance in the scope of work for the two projects. *Id.*

USI argues that the Agency has also attempted to establish that the Agency's review is uniform and consistent. Exh. 109 at 36. USI does not agree. Exh. 109 at 37. USI provides information that the reviewers are erratic and can be impacted by unit managers. Exh. 109 at 37; Attach. 16.

**Specific Non-Objectionable Provisions**

USI reviewed the maximum payment amounts set forth in the proposed rule in Sections 734.810-734.840 to determine if USI had any objection to the payment amounts. Exh. 109 at 37. USI applied several "tests" to the maximum payment amounts in order to establish that the amounts are acceptable. *Id.* The first test was whether the "unit of measure" assigned to the work activity was appropriate to the work being performed. Exh. 109 at 37-38. The second test was whether the regulations provided sufficient detail to allow a scope of work to be authored for a bid specification to allow for competitive bidding. Exh. 109 at 38-39. The third test was whether USI believes the price accurately reflects prevailing market prices and the whether the price includes conditions likely to be encountered at most sites in Illinois. Exh. 109 at 39.

USI notes that there are 109 maximum payment amounts in Sections 734.810-734.840 and USI performed the three tests on each of those amounts. Exh. 109 at 40. USI states that with the exception of omitting a maximum payment amount for mobilization for the drilling activities in Section 734.820, USI has found the maximum payment amounts acceptable. *Id.* USI believes that the amounts are appropriate and workable, and USI has no objection to implementation of these amounts. *Id.*

The Agency notes that USI has completely rewritten Section 734.810-734.840 in the draft rule (PC 55). PC 59 at 17. The Agency asks if USI has no objection to these sections why USI has rewritten them. *Id.* USI states that USI does not object to the "concept" behind the Agency language; however USI believes the concept behind the rule can be rewritten so that the rule is simpler and does not require the body of the rule to be rewritten if a rate change is warranted. *Id.* USI has suggested placing rates in an Appendix rather than the body of the rule. USI envisions that the rate in the appendix would be an expedited rate and an unpublished maximum rate could be calculated for each of these sections. PC 59 at 31-41. USI also envisions a "bid unit rate" and unusual and extraordinary circumstances to be included in the range of rates reasonable for these sections. *Id.*

**Specific Objectionable Provisions**

USI asserts that key portions of Subpart H are based upon conjecture and not fact, are poorly crafted, and will lead to arbitrary results by Agency personnel. Exh. 109 at 41. USI argues that key portions of Subpart H as published at first notice are so poorly conceived and conceptually flawed that the "mere passage is likely to have immediate, deleterious or ruinous impact" on UST owners/operators in Illinois. *Id.* USI opines that there are five concepts associated with Subpart H that must be addressed before proceeding to second notice. The following sections will discuss each of the five concepts USI has raised.

**Lack of Standards and Definitions.** USI concedes that consolidating work activities into "tasks" is a good concept and necessary for accurate and administratively efficient long term cost containment. Exh. 109 at 42. However, USI maintains that Subpart H attempts to group "costs" into "tasks" and then to maximum payment amounts for each "task" and this is confusing absent standards and definitions. *Id.*

USI points to the language in Section 734.800 as proof of the confusion. Exh. 109 at 43. USI notes that in subsection (a), the rule states that "all costs" are grouped into "tasks" set forth in Sections 734.810-734.850 and the maximum payment amount for each task is set forth in those sections. *Id.* Next in subsection (b), USI notes the language of the rule indicates that the "costs listed under each task" in Sections 734.810-734.850 "identify only some of the costs associated with each task" and are not an exclusive list. *Id.* Finally in subsection (c), USI notes that language indicates that Subpart H sets forth the only methods that can be used to determine the maximum amounts that can be paid for eligible corrective action costs and whether a costs is eligible is determined by 35 Ill. Adm. Code 734.Subpart F. *Id.*

USI argues that after reading Section 734.800, one is not certain whether the maximum payment amounts in Subpart H are for "costs" or "tasks" or some combination of the two. Exh. 109 at 43. Also, the language of subsection (c) would appear to directly contradict the "all costs" language in subsection (a). *Id.* USI opines that one interpretation of subsection (c) also would allow for payments in excess of the maximum payment amounts if the costs are "eligible corrective action costs" pursuant to 35 Ill. Adm. Code 734.Subpart F. Exh. 109 at 43-44. USI asserts:

> This is the case since it is obvious that the maximum payment amounts in Subpart H "identify only some of the costs associated with each task" and do not provide an "exclusive list of *all costs* associated with each *task*" ([Section] 734.800(b)). Exh. 109 at 44.

USI opines that the Agency might argue that payments in excess of the maximum payment are precluded by Section 734.630(aaa). Exh. 109 at 44. However, USI asserts that since the Agency has omitted many professional consulting tasks that are necessary to complete corrective action and has failed to provide a scope of work, it will be impossible for the Agency to demonstrate that costs are ineligible pursuant to Section 734.630(aaa). *Id.* USI states that as part of the prefiled questions to the Agency before the last hearing, at least 21 questions were posed to the Agency regarding scope of work. *Id.* USI indicates that the questions all sought a definition or disclosure from the Agency as to where certain costs are accounted for in Subpart H. *Id.* USI asserts that the Agency failed or refused to identify specific "tasks" where "costs" are allocated in most instances and in other instances the answers demonstrate how confusing the rule will be to administer. Exh. 109 at 44-45.

USI allows that the literal interpretation discussed above is not the one espoused by the Agency. Exh. 109 at 45. USI points to additional areas of confusion such as the fact that the word "task" is used only in Subpart H but no where else in the rule. *Id.* Also USI notes that the word "activities" is being deleted from Section 732.601 and 734.605 while "activities" are referenced in Section 734.850(b). *Id.*

**<u>Use of ACECI Estimated Personnel Hours.</u>** USI notes that the Agency based the maximum payment amounts in Section 734.845 on the number of professional consulting hours estimated by ACECI and provided to the Agency. Exh. 109 at 46. However, USI argues that the Agency used those estimates without including the specific, definable, and objective scope of work the estimates were predicated upon. *Id*. USI asserts that the practitioners participating in the *ad hoc* group from ACECI qualified the number of hours that were provided to the Agency for each task developed. Exh. 109 at 50. USI states that the *ad hoc* group recognized the importance of a scope of work for any professional service so the group qualified the number of hours provided to the Agency by specifying a scope of work for each task. *Id*. USI further states that the group informed the Agency that the quantity of hours needed for each task would change if the scope of work was other than the one specified by the group. *Id*.

USI asserts that after the Agency received the information from the *ad hoc* group, the Agency changed the scope of work by modifying and/or consolidating several tasks. Exh. 109 at 51. Furthermore, USI asserts the Agency omitted the scope of work that the group had listed for each task. *Id*. USI argues that the scope of work for each task was the "very foundation" for ACECI's determination of what number of hours was appropriate to complete a task. *Id*.

USI testifies that the Agency has testified that the "rates" in Subpart H are generally consistent with the rates currently reimbursed. Exh. 109 at 46. USI opines that "generally" is a broad characterization and in the case of professional consulting services, "rates" are only one component of costs. *Id*. USI states that costs are determined by multiplying the rates per unit of measure by the quantity of units required to complete the service. *Id*.

USI states that in the 15 plus years that the Agency has administered the UST Fund, the Agency has never issued a standardized list of "tasks" to be used. Exh. 109 at 47. As a result, USI testifies that consultants have been forced to arbitrarily group professional service work activities into arbitrary tasks. *Id*. USI asserts that this has led to an unidentified and potentially infinite number of unique tasks reported to the Agency. *Id*. Thus, USI asserts the Agency has no valid, accurate or scientifically defensible means of determining what quantity of professional service hours are normal for the various tasks. *Id*.

**<u>No Defined Scope of Work.</u>** USI asserts that the failure to include a defined scope of work for professional service tasks listed in Section 734.845 is the most serious conceptual flaw of the proposed rulemaking. Exh. 109 at 53. USI claims this is particularly so when considering there are only two methods for establishing alternative payment amounts. *Id*. Those two alternatives are competitive bidding and the extraordinary provisions, neither of which will work for professional service tasks. Exh. 109 at 54, 57-58.

***<u>Competitive Bidding.</u>*** USI asserts that there are fundamental impediments in using competitive bidding for professional services without a scope of work. Exh. 109 at 54. One problem is that bid specifications that cover all costs that are included in the maximum payment amount cannot be prepared. *Id*. Second, bids that truly cover all costs will be difficult to obtain. *Id*. Third, demonstrating that the bid covers all costs will be difficult. *Id*.

USI maintains that the concept of competitive bidding for professional services should not be included in this rule. Exh. 109 at 54. USI argues that the Agency personnel reviewing bids for professional services will have no guidance, absent a scope of work, and thus the review will be arbitrary. Exh. 109 at 55. The result of the arbitrary review, according to USI, is that the Agency will either end up defending the decisions before the Board or courts or the Agency will develop internal standards. Exh. 109 at 55. As a result USI insists the Agency will be developing a scope of work through these two courses. Exh. 109 at 55-56.

USI argues that the prefiled questions by Mr. King to the Agency included 21 questions "primarily designed to assist in assessing the Agency's ability to adequately and objectively administer" maximum payment amounts from Section 734.845 and the competitive bidding provisions of Section 734.855. Exh. 109 at 56. USI asserts that 16 of the Agency's answers failed to provide enough detail to determine how professional service costs should be allocated. Exh. 109 at 56-57, Attach 18.

***Unusual and Extraordinary Circumstances.*** USI argues that the lack of a defined scope of work effectively precludes the use of this provision for professional consulting services. Exh. 109 at 57. USI asserts that determining what cost and corresponding Section 734.845 maximum payment amount are to be considered for comparison when determining whether to use the unusual or extraordinary circumstances provision is impossible. Exh. 109 at 57-58. Further, USI maintains if what is ordinary is not defined; owner/operators and consultants will be unable to define extraordinary. Exh. 109 at 58.

**Conversion of Professional Service Payment.** USI believes that another conceptual flaw in this proposed rulemaking is the attempt to immediately convert payments for professional services for a time and material basis to a lump sum basis. Exh. 109 at 59. USI notes that since the inception of the UST program, the Agency has reimbursed professional service on a time and materials basis. *Id.* USI states that this is how consultants and engineers bill their services. *Id.* USI asserts that time and materials is a reasonable and logical approach because a task can have various scopes of work or even an inherently unpredictable scope of work. Exh. 109 at 59-60. Further, USI argues that professional consulting services are intellectual in nature and time and materials billing is appropriate. Exh. 109 at 60.

USI notes that as discussed above, determining that the maximum payment amounts are reasonable absent a defined scope of work is difficult because the proposed rule has attempted to aggregate costs into tasks. Exh. 109 at 60. USI opines that even if a scope of work had been provided, the best anyone could do would be to estimate the time for each task. *Id.* USI asserts that immediately converting from time and materials to lump sum based on a flawed system will hamper the cleanup of the environment and threaten small businesses. Exh. 109 at 61.

USI believes that with the inclusion of a defined scope of work, some professional consulting services can be converted to lump sum payments in time. Exh. 109 at 61-62. USI opines that this should be done in phases and at the onset of this proposed rule, professional services should be billed and reimbursed on a time and materials basis. Exh. 109 at 62.

**Use of Averages as Maximums.** USI notes that the Agency has proposed the adoption of average historical costs as the maximum in many instances. Exh. 109 at 62. USI asserts that this is inherently problematic. Exh. 109 at 63. USI opines that the Agency may have proposed the average because if a higher number were published consultants would raise their prices to the higher price. *Id.* USI further opines that this would drain the UST Fund and using the average would not have the same effect. *Id.* However, USI argues that using the average is just as problematic for several reasons. *Id.*

USI asserts that using the historical averages will create an artificially low price and cause havoc for the owners/operators. Exh. 109 at 63-64. USI argues that if the averages are adopted, many consultants costs will be higher than the maximum payment amounts and consultants will either no longer provide services or the owner/operator will be required to pay the difference. Exh. 109 at 64. USI states that in either case the owner/operator loses. *Id.*

A second problem, according to USI, is that requiring an owner/operator to seek only the maximum payment amount will skew the Agency's data and eliminate the Agency's ability to review prevailing market rates. Exh. 109 at 64. USI also believes that using an average as a maximum will result in "administrative upheaval and a flood of appeals" neither of which will streamline the process. *Id.* Finally, USI opines that due to varying conditions throughout the state, using the average could result in a complete reimbursement at one site but not at another site. *Id.*

**Solutions**

USI provided draft regulations addressing the flaws discussed above. USI states that the draft regulations have been prepared with the goals of streamlining the preparation and review of budgets and payment applications, improving consistency of review, and creating a cost-containment program based on real market statistics from Illinois in mind. Exh. 109 at 65. The following paragraphs will give a brief overview of USI's suggested changes offered by USI.

**Lack of Standards and Definitions.** USI proposes that key terms be clearly defined and adds definitions for words and phrases such as expedited unit rate, extended cost, extraordinary unit rate, maximum unit rate, reasonable quantity, and standard products and services. Exh. 109 at 66; Attach 20; PC 55. USI also provided detailed descriptions of fieldwork. *Id.*

**ACECI Hours and Defined Scope of Work.** USI proposes implementing a cost-containment rule using time and materials billing for professional services. Exh. 109 at 67. USI also proposes adoption of a defined scope of work. *Id.*

**Conversion of Professional Services Payments.** USI recommends using the standardized system of tasks discussed above to develop a database to support conversion of from time and materials to lump sum payments for professional services. Exh. 109 at 67.

**Use of Averages as Maximums.** USI proposes adopting the unit pricing rates as a level that will be presumed acceptable and not be subject to further review or reduction. Exh. 109 at 68. USI suggests that a second level of pricing that will be higher than the published rates may

be adopted which are in fact the maximum rates. *Id.* USI suggests that these rates remain unpublished and known only to the Agency and be set by a statistically sound method. *Id.*

USI asserts that a key component of the draft regulations is the allowance for collection of real market pricing data and adjustment of unit pricing based on such data. Exh. 109 at 69. USI notes that the Agency has expressed concerns that if consultants know that pricing data is being collected and attempt to manipulate the data may be made. *Id.* USI asserts that four key facets of the draft regulations will minimize potential for manipulation. *Id.* Those four facets are:

1. Use of published expedited unit price schedule at which pricing is known to be acceptable.

2. Use of unpublished maximum payment amounts will discourage excessive pricing.

3. Use of statistically sound unit quantity determination will play a major role in keeping costs in line.

4. Task standardization will provide consultants (and competitive bidders) the information needed to adequately, correctly, and completely plan what work is required and in what way it will be paid. Exh. 109 at 70.

**Concern about Professional Consulting Services Cost Levels.** USI states that there is real concern that absent historical standardization of tasks, appropriate total pricing levels cannot be set for professional services which vary in effort. Exh. 109 at 70. USI proposes using time and material billing status under the draft regulations initially to allow for collection of data. *Id.* USI is recommending an approach that addresses control of costs at the unit price level. *Id.* USI cautions however that another component to total cost is the quantity of units being performed. *Id.* USI has used the data on the total number of professional personnel hours typically used in the past per phase of work to quantify units being performed. *Id.*

USI recommends that the LUST Advisory Committee or similar committee establish a certain quantity of hours per project phase as an appropriate quantity for the performance of all professional services required by that phase. Exh. 109 at 70. USI's draft regulations would have the Agency use this quantity of hours as a "barometer to monitor reasonableness" of professional services costs proposed or incurred throughout the phase of the project. Exh. 109 at 71. USI suggests this as an interim measure until data can be collected. *Id.*

To ensure the collection of data, USI's proposal would have all costs proposed and or incurred reported to the Agency using the standardized tasks and scope of work suggested above. Exh. 109 at 71. After data has been collected, USI proposes establishing lump sum expedited rates based on the data. *Id.* USI notes that as an alternative to tracking data at the phase level, data could be tracked at the task level, which would be a more accurate means of analyzing data. *Id.* However, according to USI, there are more than 900 task name conventions used by various consultants in recent years so there is no historical task data. *Id.*

**Database Solution.** USI asserts that the suggested changes discussed above, "lends itself to automation" in the UST program. Exh. 109 at 72. USI proposes the use of Automated Budget and Reimbursement Approach (ABRA). *Id*. USI asserts that the new budget proposals and payment applications are highly automated and a user will simply need to open a web browser. *Id*. USI argues that the data will be reliable because the system will use Agency approved unit rates against consultants' proposed pricing. *Id*. Upon receipt of data from the consultant, the system would perform a series of validations to determine which if any unit prices exceed the standard fee schedule. Exh. 109 at 72. USI argues that ABRA establishes that a database is not just feasible and workable, but an absolute requirement for effectively managed UST program. *Id*.

**Legal Challenges.** As a part of USI's testimony, USI submitted a legal memorandum from Mr. Hundley concerning the proposed regulations. Exh. 109 at 74, Attach 23. Mr. Hundley addresses three issues in the legal memorandum. The first addresses the maximum reimbursable prices. *Id*. The second addresses the proposed regulations and the use of TACO. *Id*. The third issue is the auditing and record retention provisions of the proposed rule. All three issue will be discussed below.

***Reimbursable Amounts.*** Mr. Hundley's memorandum echoes many of USI's concerns regarding the use of the unusual or extraordinary circumstances and competitive bidding provisions of the proposed rule. Exh. 109, Attach. 23 at 1-4. Mr. Hundley's memorandum than asserts that there is "drastic lack of statutory basis" for Agency's approach to maximum payment amounts. Exh. 109, Attach. 23 at 4. Mr. Hundley maintains that the approach is unlawful. Exh. 109, Attach. 23 at 5. Mr. Hundley states that the legislature intended that persons who undertake cleanup under the UST program be able to seek payment for "any costs associated with physical soil classification, groundwater investigation, site classification and corrective action." Exh. 109, Attach. 23 at 5, citing 415 ILCS 5/57 (2004). Mr. Hundley asks why the legislature would say "any costs" if the legislature intended "average costs" were to be reimbursed. *Id*. Mr. Hundley states that the legislature when adopting P.A. 92-554 specifically required an applicant to study certain site-specific criteria and set forth and accounting of all costs. Exh. 109, Attach. 23 at 5. Mr. Hundley also points to language adopted by the legislature in P.A. 92-574 which requires the applicant to submit an accounting of all costs. *Id*. Likewise, according to Mr. Hundley, Section 57.7(c)(3) of the Act provides that "the costs associated with the plan are reasonable." *Id*, citing 415 ILCS 5/57.7(c)(3) (2004).

Mr. Hundley opines that the regulations are being proposed not to meet statutory obligations but rather to cut the reimbursements down to perceived available funds. Exh. 109, Attach. 23 at 6. Mr. Hundley states that the Agency admits "as much" in the Agency's testimony in this proceeding. *Id*. Mr. Hundley concedes that the Agency's budget concerns may be valid; however, the legislature has considered shortages in the UST Fund and reacted differently. Exh. 109, Attach. 23 at 7. Specifically, Mr. Hundley states that the legislature has adopted language which directs the Agency to notify claimants if finds are insufficient and to create a priority list for reimbursement. *Id*, citing 415 ILCS 5/57.8 (2004). Further, Mr. Hundley argues that the legislature requires the Agency to make payment determinations within 120 days whether there are available funds or not. *Id*. Mr. Hundley argues that the Agency does not have the authority

to overrule the legislature and the Board and the Agency must carry out the legislature's intent. Exh. 109, Attach. 23 at 8.

***TACO.*** Mr. Hundley argues that limiting reimbursement to Tier 2 TACO levels and the requirement to use groundwater ordinances are inappropriate. Exh. 109, Attach. 23 at 10. Mr. Hundley asserts that there is no statutory basis for these proposals. *Id*. Mr. Hundley notes that the legislature has acknowledged the use of TACO; however, the legislature did not limit the use of TACO to Tier 2 objectives. *Id*. Furthermore, Mr. Hundley asserts that the legislature had directed an owner/operator to design the plan to mitigate any threat to human health, human safety, or the environment resulting from a leaking UST. *Id*. Mr. Hundley maintains that had the legislature intended to limit the cleanup of a site, the legislature would not have use the phrase "any threat" in the statute. Exh. 109, Attach. 23 at 11.

Mr. Hundley asserts that cleanup to Tier 1 versus Tier 2 will indisputably affect the future property use, value and salability. Exh. 109, Attach. 23 at 11. Also, Mr. Hundley maintains that TACO focuses on risk to human health, while the UST program requires cleanup if there is a threat to human health, safety or the environment. Exh. 109, Attach. 23 at 12. Mr. Hundley argues that the Agency cannot ignore the language of the statute. *Id*.

The Agency questioned USI further regarding the statements made in the legal memorandum and USI responded. PC 59 at 19-21. USI states that the memorandum does not suggest that all remediation under Tier 2 of TACO fails to provide protection for human health. PC 59 at 19. However, USI contends that remediation under Tier 2 of TACO does not provide as much protection as Tier 1 of TACO. *Id*.

**Audit and Record Retention.** Mr. Hundley argues that Section 734.665 is beyond the Agency's statutory authority and Mr. Hundley takes issue with the Board's decision to the contrary at first notice. Exh. 109, Attach. 23 at 13. Mr. Hundley argues that the statute gives the Agency only the authority to audit "data, reports, plans, documents and budgets *submitted*" pursuant to the Act. *Id*. Mr. Hundley asserts that audit is defined by the Act and the definition of audit does not extend the audit provisions to all documents. *Id*. Mr. Hundley argue that the legislature has made clear that he Board and the Agency are given authority consistent with the provisions of the Act and requiring the regulated entity to maintain copies of not only what was submitted to the Agency but also all documents pertinent to the submission to the Agency is beyond the requirements of the Act. Exh. 109, Attach. 23 at 14-15.

**Response to Agency Questions**

In response to the Agency's 36 questions, USI expressed a desire to address two "suggestive subtleties" in the Agency's questions. PC 59 at 1. The remaining responses to the Agency's questions have been incorporated above where appropriate. The following paragraphs address the two general issues USI addressed.

**Implication that USI Takes Exception to Board Publishing Rule at First Notice.** USI asserts that the Agency's questions imply that USI takes exception to the Board publishing the rule for first notice. PC 59 at 1. USI clarifies that USI is not at odds with the Board and in fact

empathizes with the position the Board was placed in at first notice. *Id.* USI recognizes that the rulemaking process is an open and public process and first notice is merely a milestone in that process. PC 59 at 2. USI argues that first notice is not the conclusion of the process and the Board may make substantive changes to the proposed rule in response to public comment prior to proceeding to second notice. PC 59 at 2, citing 35 Ill. Adm. Code 102.606.

USI empathizes with the Board because at the time the Board moved to first notice the Board was faced with a "highly controversial, confusing and incomplete record." PC 59 at 2. USI asserts that the Board's adoption of a first notice proposal similar to the Agency's original proposal was not an adoption by the Board of the Agency's proposal. *Id.* Rather, USI argues, the Board's publication of a first-notice rule was a means of moving forward and forcing the participants to identify and focus upon critical portions of the proposed rule. *Id.* USI states that for these reasons, USI focused primarily on the issues the USI believes are the largest remaining issues in the rulemaking. *Id.*

USI argues that for the Agency to imply that the rule as proposed at first notice is the Board's proposal or even the Board's final position with regard to Subpart H is inappropriate. PC 59 at 3. USI believes that the post first-notice rulemaking process is a substantive process involving continued receipt of information by an impartial decisionmaker. *Id.* USI does not believe that the post first-notice rulemaking process is "window dressing" as USI asserts the Agency would like the participants to believe. *Id.*

**USI's Business Operations.** USI notes that a number of the Agency's questions concern USI's business operations and financial performance. PC 59 at 3. USI argues that these questions are not relevant to the testimony offered by USI on July 27, 2005, or to this rulemaking. *Id.* USI asserts that it is but one consultant performing UST work in Illinois and the subject matter of USI's testimony was much broader in scope than USI's business alone. *Id.* USI provided testimony based on a "statistically reliable survey of information in the Agency's own files" that provided a range of professional consulting hours, rates, and costs that the Agency has historically reimbursed. *Id.*

USI also provided a national survey of profitability of environmental engineering and consulting firms from across the nation. PC 59 at 3. USI asserts that considering that this rulemaking is an industry wide and statewide rulemaking with national costs data in the record, USI business operations and financial performance are not important. PC 59 at 4.

**Public Comments**

USI filed numerous public comments in this proceeding. Three of the comments (PC 55, PC 60, and PC 67) were documents reflecting the suggested rule changes and the draft rule discussed as a part of USI's testimony. PC 59, discussed above, was USI's responses to Agency questions. Numerous documents titled "Statement of Support" or "Request for Delay" were signed by various companies and individuals and filed as PC 66. USI filed a sample budget and billing form that was docketed as PC 68. USI also submitted copies of letters and documents from Illinois State Senators and those are discussed *infra* at 50 (PC 69). PC 72 is a CD of USI's final comments. USI's comments filed as PC 61 and 71 will be discussed here.

USI's states that the random sampling and analysis performed by USI focused on professional consulting costs that the Agency has historically reimbursed. PC 61 at 1. Specifically, USI examined the historical costs reimbursed for professional consulting services typically rendered during each phase of a UST remediation. *Id*. USI argues that the data gathered by USI demonstrates that the maximum payment amounts proposed for professional consulting services will cut UST Fund benefits to owner/operators by 50%. *Id*.

In contrast, USI opines that the Agency's testimony was designed to lead one to believe that the maximum payment amounts for professional consulting service were not distinctly different from the historical reimbursement amounts. PC 61 at 2. USI reexamined the data used by the Agency and found striking contrasts between the actual case files and the testimony concerning the data developed by the Agency. PC 61 at 2-4. USI points out these contrasts and suggests that the conclusions drawn by the Agency based on the Agency's data were incorrect. *Id*.

USI also filed a response to the Agency's comment in this proceeding (PC 71). USI defends its positions noting that the expedited unit rates and services suggested by USI is not "elaborate" or "difficult to decipher" in anyway. PC 71 at 1. USI believes that the creation of a database is essential and that a database will not complicate or lengthen the reimbursement process. *Id*.

**Illinois Environmental Protection Agency's Public Comment**

The Agency states that "time does not permit" the Agency to provide detailed comment on all suggestions and issues that have been raised and to do so would "diminish by its length" the usefulness of the Agency's final comment. PC 62 at 1. The Agency states that absence of a comment on any testimony or public comment should not be construed as the Agency's acquiescence in or support for the testimony or comment. PC 62 at 2.

The Agency's final comment is divided into three sections. The first section contains comments on testimony from the July 27, 2005 hearing and is divided by the Sections of the rule. The second section contains comments addresses public comments submitted to the Board in response to the Board's first-notice proposal. The third section suggests a few non-substantive changes to the rule. The following section will follow the Agency's organization and summarize the comment.

**Comments on Testimony**

The Agency supports the rules as proposed by the Board at first notice and requests that the Board proceed with adopting the rules. PC 62 at 2. The Agency believes that as a whole the proposed rules will allow for reimbursement of reasonable remediation costs from the UST Fund. *Id*. The Agency also believes that the proposal establishes reasonable and appropriate rules for implementation of statutory changes in the leaking UST program enacted in 2002. *Id*. The Agency comments specifically on some requested amendments to the proposal on a section-by-section basis. The following paragraphs will summarize the Agency's comments.

**Section 734.100.** In response to CW$^3$M's suggestion that the Board further amend the applicability section of the rule "to clarify that the proposed rules should not be used as final rules before the rulemaking process has been completed," the Agency comments that no additional change is necessary. PC 62 at 2. The Agency notes that the suggested changes will not take effect until the rule is adopted and therefore the stated purpose could not be accomplished. PC 62 at 2-3. The Agency further notes that CW$^3$M also suggests changing the word "applies" to "is intended" but such a change would convert this applicability section to an intent section. PC 62 at 3. CW$^3$M also suggests limiting the scope of Part 734 to changes implementing the statutory amendments in P.A. 92-0554 and P.A. 92-735; however, the Agency asserts that the proposed amendments do not implement only those two public acts. *Id.* The Agency maintains that the proposed rules implement the rest of the UST program's statutory provisions including two other public acts enacted in 2002. *Id.* Lastly, the Agency comments on CW$^3$M's suggestion that a new subsection (d) be added to address payment for work already approved prior to the effective date of the rules. The Agency believes that Section 734.100(a)(2) already addresses that issue. *Id.*

The Agency points out that the Board examined the language in Section 734.100 in the first-notice opinion and the Board made revisions to ensure that the rule would not have a retroactive effect. PC 62 at 3. The Agency does not believe that the additional language changes suggested by CW$^3$M are necessary, nor did CW$^3$M provide adequate justification for changing the rules. PC 62 at 3-4.

**Section 734.340(b).** The Agency responds to CW$^3$M's suggestion that the rule reflect that only available alternatives should be cost compared. PC 62 at 4. The Agency feels this change is unnecessary as the language in Section 734.340(b) already states that if an owner/operator is seeking to use an alternative technology the owner/operator must demonstrate that the costs "is not substantially higher than other available alternative technologies." *Id.* The Agency states that if a particular technology is not available, no cost comparison is required; and the Agency would not require comparison to an alternative technology that cannot be used. *Id.*

**Section 734.505.** The Agency does not believe that the rule needs to include language requiring more specific reasons for Agency's decisions. PC 62 at 4. The Agency points out that the proposed rule already includes the statutory requirements that any rejection or modification of a plan, budget, or report by the Agency must include "[a] statement of specific reasons why" the Act or regulations may be violated if the plan, budget, or report is approved. PC 62 at 4-5.

**Section 734.510.** The Agency takes issue with CW$^3$M's suggested changes to Section 734.510(b). PC 62 at 5. The Agency states that CW$^3$M's suggestion deletes standards the Agency has long been required to use when conducting financial reviews and replaces the standards with a requirement that the Agency determine that the costs are consistent with Part 734. *Id.* The Agency asserts that this change is inappropriate because by statute the Agency must determine if the costs are reasonable, are incurred in performance of site investigation or corrective action, are not for activities in excess of those required to meet the Act. *Id*, citing 415 ILCS 5/57.7(c)(3) (2004). The Agency comments that the standards in Section 734.510(b) repeat the long existing standards in Section 734.505(c), and those standards mirror the statutory

requirements for reviewing costs. *Id.* The Agency argues that the standards should stay in the rule. *Id.*

**Section 734.605.** The Agency disagrees with suggestions by $CW^3M$ that rule be changed concerning the proof of payment of subcontractors, before handling charges will be reimbursed. PC 62 at 5-6. The Agency concedes that a businesses' workload increases as the number and complexity of projects increase; however increased workload should not excuse proper documentation of costs. PC 62 at 6. The Agency notes that the Board took notice of the fact that the existing rules for UST reimbursement already prohibit payment of handling charges if the primary contractor has not paid the subcontractor. *Id.* Further, the Agency notes that the Board already considered deleting the proof of payment requirement and rejected the request. *Id.* However, the Board did provide additional language to clarify that proof of payment can be met in many ways, points out the Agency. *Id.* The Agency believes the Board's proposed language is appropriate and the changes suggested by $CW^3M$ are not necessary. PC 62 at 7.

The Agency also takes issue with $CW^3M$'s suggested changes to the one-year deadline for submittal of reimbursement applications after an NFR letter has issued. PC 62 at 7. The Agency believes that the suggested change nullifies the one-year deadline for submitting reimbursement applications because the deadline can be extended for any reason. *Id.*

**Section 734.625.** In response to suggestions by $CW^3M$ that additional items be added to the list of eligible costs, the Agency comments that the list is not an exclusive list. PC 62 at 7. The Agency states that Section 734.625(a) merely contains examples of costs that may be eligible and eligibility of a certain cost is not dependant upon listing in this section. *Id.* The Agency states that adding the costs suggested by $CW^3M$ will not make those costs any more eligible. *Id.* The Agency comments that attempting to identify in the rules every cost that is eligible would create a massive list in the rules. *Id.*

**Section 734.630.** The Agency responds to several suggested changes to this section. The Board will summarize each of those responses below.

***Section 734.630(w).*** The Agency does not believe that deletion of the word "compaction" from this subsection, as suggested by $CW^3M$, is appropriate. PC 62 at 8. The Agency asserts that costs associated with compaction of backfill have long been ineligible for reimbursement and sufficient justification for a change has not been offered. *Id.* The Agency further argues that returning the subsurface of a site to pre-excavation condition that is suitable for redevelopment is not required as a part of corrective action and thus exceeds the minimum requirements of the Act. PC 62 at 8, citing *e.g.*, McDonald's Corporation v. IEPA, PCB 04-14 (Jan. 22, 2004). Furthermore, the Agency comments that the Board in this proceeding has already addressed the issue of compaction costs. PC 62 at 9, citing R04-22, 23 (Feb. 17, 2005) at 82.

***Section 734.630(gg).*** The Agency notes that currently costs incurred after issuance of an NFR letter are generally ineligible for reimbursement. PC 62 at 9. The exceptions to this ineligibility are specified in the rule. *Id.* The Agency points out that at first notice the Board proposed three new exclusions to the prohibition against reimbursement. PC 62 at 9. $CW^3M$ has

suggested additional exclusions, all of which the Agency believes are inappropriate. PC 62 at 9-11.

First, the Agency argues that reimbursement for incremental costs incurred by a highway authority would be inappropriate. PC 62 at 10. The Agency asserts that the Board determined in a prior rulemaking that costs incurred pursuant to highway authority agreements are not eligible for reimbursement. PC 62 at 10, citing Regulation of Petroleum Leaking Underground Storage Tanks: Amendments to 35 Ill. Adm. Code 732, R01-26 (Feb. 21, 2002). Thus, the Agency argues reimbursement is improper. *Id.*

Second, the remaining exclusions suggested by $CW^3M$ are also not appropriate, argues the Agency. PC 62 at. 11. The Agency states that the Agency agrees with the Board's statement in a R01-26 that "absent special circumstances such as MTBE contamination, the UST Fund should not be used to pay for remediation costs once the Agency issues an NFR letter." PC 62 at 11, citing R01-26. The Agency points out that the Board further noted that "an NFR letter does not absolve a UST owner or operator from liability for cleaning up off-site releases, even where an NFR letter has been issued." *Id.* The Agency states that the Board has already acknowledged in previous rulemakings that while an owner/operator may be liable for remediation after issuance of an NFR letter, remediation conducted after the issuance of the NFR letter is not eligible for reimbursement from the UST Fund. PC 62 at 11.

The Agency argues that the changes suggested by $CW^3M$ are not consistent with the exclusions added by the Board. PC 62 at 12. The Agency asserts that the changes suggested by $CW^3M$ do not address activities related to corrective action conducted prior to the issuance of an NFR letter, nor do they address activities conducted pursuant to the Board's UST rules or Board or court order. *Id.* The Agency does not believe the changes are appropriate or that $CW^3M$ has provided sufficient justification to warrant a change in the proposal. *Id.*

***Section 734.630(oo).*** The Agency states that $CW^3M$ and CSD suggest a change to allow the payment of handling charges when the prime contractor and subcontractor are related entities. PC 62 at 12. The Agency characterizes $CW^3M$ and CSD's arguments as centering on the fact that the prime contractor incurs costs for administration, insurance, and interest costs, and a reasonable profit for procurement, oversight, and payment of the subcontract. *Id.* The Agency asserts that unlike where a third party is the subcontractor, the primary contractor does not incur many of these costs when a related entity is subcontracted. PC 62 at 13. Further the Agency argues that "where such costs are incurred for related subcontractors they are the result of the prime contractor's or its owner's decision to conduct business through multiple entities instead of a single entity." *Id.* The Agency states that there are many reasons for conducting business through several entities; but one result is an increase in the cost of conducting business. *Id.* The Agency does not believe the UST Fund should be used to cover such additional costs. *Id.*

***Section 734.630(aaa).*** The Agency does not believe the deletion of the word "maximum" in the phrase "maximum payment amount" is appropriate. PC 62 at 13. The Agency states that the change was suggested by $CW^3M$; however no supporting testimony was offered, according to the Agency. *Id.* The Agency states that the Board considered and declined

to change the phrase "maximum payment amount" in the first-notice opinion and the Agency agrees with the Board's decision. *Id.*

***Section 734.630(ccc).*** The Agency does not believe that the deletion of this subsection as suggested by $CW^3M$ is necessary. PC 62 at 14. The Agency states that the proposed rule does not require the reclassification of groundwater by an adjusted standard so $CW^3M$'s reliance on 35 Ill. Adm. Code 620.260 has not been adequately explained, according to the Agency. *Id.* In response to $CW^3M$'s claim that this subsection has a negative effect on property values, the Agency asserts that the effect of remediation on property values is not a factor in UST Fund reimbursement. *Id.* The Agency asserts that reimbursement for the UST Fund is limited to costs necessary to meet the requirements of the Act and use of a groundwater ordinance as an institutional control meets the minimum requirements. *Id.*

**Section 734.665.** The Agency is opposed to changes in auditing language proposed by $CW^3M$. PC 62 at 15. The Agency argues that although the owner/operator is the individual charged with providing the plans, reports, budgets, and applications to the Agency, those documents are often submitted directly by the consultant. *Id.* The Agency maintains that in many cases the owner/operator's only involvement is signing the documents and as a result the owner/operator is unlikely to have additional information about the documents. *Id.* The Agency asserts that limiting the Agency's review to information maintained by the owner/operator would limit the review to the document the Agency already has, in most instances. *Id.* The Agency asserts that the Agency needs to review information maintained by the owner/operator's consultant in order to conduct a complete and proper review of the information for the owner/operator. *Id.*

The Agency further states that providing a list of documents required during an inspection is impossible because the Agency cannot know what information is in the possession of the consultant or owner/operator until the Agency conducts the review. PC 62 at 15. The Agency does not believe that the suggested changes are necessary or that $CW^3M$ has provided sufficient justification to warrant a change. PC 62 at 15-16.

**Section 734.800.** The Agency argues that the changes suggested by $CW^3M$ and CSD would entirely alter the intent and effect of Subpart H. PC 62 at 17. The Agency states that the rates in Subpart H are *maximum* payment amounts, not "speed bumps" for reimbursement. *Id.* The Agency asserts that allowing reimbursement above the maximum payment amounts outside of the bidding and unusual or extraordinary circumstances provisions would render those provisions superfluous. The Agency also believes that the changes suggested by $CW^3M$ would result in frequent attempts to exceed the "threshold" amounts in the rules rather than routine requests at or below those rates. *Id.*

As to the suggested change to allow for tasks not specifically listed under a maximum payment amount to be reimbursed separately, the Agency believes that such a change will eventually result in Subpart H becoming a reimbursement on time and materials basis for every item not specifically identified in the rules. PC 62 at 18. The Agency states that developing an all-inclusive list of costs associated with each task identified in Subpart H would be impossible. *Id.*

The Agency summarizes $CW^3M$'s next suggested change as amending the proposal to eliminate the submission of cost breakdowns and invoices for costs paid by lump sum or unit of productions and to allow for payment in excess of maximum payment amounts if the applicant justifies the reasonableness on a time and materials basis. PC 62 at 19. The Agency asserts that $CW^3M$ does not provide any additional testimony to support these changes. *Id.* As to the first change, the Agency states a description of the supporting documentation the Agency believes is necessary in a reimbursement application is already in the record of this proceeding, but one item would be an invoice with minimum information to document the costs requested for reimbursement. *Id.* In response to the second change, the Agency notes that the Board's proposal allows for exceeding the maximum payment amounts via bidding and the unusual or extraordinary circumstances provisions. *Id.*

The next suggested change the Agency comments on is $CW^3M$'s suggestion that a new subsection (d) be added to allow for reimbursement for emergency activities on a time and material basis. PC 62 at 19. The Agency argues that the record contains nothing to demonstrate that emergency activities need to be reimbursed differently than non-emergency activities. *Id.* The Agency states that under the proposal emergency activities will be reimbursed to the same extent and in the same manner as non-emergency activities and the Agency does not believe the suggested change is necessary. *Id.*

**Section 734.810.** The Agency opposes $CW^3M$'s suggestion to exclude several costs from the maximum payment amounts allowed for UST removal and abandonment and instead to reimburse on a time and materials basis. PC 62 at 20. The Agency states that $CW^3M$ does not provide any reasoning for excluding the costs, nor does $CW^3M$ explain how the maximum rates suggested by $CW^3M$ were calculated. *Id.*

$CW^3M$ suggests changing the maximum payment amounts for UST removal and abandonment. PC 62 at 20. The Agency states that CSD also suggests changing the amounts and bases the payment amounts on *RS Means* calculations. *Id.* $CW^3M$ and CSD have suggested different payment amounts, according to the Agency. *Id.* The Agency notes that PIPE had previously suggested alternative amounts based on the *RS Means* calculations and the Board rejected those suggestions in the first-notice opinion. PC 62 at 21, citing R04-22, 23 (Feb. 17, 2005) at 81.

The Agency argues that CSD and $CW^3M$ have not provided sufficient testimony to show why the Board should adopt their suggested rates over those proposed. PC 62 at 21. The Agency further argues that CSD and $CW^3M$ have not provided sufficient testimony as to why the bidding and unusual or extraordinary circumstances provisions will not allow for reasonable reimbursement in excess of the maximum payment amounts when required. *Id.*

**Section 734.820.** According to the Agency, $CW^3M$ recommends that a provision be added to make the maximum payment amounts for travel associated with professional consulting services also applicable to drilling costs to cover drilling contractors' mobilization charges. PC 62 at 22, citing Exh. 106 at 21. USI also takes issue with the omission of a maximum payment

amount for mobilization. PC 62 at 22, citing Exh.109 at 40. The Agency does not believe the suggested changes are necessary. PC 62 at 22.

The Agency states that the Agency provided testimony that mobilization costs were include in the drilling rates proposed by the Agency. PC 62 at 22, citing Tr.3 at 46-47. Further, the Agency states the Board's proposal includes mobilization charges in the maximum payment amounts for drilling. PC 62 at 22. The Agency counters that the rates proposed by $CW^3M$ to be made applicable to drilling were developed and intended to be used with professional consulting services. *Id*. The Agency asserts that neither $CW^3M$ or USI have provided sufficient additional testimony to support their suggested changes and the Agency does not believe the changes are necessary. *Id*.

**Section 734.825.** The Agency summarizes $CW^3M$'s suggested changes as: (1) basing maximum payment amounts upon amounts approved by IDOT; (2) changing the "swell factor" and "weight/volume" conversion factor to 1.2 tons per cubic yard; and (3) adding $14.25 per cubic yard for "additional expenses" associated with the transportation of soil that is temporarily stockpiled on-site or off-site. PC 62 at 23. The Agency opposes all of these changes. PC 62 at 23-25.

Concerning the amounts approved by IDOT, the Agency reiterates that Exhibit 89 was presented by the Agency at hearing. PC 62 at 23. Exhibit 89 is a letter from IDOT which states that costs in IDOT's contracts should not be used to justify or compare with costs proposed by the Agency in this rulemaking. *Id*. The Agency notes that the Board considered testimony by $CW^3M$ on this issue and the Board declined to make a change. *Id*. The Agency asserts that $CW^3M$ has not provided sufficient additional testimony to support this change. *Id*.

The Agency points out that $CW^3M$ previously suggested a "swell factor" and "weight/volume" conversion factor of 1.68 tons per cubic yard. PC 62 at 24. The Agency continues on to note that the Board received a great deal of comment and testimony prior to first notice regarding "swell factor" and "weight/volume" conversion, and the Board proposed a 1.5 per cubic ton conversion factor. *Id*. The Agency asserts that $CW^3M$ does not provide any testimony regarding how the suggested "swell factor" and "weight/volume" conversion factor of 1.2 was calculated or why the conversion factor should now be 1.2 instead of 1.68. *Id*.

The Agency states that $CW^3M$ does not provide testimony sufficient to establish why the Board should adopt a rate of $14.25 for additional expenses. PC 62 at 24. Rather, the Agency argues that $CW^3M$ merely suggest arbitrarily increasing the maximum amount by a sum roughly equal to the transportation charge for hauling contaminated soil to a landfill even in cases where the soil is stockpiled on-site. PC 62 at 24-25. The Agency does not believe this change is necessary.

**Section 734.830.** The Agency opposes $CW^3M$ suggestion that a mobilization fee or "stop fee" be included for drum disposal in this section. PC 62 at 25. The Agency states that the proposed rule's maximum payment amount already includes a "stop fee" or other travel fees associated with drum disposal. *Id*. Further, the Agency argues that the fees in Section 734.845(e) were developed and intended to be used for travel costs associated with professional

consulting service, not drum disposal. *Id*. The Agency asserts that $CW^3M$ has not provided any additional testimony to show why a "stop fee" must be added to the maximum payment amounts proposed by the Board. *Id*.

**Section 734.840.** The Agency disagrees with $CW^3M$'s suggestion to change the maximum payment amounts associated with concrete, asphalt, and paving. PC 62 at 26. The Agency notes that $CW^3M$ supports the suggested change by referencing testimony offered prior to the Board's adoption of the first-notice proposal and $CW^3M$ states that the suggested rates are consistent with prevailing rates. PC 62 at 26, citing Exh. 106 at 25. The Agency argues that the Board has already considered $CW^3M$'s prior testimony and declined to make changes. PC 62 at 26. Further, the Agency asserts that $CW^3M$ has not provided additional testimony to show why the Board should adopt the suggested change. *Id*.

**Section 734.845.** The following discussion will be divided into two sections as the Agency's comment responds first to suggestion by $CW^3M$ and then to comments by USI.

***$CW^3M$.*** The Agency characterizes $CW^3M$'s suggestion as "changing the maximum payment amounts for professional consulting services into absolute payment amounts." PC 62 at 27. The Agency asserts that with such changes, the rules would mandate that the Agency reimburse the full maximum payment amount for a task regardless of the actual cost or charge for the task. *Id*. The Agency does not believe that an owner/operator should be reimbursed for the full maximum payment amount if the owner/operator is charged less than that amount. *Id*. The Agency asserts that amounts exceeding the total charged to the owner/operator would not be reasonable, would not have been incurred in the performance of corrective action or site investigation, and would be in excess of costs necessary to meet the minimum requirements of the Act. *Id*. The Agency asserts that the amounts would therefore be ineligible for reimbursement. *Id*.

The Agency also opposes $CW^3M$'s suggested changes to the maximum payment amounts throughout the section. PC 62 at 27. The Agency argues that the changes are not supported by additional testimony from $CW^3M$ and are unnecessary. *Id*.

***USI.*** The Agency states that "[a]lthough USI believes the maximum payment amounts set forth" in other sections of Subpart H "are appropriate" and USI has no "objection" to those rates, USI suggests wholesale changes to Section 734.845. PC 62 at 28. The Agency characterizes USI's suggestion as "an elaborate and difficult to decipher system for calculating a series of different payment amounts" the Agency must use in reviewing reimbursement requests for professional consulting services. *Id*. The Agency notes that some payment amounts developed will be published while others would remain unpublished and known only to the Agency. *Id*. Further, the Agency notes that the changes include a database software to assist in the gathering of data for future development of rates. PC 62 at 28-29.

The Agency's response to USI's wholesale changes, is that USI submitted significant information "at the last hour" regarding a "concept" for reimbursement of professional consulting services. PC 62 at 30. The Agency asserts that USI has not provided sufficient

testimony to show why the Board should abandon the maximum payment amounts proposed and begin developing rules for a reimbursement system similar to the concept submitted by USI. *Id.*

More specific criticism by the Agency is that the database software is complicated, confusing to understand, and cumbersome to use. PC 62 at 29. The database software requires breakdown of costs into minute detail with little to no quality control, according to the Agency. *Id.* The Agency also does not believe that the large majority of consulting firms would embrace the use of the database software. *Id.* Finally, the Agency feels implementation and maintenance of such a database would require significant resources the Agency does not have. *Id.*

As to the concept proposed by USI, the Agency states that the use of rates not adopted in rules or otherwise made public is inappropriate. PC 62 at 29. The Agency points out that litigation resulted in the past from the Agency's use of reimbursement rates not adopted by rule. *Id.* The Agency opines that setting up a system of generally applicable rates not adopted in rules only invites additional litigation. *Id.*

The Agency argues that whether USI's concept will result in reimbursement of reasonable remediation costs is not clear. PC 62 at 30. The Agency asserts that USI could not provide the amount or range of amounts an owner/operator would be reimbursed under USI's concept. *Id.* However, the Agency maintains that based on USI's data the amounts could be high. *Id.*

**Response to Comments**

The Agency next commented on six points from the public comments received by the Board during the first-notice period. The following paragraphs summarize those comments.

**Cost Associated with Preparing and Submitting Applications.** Concerning prefiled testimony from CSD regarding the costs of preparing and submitting reimbursement applications, the Agency states such costs are included in the amounts proposed for professional consulting services in Section 734.845. PC 62 at 31. The Agency believes the proposed amounts are sufficient to cover reasonable costs associated with the preparation and submission of reimbursement applications. *Id.* The Agency states that the frequency with which an owner/operator submits an application is left to the owner/operator. *Id.*

**Groundwater Ordinance.** The Agency states that in PC 39, the premise of the comment is that defining the extent of groundwater contamination is unnecessary if there is a local ordinance as an institutional control. PC 62 at 31-32. The comment indicates that the such investigation is unnecessary due to "preexisting" groundwater institutional controls. *Id.* The Agency responds that there are no "preexisting" groundwater ordinance institutional controls. PC 62 at 32.

The Agency maintains that to use a groundwater ordinance as an institutional control, the owner/operator must demonstrate that the TACO requirements for using an institutional control have been satisfied. PC 62 at 32. The Agency states that a part of the TACO requirements includes delineation of groundwater contamination. *Id.* The Agency argues that use of a

groundwater ordinance as an institutional control does not meant that the ordinance will be approved for another site in the same municipality. *Id.*

**Bidding.** In response to ACECI's comment that federal and state governments are required to use "Qualification Based Selection" rather than bidding, the Agency states that the laws cited by ACECI are inapplicable. PC 62 at 34. The Agency asserts that professional service costs being reimbursed from the UST Fund are for services procured by the owner/operator, not the Agency. *Id.*

**Letters from USI.** The Agency opines that based on a letter from USI, the Board is sure to receive additional form letters and petitions concerning the proposed rules. PC 62 at 35. The Agency concedes that they have every right to register their opinion; but the Agency "suspects" the opinions are based on USI's characterization of the rulemaking and not a careful review of the record. *Id.*

## Suggested Non-Substantive Changes to the Proposal

The Agency suggested several non-substantive changes to the rule, which correct scrivener's errors, as well as minor grammatical changes.

# COMMENTS

In addition to the participants above who offered both testimony and comments, the Board received comments from groups, individuals, and businesses, who did not testify. In all after first notice, the Board received over 60 comments, more than 20 comments were filed asking for an additional hearing in Southern Illinois. The Board responded to those comments and held the July 27, 2005 hearing in Carbondale. The following discussion will summarize the remaining comments.

## Comments from Senators

Senator John Sullivan filed a comment with the Board noting that several constituents had contacted him concerning the proposed rule. PC 65. Senator Sullivan asked that the Board carefully review all proposed changes and the impacts on small businesses and municipalities. *Id.*

The Board received a comment from Senator Chris Lauzen asking that a ruling be delayed until a more suitable solution can be developed. PC 69[3]. Senator Lauzen expresses concerns that the rules as proposed are not justifiable and will potentially reduce property values while imposing improperly calculated maximum payment rates. *Id.*

The Board received a comment from Senator Gary Dahl, who has concerns that the proposed rules are inequitable and lack a rational basis. PC 69. Senator Dahl believes that the changes as proposed would not be in the best interest of property owners, municipalities,

[3] PC 69 was submitted by USI.

taxpayers, and Illinois. *Id.* Senator Dahl asks why the rules are being changed at this time and for the justification for the rules. *Id.*

Senator Arthur Wilhelmi signed a request for delay of this rulemaking, while Senator John Jones signed a statement of support for USI's revisions. PC 69. Senator Frank Watson signed both a statement of support and a request for delay. *Id.* Senator David Luechtefeld also signed both a statement of support and a request for delay. *Id.*

**Professionals of Illinois for the Protection of the Environment (PIPE)**

PIPE comments that the Board's sole concern with the UST Fund should be the broad purpose of the leaking UST regulations. PC 70 at 2. PIPE asserts that the broad purpose is "to provide assurance" that the UST program meets the goal for which the program was established, the remediation of Illinois leaking UST sites that are eligible for reimbursement through the UST Fund. *Id.* PIPE argues that before moving to second notice the Board should be convinced that the adoption of this proposed rule will result in the remediation of more sites and not less. *Id.*

PIPE asserts that the rule is very controversial without supporters except the Agency and perhaps the Board. PC 70 at 2. PIPE notes that the most vocal opponents are members of PIPE who are small Illinois companies that remediate a substantial percentage of the UST sites for downstate owners outside of urban markets. PC 70 at 3.

PIPE argues that the evidence in this proceeding establishes that owners/operators will be required to pay out of pocket a large percentage of the actual cost of remediation. PC 70 at 3. PIPE states that where this is not possible there will likely be no remediation. *Id.* PIPE opines that given the evidence, how can the Agency's proposed rates be considered reasonable reimbursement? *Id.*

PIPE also comments that the rule is fatally flawed because the rule does not include a scope of work for the tasks and thus fails to identify what actual work the Agency will consider reimbursable. PC 70 at 4. Further, the Agency has refused to design a process that allows for cost disputes to be effectively resolved and if the rule is adopted, there will be a "virtual vacuum of review." *Id.*

PIPE argues that they and other participants have presented information and evidence in this rulemaking and the Act does not require participants to provide a viable rule as alternatives. PC 70 at 4. The Board is acting in a quasi-legislative capacity, and this is a fact-find proceeding, according to PIPE. *Id.* PIPE asserts that without substantial changes, the Agency's proposal is not ready for review by JCAR at second notice. PC 70 at 5. PIPE asks the Board to substantially amend the rule, even if the rule must return to first notice. *Id.* Alternatively, PIPE asks the Board to write an opinion that analyzes the approach submitted by PIPE members and directs the Agency to work with participants to develop a new first-notice proposal. *Id.*

**American Council of Engineering Companies of Illinois (ACECI)**

ACECI comments that there are two issues ACECI has with this proposal. First, ACECI takes issue with price bidding instead of "Qualification Based Selection" of professional services. PC 58 at 1. Second, ACECI takes issue with the lack of a clearly defined scope of work. *Id.*

**"Qualification Based Selection" vs. Bidding.** ACECI asserts that the bidding process in Section 734.855 for professional services is not consistent with federal and state policy. PC 58 at 1. ACECI states that federal agencies are required to use "Qualification Based Selection" when procuring professional services and Illinois has a similar law which also requires "Qualification Based Selection" for professional services. *Id.* ACECI believes that for the Agency to require bidding by private tank owners when bidding goes against public policy for government agencies is unreasonable. *Id.* ACECI recommends that professional services be exempt from the bidding process. *Id.*

**Scope of Work.** ACECI has a continuing concern with the lack of a clear delineation of the scope of work for professional services. PC 58 at 2. ACECI asks that the Board add scopes of work to the appendix using the information provided by Mr. Daniel Goodwin in his testimony for the May 11, 2004 hearing. *Id.* ACECI also believes that the maximum rates are too low for some tasks based on the estimated hours in Mr. Goodwin's testimony. *Id.* Also ACECI notes that there are tasks necessary for site investigation which is not included in Section 734.845. *Id.*

**Concerns of Small Businesses**

The Board received comments from eight different individuals or businesses that expressed the same basic sentiment. Those comments were:

PC 41 Michael R. Oltman of Nokomis Tire & Auto Repair
PC 42 Wilma Schleifer of Schleifer Petroleum Co., Inc.
PC 43 Chris A. Barnes, President, Spectrulite Consortium, Inc.
PC 44 Kent and Hal Devore, former owners of Devore Marina, Inc
PC 45 Bob Foerster, President, Bob's Service Center
PC 49 Tom Mueller
PC 51 Greg Courson of Advanced Environmental Drilling & Contracting, Inc.
PC 53 John Komocar

In essence, each of these commenters indicated a lack of support for revisions which would result in an increased cost to them as owners/operators of USTs. The commenters expressed their reliance on environmental professionals and the UST Fund to cleanup their sites. The commenters urged the Board not to adopt a rule that was not thoroughly supported by scientific or statistical data.

Ms. Becky Canty, Superintendent of Elverado Unit #196 Schools in Elkville, Illinois, submitted PC 54. Superintendent Canty indicated that Elverado Unit 196 is involved in a single incident cleanup and based on her observations she presents these comments. PC 54 at 1. Superintendent Canty states that trying to make specifications from generalizations is never a good process, as one size does not fit all. *Id.* Superintendent Canty notes that the UST Fund

tremendously assists owners/operators who are forced to function within stretched and strained budgets. PC 54 at 2. The process is incredibly complicated and reliance on the consultants is critical to the effectiveness of a proper cleanup. *Id.* Superintendent Canty insists that owners/operators should not be held hostage to an inflexible system. *Id.*

Kevin Majors with R.L Hoener Company commented that his company does not support the maximum payment amount for tank removal. PC 50. Mr. Majors states that there are too many factors in pulling or abandoning tanks and setting a price is difficult. *Id.*

HDC Engineering filed a comment that includes petitions signed by clients of HDC Engineering. PC 52. The petitions are identical to those submitted by USI and CDS discussed above.

**Specific Issues Concerning the Proposed Rule**

Midwest Petroleum filed a comment regarding the proposal's limitation for reimbursement to Tier 2 TACO and the inability to access the UST Fund after issuance of an NFR. PC 57. Midwest Petroleum recounted a situation where, at the urging of an Agency project manager, an environmental land use control (ELUC) and groundwater restrictions were applied. *Id.* According to Midwest Petroleum both the adjoining property owner and IDOT will hold Midwest Petroleum liable if contamination is found at a later date. *Id.* Midwest Petroleum expresses concern that if the Board adopts the rule, Midwest Petroleum will be unable to access the UST Fund for cleanup at those sites. *Id.*

Clayton Group Services comments that many of the amounts are substantially lower that competitive prices for the Chicago area. PC 56. Clayton Group Services also takes issue with the bidding process noting that the bidding process is cumbersome and questioning whether costs associated with preparing the bids would be eligible for reimbursement. *Id.* Clayton Group Services states that it would not bid a project if payment were based on the maximum payment amounts or be subject to the bidding process. *Id.*

Mr. Raymond T. Reott of Reott Law Offices LLC offered specific language changes to the proposed rule. PC 39 at 1-2. Mr. Reott comments that an ambiguity exists in the language in several places where investigation of a site is required if the most stringent Tier 1 remediation objectives have not been met. PC 39 at 1. Mr. Reott notes that such investigation is not warranted if the only migration pathway has been severed by a preexisting institutional control. *Id.* Specifically, Mr. Reott states that in Chicago a groundwater ordinance exists as an institutional control and requiring investigation of a site where the only migration would be a groundwater pathway is not warranted. *Id.* Mr. Reott also suggest that clarifying language be added in Section 734.630(ccc) to include soil remediation in situations like those in Chicago. PC 39 at 2.

**UST FUND PROGRAM AND REIMBURSMENT**

Section 57 of the Act states that the intent and purpose of the leaking UST program is:

1. to adopt procedures for the remediation of UST sites due to the release of petroleum;

2. to establish and provide procedures for the leaking UST program which will oversee and review any remediation required for leaking USTs and administer the UST Fund;

3. to establish a UST Fund intended to be a State fund by which persons may satisfy financial responsibility under applicable State law and regulations;

4. to establish requirements for eligible owners/operators of USTs to seek payment for any costs associated with physical soil classification, groundwater investigation, site classification and corrective action from the UST Fund;

5. to audit and approve corrective action efforts performed by Licensed Professional Engineers. 415 ILCS 5/57 (2004).

"Corrective Action" is defined as activities associated with compliances with the provisions of Section 57.6 and 57.7 of the Act. 415 ILCS 5/57.2 (2004). "Site investigation" is defined as activities associated with compliances with the provisions of subsection (a) of Section 57.7 of the Act. *Id.*

Section 57.7(c)(3) of the Act provides:

> In approving any plan submitted pursuant to subsection (a) or (b) of the Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title. 415 ILCS 5/57.7(c)(3) (2004).

This language is repeated in Section 57.7(4)(C) of the Act, as amended by P.A. 92-574. Thus, the Act requires reimbursement for activities necessary to "meet the *minimum* requirements" of the Act.

The Board has long held that costs that are not corrective action will not be reimbursed. *See* McDonald's Corporation v. IEPA PCB 04-14 (Jan. 22, 2004); Rosman Enterprise Leasing Company v. IEPA, PCB 91-174 (Apr. 9, 1992); and Platolene 500 v. IEPA, PCB 92-9 (May 7, 1992). The Board has found that items such as compaction of backfill, concrete replacement, and pumping and disposal of water are not eligible for reimbursement, if not corrective action. *See* McDonald's Corporation v. IEPA PCB 04-14 (Jan. 22, 2004); Richard and Wilma Sayer v. IEPA, PCB 98-156 (Jan. 21, 1999); Clarendon Hills Bridal Center v. IEPA, PCB 93-55 (Feb. 16, 1995).

## SUMMARY OF FIRST-NOTICE ACTION BY THE BOARD

The Board's first-notice opinion examined 20 issues and determined that many changes were necessary to proceed with the proposal. The Board amended the language of the applicability section to clarify that the rules could not be applied retroactively, in response to comments from PIPE. R04-22, 23 (Feb. 17, 2005) at 63. The Board amended the language concerning the removal of free product. R04-22, 23 (Feb. 17, 2005) at 64. The first-notice proposal also clarified that only available alternative technologies should be compared to one another and conventional technologies. R04-22, 23 (Feb. 17, 2005) at 65. The Board added a procedure to allow for bidding of tasks when the maximum payment amounts are too low. R04-22, 23 (Feb. 17, 2005) at 67. The Board amended the language to allow for additional mechanisms to prove payment to subcontractors. R04-22, 23 (Feb. 17, 2005) at 72. The Board decided not to declare permit and government fees as ineligible costs. R04-22, 23 (Feb. 17, 2005) at 74. The Board also allowed for Stage 3 site investigation plans to be reimbursed based on time and materials. R04-22, 23 (Feb. 17, 2005) at 80. The Board did not make substantive changes to the remainder of Subpart H, nor did the Board adopt scopes of work. However, the Board requested additional comment on those issues as well as many others.

Contrary to the charges of several commenters after proceeding to first notice, the Board did not "ignore" other suggestions from industry. In fact some of the changes made were changes suggested by participants other than the Agency. Where the Board decided not to adopt suggestions from groups such as PIPE, CSD, or CW$^3$M, the Board explained those decisions. For example in deciding not to adopt PIPE's proposed alternative rates the Board stated:

> The Board is not convinced that basing rates on *RS Means* in and of itself is appropriate. Although as indicated above, the Agency's method for developing the maximum payment amounts had statistical limitations, the Agency's rates were based on real data from actual sites in Illinois. Therefore, the Board rejects alternative rates, such as *RS Means*, and the Board will propose the rates as developed by the Agency for first notice. R04-22, 23 (Feb. 17, 2005) at 81.

Thus, the Board examined the rates proposed and determined that the data from actual sites in Illinois was the appropriate data to consider when writing the Board's first-notice opinion.

The Board regrets that some of the participants believe their comments have not been heard, but the Board disagrees. A comprehensive reading of the Board's first-notice opinion demonstrates the Board's careful consideration of all points of view in developing the first-notice proposal. The Board will continue to consider all the comments in developing the second-notice proposal.

## SECOND-NOTICE ISSUES

The Board has dissected the following list of issues to be discussed in the second-notice opinion.

1. General;

2. Professional Consulting Services (Section 732.845/734.845);

3. Maximum payment rates;

4. An Agency database;

5. The Agency review process;

6. The applicability section (Section 732.100/734.100);

7. Alternative technology (Section 732.407/734.340);

8. Tier 2 TACO cleanup objectives and groundwater ordinances (Section 732.408/734.410 and 732.606(fff)/734.630(ccc));

9. Eligibility of costs incurred after issuance of an NFR letter (Section 732.601(j)/734.605(j) and 732.606(kk)/734.630(gg);

10. Handling Charges (Section 732.606(ss)/734.630(oo) and Section 732.601(b)(10)/734.605(b)(10));

11. Auditing provisions (Section 732.614/734.665);

12. Maximum payment amount for abandonment and removal of tanks (Section 732.810/734.810);

13. Mobilization charges for drill rigs (Section 732.820/734.820);

14. Soil Removal and Disposal (Section 732.825/734.825)

15. Drum disposal (Section 732.830/734.830);

16. Maximum payment amounts for concrete, asphalt, and paving (Section 732.840/734.840);

17. Bidding of professional services (Section 732.855/734.855)

18. The economic impact of the rulemaking;

19. Miscellaneous.

## DISCUSSION

The Board's discussion will follow the list of issues outlined above. The Board will first discuss certain general concepts and then proceed to more substantive issues. Finally, the Board

will discuss miscellaneous comments from the participants and list any additional changes to the proposal.

**1. General**

Before discussing the specific issues of this proceeding the Board would like to address some of the general comments and issues raised. The first comments in this category are the comments from Senator John Sullivan, Senator Chris Lauzen, Senator Gary Dahl, Senator Arthur Wilhelmi, Senator John Jones, Senator Frank Watson, and Senator David Luechtefeld. PC 65; PC 69. The Senators each expressed concerns about the economic impact of the rules and some asked that the rulemaking be delayed. In response to each of their concerns, the Board notes that we have carefully reviewed the testimony, comments and vast amount of information in this proceeding. As is reflected by today's opinion, the Board takes the concerns of industry very seriously and the Board has attempted to address the concerns raised by the participants.

Second, the Board wishes to address the testimony from USI regarding the indefensibility of the proposed rates in Subpart H of the rule. USI's testimony, concerning the 69 sites reviewed, refers to the rates for professional consulting services. The post-hearing comments of both CSD and CW$^3$M could be read to imply that USI's statistical data is applicable to all the rates in Subpart H. However, USI clearly states in the final comment that the data being challenged concerns professional consulting services. Exh. 109 at 37-38.

A third area of comments the Board will address here are the comments from PIPE, CSD, and CW$^3$M suggesting that legislative action may be taken, if the Board does not address certain issues. Some of those issues will be discussed in more detail below. However, while the Board understands the position of industry in this rulemaking, some of the changes that PIPE, CSD, and CW$^3$M are seeking are not within the Board's authority to grant. As discussed below, allowing development of a standard of general applicability outside the rulemaking process would surely be in violation of the Act and the IAPA. Likewise, as discussed *infra* 54, the Board made changes to the rule in response to industry concerns prior to proceeding to first notice and the Board will make additional changes here today.

**2. Professional Consulting Services (Section 732.845/734.845)**

As noted in the summary of first-notice testimony and comments, the proposed maximum payment costs associated with professional consulting services set forth at Section 732.845/734.845 continues to be a major issue of contention between the Agency and the regulated community. The participants, including PIPE, CSD, ACECI, USI and CW$^3$M express serious concerns regarding the provisions of Section 732.845/734.845. The participants contend that the proposed maximum payment amounts for professional services are flawed since the proposal does not define the "scope of work" associated with the payments amounts. PIPE, CSD, ACECI, USI and CW$^3$M also question the Agency's methodology used in developing the hourly payment cost for professional consulting services.

The participants argue that the rules do not provide any feasible options for establishing alternate maximum payment costs for professional consulting services. In this regard, the

participants argue that the proposed bidding process is inappropriate for establishing alternative maximum payment costs, and the provisions for "extraordinary and unusual circumstances" is not a workable option without a defined scope of work. The participants also maintain that the hourly payment cost for professional services is significantly lower than the actual cost incurred by the consultants.

The Agency supports the rules as proposed by the Board at first notice. The Agency maintains that the proposed payments costs are reasonable, and reflect activities that must be performed to meet the regulatory requirements. In the following sections, the Board provides a brief background on the proposed payment provisions, and a discussion of the issues concerning the scope of work and maximum payment costs for professional consulting services.

**Background**

Briefly, the Board's first notice regulations pertaining to payment for professional consulting services is based on the Agency's initial proposal with one substantive change regarding the payment for Stage 3 site investigation under Part 734. The proposed provisions at first notice in Section 732.845/734.845 include the following maximum payment costs for professional consulting services:

1. Early action and free product removal: preparation for abandonment or removal of USTs; early action field work and field oversight, preparation of 20-day and 45-day reports; and preparation and submission of reports.

2. Site evaluation and classification required under Section 732.307 and 732.312.

3. Stage 1 and Stage 2 site investigation required pursuant to Sections 734.315 and 734.320.

4. Low priority and high priority corrective action under Part 732.

5. Corrective action required under Part 734, Subpart C.

6. Travel, including travel time, per diem, mileage, lodging, meals, etc.

7. Amendment of corrective action plan.

In addition, the proposed regulations require payment of costs associated with a number of activities on either a daily charge basis or on a time and material basis. While the regulations specify maximum payment amounts for various tasks, they do not prescribe a detailed scope of work associated with each task. The methodology used by the Agency in developing maximum payment costs is described in the Board first-notice opinion. *See* R04-22, 23 (Feb. 17, 2005) at 25.

Although, the regulated community voiced concern regarding the lack of definition of "scope of work" in the Agency's proposal, the Board declined, at first notice, to define the

"scope of work" associated with the lump sum payments mainly because of the inclusion of a bidding process for establishing alternative maximum payment costs, and the provision for addressing "extraordinary and unusual circumstances" in the proposed rule. Additionally, the Board relied on the Agency's experience and testimony that the maximum payments account for variability from site to site.

**<u>Participants' Concerns</u>**

The regulated community has submitted extensive testimony and comments on the issue of scope of work and the maximum payment amounts in Section 732.845/734.845 since the adoption of the first-notice proposal. The testimony and comments express continuing concerns about the lack of a scope of work as well as the time and rates proposed at first notice. The following is a brief summary of some of the concerns.

USI asserts that the failure to define the scope of work is a serious conceptual flaw of the proposed rules. Exh. 109 at 53. The participants state that the inclusion of a competitive bidding process for establishing alternative maximum payment fails to address their concern regarding the lack of definition of scope of work. First, USI and ACECI assert the concept of competitive bidding for professional services should be removed from the rules. Exh. 109 at 54; PC 63 at 9; PC 58. In this regard, ACECI states that bidding for professional services is inconsistent with the federal and state policy of procuring professional services on the basis of qualifications. USI maintains that even if the Board decides to retain competitive bidding for professional services, the proposed provisions would be impractical without a defined scope of work. Exh. 109 at 54-55. USI argues that it will be impossible for the Agency reviewers to make determinations on alternate bids without guidance on specific costs to be included in each maximum payment. *Id*.

The participants also state that they will be unable to use the "extraordinary and unusual circumstances" provision at Section 732.860/734.860 to establish alternative payment cost without a defined scope of work. USI states that it will impossible to determine if a situation is "extraordinary or unusual" in the absence of standardized scope of work defining the "ordinary" situation. Exh. 109 at 58. Further, $CW^3M$ states that the "extraordinary or unusual circumstances" provision may not be available for developing alternative costs because of the Agency's position that there will be very few reasons to accept or approve unusual or extraordinary circumstances. PC 63 at 8.

Additionally, USI argues that the exclusion of a specific "scope of work" from the regulations and inclusion of "include, but limited to" language in the rules creates a very broad and undefined level of service. Exh. 109 at 52. USI asserts that while the Agency used the scope of work and time (hours) requirements developed by the *ad hoc* work group to determine the proposed maximum payment costs, the Agency changed or modified the *ad hoc* work group's "scope of work" and did not include the "scope of work" for each "task" in Section 732.845/734.845. Exh. 109 at 51. USI maintains that the number of hours for performing various tasks presented by the *ad hoc* work group was very specific to the associated "scope of work" and were never intended to be used in the "include, but not limited to" framework proposed by the Agency in Section 732.845/734.845. Exh. 109 at 52. In this regard, $CW^3M$ notes that failure to include scope of work would result in additional tasks not considered in the

development of the payment costs being included in the lump sum payments. PC 63 at 7. ACECI, PIPE, USI, and CW$^3$M have submitted alternate proposals addressing the inclusion of "scope of work" for professional consulting services. Exh. 74, Attach. B; PC. 6; Exh. 109; PC 63.

Regarding the maximum payment rates proposed for Section 732.845/734.845, USI performed a review of 69 randomly selected sites to evaluate current and historical reimbursements for professional services. Exh. 109 at 34. As a result of this review, USI and CW$^3$M argue that the rates proposed in Section 732.845/734.845 are not consistent with the rates historically reimbursed by the Agency. Exh. 109 at 34; PC 63 at 5-6. Further, CW$^3$M asserts that the maximum payment rates are inconsistent with OSHA requirements, which must be met at UST sites. PC 63 at 5-6. USI also argues that the Agency proposed the use of average costs for maximum payment amounts and this will cause havoc for owners/operators. Exh. 109 at 64. PIPE and CW$^3$M both argue that if the rates proposed were more closely related to current reimbursement rates, this rulemaking would not have been as controversial and industry may have even supported the rule. PC 63 at 6; PC 70 at 2.

**Discussion and Findings**

Upon a review of the testimony and comments, the Board agrees with the participants that a well-defined scope of work will be helpful in addressing concerns regarding payment for professional services. The Board's adoption of the first notice provisions at Section 732.845/734.845 was premised on the belief that the alternative bidding process, and the "unusual or extraordinary circumstances" provision would provide alternative means of establishing maximum payment costs. However, as discussed in more detail below, the Board finds that the bidding process is not appropriate for choosing professional services. *Supra* at 74. Further, given the Agency's position that the "unusual or extraordinary circumstances" provision is not meant for addressing alternative maximum payment costs on a routine basis, the Board agrees with the participants that Section 732.860/734.860 do not provide for an alternative means for establishing alternate payment costs for professional consulting services. Moreover, the Board agrees with the participants that it would be difficult for a consultant to demonstrate that the costs above the maximum payment costs are due to extraordinary or unusual circumstances without a defined scope of work.

The Board also agrees that the maximum payment rates for professional services in Section 732.845/734.845 should be examined more closely. In particular, given the evidence provided by USI's review of 69 randomly selected sites, the Board is convinced that the rates need to be adjusted to reflect the actual scope of work and current market rates.

In light of the above, the Board finds that the proposed framework for maximum payment costs for professional services needs to be revised. Specifically, the rule must include a scope of work for the tasks for which the rules specify lump sum payment amounts and lump sum rates which more accurately reflect current and historical reimbursement rates. The rules must also allow for payments based on time and materials for any work performed beyond the specified scope of work that is required to meet the applicable regulatory requirements. Further, the Board agrees with PIPE and CW$^3$M that it is prudent to allow all participants and the Agency to provide

further input on the revisions to Section 732.845/734.845. In view of this, the Board will propose changes to Section 732.845/734.845 in a rulemaking subdocket for further consideration. The Board will discuss the alternate proposals submitted by the participants and the proposed revisions to Section 732.845/734.845 in Subdocket B of this rulemaking.

## 3. Maximum Payment Amounts

In this section, the Board will generally address the issue of maximum payment amounts. Later in the opinion the Board will discuss specific rates and how the Board will address the concerns about those rates.

The issue of whether the maximum payment amounts proposed in Subpart H are sufficient is an ongoing source of disagreement not just between the Agency and industry, but also within the industry. Industry has provided alternative proposals since the Board adopted the first notice. Generally, those alternative proposals would have the Board establish rates that are "threshold" or "expedited" amounts, which would be approved by the Agency without a lengthy review. *See* Exh. 99 at 2-3; PC 63 at 3; and Exh. 109 at 68. The alternative proposals also suggest a system where either rates or scopes of work are developed outside the rulemaking process. *See* Exh. 109 at 68; PC 64 at 3.

In addition to the alternative proposals, the comments and testimony received since first notice challenge the Agency's experience relied upon in developing the maximum rates as well as the use of historical averages as a maximum rate. *See* Exh. 101 at 4; PC 64 at 1-2; PC 63 at 5; Exh. 109 at 63-64. The statutory authority for adoption of maximum rates was also challenged. PC 109, Attach 23.

### Alternative Proposals

The Board greatly appreciates the time and effort expended in developing alternative proposals in this proceeding. The Board will adopt some of the suggestions contained in those proposals as discussed later in this opinion. However at this time, the Board is not prepared to adopt the use of "threshold" or "expedited" amounts in place of the maximum payment amounts in Subpart H. The reasons for this are two-fold. First, the Board believes that the mere adoption of these rates will expedite the review process for remediation at UST sites in Illinois. As one of the concerns from the participants is that the review of applications takes too much time, this should alleviate some of the time necessary to review the reasonableness of the reimbursement request.

Second, $CW^3M$'s alternative proposal and USI's alternative proposal include provisions that would have rates and/or scopes of work developed outside the rulemaking process and published outside the rulemaking process. CSD also supports this type of development. USI's proposal even suggests that the Agency develop maximum rates that are not published. Obviously the Agency opposes this concept, as does the Board. The Board cannot adopt a procedure that allows for development of a standard of general applicability outside the procedures of the Act and the IAPA, because that procedure would be a violation of both statutes. Thus, the Board finds that adopting the concepts proposed by $CW^3M$'s and USI's

alternative proposal would result in a process that violates the Act and the IAPA. Therefore, the Board will not adopt the concept.

**Sufficiency of Rates**

The Board notes that USI stated that in general the rates proposed in Subpart H are acceptable with the use of both the bidding process and the unusual and extraordinary circumstance provisions. In making this determination, USI employed three tests. The first test was whether the "unit of measure" assigned to the work activity was appropriate to the work being performed. Exh. 109 at 37-38. The second test was whether the regulations provided sufficient detail to allow a scope of work to be authored for a bid specification to allow for competitive bidding. Exh. 109 at 38-39. The third test was whether USI believes the price accurately reflects prevailing market prices and the whether the price includes conditions likely to be encountered at most sites in Illinois. Exh. 109 at 39. However, USI does challenge the maximum rates for professional consulting services.

$CW^3M$'s alternative proposal would use the Agency's proposed rates as interim rates until a process is in place to develop a database to be used in developing rates. PC 63 at 4. $CW^3M$ specifically states that $CW^3M$ does not endorse the rates as proposed. *Id.*

In proceeding to first notice with the proposal the Board stated:

> The Board will not discuss each and every proposed lump sum maximum payment amount; however, the Board has carefully reviewed all the rates proposed by the Agency. Other than the rates discussed in more detail in this opinion, the Board finds the rates are reasonable and supported by the record. R04-22, 23 (Feb. 17, 2005) at 79.

Given the acceptance by USI, and even $CW^3M$, of many of the maximum payment amounts listed in Subpart H, the Board finds that the maximum payment amounts, except as discussed below, are reasonable and supported by the record. The Board, as discussed above, further finds that absent a defined scope of work, the record does not support the rates for professional services in Section 732.845/734.845. The Board will amend the rule to allow for professional services to be reimbursed based on time and materials basis.

**Statutory Authority**

As discussed above and in the Board's first-notice opinion, Section 57.7(b)(2) of the Act allows reimbursement for corrective action that mitigates "any threat to human health, human safety, or the environment resulting from the underground storage tank release." 415 ILCS 5/57.7(b)(2) (2004). Section 57.7(c) of the Act (415 ILCS 5/57.7(c) (2004)) requires the Agency to determine that costs associated with any plan "are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation of corrective action activities in excess of those required to meet the minimum requirements of this Title." 415 ILCS 5/57.7(c) (2004). The Board has examined a substantial and detailed record in this proceeding and based on that examination, the Board has found the maximum

payment rates to be "reasonable" and not in "excess" of activities necessary to meet the "minimum" requirements of the Act. For this reason, employing maximum payment rates is consistent with the Act and therefore appropriate for the Board to adopt.

### 4. An Agency Database

An ongoing issue in this proceeding has been the quality of the data available to develop rates. Participants asked prior to first notice and again after first notice that the Board require the Agency to develop a database sufficient to support rates. More specifically, both USI and $CW^3M$, in their alternative proposals, suggest that additional data be developed concerning the maximum payment amounts in Subpart H. USI offered testimony concerning the use of Automated Budget and Reimbursement Approach (ABRA) to collect data concerning both rates and scope of work. Exh. 109 at 72. The Agency is concerned that the database software presented by USI is complicated, confusing to understand, and cumbersome to use. PC 62 at 29. The Agency also does not believe that the large majority of consulting firms would embrace the use of the database software. *Id*. Finally, the Agency feels implementation and maintenance of such a database would require significant resources the Agency does not have. *Id*.

The Board addressed the issue of requiring the Agency to develop and maintain a database concerning reimbursement rates and scopes of work at in the first-notice opinion. The Board stated:

> The Board acknowledges that many participants have made meaningful comments about the value of an electronic database to track reimbursement rates. However, the Board will not require the Agency to develop an electronic database of reimbursement information. The Board is not convinced that an electronic database is necessary to administer either these specific rules or the UST program. R04-22, 23 (Feb. 17, 2005) at 68.

The Board appreciates the efforts of USI to seek out the development of a system that will allow for collection of data concerning reimbursement rates as well as the scope of work for tasks. However, the participants are in effect asking the Board to direct the Agency to maintain or developed a process to be used internally by the Agency. The Board is unwilling to direct the Agency to do so, especially given the financial consequences to the Agency for the development and maintenance of such a process. And as stated at first notice, the Board is not convinced that an electronic database is necessary to administer either these specific rules or the UST program. Therefore, the Board will not direct the Agency to either use the ARBA system or develop a system for collection of data concerning reimbursement rates.

### 5. Agency Review Process

The issue of how the Agency performs reviews of materials submitted in the UST program and the length of time such reviews take has been discussed from the beginning of this rulemaking process. Most recently, CSD expresses concern that due process is not afforded to owners/operators who cannot afford to appeal an adverse Agency decision to the Board. PC 64 at 4. CSD demands that the Board provide an alternative to appeals to the Board in the rule or

legislative action may be necessary. *Id.* CW$^3$M takes issue with Agency suggestions that the length of time a review takes is because of the submissions by consultants. Exh. 106 at 7. CW$^3$M argues and provides statistics to demonstrate that review times often are dependent on the Agency reviewer. *Id.* CW$^3$M also asks that the Board require the Agency to include more detail in denial letters. Exh. 106 at 13.

These same issues were raised prior to first notice, although worded somewhat differently. At hearing and in comments, PIPE sought issuance of a pre-denial letter, shortened review times, and alternative dispute resolution procedures. PC 6 at 21 and Tr.7 at 215-16. CSD, a member of PIPE, now maintains that "due process" is not afforded because some owners/operators cannot afford to appeal to the Board.

The Board disagrees with CSD and finds that the review process under Section 57.7 of the Act (415 ILCS 5/57.7 (2004)) provides applicants with due process. Specifically, Section 57.7 (415 ILCS 5/57.7 (2004)) allows an applicant to appeal an adverse decision of the Agency to the Board pursuant to Section 40 of the Act (415 ILCS 5/40 (2004)). If a party appeals a decision to the Board under the UST program and prevails, attorney fees are reimbursable. *See* 415 ILCS 5/57.8(l) (2004). Further, the legislature has adopted a provision that allows a 90-day extension of the appeal period (*see* 415 ILCS 5/40(a)(1) (2004)) to provide for an opportunity for ongoing dialogue between applicants and the Agency. Thus, the statutory language currently addresses the inability to "afford" an appeal and the concept of responding to denial reasons before an appeal, so there is no need for additional language.

The level of detail in the denial letter is also addressed in statutory language. As the Board noted in the first-notice opinion:

> As to the concerns that the Agency's denial letters lack specificity, the Board is cognizant of that concern. However, Section 57.7(c)(4) (or (c)(4)(D)) (415 ILCS 5/57.7(c)(4) (or (c)(4)(D)) (2002))[4] sets forth the requirements for the Agency's denial letter. Section 57.7(c)(4) of the Act (415 ILCS 5/57.7(c)(4) (2002)) provides that any Agency action to disapprove or modify a plan submitted pursuant to this Title shall be accompanied by:
>
> (A) an explanation of the Sections of this Act which may be violated if the plans were approved;
>
> (B) an explanation of the provisions of the regulations, promulgated under this Act which may be violated if the plans were approved;
>
> (C) an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and

[4] The language in the Act concerning the contents of the Agency's denial letter is identical in all four public acts; except that, the numbering and lettering differs from public act to public act.

> (D) a statement of specific reasons why the Act and the regulations might not be met if the plan were approved. (415 ILCS 5/57.7(c)(4) (2002))
>
> The Board notes that the language of Section 57.7(c)(4) (415 ILCS 5/57.7(c)(4) (2002)) clearly outlines the required content of a plan disapproval or modification by the Agency. The Board is not convinced that additional language is necessary to effectuate the legislative intent of Section 57.7(c)(4) (415 ILCS 5/57.7(c)(4) (2002)). R04-22, 23 (Feb. 17, 2005) at 70.

Nothing in the additional comments from $CW^3M$ convinces the Board that additional language in the rule will be more effective than the plain language of the statute. Therefore, the Board declines to make the changes suggested.

**6. Applicability Section (732.100/734.100)**

Participants have expressed concerns that the rule may have a retroactive effect and that the applicability of the rule should be clarified. $CW^3M$ suggests several changes in the applicability section of the rule. $CW^3M$'s proposed changes add language referencing the P.A. 92-0554 and P.A. 92-735 and specify that the rules do not apply retroactively. Prior to first notice, PIPE made suggestions to this same section because of concerns that the rule may be applied retroactively. The Board made minor changes prior to first notice to address PIPE's concerns. R04-22, 23 (Feb. 17, 2005) at 63. The Agency opposes the changes suggested by $CW^3M$ because the Agency believes that the references to the public acts would limit the scope of the rule. The Agency is also concerned that the $CW^3M$'s proposed changes would convert an applicability section into an intent section. Finally, the Agency believes the rule already reflects that the rule will not be applied retroactively.

The Board agrees with the Agency's concern that the language proposed by $CW^3M$ referencing the public acts could limit the scope of the rules. Also, the Board believes that the language is clear that the rule does not have a retroactive application. In any event, a rule is not effective until filed with the Secretary of State pursuant to Section 5-40 of the IAPA (5 ILCS 100/5-40 (2004)). The Board therefore declines the suggestions made by $CW^3M$ to reference the public acts and to add language regarding retroactive application of the rule. However, $CW^3M$ has suggested a change in the second sentence that the Board will accept. $CW^3M$ suggests changing "[i]t does" to "[t]hese amendments do" and the Board will make that change.

**7. Alternative Technology (Section 732.407/734.340)**

During the first-notice period, the comments and testimony raised issues concerning alternative technology. CSD questions whether the Agency had considered allowing for submission of alternative technology in phases, which would allow the Agency the opportunity at early stages to evaluate the technology proposed. Exh. 99 at 5. $CW^3M$ offered language that $CW^3M$ believes reflects that there may not always be more than one available alternative

technology. Exh. 106 at 13. The Agency did not respond to CSD's comment and does not believe that CW$^3$M's suggested change is warranted. PC 62 at 4.

The Board appreciates the concerns about alternative technology raised by CSD and the Board is disappointed that the Agency did not address CSD's concern either at hearing or in public comment. Unfortunately, the record does not provide the Board with sufficient information on how to implement a procedure allowing submission of alternative technologies in phases. Therefore, the Board must decline to make this change, as the record does not provide enough support for the Board to make the change.

CW$^3$M has again asked the Board to specify that only *available* alternative technologies should be considered; specifically, CW$^3$M would add, "if other alternative technologies are available which are capable of being implemented." PC 63 at 51. The Board addressed this issue at first notice and indicated that the language would be amended to clarify that only *available* technologies needed to be considered. *See* R04-22, 23 (Feb. 17, 2005) at 65. The Board added the phrase "if other alternative technologies are available and are technically feasible" to subsection (b). *Id*. The Board invited additional comment on this issue. A review of the Board's first-notice order indicates that the language was placed in Section 732.407, but not Section 734.340. The Board will correct that error at second notice. The Board's language added at first-notice is nearly identical to the language proposed by CW$^3$M. Therefore, the Board finds that additional language changes are not necessary in this section beyond adding language to Section 734.340.

**8. Tier 2 TACO Cleanup Objectives and Groundwater Ordinances (Sections 732.408/734.410 and 732.606(fff)/734.630(ccc))**

In the Board's first-notice opinion the Board invited additional comment on the issue of limiting reimbursement to Tier 2 TACO standards and the participants responded to that request. In addition, the Board received additional comment on the use of groundwater ordinances as institutional controls when remediating UST sites.

CW$^3$M argues that the required use of a groundwater ordinance should be deleted because the Agency did not consider the effect on property values if the owner/operator is "forced" to leave contamination in place. Exh. 106 at 19. The Agency does not believe that deletion of this subsection is necessary. PC 62 at 14. The Agency asserts that the effect of remediation on property values is not a factor in UST Fund reimbursement. *Id*. The Agency maintains that reimbursement is limited to costs necessary to meet the minimum requirements of the Act and use of a groundwater ordinance as an institutional control meets the minimum requirements of the Act. *Id*.

Mr. Reott offered specific language to clarify that if there is a preexisting groundwater ordinance, certain investigative steps would not be needed. PC 39 at 1-2. The Agency disagrees with Mr. Reott's suggestion because the Agency maintains that there are no preexisting groundwater ordinances as institutional controls. PC 62 at 31-32. The Agency states that to use a groundwater ordinance as an institutional control, the owner/operator must demonstrate that TACO requirements have been met to allow use of an institutional control. PC 62 at 32.

Mr. Hundley, on behalf of USI, argues that the limitation of reimbursement for cleanup to Tier 2 TACO levels and the requirement that the groundwater ordinance be used are inappropriate. Exh. 109, Attach 23 at 10. Mr. Hundley asserts that there is no statutory basis for these proposals and although the legislature has acknowledged TACO, the legislature has not limited reimbursement to Tier 2 TACO levels. *Id.* Mr. Hundley notes that the statutory language of the Act requires an owner/operator to design a plan to mitigate any threat to human health, human safety, or the environment resulting from a leaking UST. *Id.* Mr. Hundley also argues that cleanup to Tier 2 rather than Tier 1 will indisputably affect future property use, value, and salability. Exh. 109, Attach 23 at 11. Mr. Hundley notes that TACO focuses on risks to human health while the UST program requires cleanup if there is a threat to human health, human safety, or the environment. *Id.*

Midwest Petroleum also filed a comment expressing concerns with allowing reimbursement to Tier 2 TACO values. PC 57. Midwest Petroleum discussed a situation where an ELUC was used but Midwest Petroleum still had contractual liability for any future failure of the ELUC. *Id.*

Concerning the use of Tier 2 TACO cleanup objectives, the Board stated at first notice:

> The Board has reviewed the comments of the participants and the Agency on the issue of limiting reimbursement to Tier 2 cleanup objectives. The Board is convinced that limiting cleanup cost reimbursement to Tier 2 TACO objectives is appropriate. As noted above, Tier 2 objectives are derived by using site-specific data rather than the conservative default values used in determining Tier 1 objectives. Thus, in most cases cleanup to Tier 2 objectives would be less expensive, but equally protective of human health and the environment as cleanup to Tier 1 objectives. The UST Fund is designed to reimburse reasonable costs for remediation that mitigates "any threat to human health, human safety, or the environment resulting from the underground storage tank release." 415 ILCS 5/57.7(b)(2) and (c)(3) (2002). Furthermore, the Board does not find a contradiction between the regulatory language and this limitation. The Agency's proposed language is consistent with existing language and does not create inconsistencies with the existing regulatory language or language proposed in this proceeding. R04-22, 23 (Feb. 17, 2005) at 76.

The Board finds nothing in the additional comments that convinces the Board to alter our position. The Board respectfully disagrees with Mr. Hundley that the use of Tier 2 objectives is inappropriate. As the Board stated at first notice, the Act authorizes reimbursement for reasonable costs to mitigate "any threat to human health, human safety, or the environment resulting from the underground storage tank release." 415 ILCS 5/57.7(b)(2) and (c)(3) (2004). The statutory language does not require reimbursement for cleanup beyond that standard and the Tier 2 objectives meet the statutory requirements.

On the issue of a groundwater ordinance as an institutional control, the Board found such an institutional control was appropriate at first notice. The concerns about future property values

are not persuasive. The purpose of the UST program includes the establishment of requirements for eligible owners/operators of USTs to seek payment for any costs associated with physical soil classification, groundwater investigation, site classification and corrective action from the UST Fund. 415 ILCS 5/57 (2004). In determining if reimbursement is appropriate the Agency shall determine that:

> the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements. 415 ILCS 5/57.7(c)(3) (2004).

Nothing in the statute requires that costs necessary to increase salability, value or future use are reimbursable. Therefore, the Board finds that use of Tier 2 TACO and groundwater ordinances as institutional controls are consistent with the provisions of the Act and the suggested changes are not warranted.

### 9. Eligibility of Costs Incurred after the Issuance of an NFR Letter (Sections 732.601(j)/734.605(j) and 723.606(kk)/734.630(gg))

On the proposed language requiring that applications for reimbursement be filed within one year of the issuance of an NFR letter, the Board asked for additional comment in the first-notice opinion. R04-22, 23 (Feb. 17, 2005) at 66. $CW^3M$ has suggested adding an exception to allow for application for reimbursement more than one year after issuance of an NFR letter. $CW^3M$ also recommends adding exceptions or exclusions to the prohibition against any reimbursement after issuance of an NFR letter. CSD supports the addition of these exceptions. The Agency opposes the suggested changes to both sections.

Regarding $CW^3M$'s proposed exception to the one-year deadline, the Board addressed this issue at first notice and invited additional comment, particularly regarding Part 731 sites and other potential exceptions. R04-22, 23 (Feb. 17, 2005) at 66. A review of the Board's first-notice opinion and the record in this proceeding indicates that $CW^3M$'s comments during first notice are very similar to the comments offered prior to first notice. That being the case, $CW^3M$ has not offered additional comment that convinces the Board to alter the first-notice proposal concerning the one-year limitation.

As to the additional exceptions to reimbursement after issuance of an NFR, the Board is also unconvinced. As the Agency points out, the Board has previously addressed some of these issues in prior rulemakings and decided not to include the exceptions. Also as noted in the Board's first-notice opinion:

> The Board is not convinced that owners or operators should be allowed back into the UST Fund after a NFR letter has been issued for a site. The NFR letter concept is predicated on finality. R04-22, 23 (Feb. 17, 2005) at 76.

$CW^3M$ and CSD have not provided sufficient justification for the Board to revisit this issue and alter the Board's positions. Therefore, the Board declines to make this change.

**10. Handling Charges (Section 732.606(ss)/734.630(oo) and Section 732.601(b)(10)/734.605(b)(10))?**

The participants have filed additional comments on two issues involving handling charges. One is whether a primary contractor with a financial interest in a subcontractor should be reimbursed for handling charges incurred when dealing with that subcontractor. The second is the issue of requiring proof of payment to a subcontractor before allowing reimbursement of handling charges.

In the Board's first-notice opinion, the Board proposed the Agency's language, which excludes handling charges for subcontractors where the primary contractor has a financial interest in the subcontractor. However, the Board invited comment on this issue and stated that "if sufficient information is added to the record, the Board will revisit this issue during the first-notice period." R04-22, 23 (Feb. 17, 2005) at 71. Both CSD and $CW^3M$ commented further on this issue. CSD conceded that much of the cost for procurement is eliminated when using a subcontractor in which CSD has an interest; however, costs for administrative, insurance, interest costs, and a reasonable profit for oversight and field purchases is not eliminated. PC99 at 1. $CW^3M$ agrees that administrative and oversight costs do not change when the primary contractor has a financial interest. PC 106 at 18. Further, $CW^3M$ indicates that the definition of financial interest is so broad, that the primary contractor could hold only a minority interest. *Id*. The Agency asserts that when the prime contractor has a financial interest in the subcontractor, many of the costs associated with hiring a subcontractor are not incurred. PC 62 at 12.

Based on this additional testimony and comment, the Board is convinced that there will be times when a primary contractor with a financial interest in a subcontractor should be able to recoup administrative and oversight costs. This would be true especially if the primary contractor holds only a minority interest in the subcontractor's operation. Therefore, the Board will delete this provision from the list of costs ineligible for reimbursement. This will allow the Agency to determine on a case-by-case basis if costs are incurred and handling charges are appropriate.

On the issue of requiring proof of payment to a subcontractor, the Board at first notice proposed a rule that requires proof of payment. R04-22, 23 (Feb. 17, 2005) at 72. However, the Board did amend the Agency's proposal to allow for additional mechanisms to establish proof of payment and the Board invited additional comment. *Id*. $CW^3M$ argues that requiring proof of payment is unduly burdensome and will add to the cost of remediation. PC 106 at 14. $CW^3M$ also argues that obtaining proofs of payment will be difficult. *Id*. The Agency opposes this change. PC 62 at 6.

In the Board's first-notice opinion the Board stated:

> The existing language in Section 732.606(ll) includes as an ineligible cost "Handling charges for subcontractor's costs when the contractor has not paid the subcontractor." The language proposed by the Agency is asking for proof that the contractor has paid the subcontractor before allowing reimbursement. The

> existing language provides that handling charges are only eligible reimbursement costs if the contractor *paid* the subcontractor. To the Board, it would appear that the Agency is merely requiring proof of a prerequisite which already exists. R04-22, 23 (Feb. 17, 2005) at 72.

The Board's first-notice language allowed cancelled checks, lien waivers or affidavits from the subcontractor as proof of payment. The Board is not convinced by $CW^3M$'s comments that proof of payment is unduly burdensome. Therefore, the Board declines to make this change.

**<u>11 Auditing Provisions (732.614/734.665)</u>**

Issues were raised during the first-notice period concerning the Agency's authority to perform audits and the extent of those audits. $CW^3M$ and USI both took issue with the auditing provisions. $CW^3M$ offers language changes to the auditing provision, which delete the engineers and geologist from the section. Exh. 106 at 19. $CW^3M$ agrees that the Agency has the authority to perform audits under the Act. *Id*. However, $CW^3M$ believes that authority is limited to reviewing portions of the plans and reports submitted to the Agency. *Id*.

Mr. Hundley, testifying on behalf of USI, argues that Section 734.665 is beyond the Agency's statutory authority and Mr. Hundley takes issue with the Board's decision to the contrary at first notice. Exh. 109, Attach. 23 at 13. Mr. Hundley argues that the statute gives the Agency only the authority to audit "data, reports, plans, documents and budgets *<u>submitted</u>*" pursuant to the Act. *Id*. Mr. Hundley does not believe that the audit provisions extend to all documents. Further, Mr. Hundley argues that the regulated entity should not be required to retain all documents pertinent to the submissions, as well as copies of submissions to the Agency. *Id*.

The Agency opposes the suggested change by $CW^3M$ because the Agency feels that in many cases the only documents the owner/operator has are the same documents submitted to the Agency. PC 62 at 15. The Agency maintains that the documents are often submitted directly by the consultant and the owner/operator merely signs the documents. *Id*. Deleting the engineers and geologist from this section would limit the Agency, in many cases, to reviewing only the documents submitted to the Agency. *Id*.

As the Board stated at first notice, the Agency's authority to: "'audit' is defined as 'a systematic inspection or examination of plans, reports, records, or documents to determine the completeness and accuracy of the data and conclusions contained therein.' 415 ILCS 5/57.2 (2004). Pursuant to Section 57.15 of the Act (415 ILCS 5/57.15 (2004)), the Agency has the authority to 'audit *all* data, reports, plans, documents and budgets submitted pursuant to this Title [emphasis added].' 415 ILCS 5/57.15 (2004)." R04-22, 23 (Feb. 17, 2005) at 66. The Board is unconvinced by the arguments that the plain language of the statute limits the Agency's review to *only* the documents submitted to the Agency. Therefore, the Board finds no basis to alter the Board's first-notice determination concerning the Agency's ability to audit data, reports, plans, and budgets.

On the second area of concern raised by $CW^3M$, that the consultants should not be required to maintain records for the Agency inspection, the Board finds merit in this point. The owner/operator is the individual who will be reimbursed and ultimately the owner/operator should bear the responsibility for recordkeeping. The Board is unconvinced by the Agency's concern that the owner/operator might not have supporting documentation. If an audit is performed and sufficient information to support the data, reports, plans, and budgets is not in the owner/operator's possession, the Agency can deny reimbursement. Therefore, the Board will delete the requirement that the engineer or geologist maintain records that must be available for Agency audit.

**12. Maximum Payment Amount for Abandonment and Removal of Tanks (Section 732.810/734.810)?**

Comments and testimony in reaction to the Board's first-notice proposal raised again the issue of the maximum payment amount for the abandonment and removal of tanks. CSD expresses concerns that the maximum payment amount for abandonment of a UST is insufficient to cover actual cost of abandonment. Exh. 99 at 3. CSD asserts that the cost for flowable fill alone would be $5,035. *Id*. CSD recommends that the maximum payment amounts be amended using *RS Means* published costs for UST closure. Exh. 99 at 4. $CW^3M$ argues that the maximum payment amounts are outdated since the amendment of OSFM regulations concerning tank removal and $CW^3M$ advocates a minimum removal amount of $6,300. Exh. 106 at 21. The Agency argues that CSD and $CW^3M$ have not provided sufficient justification for a change and have in fact suggested different rates. PC 62 at 20.

In the Board's first-notice opinion, the Board addressed this issue in response to comments from PIPE and stated:

> PIPE proposed alternative rates for UST removal and abandonment. PC 6 at 11. PIPE based the alternative rates on the 2004 *RS Means Environmental Cost Handling Options and Solutions* (*RS Means*). *Id*. PIPE believes that the alternative rates are "eminently more justifiable as 'reasonable'" rates than those proposed by the Agency. *Id*.
>
> The Board is not convinced that basing rates on *RS Means* in and of itself is appropriate. Although as indicated above, the Agency's method for developing the maximum payment amounts had statistical limitations, the Agency's rates were based on real data from actual sites in Illinois. Therefore, the Board rejects alternative rates, such as *RS Means*, and the Board will propose the rates as developed by the Agency for first notice. R04-22, 23 (Feb. 17, 2005) at 81.

After careful review of the testimony provided by CSD, $CW^3M$, and USI since first notice, the Board is convinced that the rates as proposed at first notice are sufficient for abandonment and removal of tanks. This is especially true given both $CW^3M$'s and USI's willingness to accept the maximum rates as proposed at least as interim rates. *See infra* at 61. Further, the provisions allowing for bidding will help to address any shortfalls with this maximum payment rate.

## 13. Mobilization Charges for Drill Rigs (Section 732.820/734.820)

Participants have raised an issue concerning the maximum rate for drilling and well installation. $CW^3M$ and USI both propose adding mobilization charges as a separate payment item. Exh. 106 at 21 and Exh. 109 at 40. CSD does not believe that the maximum payment amount is sufficient to pay for the mobilization of more than one drill rig and CSD supports $CW^3M$'s and USI's changes. PC 64 at 5. The Agency maintains that the maximum payment amounts already include the cost for mobilization and the suggested use of the amounts in Section 732.845/734.845 are not appropriate. PC 62 at 22. Specifically the Agency states that the rates in Section 732.845/734.845 are for professional consulting services not drill rig mobilization. *Id*.

The Board is cognizant of the concerns by CSD, $CW^3M$, and USI. However, the Board is equally cognizant of the fact that the rates proposed for mobilization by $CW^3M$, and USI are rates developed for travel by professional consultants. CSD, $CW^3M$, and USI have not presented evidence that the rates are equivalent and the Board cannot make that leap. Further, the Agency offered testimony prior to first notice that the rate included mobilization and also the rule language states that the maximum payment amount includes mobilization/demobilization. Therefore, the Board finds the record does not support a change to the rule.

## 14. Soil Removal and Disposal (Section 732.825/734.825)

The issue of soil removal and disposal was discussed extensively prior to the Board proceeding to first notice. $CW^3M$ again asks that the Board adopt rates for soil removal and disposal based on rates from IDOT projects where the projects were bid. Exh. 106 at 22-23. $CW^3M$ also proposes the use of a conversion factor of 1.05. *Id*. The Agency responds to $CW^3M$ by summarizing the proposed changes to this section as: 1) basing maximum payment amounts on amounts approved by IDOT; 2) changing the "swell factor" and "weight/volume" conversion factor to 1.2 tons per cubic yard; and 3) adding $14.25 per cubic yard for "additional expenses" associated with the transportation of soil that is temporarily stockpiled on-site or off-site. PC 62 at 23. The Agency opposes all of these changes. PC 62 at 23-25.

The Agency notes that IDOT provided a letter stating that the costs in IDOT's contracts should not be used to justify or compare costs in this rulemaking. PC 62 at 23, citing Exh. 89. Further, the Agency notes that prior to first notice, $CW^3M$ proposed a conversion factor of 1.68. PC 62 at 24. Finally, the Agency maintains that $CW^3M$ provided no justification for the additional $14.25 per cubic yard that $CW^3M$ suggests adding. *Id*.

Prior to proposing this rulemaking for first notice, the Board examined the issue of what conversion factor was appropriate. The Board stated:

> First, the Board does not see a significant disparity between the Agency's proposed swell factor and the swell factor recommended by the other participants. The Board is convinced that a swell factor of five percent applied to the total for ETD is equivalent to a twenty percent swell factor and twenty percent is appropriate. Regarding the conversion factor, the Board recognizes that the factor

> ranges from one to two tons per cubic yard for different types of geologic material. The conversion factor proposed by the Agency takes into consideration various types of geologic material that occur at Illinois UST sites and the Board finds that the record supports a 1.5 tons per cubic yard conversion factor. The Board will proceed to first notice with the swell factor and conversion factor as proposed by the Agency. R04-22, 23 (Feb. 17, 2005) at 74.

$CW^3M$ has presented the Board with no information that would convince the Board to change the position taken by the Board at first notice concerning a conversion factor. As to the remaining issues, the Board is also unconvinced that a change is warranted. IDOT has specifically stated that the contract rates used by IDOT should not be used in this proceeding and the Board is persuaded by that comment. Also as an owner/operator may seek bids for soil removal and disposal if the maximum rates prove insufficient, the owner/operator can address any shortcoming in the maximum rates. Therefore the Board declines to make the changes suggested by $CW^3M$.

**15. Drum Disposal (Section 732.830/734.830)**

Concerning the maximum payment amount for drum disposal, $CW^3M$ suggests that the words "non-hazardous" be added to the language of the rule and suggests a "stop fee" in accordance with Section 734.845(e) be added. Exh. 106 at 25. The Agency opposes a "stop fee" for this section as the maximum payment amount already includes that cost. PC 62 at 25. The Agency also notes that the travel fees in Section 734.845 are for travel costs associated with professional consulting service, not drum disposal. *Id.*

The Board is unconvinced that a "stop fee" is required for drum disposal as the lump sum payment amount includes "transportation" by the plain language of the rule. Further, the rates proposed for mobilization or "stop fees" by $CW^3M$ are rates developed for travel by professional consultants. $CW^3M$ has not presented evidence that the rates are equivalent to "stop fees" and the Board cannot make that leap. Therefore, the Board finds that the record does not support the addition of a "stop fee" for drum disposal and the Board will not make that change. The Board is also unconvinced that adding the phrase "non-hazardous" is necessary and declines to do so.

**16. Concrete, Asphalt and Paving (Section 732.840/734.840)**

$CW^3M$ raises again the issue of maximum payment amounts for concrete, asphalt, and paving and suggests that testimony offered prior to the Board's adoption of the first-notice proposal demonstrates that there are numerous flaws with the proposed rates. Exh. 106 at 25. $CW^3M$ offers alternative rates. *Id.* The Agency opposes the alternative rates suggested by $CW^3M$. PC 62 at 26. The Agency notes that $CW^3M$ supports the alternative rates based on testimony given prior to the Board's first-notice proposal and the Board has already considered that testimony and rejected the changes. *Id.* The Agency argues that $CW^3M$ has not offered any new information to support the alternative rates.

The Board has reviewed the first-notice opinion and order and the testimony by $CW^3M$. The Board finds nothing which convinces the Board that the alternative rates proposed by $CW^3M$

should be adopted. Further, given the support of USI for these rates as discussed *infra* at 61, the Board finds that the rates as proposed are reasonable.

**17. Bidding for Professional Services (732.855/734.855)**

The Board received a great deal of comment and testimony concerning the concept of bidding for professional services under the rule. The Board added the concept of bidding in the first-notice opinion after the issue was raised during the hearing process. Some of the specific comments include that CSD notes that bidding for professional services is not normally done and many gasoline station owners/operators do not employ environmental professionals to assist with regulations. Exh. 99 at 3. CSD believes that the bidding process should be reserved for UST compliance costs other than professional consulting services. *Id.* $CW^3M$ agrees that bidding of professional consulting services is not practicable although bidding may be an option in other areas. PC 63 at 5. USI also believes that using competitive bidding for professional services is problematic, especially without a defined scope of work. Exh. 109 at 54. USI argues that the concept of bidding for professional services should not be included in this rule. *Id.* ACECI challenges the propriety of requiring an owner/operator to bid out professional services, when the State would be required to use qualification-based selection. PC 58 at 1.

The Board has carefully reviewed the comments and testimony concerning bidding for professional consulting services. The Board is convinced that bidding for many of the lump sum payment rates in Subpart H is a feasible alternative. This conclusion is supported by USI's comments concerning the acceptability of many of the rates in Subpart H. *See infra* 61. However, the Board is equally convinced that, especially absent defined scopes of work, bidding for professional consulting services is not a feasible alternative. For an owner/operator to prepare bid specifications and accept bids based on the rules as proposed for second notice without a consultant, places a massive burden on owners/operators, especially small businesses and municipalities. Therefore, the Board will exclude professional consulting services from the bidding provisions at this time. Further, the Board notes that in today's opinion the Board has determined that professional consulting services will be reimbursed on time and materials and therefore bidding for professional services is not necessary.

**18. Economic Impact of the Rulemaking**

A major concern of the participants in this rulemaking has been the economic impact of the rules on owners/operators of UST sites in Illinois that have not yet been remediated. CSD, $CW^3M$, and USI all assert that the adoption of the proposed maximum payment amounts, particularly for professional consulting services, will have a negative impact on owners/operators and their consultants in Illinois. CSD states that adoption of lump sum payments will cut profit margins so much that consultants will not offer upfront financing. Exh. 99 at 2. CSD believes that without upfront financing, noncompliance will increase among many small businesses. *Id.* $CW^3M$ asserts that the failure to adopt adequate rates will have a serious impact on owners/operators and the future of $CW^3M$'s business is at stake. PC 63 at 9.

USI comments that over 4,000 small owners/operators are responsible for sites yet to be issued NFR letters in Illinois. Exh. 109 at 8. USI asserts that small owners/operators are even

more reliant on the UST Fund and need to be reimbursed for 100% of eligible costs. Exh. 109 at 11. USI specifically asked that the Board again request DCEO to perform an economic impact study of the effects of the rule. Exh. 96 at 3-4.

The Board received comments from Senator Sullivan, Senator Lauzen, and Senator Dahl expressing concerns about the effect of these proposed rules on small businesses and municipalities in the State. PC 65 and PC 69. In addition PIPE states that the evidence in this proceeding establishes that owners/operators will be required to pay large sums out of pocket when remediating a UST site. PC 70 at 3.

Prior to proceeding to first notice and even before holding our first hearing in this matter the Board asked DCEO, pursuant to Section 27(b) of the Act (415 ILCS 5/27(b) (2004)), to perform an economic impact study. DCEO responded in April 2004 before the Board's second group of hearings. DCEO's response indicated that due to financial constraints a study could not be performed at that time.

The Board has proceeded with this rulemaking and gathered substantial testimony about the economic impact of the proposed rules. The comments indicate that the main area of negative economic impact concerns the professional consulting maximum payment rates without a defined scope of work. Given the Board's action today to open a subdocket on the scope of work and maximum payments for professional consulting services, and in the meantime to allow professional consulting to be reimbursed on time and material basis, the negative impact of the rule has been substantially alleviated. Therefore, the Board finds that the rule as being proposed for second notice is economically reasonable and that any adverse economic effect has been minimized. However, the Board will again request an economic impact study from DCEO pursuant to Section 27(b) of the Act (415 ILCS 5/27(b) (2004)) on the subdocket.

## 19. Miscellaneous

Throughout the comments and testimony the participants have addressed various miscellaneous issues which do not fall within the categories of issues above. Therefore the Board will address those remaining comments and testimony here.

### Application for Reimbursement

CSD raises an issue concerning the number of applications for reimbursement that can be submitted, the frequency of submission, and how the maximum payment amounts in Section 732.845/734.845 apply. Exh. 99 at 5. The issue is raised in response to the Agency's answers to prefiled question, which CSD believes are contradictory. *Id.* CSD also questioned the maximum payment amounts for amending a plan for unforeseen circumstances under Section 734.845(f)/734.845(f). Exh. 99 at 6. The Agency responds to CSD's concerns indicating that the maximum payment amounts include the costs of preparing and submitting applications and are sufficient to cover reasonable costs associated with the preparation. PC 62 at 31. The Agency states that the frequency of submissions is left to the owner/operator. *Id.*

The Board understands the concerns raised by CSD on these issues surrounding the maximum payment amounts for professional services. As the Board has determined to proceed to second-notice with a rule that will allow for payment on a time and material basis and to examine the maximum payment amounts along with scopes of work in a subdocket, the Board need take no action on CSD's concerns today. However, the Board invites CSD and other participants to raise these issues in subdocket B.

**Triennial Review**

Under Section 732.875/734.875, the Agency will review the reimbursement amounts at least every three years. CSD asks that the Board require the Agency to develop written procedures for conducting the review and make those procedures available to the public. Exh. 99 at 4. The specific language of Section 732.875/734.875 is:

> No less than every three years the Agency must review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report must identify amounts that are not consistent with the prevailing market rates and suggest changes needed to make the amounts consistent with the prevailing market rates.

The Board understands the concerns expressed by CSD; however, the rule language already requires that the Agency's finding be reported to the Board. To ensure that the public is aware of the results of the Agency's review, the Board will announce receipt of the report on the Board's web page and in the *Environmental Register*. The Board will amend the rule language to reflect this decision.

**LUST Advisory Committee**

CSD suggests that there should be an odd number on the Advisory Committee rather than the current committee size of ten members. PC 64 at 3. CSD also suggests that because of PIPE's level of activity in this rulemaking, PIPE should be given two seats on the Advisory Committee. *Id.* CSD further suggests that the Advisory Committee be given additional responsibilities for things such as developing standardized forms and evaluation of maximum payment amounts. *Id.* CSD, $CW^3M$ and USI all recommend using the Advisory Committee to assist in the development of task lists or scopes of work.

The Board agrees that the Advisory Committee would be better served by having an odd number of participants. The Board will therefore accept CSD's suggestion and add a second member of PIPE to the Advisory Committee. As to the suggestions by CSD, $CW^3M$ and USI that the Advisory Committee assist in the development of task lists or scopes of work, in subdocket B, the Board will address the issue of task lists and scopes of work. The Board encourages the participants and the Advisory Committee to work with the Agency and the Board in subdocket B.

**Information in Reimbursement Requests**

CW$^3$M expressed confusion arising from responses by the Agency to prefiled questions. Exh. 106 at 10. Specifically, CW$^3$M is confused over what information must be included in a reimbursement application for a lump sum payment. *Id.* CW$^3$M maintains that at one point the Agency indicated simply an invoice would be sufficient, while a later response seem to indicate more substantial information would be required. *Id.* The Board does not share CW$^3$M's confusion. Section 57.8(a)(6) of the Act (415 ILCS 5/57.8(a)(6) (2004)) specifies what must be included in a complete application and the Agency's answers are consistent with Section 57.8(a)(6) of the Act (415 ILCS 5/57.8(a)(6) (2004)). Therefore, the Board finds no change is necessary.

**Sections 732.110/734.135 and 732.505/734.510**

CW$^3$M suggests amending the language in both these sections. Specifically CW$^3$M suggests that language be added to allow for documentation of reports delivered by hand or private delivery service to the Agency and language be added to ensure that the Agency maintains records of the Agency's review. Exh. 106 at 12, 14. The Board agrees that private and hand delivery should be allowed and will therefore amend the language to reflect such delivery. The Board notes that the record before the Agency includes "any information the Agency relied upon in making its determination" (35 Ill. Adm. Code 105.410). The Board finds that the phrase is sufficiently inclusive and finds no merit in adding language concerning the content of the Agency's record to the rule.

**Sections 734.320(b)(2) and 734.330(a)(1)**

CW$^3$M asks that the word "projected" be added before "post-remediation use of the property" because an owner/operator may not know for certain what the future use of the property may be. Exh. 106 a 12. The Board will accept the suggestion by CW$^3$M and will add "projected" before "post-remediation use of the property" in the rule.

**Section 732.605/734.625 and 734.630(w)**

CW$^3$M suggests adding several items to the list of eligible costs in the rule. Exh. 106 at 16. In response, the Agency comments that the list is not an exclusive list and Section 732.605/734.625 merely contains examples of costs that may be eligible and eligibility of a certain cost is not dependant upon listing in this section. PC 62 at 7. The Board agrees with the Agency that the list of costs eligible for reimbursement in Section 732.605/734.625 is not an exhaustive list and is not meant to be one. The Board finds that the additions suggested by CW$^3$M are not necessary and declines to make the changes.

One specific suggestion by CW$^3$M is that compaction of backfill be allowed as an eligible cost and that compaction be deleted from the language in Section 734.630(w). Exh. 106 at 16, 75. The Agency opposes these changes and notes that ineligibility of costs associated with compaction of backfill is a longstanding practice. PC 62 at 8. The Board agrees with the Agency and finds no merit in amending the rule to alter the longstanding practice that compaction of backfill is ineligible for reimbursement. *See* McDonald's Corporation v. IEPA PCB 04-14 (Jan. 22, 2004).

**<u>"Must" to "Shall" and "But Not Limited To"</u>**

Throughout the proposal, $CW^3M$ has suggested the Board change the word "must" to "shall" and delete the phrase "but not limited to" from the rule. The Board has been systematically replacing "shall" with "must" in all the Board's rulemakings both for grammatical reasons and in response to comments from JCAR. Therefore, the use of the word "must" is grammatically correct and consistent with the Board's practice. As to the phrase "but not limited to" this phrase is a standard inclusion in all rules where a non-exhaustive list is given. Therefore, removing the phrase "but not limited to" could be misinterpreted as limiting the eligible costs to only those costs specified. The Board finds that this limitation is not supported by the record and declines to remove the phrase.

**<u>Various Suggested Changes to the Proposed Rule</u>**

The Board notes that in addition to the specific changes discussed herein, many participants and $CW^3M$ in particular, submitted suggested language changes throughout the rule. The Board has reviewed all those suggested changes and unless specifically discussed in the opinion or listed below, the Board did not accept the changes. The Board finds that those changes not accepted were not necessary or were unsupported by the record.

The Board made several changes in response to comments from the Joint Committee on Administrative Rules (JCAR) during first notice. In addition, the following changes, not discussed previously, were made in response to comments:

1. Sections 732.410 and 732.612 were restored in place of "A" in the Table of Contents;

2. In Section 732.307(j)(2), "Sections" was changed to "Section";

3. In Section 732.309(a), "Licensed Professional Geologist" was added;

4. In Section 732.309(a)(2), "potables" was changed to "potable";

5. In Section 732.606(eee), the reference to "this subsection (fff)" was changed to "this subsection (ddd)";

6. In Section 734.315(a)(1)(B) "a close as practicable" was changed to "as close as practicable";

7. In Section 734.345(a) "5/" was added to the statutory citation; and

8. In Section 734.350(d)(5) "a" was added before "potable."

The Board has identified the changes, other than those suggested by JCAR, in the proposal using double underling in today's order.

## CONCLUSION

The Board adopts the proposal for second notice pursuant to the IAPA (5 ILCS 100/5-5 *et. seq.* (2004). Due to the comments received after the first notice began and in consideration of the prior comments in this rulemaking, the Board opens a subdocket B . The purpose of subdocket B is to develop scopes of work to be used in reimbursing professional consulting services with the hope of proceeding ultimately to lump sum payments for many tasks undertaken in the remediation of UST sites in Illinois. Subdocket B will also examine issues surrounding the hourly payment amounts and hours of work for professional consulting services. During the pendency of subdocket B, professional consulting services will continue to be reimbursed on a time and material basis.

In addition to opening a subdocket, the Board makes several changes to the proposed rule in response to the comments. Some of the more significant changes include allowing for reimbursement of handling charges for a subcontractor if the primary contractor has a financial interest in the subcontractor and removing professional consulting services from eligibility for bidding. The Board also determines that some changes requested by the participants are not necessary or supported by the record. Some of those more significant suggestions include adding mobilization charges for drill rigs and adjusting maximum payment amounts for abandonment and removal of tanks.

The Board finds that the rule, as proposed for second notice, is economically reasonable and technically feasible. The Board further finds that any negative economic impact has been minimized by removal of the professional service lump sum payments to subdocket B. Finally, the Board finds that the record supports the Board's decision to proceed to second notice with the remainder of the rule language.

## ORDER

The Board directs that the following rule be submitted to the Joint Committee on Administrative Rules for second-notice.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND UNDERGROUND STORAGE TANK PROGRAMS

PART 732
PETROLEUM UNDERGROUND STORAGE TANKS
(RELEASES REPORTED SEPTEMBER 23, 1994, THROUGH JUNE 23, 2002)

SUBPART A: GENERAL

Section
732.100 Applicability
732.101 Election to Proceed under Part 732
732.102 Severability
732.103 Definitions
732.104 Incorporations by Reference
732.105 Agency Authority to Initiate Investigative, Preventive or Corrective Action
732.106 Laboratory Certification
732.108 Licensed Professional Engineer or Licensed Professional Geologist Supervision
732.110 Form and Delivery of Plans, Budget Plans, and Reports; Signatures and Certifications
732.112 Notification of Field Activities
732.114 LUST Advisory Committee

SUBPART B: EARLY ACTION

Section
732.200 General
732.201 Agency Authority to Initiate
732.202 Early Action
732.203 Free Product Removal
732.204 Application for Payment of Early Action Costs

SUBPART C: SITE EVALUATION AND CLASSIFICATION

Section
732.300 General
732.301 Agency Authority to Initiate
732.302 No Further Action Sites
732.303 Low Priority Sites
732.304 High Priority Sites
732.305 Plan Submittal and Review
732.306 Deferred Site Classification; Priority List for Payment
732.307 Site Evaluation
732.308 Boring Logs and Sealing of Soil Borings and Groundwater Monitoring Wells
732.309 Site Classification Completion Report
732.310 Indicator Contaminants
732.311 ~~Indicator Contaminant~~ Groundwater Remediation Objectives
732.312 Classification by Exposure Pathway Exclusion

SUBPART D: CORRECTIVE ACTION

Section
732.400 General
732.401 Agency Authority to Initiate
732.402 No Further Action Site

732.403 Low Priority Site
732.404 High Priority Site
732.405 Plan Submittal and Review
732.406 Deferred Corrective Action; Priority List for Payment
732.407 Alternative Technologies
732.408 Remediation Objectives
732.409 Groundwater Monitoring and Corrective Action Completion Reports
732.410 ~~A~~"No Further Remediation" Letter (Repealed)
732.411 Off-site Access

SUBPART E: REVIEW OF ~~SELECTION AND REVIEW PROCEDURES FOR~~ PLANS, BUDGET PLANS, AND REPORTS

Section
732.500 General
732.501 Submittal of Plans or Reports (Repealed)
732.502 Completeness Review (Repealed)
732.503 ~~Full~~ Review of Plans, Budget Plans, or Reports
732.504 Selection of Plans or Reports for Full Review (Repealed)
732.505 Standards for Review of Plans, Budget Plans, or Reports

SUBPART F: PAYMENT FROM THE FUND ~~OR REIMBURSEMENT~~

Section
732.600 General
732.601 Applications for Payment
732.602 Review of Applications for Payment
732.603 Authorization for Payment; Priority List
732.604 Limitations on Total Payments
732.605 Eligible Corrective Action Costs
732.606 Ineligible Corrective Action Costs
732.607 Payment for Handling Charges
732.608 Apportionment of Costs
732.609 Subrogation of Rights
732.610 Indemnification
732.611 Costs Covered by Insurance, Agreement or Court Order
732.612 ~~A~~Determination and Collection of Excess Payments
732.614 Audits and Access to Records; Records Retention

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section
732.700 General
732.701 Issuance of a No Further Remediation Letter
732.702 Contents of a No Further Remediation Letter

732.703 Duty to Record a No Further Remediation Letter
732.704 Voidance of a No Further Remediation Letter

SUBPART H: MAXIMUM PAYMENT AMOUNTS

Section

732.800 Applicability
732.810 UST Removal or Abandonment Costs
732.815 Free Product or Groundwater Removal and Disposal
732.820 Drilling, Well Installation, and Well Abandonment
732.825 Soil Removal and Disposal
732.830 Drum Disposal
732.835 Sample Handling and Analysis
732.840 Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures
732.845 Professional Consulting Services
732.850 Payment on Time and Materials Basis
732.855 Bidding
732.860 Unusual or Extraordinary Circumstances
732.865 ~~Unusual or Extraordinary Circumstances~~ Handling Charges
732.870 Increase in Maximum Payment Amounts
732.875 Agency Review of Payment Amounts

732.APPENDIX A Indicator Contaminants
732.APPENDIX B Additional Parameters
732.APPENDIX C Backfill Volumes ~~and Weights~~
732.APPENDIX D Sample Handling and Analysis
732.APPENDIX E Personnel Titles and Rates
TABLE A Groundwater and Soil Remediation Objectives (Repealed)
TABLE B Soil remediation Methodology: Model Parameter Values (Repealed)
TABLE C Soil remediation Methodology: Chemical Specific Parameters (Repealed)
TABLE D Soil remediation Methodology: Objectives (Repealed)
ILLUSTRATION A Equation for Groundwater Transport (Repealed)
ILLUSTRATION B Equation for Soil-Groundwater Relationship (Repealed)
ILLUSTRATION C Equation for Calculating Groundwater Objectives at the Source (Repealed)
ILLUSTRATION D Equation for Calculating Soil Objectives at the Source (Repealed)

AUTHORITY: Implementing Sections 22.12 and 57-57.17 and authorized by Section 57.14 of the Environmental Protection Act [415 ILCS 5/22.12, 57-57.17].

SOURCE: Adopted in R94-2 at 18 Ill. Reg. 15008, effective September 23, 1994; amended in R97-10 at 21 Ill. Reg. 3617, effective July 1, 1997; amended in R01-26 at 26 Ill. Reg. 7119, effective April 29, 2002; amended in R04-22/23 at 30 Ill. Reg. _______, effective _______.

NOTE: Italics denotes statutory language.

## SUBPART A: GENERAL

### Section 732.100 Applicability

a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to Illinois Emergency Management Agency (IEMA) on or after September 23, 1994, but prior to June 24, 2002, in accordance with regulations adopted by the Office of the State Fire Marshal (OSFM). It also applies to owners or operators that, prior to June 24, 2002, elected to proceed in accordance with this Part pursuant to Section 732.101 of this Part. ~~This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release has been confirmed and required to be reported to Illinois Emergency Management Agency (IEMA) on or after September 23, 1994 in accordance with regulations adopted by the Office of State Fire Marshal (OSFM).~~ This Part ~~It~~ does not apply to owners or operators of sites for which the OSFM does not require a report to IEMA or for which the OSFM has issued or intends to issue a certificate of removal or abandonment pursuant to Section 57.5 of the Act ~~Environmental Protection Act (Act)~~ [415 ILCS 5/57.5]. ~~Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to IEMA on or before September 12, 1993, may elect to proceed in accordance with this Part pursuant to Section 732.101.~~

b) Upon the receipt of a corrective action order issued by ~~from~~ the OSFM prior to June 24, 2002, and pursuant to Section 57.5(g) of the Act, where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit shall conduct corrective action in accordance with this Part.

c) Owners or operators subject to this Part by law or by election shall proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 732.105 of this Part to expedite investigative, preventive or corrective action by an owner or operator or to initiate such action.

d) The following underground storage tank systems are excluded from the requirements of this Part:

1) Equipment or machinery that contains petroleum substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

2) Any underground storage tank system whose capacity is 110 gallons or less.

3) Any underground storage tank system that contains a de minimis concentration of petroleum substances.

4) Any emergency spill or overfill containment underground storage tank system that is expeditiously emptied after use.

5) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act (33 USC ~~U.S.C.~~ 1251 *et seq*. ~~(1972)~~).

6) Any UST system holding hazardous waste listed or identified under Subtitle C of the Solid Waste Disposal Act (42 USC ~~U.S.C.~~ 3251 *et seq*.) or a mixture of such hazardous waste or other regulated substances.

e) Owners or operators subject to this Part may, pursuant to 35 Ill. Adm. Code 734.105, elect to proceed in accordance with 35 Ill. Adm. Code 734 instead of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.101 Election to Proceed under Part 732

a) Prior to June 24, 2002, owners ~~Owners~~ or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority on or before September 12, 1993 were able to ~~may~~ elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. ~~Such election shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Corrective action shall then follow the requirements of this Part.~~ The election became ~~shall be~~ effective upon receipt by the Agency and shall not be withdrawn ~~once made~~. However, an owner or operator that elected to proceed in accordance with this Part may, pursuant to 35 Ill. Adm. Code 734.105, elect to proceed in accordance with 35 Ill. Adm. Code 734 instead of this Part.

b) Prior to June 24, 2002, except ~~Except~~ as provided in Section 732.100(b) of this Part, owners or operators of underground storage tanks (USTs) used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit were able to ~~may~~ elect to proceed in

accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. ~~Such election shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Corrective action shall then follow the requirements of this Part.~~ The election became ~~shall be~~ effective upon receipt by the Agency and shall not be withdrawn ~~once made~~. However, an owner or operator that elected to proceed in accordance with this Part may, pursuant to 35 Ill. Adm. Code 734.105, elect to proceed in accordance with 35 Ill. Adm. Code 734 instead of this Part.

c) If the owner or operator elected ~~elects~~ to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election shall be payable from the Fund ~~or reimbursable~~ in the same manner as was allowable under the law applicable to the owner or operator prior to the notification of election ~~then existing law~~. Corrective action costs incurred after the notification of election shall be payable from the Fund ~~or reimbursable~~ in accordance with ~~Subparts E and F of~~ this Part. Corrective action costs incurred on or after the effective date of an election to proceed in accordance with 35 Ill. Adm. Code 734 shall be payable from the Fund in accordance with that Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.103 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 [415 ILCS 5].

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

"Alternative Technology" means a process or technique, other than conventional technology, used to perform a corrective action with respect to soils contaminated by releases of petroleum from an underground storage tank.

"Board" means the Illinois Pollution Control Board.

*"Bodily Injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank* [415 ILCS 5/57.2].

"Class I Groundwater"~~*"Class I groundwater"*~~ *means groundwater that meets the Class I: potable resource groundwater criteria set forth in the* Board ~~*board*~~ *regulations adopted pursuant to the Illinois Groundwater Protection Act* [415 ILCS 5/57.2].

"Class II Groundwater"~~*"Class III groundwater"*~~ *means groundwater that meets the Class III: special resource groundwater criteria set forth in the* Board ~~*board*~~ *regulations adopted pursuant to the Illinois Groundwater Protection Act* [415 ILCS 5/57.2].

*"Community water supply" means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents* [415 ILCS 5/3.145].

"Confirmed Exceedence" means laboratory verification of an exceedence of the applicable remediation ~~groundwater quality standards or~~ objectives.

"Confirmation of a Release" means the confirmation of a release of petroleum in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Confirmed Release" means a release of petroleum that has been confirmed in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Conventional Technology" means a process or technique to perform a corrective action by removal, transportation and disposal of soils contaminated by a release of petroleum from an underground storage tank in accordance with applicable laws and regulations, but without processing to remove petroleum from the soils.

*"Corrective action" means activities associated with compliance with the provisions of Sections 57.6 and 57.7* of the Act [415 ILCS 5/57.2].

"County Highway" means county highway as defined in the Illinois Highway Code [605 ILCS 5].

"District Road" means a district road as defined in the Illinois Highway Code [605 ILCS 5].

"Environmental Land Use Control" means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200. ~~an instrument that meets the requirements of these regulations and is placed in the chain of title to real property that limits or places requirements upon the use of the property for the purpose of protecting human health or the environment, is binding upon the property owner, heirs, successors, assigns, and lessees, and runs in perpetuity or until the Agency approves, in writing, removal of the limitation or requirement from the chain of title~~.

"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 simple by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

"Fill Material"~~*"Fill material"*~~ *means non-native or disturbed materials used to bed and backfill around an underground storage tank* [415 ILCS 5/57.2].

"Financial Interest" means any ownership interest, legal or beneficial, or being in the relationship of director, officer, employee, or other active participant in the affairs of a party. Financial interest does not include ownership of publicly traded stock.

"Free Product" means a contaminant that is present as a non-aqueous phase liquid for chemicals whose melting point is less than 30°C (e.g., liquid not dissolved in water).

"Full Accounting" means a compilation of documentation to establish, substantiate and justify the nature and extent of the corrective action costs incurred by an owner or operator.

"Fund"~~*"Fund"*~~ *means the Underground Storage Tank Fund* ~~*underground storage tank fund*~~ [415 ILCS 5/57.2].

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

"Groundwater"~~*"Groundwater"*~~ *means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure* [415 ILCS 5/3.210] ~~[415 ILCS 5/3.64]~~.

"Half-day" means four hours, or a fraction thereof, of billable work time. Half-days must be based upon the total number of hours worked in one calendar day. The total number of half-days per calendar day may exceed two.

"Handling Charges" means administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.

"Heating Oil"~~*"Heating oil"*~~ *means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy, No. 5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and*

*other residual fuel oils including navy special fuel oil and bunker C ~~c~~.* [415 ILCS 5/57.2]~~.~~

"Highway Authority" means the Illinois Department of Transportation *with respect to a State highway;* the Illinois State Toll Highway Authority with respect to a toll highway; *the county board with respect to a county highway or a county unit district road if a discretionary function is involved and the county superintendent of highways if a ministerial function is involved; the highway commissioner with respect to a township or district road not in a county or unit road district; or the corporate authorities of a municipality with respect to a municipal street* [605 ILCS 5/2-213].

"Highway Authority Agreement" means an agreement with a highway authority that meets the requirements of 35 Ill. Adm. Code 742.1020.

"IEMA" means the Illinois Emergency Management Agency.

*"Indemnification" means indemnification of an owner or operator for the amount of judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by any agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator* [415 ILCS 5/57.2].

"Indicator Contaminants" means the indicator contaminants set forth in Section 732.310 of this Part.

"Institutional Control" means a legal mechanism for imposing a restriction on land use as described in 35 Ill. Adm. Code 742, Subpart J.

"Land Use Control Memorandum of Agreement" 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"~~*"Licensed professional engineer"*~~ *means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering* [415 ILCS 5/57.2].

"Licensed Professional Geologist" *means a person licensed under the laws of the State of Illinois to practice as a professional geologist* [415 ILCS 5/57.2].

~~"Line Item Estimate" means an estimate of the costs associated with each line item (including, but not necessarily limited to, personnel, equipment, travel, etc.) that an owner or operator anticipates will be incurred for the development, implementation and completion of a plan or report.~~

"Man-made Pathway" means constructed routes that may allow for the transport of mobile petroleum free-liquid or petroleum-based vapors including, but not limited to, sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches or previously excavated and filled areas.

"Monitoring Well" means a water well intended for the purpose of determining groundwater quality or quantity.

"Natural Pathway" means natural routes for the transport of mobile petroleum free-liquid or petroleum-based vapors including, but not limited to, soil, groundwater, sand seams and lenses, and gravel seams and lenses.

"Non-community Water Supply" *means a public water supply that is not a community water supply* [415 ILCS 5/3.145].

*"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank* [415 ILCS 5/57.2].

"OSFM" means the Office of the State Fire Marshal.

"Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (Derived from 42 USC 6991)

BOARD NOTE: A person who voluntarily undertakes action to remove an underground storage tank system from the ground shall not be deemed an "operator" merely by the undertaking of such action.

"Owner" means:

In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances;

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use. (Derived from 42 USC 6991)

"Perfect" or "Perfected" means recorded or filed for record so as to place the public on notice, or as otherwise provided in Section ~~subsections~~ 732.703(c) and (d) of this Part.

"Person" means, for the purposes of interpreting the definitions of the terms "owner" or "operator," an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state~~State~~, municipality, commission, political subdivision of a state~~State~~, or any interstate body and shall include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 USC 6991)

"Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). (Derived from 42 USC 6991)

"Physical Soil Classification"~~*"Physical soil classification"*~~ *means verification* of geological conditions consistent with regulations for identifying and protecting potable resource groundwater or verification *that subsurface strata are as generally mapped in the publication Illinois Geological Survey Circular (1984) entitled "Potential For Contamination Of Shallow Aquifers In Illinois," by Berg, Richard C., et al. Such classification may include review of soil borings, well logs, physical soil analysis, regional geologic maps, or other scientific publication*. [415 ILCS 5/57.2]~~.~~

"Potable" ~~*"Potable"*~~ *means generally fit for human consumption in accordance with accepted water supply principles and practices* [415 ILCS 5/3.340] ~~[415 ILCS 5/3.65]~~.

"Practical quantitation limit" or "PQL" 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 732.104 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 732.104 of this Part.

"Property Damage" ~~"*Property damage*"~~ *means physical injury to, destruction of, or contamination of tangible property* owned by a person other than an owner or operator of the UST from which a release of petroleum has occurred and which tangible property is located off the site where the release occurred. Property damage includes *all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank*~~.~~ [415 ILCS 5/57.2].

"Public Water Supply" *means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a "community water supply" or a "non-community water supply"* [415 ILCS 5/3.365].

"Registration" means registration of an underground storage tank with the OSFM in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4].

*"Regulated recharge area" means a compact geographic area, as determined by the Board, the geology of which renders a potable resource groundwater particularly susceptible to contamination* [415 ILCS 5/3.390] ~~[415 ILCS 5/3.67]~~.

"Regulated Substance" means any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC Sec. 9601(14)) (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 USC 6921 et seq.)), and petroleum ~~Petroleum~~. (Derived from 42 USC 6991)

*"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils* [415 ILCS 5/57.2].

"Residential Tank" means an underground storage tank located on property used primarily for dwelling purposes.

"Residential Unit" means a structure used primarily for dwelling purposes including multi-unit dwellings such as apartment buildings, condominiums, cooperatives or dormitories.

"Right-of-way" means *the land, or interest therein, acquired for or devoted to a highway* [605 ILCS 5/2-217].

"Setback Zone" ~~*"Setback Zone"*~~ *means a geographic area, designated pursuant to the Act or regulations* (see 35 Ill. Adm. Code, Subtitle F)*, containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwater* [415 ILCS 5/3.450]. ~~[415 ILCS 5/3.61].~~

"Site" ~~*"Site"*~~ *means any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way* [415 ILCS 5/57.2].

"State Highway" means a State highway as defined in the Illinois Highway Code [605 ILCS 5].

"Stratigraphic Unit" means a site-specific geologic unit of native deposited material and/or bedrock of varying thickness (e.g., sand, gravel, silt, clay, bedrock, etc.). A change in stratigraphic unit is recognized by a clearly distinct contrast in geologic material or a change in physical features within a zone of gradation. For the purposes of this Part, a change in stratigraphic unit is identified by one or a combination of differences in physical features such as texture, cementation, fabric, composition, density, and/or permeability of the native material and/or bedrock.

"Street" means a street as defined in the Illinois Highway Code [605 ILCS 5].

"Surface Body of Water" or "Surface Water Body" means a natural or man-made body of water on the ground surface including, but not limited to, lakes, ponds, reservoirs, retention ponds, rivers, streams, creeks and drainage ditches. Surface body of water does not include puddles or other accumulations of precipitation, run-off or groundwater in UST excavations.

"Tank Field" means all underground storage tanks at a site that reside within a circle with a 100 foot radius.

"Toll Highway" means a toll highway as defined in the Toll Highway Act [605 ILCS 10].

"Township Road" means a township road as defined in the Illinois Highway Code [605 ILCS 5].

"Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent ~~per centum~~ or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected thereto:

Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

Septic tank;

Pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.), or the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.), or which is an intrastate pipeline facility regulated under State laws as provided in either of these provisions of law, and that is determined by the Secretary of Energy to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

Surface impoundment, pit, pond, or lagoon;

Storm water or waste water collection system;

Flow-through process tank;

Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated on or above the surface of the floor. (Derived from 42 USC § 6991)

*The term "underground storage tank" shall also mean an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit* [415 ILCS 5/57.2].

"UST System" or "Tank System" ~~"tank system"~~ means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wellhead Protection Area" means the wellhead protection area of a community water supply well as determined under the Agency's wellhead protection program pursuant to 42 USC § 300h-7.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.104 Incorporations by Reference

a) The Board incorporates the following material by reference:

ASTM. American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2959 (610) 832-9585

ASTM D 422-63, Standard Test Method for Particle-Size Analysis of Soils, approved November 21, 1963 (reapproved 1990).

ASTM D 1140-92, Standard Test Method for Amount of Material in Soils Finer than the No. 200 (75 µm) Sieve, approved November 15, 1992.

ASTM D 2216-92, Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock, approved June 15, 1992.

ASTM D 4643-93, Standard Test Method for Determination of Water (Moisture) Content of Soil by the Microwave Oven Method, approved July 15, 1993.

ASTM D 2487-93, Standard Test Method for Classification of Soils for Engineering Purposes, approved September 15, 1993.

ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993.

ASTM D 5084-90, Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter, approved June 22, 1990.

ASTM D 4525-90, Standard Test Method for Permeability of Rocks by Flowing Air, approved May 25, 1990.

ASTM D 1587-83, Standard Practice for Thin-Walled Tube Sampling of Soils, approved August 17, 1983.

ISGS. Illinois State Geological Survey, 615 E. Peabody Drive, Champaign, IL 61820-6964 (217) 333-4747

Richard C. Berg, John P. Kempton, Keros Cartwright, “Potential for Contamination of Shallow Aquifers in Illinois” (1984), Circular No. 532.

NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 605-6000 or (800) 553-6847

~~"Methods for Chemical Analysis of Water and Wastes," EPA Publication No. EPA-600/4-79-020 (March 1983), Doc. No. PB 84-128677.~~

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

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

"Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039 (December 1988) (revised July 1991); ~~"Methods for the Determination of Organic Compounds in Drinking Water," EPA, EMSL, EPA-600/4-88/039 (December 1988), Doc. No. PB 89-220461.~~

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

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

~~"Practical Guide for Ground-Water Sampling," EPA Publication No. EPA-600/2-85/104 (September 1985), Doc. No. PB 86-137304.~~

~~"Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination Sites," EPA Publication No. EPA-600/8-85/002(February 1985), Doc. No. PB 85-192219.~~

"Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition (September1986), as amended by Updates I, IIA, III, and IIIA (Final Update IIIA dated April 1998), Doc. No. 955-001-00000-1.

~~USGS. United States Geological Survey, 1961 Stout Street, Denver, CO 80294 (303) 844-4169~~

~~"Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground-Water Samples for Selected Unstable Constituents," Book I, Chapter D2 (1981).~~

~~b) CFR (Code of Federal Regulations). Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202) 783-3238~~

40 CFR 261, Appendix II (1992).
40 CFR 761, Subpart G (2000).

b)c) This Section incorporates no later editions or amendments.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.106 Laboratory Certification

All quantitative analyses of samples collected on or after January 1, 2003, and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180, shall be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. A certification from the accredited laboratory stating that the samples were analyzed in accordance with the requirements of this Section shall be included with the sample results when they are submitted to the Agency. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 shall be deemed invalid.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.108 Licensed Professional Engineer or Licensed Professional Geologist Supervision

All investigations, plans, budget plans, and reports conducted or prepared under this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 732.300(b) or 732.409 of this Part, must be conducted or prepared under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist. High Priority Corrective Action Completion Reports submitted pursuant to Section 732.300(b) or 732.409 of this Part must be prepared under the supervision of a Licensed Professional Engineer.

(Source: Added at ________ Ill. Reg.___________, effective ________________)

Section 732.110 Form and Delivery of Plans, Budget Plans, and Reports; Signatures and Certifications

a) All plans, budget plans, and reports must be submitted to the Agency on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. At a minimum, all site maps submitted to the Agency must meet the following requirements:

1) The maps must be of sufficient detail and accuracy to show required information;

2) The maps must contain the map scale, an arrow indicating north orientation, and the date the map was created; and

3) The maps must show the following:

A) The property boundary lines of the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release;

B) The uses of the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release;

C) The locations of all current and former USTs at the site, and the contents of each UST; and

D) All structures, other improvements, and other features at the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release, including but not limited to buildings, pump islands, canopies, roadways and other paved areas, utilities, easements, rights-of-way, and actual or potential natural or man-made pathways.

b) All plans, budget plans, and reports must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt executed by Agency personnel acknowledging receipt of documents by hand delivery or messenger or from certified or registered mail.

c) All plans, budget plans, and reports must be signed by the owner or operator and list the owner's or operator's full name, address, and telephone number.

d) All plans, budget plans, and reports submitted pursuant to this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 732.300(b) or 732.409 of this Part, must contain the following certification from a Licensed Professional Engineer or Licensed Professional Geologist. Corrective Action Completion Reports submitted pursuant to Section 732.300(b) or 732.409 of this Part must contain the following certification from a Licensed Professional Engineer.

I certify under penalty of law that all activities that are the subject of this plan, budget plan, or report were conducted under my supervision or were conducted under the supervision of another Licensed Professional Engineer or Licensed Professional Geologist and reviewed by me; that this plan, budget plan, or report and all attachments were prepared under my supervision; that, to the best of my knowledge and belief, the work described in the plan, budget plan, or report has been completed in accordance with the Environmental Protection Act [415 ILCS 5], 35 Ill. Adm. Code 732, and generally accepted standards and practices of my profession; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or

representations to the Agency, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

e) Except in the case of sites subject to Section 732.703(c) or (d) of this Part, reports documenting the completion of corrective action at a site must contain a form addressing site ownership. At a minimum, the form must identify the land use limitations proposed for the site, if land use limitations are proposed; the site's common address, legal description, and real estate tax/parcel index number; and the names and addresses of all title holders of record of the site or any portion of the site. The form must also contain the following certification, by original signature, of all title holders of record of the site or any portion of the site, or the agent(s) of such person(s):

> I hereby affirm that I have reviewed the attached report entitled __________ and dated __________, and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further affirm that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the report upon the property I own.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.112 Notification of Field Activities

The Agency may require owners and operators to notify the Agency of field activities prior to the date the field activities take place. The notice must include information prescribed by the Agency, and may include, but is not limited to, a description of the field activities to be conducted, the person conducting the activities, and the date, time, and place the activities will be conducted. The Agency may, but is not required to, allow notification by telephone, facsimile, or electronic mail. This Section does not apply to activities conducted within 45 days plus 14 days after initial notification to IEMA of a release, or to free product removal activities conducted within 45 days plus 14 days after the confirmation of the presence of free product.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.114 LUST Advisory Committee

Once each calendar quarter the Agency must meet with a LUST Advisory Committee to discuss the Agency's implementation of this Part, provided that the Agency or members of the Committee raise one or more issues for discussion. The LUST Advisory Committee must consist of the following individuals: one member designated by the Illinois Petroleum Marketers Association, one member designated by the Illinois Petroleum Council, one member designated by the American Consulting Engineers Council of Illinois, one member designated by the Illinois Society of Professional Engineers, one member designated by the Illinois Chapter of the American Institute of Professional Geologists, ~~one~~ two members designated by the Professionals

of Illinois for the Protection of the Environment, one member designated by the Illinois Association of Environmental Laboratories, one member designated by the Illinois Environmental Regulatory Group, one member designated by the Office of the State Fire Marshal, and one member designated by the Illinois Department of Transportation. Members of the LUST Advisory Committee must serve without compensation.

(Source: Added at ________ Ill. Reg.___________, effective ________________)

SUBPART B: EARLY ACTION

Section 732.200 General

*Owners and operators of underground storage tanks shall, in response to all confirmed releases* of petroleum, *comply with all applicable statutory and regulatory reporting and response requirements*. [415 ILCS 5/57.6](Section 57.6(a) of the Act) No work plan or corresponding budget plan shall be required for conducting early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.202 Early Action

a) Upon confirmation of a release of petroleum from a an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, shall perform the following initial response actions within 24 hours after the release:

1) Report the release to IEMA (e.g., by telephone or electronic mail);

2) Take immediate action to prevent any further release of the regulated substance to the environment; and

3) Identify and mitigate fire, explosion and vapor hazards.

b) Within 20 days after initial notification to IEMA of a release plus 14 days, after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, the owner or operator shall perform the following initial abatement measures:

1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;

2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator shall comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;

5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 732.203.

c) Within 20 days <u>after initial notification to IEMA of a release plus 14 days, the owner or operator</u> ~~after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, owners or operators~~ shall submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data. ~~The report shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

d) Within 45 days <u>after initial notification to IEMA of a release plus 14 days, the owner or operator</u> ~~after confirmation of a release, owners or operators~~ shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information shall include, but is not limited to, the following:

1) Data on the nature and estimated quantity of release;

2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;

3) Results of the site check required at subsection (b)(5) of this Section; and

4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 732.203 of this Part.

e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator ~~after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, owners or operators~~ shall submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy. The information shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal* (see 41 Ill. Adm. Code 160, 170, 180, 200). *The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment for early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank.* Early action may also include disposal in accordance with applicable regulations or ex situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank. ~~in accordance with Section 57.7(a)(1)(B) of the Act~~ [415 ILCS 5/57.6(b)].

g) For purposes of payment from the Fund ~~reimbursement~~, the activities set forth in subsection (f) of this ~~the~~ Section shall be performed within 45 days after initial notification to IEMA of a release plus 14 ~~7~~ days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 ~~7~~ days. The owner or operator shall notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 ~~7~~ days. Costs incurred beyond 45 days plus 14 ~~7~~ days shall be eligible if the Agency determines that they are consistent with early action.

BOARD NOTE: Owners or operators seeking payment from the Fund ~~reimbursement~~ are to first notify IEMA of a suspected release and then confirm the release within 14 ~~seven~~ days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and ~~,~~ 170.580~~, 170.600~~. The Board is setting the beginning of the payment ~~reimbursement~~ period at subsection (g) to correspond to the notification and confirmation to IEMA.

h) The owner or operator shall determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation

boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. ~~applicable Tier 1 remediation objectives pursuant to 35 Ill. Adm. Code 742, Subpart E. Six samples shall be collected, one on each sidewall and two at the bottom of the excavation. If contaminated backfill is returned to the excavation, 2 representative samples must be collected and analyzed for the applicable indicator contaminants. Additional samples may be required for a multiple tank excavation.~~

1) At a minimum, for each UST that is removed, the owner or operator shall collect and analyze soil samples as follows. The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.

A) One sample must be collected from each UST excavation wall. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified on a wall, the sample must be collected from the center of the wall length at a point located one-third of the distance from the excavation floor to the ground surface. For walls that exceed 20 feet in length, one sample must be collected for each 20 feet of wall length, or fraction thereof, and the samples must be evenly spaced along the length of the wall. For USTs abandoned in place, the samples must be collected via borings drilled as close as practicable to the UST backfill.

B) Two samples must be collected from the excavation floor below each UST with a volume of 1,000 gallons or more. One sample must be collected from the excavation floor below each UST with a volume of less than 1,000 gallons. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If areas of contamination cannot be identified, the samples must be collected from below each end of the UST if its volume is 1,000 gallons or more, and from below the center of the UST if its volume is less than 1,000 gallons.

C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must be collected from a location representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a length of piping run excavation being sampled, the sample must be collected from the center of the length being sampled. For UST piping abandoned in place, the

samples must be collected in accordance with subsection (h)(2)(B) of this Section.

D) If backfill is returned to the excavation, one representative sample of the backfill must be collected for each 100 cubic yards of backfill returned to the excavation.

E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 732.310(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) through (D) of this Section must then be analyzed for the applicable used oil indicator contaminants.

2) At a minimum, for each UST that remains in place, the owner or operator must collect and analyze soil samples as described in subsections (h)(2)(A through (D). The Agency must allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.

A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for each 20 feet of side length, or fraction thereof, and the borings must be evenly spaced along the side. The borings must be drilled in the native soil surrounding the UST(s) and as close practicable to, but not more than five feet from, the backfill material surrounding the UST(s). Each boring must be drilled to a depth of 30 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 30 feet below grade.

B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close as practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be

collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.

C) If auger refusal occurs during the drilling of a boring required under subsection (h)(2)(A) or (B) of this Section, the boring must be drilled in an alternate location that will allow the boring to be drilled to the required depth. The alternate location must not be more than five feet from the boring's original location. If auger refusal occurs during drilling of the boring in the alternate location, drilling of the boring must cease and the soil samples collected from the location in which the boring was drilled to the greatest depth must be analyzed for the applicable indicator contaminants.

D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

3)~~1)~~ If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) are met, within 30 days after the completion of early action activities ~~there is no evidence that contaminated soils may be or may have been in contact with groundwater,~~ the owner or operator shall submit a ~~corrective action completion~~ report demonstrating compliance with those remediation objectives. The report must include, but is not limited to, the following:

A) A characterization of the site that demonstrates compliance with the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

B) Supporting documentation, including, but not limited to, the following:

i) A site map meeting the requirements of Section 732.110(a)(1) of this Part that shows the locations of all samples collected pursuant to this subsection (h);

ii) Analytical results, chain of custody forms, and laboratory certifications for all samples collected pursuant to this subsection (h); and

iii) A table comparing the analytical results of all samples collected pursuant to this subsection (h) to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

C) A site map containing only the information required under Section 732.110(a)(1) of this Part.

4)2) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, there is evidence that contaminated soils may be or may have been in contact with groundwater, the owner or operator shall continue evaluation in accordance with Subpart C of this Part.

A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);

B) Free product that may impact groundwater is found to need recovery in compliance with Section 732.203 of this Part; or

C) There is evidence that contaminated soils may be or may have been in contact with groundwater, unless:

i) The owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping; and

ii) The Agency determines that further groundwater investigation is not necessary.

BOARD NOTE: Section 57.7(a)(1)(B) of the Act limits payment or reimbursement from the Fund for removal of contaminated fill material during early action activities. Owners or operators proceeding with activities set forth in subsection (f) of this Section are advised that they may not be entitled to full payment or reimbursement. See Subpart F of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.203 Free Product Removal

a) Under any circumstance in which conditions at a site indicate the presence of free product, owners or operators shall remove, to the maximum extent practicable, free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water, ~~to the maximum extent practicable~~ while initiating or continuing any actions required pursuant to this Part or other applicable laws or regulations. In meeting the requirements of this Section, owners or operators shall:

1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, State and federal regulations;

2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

3) Handle any flammable products in a safe and competent manner to prevent fires or explosions;

4) Within 45 days after the confirmation of presence of free product from a UST, prepare and submit to the Agency a free product removal report ~~on forms prescribed and provided by the Agency and, if specified by the Agency, by written notice, in an electronic format~~. The report shall, at a minimum, provide the following:

A) The name of the persons responsible for implementing the free product removal measures;

B) The estimated quantity, type and thickness of free product observed or measured in wells, boreholes and excavations;

C) The type of free product recovery system used;

D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

E) The type of treatment applied to, and the effluent quality expected from, any discharge;

F) The steps that have been or are being taken to obtain necessary permits for any discharge;~~ and~~

G) The disposition of the recovered free product; ~~and~~

H) The steps taken to identify the source and extent of the free product; and

I) A schedule of future activities necessary to complete the recovery of free product still exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or still present as a sheen on groundwater in the tank removal excavation or on surface water. The schedule must include, but not be limited to, the submission of plans and budgets required pursuant to subsections (c) and (d) of this Section; and

5) If free product removal activities are conducted more than 45 days after the confirmation of the presence of free product, submit free product removal reports in accordance with a schedule established by the Agency.

b) For purposes of payment from the Fund ~~reimbursement~~, owners or operators are not required to obtain Agency approval ~~pursuant to Section 732.202(g)~~ for free product removal activities conducted within ~~more than~~ 45 days after the confirmation of the presence of free product ~~initial notification to IEMA of a release~~.

c) If free product removal activities will be conducted more than 45 days after the confirmation of the presence of free product, the owner or operator must submit to the Agency for review a free product removal plan. The plan must be submitted with the free product removal report required under subsection (a)(4) of this Section. Free product removal activities conducted more than 45 days after the confirmation of the presence of free product must not be considered early action activities.

d) Any owner or operator intending to seek payment from the Fund must, prior to conducting free product removal activities more than 45 days after the confirmation of the presence of free product, submit to the Agency a free product removal budget plan with the corresponding free product removal plan. The budget plan must include, but not be limited to, an estimate of all costs associated with the development, implementation, and completion of the free product removal plan, excluding handling charges. The budget plan should be consistent with the eligible and ineligible costs listed in Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget plan the Agency may require a comparison between the costs of the proposed method of free product removal and other methods of free product removal.

e) Upon the Agency's approval of a free product removal plan, or as otherwise directed by the Agency, the owner or operator must proceed with free product removal in accordance with the plan.

f) Notwithstanding any requirement under this Part for the submission of a free product removal plan or free product removal budget plan, an owner or operator may proceed with free product removal in accordance with this Section prior to the submittal or approval of an otherwise required free product removal plan or budget plan. However, any such removal plan and budget plan must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (f) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

g) If, following approval of any free product removal plan or associated budget plan, an owner or operator determines that a revised removal plan or budget plan is necessary in order to complete free product removal, the owner or operator must submit, as applicable, an amended free product removal plan or associated budget plan to the Agency for review. The Agency must review and approve, reject, or require modification of the removal amended plan or budget plan in accordance with Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all free product removal plans and associated budget plans submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.204 Application for Payment of Early Action Costs

Owners or operators intending to seek payment or reimbursement for early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product, are not required to submit a corresponding budget plan to the Agency prior to the application for payment. The application for payment may be submitted to the Agency upon completion of the early action activities in accordance with the requirements at Subpart F of this Part, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product. Applications for payment of free product removal activities conducted more than 45 days after confirmation of the presence of free product may be submitted upon completion of the free product removal activities.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

## SUBPART C: SITE EVALUATION AND CLASSIFICATION

### Section 732.300 General

a) Except as provided in subsection (b) of this Section, or unless the owner or operator submits a report pursuant to Section 732.202(h)(3) of this Part demonstrating that the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, the owner or operator of any site subject to this Part shall evaluate and classify the site in accordance with the requirements of this Subpart C. All such sites shall be classified as No Further Action, Low Priority or High Priority. Site classifications shall be based on the results of the site evaluation, including, but not limited to, the physical soil classification and the groundwater investigation, if applicable.

b) An owner or operator may choose to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part as an alternative to conducting site classification activities pursuant to this Subpart C provided that:

1) Upon completion of the remediation~~,~~ the owner or operator shall submit a corrective action completion report~~,~~ demonstrating compliance with the required levels. The corrective action completion report must include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the remediation and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. ~~With the exception of Federal Landholding Entities subject to Section 732.703(d), the owner or operator must sign and submit, with the corrective action completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:~~

~~I hereby certify that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further certify that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the corrective action completion report; and~~

A) Documentation of the water supply well survey conducted pursuant to subsection (b)(3) of this Section must include, but is not limited to, the following:

i) One or more maps, to an appropriate scale, showing the following: The location of the community water supply wells and other potable water supply wells identified pursuant to subsection (b)(3) of this Section, and the setback zone for each well; the location and extent of regulated recharge areas and wellhead protection areas identified pursuant to subsection (b)(3) of this Section; the current extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and the modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

ii) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to subsection (b)(3) of this Section;

iii) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to subsection (b)(3) of this Section, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

iv) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of subsection (b)(3) of this Section and that the documentation submitted pursuant to subsection (b)(1)(A) of this Section includes the information obtained as a result of the survey.

B) The corrective action completion report must be accompanied by a certification from a Licensed Professional Engineer stating that the information presented in the applicable report is accurate and complete, that corrective action has been completed in accordance

with the requirements of the Act and subsection (b) of this Section, and that no further remediation is required at the site.

2) Unless an evaluation pursuant to 35 Ill. Adm. Code 742 demonstrates that no groundwater investigation is necessary, the owner or operator must complete a groundwater investigation under the following circumstances:

A) If there is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants ~~Tier 1 residential numbers set forth in 35 Ill. Adm. Code 742.Appendix B~~ (e.g., as found during release confirmation or previous corrective action measures);

B) If free product that may impact groundwater is found to need recovery in compliance with Section 732.203 of this Part; or

C) If there is evidence that contaminated soils may be or may have been in contact with groundwater, except that, if the owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping, the owner or operator does not have to complete a groundwater investigation, unless the Agency's review reveals that further groundwater investigation is necessary.

3) As part of the remediation conducted under subsection (b) of this Section, owners and operators must conduct a water supply well survey in accordance with this subsection (b)(3).

A) At a minimum, the owner or operator must identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells must include, but is not limited to, the following:

i) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;

ii) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to

identify potable water supply wells other than community water supply wells; and

iii) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.

B) In addition to the potable water supply wells identified pursuant to subsection (b)(3)(A) of this Section, the owner or operator must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of remediation, the owner or operator leaves in place soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:

i) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

ii) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants is located.

C) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but are not limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to subsections

(b)(3)(A) or (b)(3)(b) of this Section. The additional investigation may include, but is not limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

BOARD NOTE: Owners or operators proceeding under subsection (b) of this Section are advised that they are not ~~may not be~~ entitled to ~~full~~ payment from the Fund for costs incurred after completion of early action activities in accordance with Subpart B.~~or reimbursement.~~ See Subpart F of this Part.

c) For corrective action completion reports submitted pursuant to subsection (b) of this Section, the Agency shall issue a No Further Remediation Letter upon approval of the report by the Agency in accordance with Subpart E.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.302 No Further Action Sites

a) Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as No Further Action if all of the following criteria are satisfied:

1) The physical soil classification procedure completed in accordance with Section 732.307 confirms either of the following:

A) "Berg Circular"

i) The site is located in an area designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and

ii) The site's actual physical soil conditions are verified as consistent with those designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois"; or

B) The site soil characteristics satisfy the criteria of Section 732.307(d)(3) of this Part;

2) The UST system is not within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;

3) After completion of early action measures in accordance with Subpart B of this Part, there is no evidence that, through natural pathways or man-made pathways, migration of petroleum or vapors threatens human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

4) There is no designated Class III special resource groundwater within 200 feet of the UST system; and

5) After completing early action measures in accordance with Subpart B of this Part, no surface bodies of water are adversely affected by the presence of a visible sheen or free product layer as a result of a release of petroleum.

b) Groundwater investigation shall be required to confirm that a site meets the criteria of a No Further Action site if the Agency has received information indicating that the groundwater is contaminated at levels in excess of the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants ~~applicable groundwater objectives specified in 35 Ill. Adm. Code 742~~ at the property boundary line or 200 feet from the UST system, whichever is less. In such cases, a groundwater investigation that meets the requirements of Section 732.307(j) shall be performed. If the investigation confirms there is an exceedence of the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants ~~applicable Tier 1 residential indicator contaminant objectives (set forth in 35 Ill. Adm. Code 742.Appendix B)~~, the Agency may reclassify the site as High Priority.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.303 Low Priority Sites

Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as Low Priority if all of the following criteria are met:

a) The physical soil classification and groundwater investigation procedures confirm the following:

1) The most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have ~~groundwater quality standard or groundwater objective for any applicable indicator contaminant has~~ not been exceeded at the property boundary line or 200 feet from the UST system, whichever is less; and

2) "Berg Circular"

A) The site is located in an area designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and

B) The site's actual physical soil conditions are verified as consistent with those designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois"; or

3) The site soil characteristics do not satisfy the criteria of Section 732.307(d)(3) of this Part;

b) The UST system is not within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;

c) After completing early action measures in accordance with Subpart B of this Part, there is no evidence that, through natural or man-made pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

d) There is no designated Class III special resource groundwater within 200 feet of the UST system; and

e) After completing early action measures in accordance with Subpart B of this Part, there are no surface bodies of water adversely affected by the presence of a visible sheen or free product layer as a result of the release of petroleum.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.304 High Priority Sites

Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as High Priority if any of the following are met:

a) The physical soil classification and groundwater investigation procedures confirm the following:

1) The most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have ~~groundwater quality standard or groundwater objective for any applicable~~

~~indicator contaminant has~~ been exceeded at the property boundary line or 200 feet from the UST system, whichever is less; and

2) "Berg Circular"

A) The site is located in an area designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and

B) The site's actual physical soil conditions are verified as consistent with those designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois"; or

3) The site soil characteristics do not satisfy the criteria of Section 732.307(d)(3) of this Part;

b) The UST system is within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;

c) After completing early action measures in accordance with Subpart B of this Part, there is evidence that, through natural or man-made pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

d) There is designated Class III special resource groundwater within 200 feet of the UST system; or

e) After completing early action measures in accordance with Subpart B of this Part, a surface body of water is adversely affected by the presence of a visible sheen or free product layer as a result of a release of petroleum.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.305 Plan Submittal and Review

a) Unless an owner or operator elects to classify a site under Section 732.312, prior to conducting any site evaluation activities, the owner or operator shall submit to the Agency a site classification plan, including but not limited to a physical soil classification and groundwater investigation plan, satisfying the minimum requirements for site evaluation activities as set forth in Section 732.307. The plans shall be designed to collect data sufficient to determine the site

classification in accordance with Section 732.302, 732.303 or 732.304 of this Part. ~~Site classification plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

b) In addition to the plan required in subsection (a) of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a ~~:~~

~~1) An application for payment of costs associated with eligible early action costs incurred pursuant to Subpart B of this Part; and~~

~~2) A~~ site classification budget plan with the corresponding site classification plan. The budget plan ~~that~~ shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an ~~a line item~~ estimate of all costs associated with the development, implementation and completion of the site evaluation activities required in Section 732.307, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part. ~~Site classification budget plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

c) The Agency shall have the authority to review and approve, reject or require modification of any plan or budget plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.

d) Notwithstanding subsections (a), ~~and~~ (b), and (e) of this Section, an owner or operator may proceed to conduct site evaluation activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required site classification plan or budget plan (including physical soil classification and groundwater investigation plans, costs associated with activities to date, and anticipated further costs). However, any such classification plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment ~~or reimbursement~~ for any related costs or the issuance of a No Further Remediation Letter. ~~If the owner or operator has obtained Agency approval of a Site Classification Work Plan and site classification completion report without submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing site evaluation activities.~~

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund ~~or~~

~~reimbursement~~. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

e) If, following the approval of any site classification plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended site classification plan or associated budget plan for review by the Agency. The Agency shall have the authority to review and approve, reject, or require modifications of the amended classification plan or budget plan in accordance with the procedures contained in Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all site classification plans and associated budget plans submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.306 Deferred Site Classification; Priority List for Payment

a) An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the Fund may elect to defer site classification activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met. ~~An OWNER OR OPERATOR WHO HAS RECEIVED APPROVAL FOR ANY BUDGET PLAN SUBMITTED PURSUANT TO this Part AND WHO IS ELIGIBLE FOR PAYMENT FROM THE UNDERGROUND STORAGE TANK FUND MAY ELECT TO DEFER SITE CLASSIFICATION, LOW PRIORITY GROUNDWATER MONITORING, OR REMEDIATION ACTIVITIES UNTIL FUNDS ARE AVAILABLE IN AN AMOUNT EQUAL TO THE AMOUNT APPROVED IN THE BUDGET PLAN if the requirements of subsection (b) of this Section are met. (Section 57.8(b) of the Act)~~

1) Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.

2) The Agency shall monitor the availability of funds ~~to determine whether sufficient resources exist to provide payment in an amount equal to the total of the approved budget plans~~ and shall provide notice of insufficient funds to owners or operators in accordance with Section 732.503(g) of this Part. ~~of the availability of funds in accordance with Section 732.503(h). Funds shall not be deemed available for owners or operators electing to defer site classification so long as there are owners or operators on the~~

~~priority list established pursuant to Section 732.603(d) of this Part awaiting forwarding of vouchers to the Office of the State Comptroller.~~

3) Owners and operators must submit elections to defer site classification activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The forms must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

4) The Agency must review elections to defer site classification activities to determine whether the requirements of subsection (b) of this Section are met. The Agency must notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.

A) The Agency must mail notices of final action on an election by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.

B) Any action by the Agency to reject an election, or rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

5)~~3)~~ Upon approval of an election ~~receiving written notification that an owner or operator elects~~ to defer site classification until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment based solely on the date the Agency receives a complete ~~the~~ written election of deferral, with the earliest dates having the highest priority. ~~The Agency's record of the date of receipt shall be deemed conclusive, unless a contrary date is proven by a dated, signed receipt from registered or certified mail.~~

6)~~4)~~ As funds become available, the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the owner or operator's site. After such notification the owner or operator shall commence site classification activities.

7)~~5)~~ Authorization of payment of encumbered funds for deferred site classification activities shall be approved in accordance with the requirements of Subpart F of this Part.

8)~~6)~~ The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred corrective action pursuant to Section 732.406 with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.

b) An owner or operator who elects to defer site classification~~, low priority groundwater monitoring, or remediation~~ activities under subsection (a) of this Section shall submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:

1) The Agency has approved the owner's or operator's site classification budget plan;

2) The owner or operator has been determined eligible to seek payment from the Fund;

3)~~1)~~ The early action requirements of Subpart B of this Part have been met; ~~and~~

4) Groundwater contamination does not exceed Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling in accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but is not limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

~~2) The release does not pose a threat to human health or the environment through migratory pathways following the investigation of migration pathways requirements of Section 732.307(g)~~.

c) An owner or operator may, at any time, withdraw the election to defer site classification activities. ~~commence corrective action upon the availability of~~

~~funds at any time.~~ The owner or operator must notify the Agency ~~shall be notified~~ in writing of the withdrawal. Upon such withdrawal, the owner or operator shall proceed with site classification in accordance with the requirements of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.307 Site Evaluation

a) Except as provided in Section 732.300(b), or unless an owner or operator submits a report pursuant to Section 732.202(h)(3) of this Part demonstrating that the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met or elects to classify a site under Section 732.312, the owner or operator of any site for which a release of petroleum has been confirmed in accordance with regulations promulgated by the OSFM and reported to IEMA shall arrange for site evaluation and classification in accordance with the requirements of this Section. A Licensed Professional Engineer or Licensed Professional Geologist (or, where appropriate, persons working under the direction of a Licensed Professional Engineer or Licensed Professional Geologist) shall conduct the site evaluation. The results of the site evaluation shall provide the basis for determining the site classification. The site classification shall be certified by the supervising Licensed Professional Engineer or Licensed Professional Geologist.

b) As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct a physical soil classification in accordance with the procedures at subsection (c) or (d) of this Section. Except as provided in subsection (e) of this Section, all elements of the chosen method of physical soil classification must be completed for each site. In addition to the requirement for a physical soil classification, the Licensed Professional Engineer or Licensed Professional Geologist shall, at a minimum, complete the requirements at subsections (f) through (j) of this Section before classifying a site as High Priority or Low Priority and subsection (f) through (i) of this Section before classifying a site as No Further Action.

c) Method One for Physical Soil Classification:

1) Soil Borings

A) Prior to conducting field activities, a review of scientific publications and regional geologic maps shall be conducted to determine if the subsurface strata are as generally mapped in the Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference in Section 732.104 of this Part. A list of the publications reviewed and any preliminary conclusions concerning

the site geology shall be included in the site classification completion report.

B) A minimum of one soil boring to a depth that includes 50 feet of native soil or to bedrock shall be performed for each tank field with a release of petroleum.

C) If, during boring, bedrock is encountered or if auger refusal occurs because of the density of a geologic material, a sample of the bedrock or other material shall be collected to determine permeability or an in situ test shall be performed to determine hydraulic conductivity in accordance with subsections (c)(3)(A) and (c)(3)(B) of this Section. If bedrock is encountered or auger refusal occurs, the Licensed Professional Engineer or Licensed Professional Geologist shall verify that the conditions that prevented the full boring are expected to be continuous through the remaining required depth.

D) Borings shall be performed within 200 feet of the outer edge of the tank field or at the property boundary, whichever is less. If more than one boring is required per site, borings shall be spaced to provide reasonable representation of site characteristics. The actual spacing of the borings shall be based on the regional hydrogeologic information collected in accordance with subsection (c)(1)(A) of this Section. Location shall be chosen to limit to the greatest extent possible the vertical migration of contamination.

E) Soil borings shall be continuously sampled to ensure that no gaps appear in the sample column.

F) If anomalies are encountered, additional soil borings may be necessary to verify the consistency of the site geology.

G) Any water bearing units encountered shall be protected as necessary to prevent cross-contamination ~~of water bearing units~~ during drilling.

H) The owner or operator may utilize techniques other than those specified in this subsection (c)(1) for soil classification provided that:

i) The techniques provide equivalent, or superior, information as required by this Section;

ii) The techniques have been successfully utilized in applications similar to the proposed application;

iii) Methods for quality control can be implemented; and

iv) The owner or operator has received written approval from the Agency prior to the start of the investigation.

2) Soil Properties

The following tests shall be performed on a representative sample of each of the stratigraphic units encountered in the native soil boring that has been determined most conducive to transporting contaminants from the source based on site factors, including but not limited to visual and tactile observations, the classification of the soil, any prior evaluation of the site stratigraphy, the volume of the release, the thickness or extent of the stratigraphic unit, and the requirements of ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993:

A) A soil particle analysis using the test methods specified in ASTM (American Society for Testing and Materials) Standard D 422-63 or D 1140-92, "Standard Test Method for Particle-Size Analysis of Soils," or "Standard Test Method for Amount of Material in Soils Finer than the No. 200 (75 µm) Sieve," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

B) A soil moisture content analysis using the test methods specified in ASTM Standard D 2216-92 or D 4643-93, "Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock," or "Standard Test Method for Determination of Water (Moisture) Content of Soil by the Microwave Oven Method," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

C) A soil classification using the test methods specified in ASTM Standard D 2487-93 or D 2488-93, "Standard Test Method for Classification of Soils for Engineering Purposes" or "Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

D) Unconfined compression strength shall be determined in tons per square foot by using a hand penetrometer; and

E) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Standard Test Method D 1587-83, incorporated

by reference in Section 732.104 of this Part, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of Section 732.308(a) of this Part.

3) Hydraulic Conductivity

A) If a water bearing unit is encountered while performing soil boring(s) for the physical soil classification, an in-situ hydraulic conductivity test shall be performed in the first fully saturated layer below the water table. If multiple water bearing units are encountered, an in-situ hydraulic conductivity test shall be performed on each such unit. ~~Wells used for hydraulic conductivity testing shall be constructed in a manner that ensures the most accurate results.~~

i) Wells used for hydraulic conductivity testing shall be constructed in a manner that ensures the most accurate results.

ii) The screen must be contained within the saturated zone.

B) If no water bearing unit is encountered in the required soil boring(s), then the following laboratory analyses shall be conducted, as applicable, on a representative sample from each stratigraphic unit:

i) A hydraulic conductivity analysis of undisturbed or laboratory compacted granular soils (i.e., clay, silt, sand or gravel) using the test method specified in ASTM Standard D 5084-90, "Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter," incorporated by reference in Section 732.104 of this Part, or other Agency approved method.

ii) Granular soils that are estimated to have hydraulic conductivity greater than $1 \times 10^{-3}$ cm/sec will fail the minimum geologic conditions for "No Further Action", i.e., rating of D, E, F, or G as described in the Berg Circular, and therefore, no physical tests need to be run on the soils.

iii) A hydraulic conductivity analysis of bedrock using the test method specified in ASTM Standard D 4525-90, "Standard Test Method for Permeability of Rocks by Flowing Air," incorporated by reference in Section 732.104 of this Part, or other Agency approved method.

iv) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an

additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Standard Test Method D 1587-83, incorporated by reference in Section 732.104 of this Part, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of Section 732.308(a) of this Part.

4) If the results of the physical soil classification or groundwater investigation reveal that the actual site geologic characteristics are different from those generally mapped by the Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part, the site classification shall be determined using the actual site geologic characteristics.

d) Method Two for Physical Soil Classification:

1) Soil Borings

A) A minimum of one soil boring to a depth that includes native material from the invert elevation of the most shallow UST to 15 feet below the invert elevation of the deepest UST for each tank field with a release of petroleum.

B) This boring shall meet the requirements of subsections (c)(1)(C) through (c)(1)(G) of this Section.

2) Soil Properties

The following tests must be performed on a representative sample of each of the stratigraphic units encountered in the native soil boring that has been determined most conducive to transporting contaminants from the source based on site factors including but not limited to visual and tactile observations, the classification of the soil, any prior evaluation of the site stratigraphy, the volume of the release, the size or extent of the unit, and the requirements of ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993 and incorporated by reference in Section 732.104 of this Part:

A) A soil particle analysis satisfying the requirements of subsection (c)(2)(A) of this Section; and

B) Either:

i) A pump test or equivalent to determine the yield of the geologic material. Methodology, assumptions and any calculations performed shall be submitted as part of the site classification completion report. If the aquifer geometry and transmissivity have been obtained through a site-specific field investigation, an analytical solution may be used to estimate well yield. The Licensed Professional Engineer or Licensed Professional Geologist shall demonstrate the appropriateness of the analytical solution to estimate well yield versus an actual field test. Well yield should be determined for either confined or unconfined formations. Once the yield has been determined site-specifically, the hydraulic conductivity shall be calculated; or

ii) Hydraulic conductivity shall be determined in accordance with subsection (c)(3) of this Section. Once the hydraulic conductivity has been determined site-specifically, the yield shall be calculated.

C) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Standard Test Method D 1587-83, incorporated by reference in Section 732.104 of this Part, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of Section 732.308(a) of this Part.

3) The results of the boring(s) and tests described in subsections (d)(1) and (d)(2) of this Section shall be used to demonstrate whether the native material from the invert elevation of the most shallow UST to 15 feet below the invert elevation of the deepest UST meets all of the following criteria:

A) Does not contain unconsolidated sand, gravel or sand and gravel that is 5 feet or more in thickness with 12 percent or less fines (i.e., fines that pass through a No. 200 sieve tested according to ASTM Standard Test Method D 2487-93, “Standard Test Method for Classification of Soils for Engineering Purposes,” incorporated by reference at Section 732.104 of this Part, or other Agency approved method);

B) Does not contain sandstone that is 10 feet or more in thickness, or fractured carbonate that is 15 feet or more in thickness;

C) Is not capable of sustained groundwater yield, from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; and

D) Is not capable of hydraulic conductivity of $1 \times 10^{-4}$ cm/sec or greater.

e) If, during the completion of the requirements of subsection (c) or (d) of this Section, a Licensed Professional Engineer or Licensed Professional Geologist determines that the site geology is not consistent with area D, E, F or G of the Illinois State Geological Survey Circular (1984) entitled, “Potential for Contamination of Shallow Aquifers in Illinois,” incorporated by reference in Section 732.104 of this Part or that the criteria of subsection (d)(3) are not satisfied, any remaining steps required by subsection (c) or (d) may be suspended, provided that the soil investigation has been sufficient to satisfy the requirements of subsection (g) of this Section. If activities are suspended under this subsection (e), the Licensed Professional Engineer or Licensed Professional Geologist shall complete the requirements of subsections (f) through (j) of this Section in order to determine whether the site is High Priority or Low Priority. The site conditions upon which the suspension of the requirements of subsection (c) or (d) of this Section is based shall be documented in the site classification completion report.

f) Survey of Water Supply Wells. At a minimum, the owner or operator must conduct a water supply well survey to identify all potable water supply wells located at the site and within 200 feet of the site, all community water supply wells located at the site and within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells must include, but is not limited to, the following.

1) Contacting the Agency’s Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;

2) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and

3) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.

~~1) The Licensed Professional Engineer shall conduct a survey of water supply wells for the purpose of identifying and locating all community water supply wells within 2500 feet of the UST system and all potable water supply wells within 200 feet of the UST system. The survey shall include, but not be limited to, contacting the Illinois State Geological Survey and the Illinois State Water Survey. The unit of local government with authority over the site shall be contacted to determine if there is a local ordinance or policy regulating the usage of potable water supply wells.~~

~~2) The Licensed Professional Engineer shall provide a map to scale showing the locations of all community water supply wells and potable water supply wells including the designated minimum and maximum setback zones of the wells identified pursuant to subsection (f)(1) of this Section. Radii of 200, 400, 1000, and 2500 feet from the UST system shall be marked on the map.~~

~~3) The Licensed Professional Engineer shall provide a table indicating the setback zone for each community water supply well and potable water supply well identified pursuant to subsection (f)(1) of this Section and the distance from the UST system to the well. The locations of each well shall be identified on the map by numbers corresponding to the information provided in the table.~~

~~4) The Licensed Professional Engineer shall determine if the UST system is within the regulated recharge area of any community water supply well or potable water supply well. The sources consulted in making this determination shall be described in the site classification completion report.~~

g) Investigation of Migration Pathways

1) The Licensed Professional Engineer or Licensed Professional Geologist shall conduct an investigation either separately or in conjunction with the physical soil classification to identify all potential natural and man-made migration pathways that are on the site, in rights-of-way attached to the site, or in any area surrounding the site that may be adversely affected as a result of the release of petroleum from the UST system. Once the migration pathways have been identified, the areas along all such pathways shall be further investigated in a manner sufficient to determine whether there is evidence that migration of petroleum or vapors along such pathways:

A) May potentially threaten human health or human safety; or

B) May cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces.

2) Natural pathways shall be identified using data obtained from investigation at the site. This must include, but is not limited to, identification and location of groundwater if encountered during excavation activities or soil boring activities, identification of different soil strata during excavation activities or soil boring activities and inspection of surface water bodies. Investigation and evaluation of natural migration pathways shall include, for applicable indicator contaminants along potential natural migration pathways:

   A) Soil sampling and laboratory analysis of samples; and

   B) When groundwater is encountered or when there is potential for surface water contamination, groundwater and surface water sampling and laboratory analysis of samples.

3) Man-made pathways shall be identified from available sources, including but not limited to site plans; ~~,~~ a review of underground utilities as identified by the Joint Utility Location Information for Excavators (J.U.L.I.E.), the Chicago Utility Alert Network (Digger), another public locator, or a private locator; and interviews with site owners or personnel. The Licensed Professional Engineer or Licensed Professional Geologist must determine whether migration of indicator contaminants ~~contaminants of concern~~ along any of these pathways has occurred, using laboratory analytical data for applicable indicator contaminants obtained as follows:

   A) From prior sampling, provided that such laboratory analytical data demonstrates that no contaminant of concern has migrated to or along any man-made pathways;

   B) From soil samples, and groundwater samples if groundwater is encountered, taken between man-made pathways and contaminated soil, provided that such laboratory analytical data demonstrates that no contaminant of concern has migrated to or along any man-made pathways; or

   C) From soil samples, and groundwater samples if groundwater is encountered, taken along man-made pathways.

4) The Licensed Professional Engineer or Licensed Professional Geologist shall provide a map of the site and any surrounding areas that may be adversely affected by the release of petroleum from the UST system. At a minimum, the map shall be to scale, oriented with north at the top, and shall show the location of the leaking UST system(s) with any associated piping and all potential natural and man-made pathways that are on the site, that are in rights-of-way attached to the site, or that are in areas that may be adversely affected as a result of the release of petroleum.

5) Unless the Agency's review reveals objective evidence to the contrary, the Licensed Professional Engineer or Licensed Professional Geologist shall be presumed correct when certifying whether or not there is evidence that, through natural or man-made pathways, migration of petroleum or vapors:

A) May potentially threaten human health or human safety; or

B) May cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces.

h) The Licensed Professional Engineer or Licensed Professional Geologist shall verify whether Class III groundwater exists within 200 feet of the UST system.

i) The Licensed Professional Engineer or Licensed Professional Geologist shall locate all surface bodies of water on site and within 100 feet of the site and provide a map noting the locations. All such surface bodies of water shall be inspected to determine whether they have been adversely affected by the presence of a sheen or free product layer resulting from the release of petroleum from the UST system.

j) Groundwater Investigation

1) For sites failing to meet NFA site classification or for sites where a groundwater investigation is necessary pursuant to Section 732.302(b) of this Part, the Licensed Professional Engineer or Licensed Professional Geologist shall perform a groundwater investigation as required under this Part in accordance with this subsection (j) to determine whether the most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have ~~an applicable indicator contaminant groundwater quality standard has~~ been exceeded at the property boundary or 200 feet from the UST system, whichever is less, as a result of the UST release of petroleum.

2) Applicable indicator contaminants ~~and groundwater quality standards~~ shall be those identified pursuant to Section ~~Sections~~ 732.310 ~~and 732.311~~ of this Part.

3) Except as provided in subsection (j)(6) of this Section, a minimum of four groundwater monitoring wells shall be installed at the property boundary or 200 feet from the UST system, whichever is less. In the event that a groundwater monitoring well cannot be physically installed at the property line or 200 feet from the UST system, whichever is closer, in accordance with this subsection (j), the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a

monitoring well in a location that is closer to the UST system than this Part requires. However, once the election is made, the owner or operator may not withdraw the election at a later time. The Agency may require the installation of additional monitoring wells to ensure that at least one monitoring well is located hydraulically upgradient and three monitoring wells are located hydraulically downgradient of the UST system. The wells must be installed so that they provide the greatest likelihood of detecting migration of groundwater contamination. At a minimum, monitoring well construction shall satisfy the following requirements:

A) Construction shall be in a manner that will enable the collection of representative groundwater samples;

B) All monitoring wells shall be cased in a manner that maintains the integrity of the borehole. Casing material shall be inert so as not to affect the water sample. Casing requiring solvent-cement type couplings shall not be used;

C) Wells shall be screened to allow sampling only at the desired interval. Annular space between the borehole wall and well screen section shall be packed with clean, well-rounded and uniform material sized to avoid clogging by the material in the zone being monitored. The slot size of the screen shall be designed to minimize clogging. Screens shall be fabricated from material that is inert with respect to the constituents of the groundwater to be sampled;

D) Annular space above the well screen section shall be sealed with a relatively impermeable, expandable material such as cement/bentonite grout that does not react with or in any way affect the sample, in order to prevent contamination of groundwater samples and groundwater and avoid interconnections. The seal shall extend to the highest known seasonal groundwater level;

E) The annular space shall be backfilled with expanding cement grout from an elevation below the frost line and mounded above the surface and sloped away from the casing so as to divert surface water away;

F) All monitoring wells shall be covered with vented caps and equipped with devices to protect against tampering and damage. Locations of wells shall be clearly marked and protected against damage from vehicular traffic or other activities associated with expected site use; and

G) All wells shall be developed to allow free entry of <u>groundwater</u> ~~water~~, minimize turbidity of the sample, and minimize clogging.

4) Monitoring well construction diagrams prescribed and provided by the Agency shall be completed for each monitoring well.

5) Static water elevations shall be measured for each monitoring well. Groundwater samples shall be taken from each well and analyzed for the applicable indicator contaminants. The data collected shall be used to determine the direction of groundwater flow and whether the applicable groundwater <u>remediation</u> ~~quality standards or clean-up~~ objectives have been exceeded. Samples shall be collected and analyzed in accordance with the following procedures:

A) Samples shall be collected in accordance with ~~the procedures set forth in the documents "Methods for Chemical Analysis of Water and Wastes," "Methods for the Determination of Organic Compounds in Drinking Water," "Practical Guide for Ground-Water Sampling,"~~ "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," <u>EPA Publication No. SW-846,</u> ~~or "Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground-Water Samples for Selected Unstable Constituents," as appropriate for the applicable indicator contaminants or groundwater objectives and as~~ incorporated by reference at Section 732.104 of this Part<u>, or other procedures approved by the Agency</u>.

B) Groundwater elevation in a groundwater monitoring well shall be determined and recorded to establish the gradient of the groundwater table.

C) The analytical methodology used for the analysis of the indicator contaminants shall be consistent with both of the following:

i) The methodology <u>must</u> ~~shall~~ have a practical quantitation limit (PQL) at or below the <u>most stringent</u> objectives or detection levels set forth in 35 Ill. Adm. Code 742 or as set for mixtures or degradation products as provided in Section 732.310 of this Part; and

ii) The methodology must be consistent with the methodologies contained in ~~"Methods for Chemical Analysis of Water and Wastes," "Methods for the Determination of Organic Compounds in Drinking Water," "Practical Guide for Ground-Water Sampling,"~~ "Test

Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, ~~and "Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground-Water Samples for Selected Unstable Constituents,"~~ as incorporated by reference at Section 732.104, or other Agency approved methods.

D) In addition to analytical results, sampling and analytical reports shall contain the following information:

i) Sample collection information including but not limited to the name of sample collector, time and date of sample collection, method of collection, and monitoring location;

ii) Sample preservation and shipment information including but not limited to field quality control;

iii) Analytical procedures including but not limited to the method detection limits and the practical quantitation limits (PQL);

iv) Chain of custody and control; and

v) Field and lab blanks.

6) As an alternative to the installation of monitoring wells under subsection (j)(3) of this Section, the Licensed Professional Engineer or Licensed Professional Geologist may demonstrate to the Agency through a site-specific evaluation that the groundwater monitoring should not be required.

A) The evaluation shall be based on a demonstration of the following factors:

i) Whether groundwater is present within the depth of the boring used to perform physical soil classification under the selected method (Method One under subsection (c) of this Section or Method Two under subsection (d) of this Section);

ii) Whether groundwater is withdrawn for potable use within 1000 feet of the UST system and at what depths; and

iii) Whether seasonal fluctuation in groundwater could result in groundwater contacting contaminated soil (e.g., historical records).

B) The presence or absence of a water bearing unit under subsection (j)(6)(A)(i) of this Section shall be determined on the basis of at least one soil boring to the depth necessary to perform physical soil classification under the selected method (Method One under subsection (c) of this Section or Method Two under subsection (d) of this Section), unless auger refusal occurs because of the density of a geologic material or because bedrock is encountered. If auger refusal occurs, then the Licensed Professional Engineer or Licensed Professional Geologist must demonstrate the depth to a water bearing unit from the available site specific or regional information.

C) If the evaluation fails to demonstrate to the Agency that a groundwater investigation should not be required as part of site classification activities, then the Licensed Professional Engineer or Licensed Professional Geologist shall perform a groundwater investigation in accordance with the remainder of this subsection (j).

D) If the evaluation demonstrates to the Agency that a groundwater investigation should not be required, then the site shall be classified as Low Priority, unless other High Priority criteria are present. Upon Agency approval of the evaluation to demonstrate that a groundwater investigation should not be required, then the site shall be classified as Low Priority and a No Further Remediation Letter shall be issued to the owner or operator of the site, unless other High Priority criteria are present.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.308 Boring Logs and Sealing of Soil Borings and Groundwater Monitoring Wells

a) Soil boring logs shall be kept for all soil borings. The logs shall be submitted along with the site classification completion report and shall be on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

1) Soil boring logs shall contain the following information at a minimum:

A) Sampling device, sample number and amount of recovery;

B) Total depth of boring to the nearest 6 inches;

C) Detailed field observations describing materials encountered in boring, including soil constituents, consistency, color, density, moisture, odors, and the nature and extent of sand or gravel lenses or seams equal to or greater than 1 inch in thickness;

D) Petroleum hydrocarbon vapor readings (as determined by continuous screening of borings with field instruments capable of detecting such vapors);

E) Locations of sample(s) used for physical or chemical analysis; and

F) Groundwater levels while boring and at completion.

2) Boring logs for soil boring(s) completed for physical soil classification also shall include the following information, as applicable for the classification method chosen, for each stratigraphic unit encountered at the site:

A) Moisture content;

B) Unconfined compression strength in tons per square foot (TSF) using a hand penetrometer;

C) Unified Soil Classification System (USCS) soil classification group symbol in accordance with ASTM Standard D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference in Section 732.104 of this Part, or other Agency approved method; and

D) The reasoning behind the Licensed Professional Engineer's or Licensed Professional Geologist's decision to perform or not perform soil testing pursuant to Section 732.307(c)(2) and (d)(2) of this Part as to each identified stratigraphic unit.

b) Boreholes and monitoring wells shall be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.309 Site Classification Completion Report

a) Within 30 days after the completion of a site evaluation in accordance with Section 732.307 of this Part, the owner or operator shall submit to the Agency a site classification

completion report addressing all applicable elements of the site evaluation. The report shall contain all maps, diagrams, and any other information required by Section 732.307 of this Part, ~~as well as~~ the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions, and ~~. The report shall be submitted on forms prescribed and provided by the Agency, shall be signed by the owner or operator, and shall contain~~ the certification of a Licensed Professional Engineer or Licensed Professional Geologist of the site's classification as No Further Action, Low Priority or High Priority in accordance with this Subpart C. Documentation of the water supply well survey conducted pursuant to Section 732.307(f) of this Part must include, but is not limited to, the following:

1) One or more maps, to an appropriate scale, showing the following:

   A) The location of the community water supply wells and other potable water supply wells identified pursuant to Section 732.307(f) of this Part, and the setback zone for each well;

   B) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to Section 732.307(f) of this Part;

   C) The current extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

   D) The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The information required under this subsection (D) is not required to be shown in the site classification completion report if modeling is not performed as part of site investigation;

2) One or more tables listing the setback zones for each community water supply well and other potable ~~potables~~ water supply wells identified pursuant to Section 732.307(f) of this Part;

3) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to Section 732.307(f) of this Part, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

4) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of Section 732.307(f) of this Part and that the documentation submitted pursuant to this Section includes the information obtained as a result of the survey.

~~For No Further Action sites, with the exception of Federal Landholding Entities subject to Section 732.703(d), the owner or operator must sign and submit, with the site classification completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), state as follows:~~

> ~~I hereby affirm that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further affirm that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the site classification completion report.~~

b) The Agency shall have the authority to review and approve, reject or require modification of any report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.310 Indicator Contaminants

a) For purposes of this Part, the term “indicator contaminants” shall mean the parameters identified in subsections (b) through (i) of this Section.

b) For gasoline, including but not limited to leaded, unleaded, premium and gasohol, the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes and methyl tertiary butyl ether (MTBE), except as provided in subsection (h) of this Section. For leaded gasoline, lead shall also be an indicator contaminant.

c) For aviation turbine fuels, jet fuels, diesel fuels, gas turbine fuel oils, heating fuel oils, illuminating oils, kerosene, lubricants, liquid asphalt and dust laying oils, cable oils, crude oil, crude oil fractions, petroleum feedstocks, petroleum fractions and heavy oils, the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes and the polynuclear aromatics ~~(PNA)~~ listed in Section 732.Appendix B of this Part. For leaded aviation turbine fuels, lead shall also be an indicator contaminant.

d) For transformer oils the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics ~~listed in Appendix B~~ and the polychlorinated biphenyl parameters listed in Section 732.Appendix B of this Part.

e) For hydraulic fluids the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, the polynuclear aromatics listed in Section 732.Appendix B of this Part and barium.

f) For petroleum spirits, mineral spirits, Stoddard solvents, high-flash aromatic naphthas, moderately volatile hydrocarbon solvents and petroleum extender oils, the indicator contaminants shall be the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B of this Part. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

g) For used oil the indicator contaminants shall be determined by the results of a used oil soil sample analysis. In accordance with Section 732.202(h) of this Part, soil samples must be collected from the walls and floor of the used oil UST excavation if the UST is removed, or from borings drilled along each side of the used oil UST if the UST remains in place. The sample that appears to be the most contaminated as a result of a release from the used oil UST must then be analyzed for the following parameters. If none of the samples appear to be contaminated a soil sample must be collected from the floor of the used oil UST excavation below the former location of the UST if the UST is removed, or from soil located at the same elevation as the bottom of the used oil UST if the UST remains in place, and analyzed for the following parameters: ~~Prior to the submission of a site classification plan the owner or operator shall collect a grab sample from a location representative of soil that is the most contaminated as a result of the release from the used oil UST. If an area of contamination cannot be identified, the sample shall be collected from beneath the used oil UST. The sample shall be analyzed for:~~

1) All volatile, base/neutral, polynuclear aromatic, and metal parameters listed at Appendix B of this Part and any other parameters the Licensed Professional Engineer or Licensed Professional Geologist suspects may be present based on UST usage. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

2) The used oil indicator contaminants shall be those volatile, base/neutral, ~~polynuclear aromatic~~ and metal parameters listed at Section 732.Appendix B of this Part or as otherwise identified at subsection (g)(1) of this Section that exceed their remediation objective at 35 Ill. Adm. Code 742 in addition to benzene, ethylbenzene, toluene, total xylenes, and polynuclear aromatics listed in Appendix B of this Part ~~and PNAs~~.

3) If none of the parameters exceed their remediation objective, the used oil indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Appendix B of this Part.

h) Unless an owner or operator elects otherwise pursuant to subsection (i) of this Section, the term "indicator contaminants" shall not include MTBE for any release reported to the Illinois Emergency Management Agency prior to June 1, 2002 (the effective date of amendments establishing MTBE as an indicator contaminant).

i) An owner or operator ~~of a site~~ exempt from having to address MTBE as an indicator contaminant pursuant to subsection (h) of this Section may elect to include MTBE as an indicator contaminant under the circumstances listed in subsections (1) or (2) of this subsection (i). ~~following circumstances:~~ Elections to include MTBE as an indicator contaminant must be made by submitting to the Agency a written notification of such election signed by the owner or operator. The election must be effective upon the Agency's receipt of the notification and cannot be withdrawn once made. Owners or operators electing to include MTBE as an indicator contaminant must remediate MTBE contamination in accordance with the requirements of this Part.

1) If the Agency has not issued a No Further Remediation Letter for the release ~~site by June 1, 2002 (the effective date of the amendments establishing MTBE as an indicator contaminant)~~; or

2) If the Agency has issued a No Further Remediation Letter for the release and the release ~~at the site~~ has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 Ill. Adm. Code 742~~, provided that the owner or operator complies with all applicable requirements of this Part~~.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.311 ~~Indicator Contaminant~~ Groundwater Remediation Objectives

For purposes of this Part, remediation objectives for groundwater ~~indicator contaminant groundwater quality standards~~ shall be the groundwater remediation ~~groundwater~~ objectives specified in 35 Ill. Adm. Code 742 for the applicable indicator contaminants. For mixtures and degradation products that have been included as indicator contaminants in accordance with Section 732.310 of this Part, the Agency shall determine groundwater remediation objectives on a site-by-site basis.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.312 Classification by Exposure Pathway Exclusion

a) An owner or operator electing to classify a site by exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, shall meet the requirements of this Section, except as provided in subsections (a)(1) and (j) of this Section.

1) Such election shall be made in writing by the owner or operator as part of the submission of the site classification plan under subsection (b) ~~(c)~~ of this Section. The election may be made at any time until the Agency issues a No Further Remediation Letter, provided, however, that the election must be received by the Agency prior to the effective date of this amendment. On or after the effective date of this amendment, owners and operators desiring to proceed with the exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, must elect pursuant to 35 Ill. Adm. Code 734.105 to proceed in accordance with 35 Ill. Adm. Code 734 and conduct site investigation and corrective action in accordance with that Part instead of meeting the requirements of this Section.

2) An owner or operator who chooses to revoke an election submitted under subsection (b) ~~(c)~~ of this Section shall do so in writing.

~~b) Upon completion of early action requirements pursuant to Subpart B of this Part, the owner or operator shall determine whether the areas or locations addressed under early action (e.g., backfill) meet the requirements applicable for a Tier 1 evaluation pursuant to 35 Ill. Adm. Code 742, Subpart E.~~

~~1) If the remediation objectives have been met, the owner or operator shall submit a corrective action completion report demonstrating compliance with the required levels.~~

~~2) If the remediation objectives have not been met, evaluation shall continue in accordance with subsection (c) of this Section.~~

b)~~c)~~ The ~~If, upon completion of early action requirements pursuant to Subpart B of this Part, the requirements under subsection (b) of this Section have not been met, then the~~ owner or operator, prior to conducting any site evaluation activities, shall submit to the Agency a site classification plan including, but not limited to, a contaminant identification and groundwater investigation plan (if one or more of the criteria set forth in Section 732.202(h)(4)(A) through (C) of this Part are met ~~applicable in accordance with Section 732.300(b)(1)~~), satisfying the minimum requirements for site evaluation activities as set forth in this Section. ~~Site classification plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~ The plans shall be designed to:

1) Determine the full extent of soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. ~~remediation objectives for Tier 1 sites under 35 Ill. Adm. Code 742, Subpart E.~~ Such activities may include soil borings with sampling and analysis, groundwater monitoring wells with sampling and analysis, groundwater modeling, or a combination of these activities.

2) Collect data sufficient to determine which, if any, of the applicable exposure routes under 35 Ill. Adm. Code 742 can be excluded pursuant to 35 Ill. Adm. Code 742, Subpart C. The data shall include, but is not limited to, site-specific data demonstrating the physical characteristics of soil and groundwater.

c)~~d)~~ A Licensed Professional Engineer or Licensed Professional Geologist (or, where appropriate, persons working under the direction of a Licensed Professional Engineer or Licensed Professional Geologist) shall conduct the site evaluation. The results of the site evaluation shall provide the basis for determining the site classification. The site classification shall be certified by the supervising Licensed Professional Engineer or Licensed Professional Geologist.

d)~~e)~~ As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct physical soil classification and contaminant identification in accordance with the procedures at subsection (b) ~~(c)~~ of this Section.

e)~~f)~~ In addition to the plan required in subsection (b) ~~(c)~~ of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a ~~:~~

~~1) An application for payment of costs associated with eligible early action costs incurred pursuant to Subpart B of this Part, except as provided in subsection (f)(2) of this Section; and~~

~~2)~~ ~~A~~ site classification budget plan with the corresponding site classification plan. The budget plan~~, that~~ shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an ~~a line item~~ estimate of all costs associated with the development, implementation and completion of the site evaluation activities required under subsection (b) ~~(c)~~ of this Section, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part.

f)~~g)~~ Sites shall be classified as No Further Action if the Licensed Professional Engineer or Licensed Professional Geologist determines that all applicable exposure routes can be excluded from further consideration pursuant to 35 Ill. Adm. Code 742, Subpart C.

g)~~h)~~ Sites shall be classified as High Priority if the Licensed Professional Engineer or Licensed Professional Geologist determines that any of the applicable exposure routes cannot be excluded from further consideration pursuant to 35 Ill. Adm. Code 742, Subpart C.

h)~~i)~~ Within 30 days after the completion of a site evaluation in accordance with this Section, the owner or operator shall submit to the Agency a site classification completion report addressing all applicable elements of the site evaluation. The report shall contain all maps, diagrams, and any other information required by this Section, ~~as well as~~ the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions, and ~~. The report shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format, shall be signed by the owner or operator, and shall contain~~ the certification of a Licensed Professional Engineer or Licensed Professional Geologist of the site's classification as No Further Action or High Priority in accordance with this Section. For any site classified as High Priority, the report shall also contain the certification of a Licensed Professional Engineer or Licensed Professional Geologist as to which exposure routes, if any, have been excluded from further consideration under 35 Ill. Adm. Code 742, Subpart C. ~~With the exception of Federal Landholding Entities subject to Section 732.703(d), the owner or operator must sign and submit, with the site classification completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:~~

> ~~I hereby affirm that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further affirm that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the site classification completion report.~~

i)~~j)~~ The Agency shall have the authority to review and approve, reject or require modification of any classification plan, budget plan, or report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.

j)~~k)~~ Notwithstanding subsections (b) ~~(c)~~ and (e) ~~(f)~~ of this Section, prior to the effective date of this amendment an owner or operator may proceed to conduct site evaluation activities in accordance with this Section prior to the submittal or approval of any otherwise required site classification plan or budget plan ~~and associated budget plans~~. However, any such classification plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to ~~receiving~~ payment ~~or reimbursement~~ for any related costs or the issuance of a No Further Remediation Letter. On or after the effective date of this amendment, owners and operators desiring to proceed with the exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, must elect pursuant to 35 Ill. Adm. Code 734.105 to proceed in accordance with 35 Ill. Adm. Code 734 and conduct site investigation and corrective action in accordance with that Part instead of meeting the requirements of this Section. ~~If the owner or operator has obtained Agency approval of a Site Classification Work Plan and site classification completion report without submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing site evaluation activities.~~

k)~~l)~~ If, following the approval of any site classification plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended site classification plan or associated budget plan for review by the Agency. The Agency shall have the authority to review and approve, reject, or require modification of the amended plan or budget plan in accordance with the procedures contained in Subpart E of this Part.

BOARD NOTE: Owners or operators proceeding under subsection (a)(2) or (j) ~~(k)~~ of this Section are advised that they may not be entitled to full payment from the Fund and that applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter ~~or reimbursement~~. Furthermore, owners or operators may only be reimbursed for one method of site classification. See Subpart F of this Part.

Owners and operators are also advised that the total payment from the Fund for all corrective action plans and associated budget plans submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

## SUBPART D: CORRECTIVE ACTION

### Section 732.400 General

a) Following approval of the site evaluation and classification by the Agency pursuant to Subpart C of this Part and except as provided in subsection (b) or (c) of this Section, the owner or operator of a ~~an~~ UST system subject to the requirements of this Part shall develop and submit a corrective action plan and perform corrective action activities in accordance with the procedures and requirements contained in this Subpart D.

b) Owners or operators of sites classified in accordance with the requirements of Subpart C as No Further Action may choose to conduct remediation sufficient to satisfy the remediation objectives referenced in Section 732.408 of this Part.

c) Owners or operators of sites classified in accordance with the requirements of Subpart C as Low Priority may choose to conduct remediation sufficient to satisfy the remediation objectives referenced in Section 732.408 of this Part. Any owner or operator choosing to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part shall so notify the Agency in writing prior to conducting such efforts. Upon completion of the remediation activities, owners or operators choosing to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part shall submit a corrective action completion report to the Agency demonstrating compliance with the required levels. Upon approval of the corrective action completion report by the Agency in accordance with Subpart E, a No Further Remediation Letter shall be issued by the Agency.

BOARD NOTE: Owners or operators proceeding under subsection (b) or (c) of this Section are advised that they may not be entitled to full payment from the Fund~~or reimbursement~~. See Subpart F of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

### Section 732.402 No Further Action Site

The owner or operator of a site that has been certified as a No Further Action site by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall have no additional remediation responsibilities beyond those performed pursuant to Subpart B or C of this Part. If the Agency fails to approve, reject or modify the site classification completion report within 120 days after receipt of the completion report pursuant to Section 732.309 or Section 732.312, the site classification completion report is rejected by operation of law.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.403 Low Priority Site

a) The owner or operator of a site that has been certified as a Low Priority site by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall develop a groundwater monitoring plan and perform groundwater monitoring in accordance with the requirements of this Section.

b) The owner or operator ~~of a site certified as Low Priority by a Licensed Professional Engineer and approved as such by the Agency~~ shall develop a groundwater monitoring plan designed to satisfy the following requirements at a minimum:

1) Groundwater monitoring shall be conducted for a period of three years following the Agency's approval of the site classification, unless subsection (b)(6) or subsection (i) of this Section applies;

2) Groundwater monitoring wells shall be placed at the property line or 200 feet from the UST system, whichever is closer. The wells shall be placed in a configuration designed to provide the greatest likelihood of detecting migration of groundwater contamination. In the event that a groundwater monitoring well cannot physically be installed at the property line or 200 feet from the UST system, whichever is closer, in accordance with this subsection (b)(2), the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a monitoring well in a location that is closer to the UST system than the rule requires. However, once the election is made the owner or operator may not withdraw the election at a later time;

3) Groundwater monitoring wells shall satisfy the requirements at Section ~~subsections~~ 732.307(j)(3) and (4) of this Part;

4) During the first year of groundwater monitoring, samples from each well shall be collected and analyzed on a quarterly basis. During the second year of groundwater monitoring, samples from each well shall be collected and analyzed during the second and fourth quarters. During the third and final year of groundwater monitoring, at a minimum, samples from each well shall be collected and analyzed in the fourth quarter;

5) To determine whether groundwater remediation ~~quality standards or Agency approved~~ objectives have been exceeded, samples for groundwater monitoring shall be collected and analyzed in accordance with the procedures set forth in Section 732.307(j)(5) of this Part for the applicable indicator contaminants determined pursuant to Section 732.310 of this Part;

6) The owner or operator may use groundwater monitoring data that has been collected up to 3 years prior to the site being certified as Low Priority, if the data meets the requirements of subsections (b)(2) through (b)(5) of this Section. This data may be used to satisfy all or part of the three year period of groundwater monitoring required under this Section.

c) Prior to the implementation of groundwater monitoring, except as provided under subsection (b)(6) of this Section, the owner or operator shall submit the groundwater monitoring plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a groundwater monitoring budget plan also shall be submitted to the Agency for review. ~~The groundwater monitoring budget plan shall include a line item estimate of all costs associated with the implementation and completion of the groundwater monitoring plan. Groundwater monitoring plans and budgets shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

d) Groundwater analysis results obtained pursuant to subsection (b) of this Section shall be submitted to the Agency within 30 days after the end of each annual sampling period ~~on forms prescribed and provided by the Agency~~, except as provided under subsection (b)(6) of this Section. Groundwater analysis data being used pursuant to subsection (b)(6) shall be submitted to the Agency as part of a Low Priority groundwater monitoring plan or the Low Priority groundwater monitoring completion report.

1) The information to be collected shall include, but not be limited to, the information set forth in Section 732.307(j)(5) of this Part.

2) If at any time the groundwater analysis results indicate a confirmed exceedence of the applicable indicator contaminant groundwater remediation ~~quality standards or Agency approved~~ objectives as a result of the underground storage tank release of petroleum, the owner or operator shall notify the Agency of the exceedence within 30 days and provide supporting documentation of the nature and extent of the exceedence.

3) Indicator contaminant groundwater remediation objectives ~~quality standards~~ shall be determined in accordance with Section 732.311 of this Part.

e) Within 30 days after the completion of the Low Priority groundwater monitoring plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report in accordance with Section 732.409 of this Part. If there is no confirmed exceedence of applicable indicator contaminant objectives during the three year groundwater monitoring period, the report shall contain a certification to that effect by a Licensed Professional Engineer or Licensed Professional Geologist.

f) The Agency shall review the groundwater monitoring completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval of the report by the Agency. If the owner or operator elects to appeal an Agency action to disapprove, modify, or reject by operation of law a Low Priority groundwater monitoring completion report, the Agency shall indicate to the Board in conjunction with such appeal whether it intends to reclassify the site as High Priority.

g) If at any time groundwater analysis results indicate a confirmed exceedence of applicable indicator contaminant objectives, the Agency may reclassify the site as a High Priority site any time before the Agency's final approval of a Low Priority groundwater monitoring completion report. The Agency shall notify the owner or operator in writing if a site is reclassified. Notice of reclassification shall be by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. Any action by the Agency to reclassify the site as a High Priority site shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for in the review of permit decisions in Section 40 of the Act.

h) The owner or operator of a Low Priority site reclassified to High Priority pursuant to subsection (g) of this Section shall develop and submit for Agency approval a High Priority corrective action plan satisfying the requirements of Section 732.404 of this Part within 120 days after receiving the notice of reclassification. If the owner or operator intends to seek payment ~~reimbursement~~ from the Fund, a corrective action budget plan ~~budget~~ also shall be submitted within 120 days after receiving the notice of reclassification.

i) As a result of the demonstration under Section 732.307(j)(6), the owner or operator of a site classified as Low Priority by a Licensed Professional Engineer or Licensed Professional Geologist shall prepare a report in accordance with Section 732.409 of this Part, that supports the issuance of a No Further Remediation Letter or reclassification of the site as a High Priority site. In the event the site is reclassified as a High Priority site, the owner or operator shall develop and submit for Agency approval a High Priority corrective action plan in accordance with subsection (h) ~~Section~~ ~~732.403(h)~~ of this Section ~~Part~~.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.404 High Priority Site

a) The owner or operator of a site classified as High Priority ~~that has been certified by a Licensed Professional Engineer as a High Priority site and approved as such by the Agency~~ shall develop a corrective action plan and perform corrective

action in accordance with the requirements of this Section. The purpose of the corrective action plan shall be to remediate or eliminate each of the criteria set forth in subsection (b) of this Section that caused the site to be classified as High Priority.

b) The owner or operator ~~of a site certified as High Priority by a Licensed Professional Engineer and approved as such by the Agency or reclassified as High Priority by the Agency pursuant to Section 732.403(g)~~ shall develop a corrective action plan based on site conditions and designed to achieve the following as applicable to the site:

1) For sites that have submitted a site classification report under Section 732.309, provide that:

A) After complete performance of the corrective action plan, applicable indicator contaminants identified in the groundwater investigation are not present in groundwater, as a result of the underground storage tank release, in concentrations exceeding the remediation objectives referenced in Section 732.408 of this Part at the property boundary line or 200 feet from the UST system, whichever is less;~~.~~

B) After complete performance of the corrective action plan, Class III special resource groundwater quality standards for Class III special resource groundwater within 200 feet of the UST system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;

C) After complete performance of the corrective action plan, remediation of contamination in natural or man-made exposure pathways as a result of the underground storage tank release has been conducted in accordance with 35 Ill. Adm. Code 742;

D) Threats to potable water supplies are remediated; and

E) Threats to bodies of surface water are remediated.

2) For sites that have submitted a site classification completion report under Section 732.312 of this Part, provide that, after complete performance of the corrective action plan, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 for any applicable exposure route not excluded from consideration under Section 732.312.

c) The owner or operator is not required to perform corrective action on an adjoining or off-site property to meet the requirements of this Section, even where complete performance of the corrective action plan under subsection (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411 of this Part.

d) In developing the corrective action plan, if the Licensed Professional Engineer or Licensed Professional Geologist selects soil or groundwater remediation, or both, to satisfy any of the criteria set forth in subsection (b) of this Section, remediation objectives shall be determined in accordance with Section 732.408 of this Part. Groundwater monitoring wells shall satisfy the requirements of Section 732.307(j)(3) and (4) of this Part.

e) Except where provided otherwise pursuant to Section 732.312 of this Part, in developing the corrective action plan, additional investigation activities beyond those required for the site evaluation and classification may be necessary to determine the full extent of soil or groundwater contamination and of threats to human health or the environment. Such activities may include, but are not limited to, additional soil borings with sampling and analysis or additional groundwater monitoring wells with sampling and analysis. Such activities as are technically necessary and consistent with generally accepted engineering practices may be performed without submitting a work plan or receiving prior approval from the Agency, and associated costs may be included in a High Priority corrective action budget plan. A description of these activities and the results shall be included as a part of the corrective action plan.

1) In addition to the potable water supply wells identified pursuant to Section 732.307(f) of this Part, the owner or operator must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:

A) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route

remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

B) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants is located.

2) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but is not limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to Section 732.307(f)(1) of this Part or subsection (e)(1) of this Section. The additional investigation may include, but is not limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

f) The owner or operator shall submit the corrective action plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a corrective action budget plan ~~budget~~ also shall be submitted to the Agency for review. ~~The corrective action plan budget shall include a line item estimate of all costs associated with the implementation and completion of the corrective action plan. The corrective action plan and corrective action plan budget shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

g) Within 30 days after completing the performance of the High Priority corrective action plan, the owner or operator shall submit to the Agency a corrective action completion report in accordance with Section 732.409 of this Part.

h) Within 120 days, the Agency shall review the corrective action completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval by the Agency.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.405 Plan Submittal and Review

a) Prior to conducting any corrective action activities pursuant to this Subpart D, the owner or operator shall submit to the Agency a Low Priority groundwater monitoring plan or a High Priority corrective action plan satisfying the minimum requirements for such activities as set forth in Section 732.403 or 732.404 of this Part, as applicable. ~~Groundwater monitoring and corrective action plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

b) In addition to the plans required in subsections (a), (e), and (f) of this Section and prior to conducting any groundwater monitoring or corrective action activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a groundwater monitoring or corrective action budget plan with the corresponding groundwater monitoring or corrective action plan. Such budget plans shall include, but is not ~~be~~ limited to, a copy of the eligibility and deductibility determination of the OSFM and an ~~a line item~~ estimate of all costs associated with the development, implementation and completion of the applicable activities, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget plan the Agency may require a comparison between the costs of the proposed method of remediation and other methods of remediation. ~~Groundwater monitoring and corrective action budget plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

c) The Agency shall have the authority to review and approve, reject or require modification of any plan or budget plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.

d) Notwithstanding subsections (a), (b), (e), and (f) of this Section and except as provided at Section 732.407 of this Part, an owner or operator may proceed to conduct Low Priority groundwater monitoring or High Priority corrective action activities in accordance with this Subpart D prior to the submittal or approval of an otherwise required groundwater monitoring plan or budget plan or corrective action plan or budget plan. However, any such plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment ~~or reimbursement~~ for any related costs or the issuance of a No Further Remediation Letter. ~~If the owner or operator has obtained Agency approval of a Low Priority groundwater monitoring plan and a Low Priority groundwater monitoring completion report, or has obtained Agency approval of a High Priority corrective action plan and a High Priority corrective action completion report, without the submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit,~~

~~on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing the applicable activities required, for a Low Priority site, in Section 732.403 of this Part or, for a High Priority site, in Section 732.404 of this Part.~~

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund ~~or reimbursement~~. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

e) If, following approval of any groundwater monitoring plan, corrective action plan or associated budget plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended groundwater monitoring plan, corrective action plan or associated budget plan for review by the Agency. The Agency shall review and approve, reject, or require modifications of the amended plan or budget plan in accordance with the procedures contained in Subpart E of this Part.

f) If the Agency determines any approved corrective action plan has not achieved applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit a revised corrective action plan. If the owner or operator intends to seek payment from the Fund, the owner or operator must also submit a revised budget plan. Any action by the Agency to require a revised corrective action plan pursuant to this subsection (f) shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all groundwater monitoring plans and associated budget plans, and for all corrective action plans and associated budget plans, submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.406 Deferred Corrective Action; Priority List for Payment

a) An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the underground storage tank fund may elect to defer site classification, low priority groundwater monitoring, or remediation activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met. ~~An~~ ~~*owner or operator who has received approval for any budget plan submitted pursuant to*~~ this Part ~~*and who is eligible for payment from*~~

~~*the underground storage tank fund may elect to defer site classification, low priority groundwater monitoring, or remediation activities until funds are available in an amount equal to the amount approved in the budget plan* if the requirements of subsection (b) of this Section are met [415 ILCS 5/57.8(b)].~~

1) Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.

2) The Agency shall monitor the availability of funds ~~to determine whether sufficient resources exist to provide payment of approved budget plans~~ and shall provide notice of insufficient funds to owners or operators ~~of the availability of funds~~ in accordance with Section 732.503(g) of this Part. ~~Funds shall not be deemed available for owners or operators electing to defer corrective action so long as there are owners or operators on the priority list established pursuant to Section 732.603(d) of this Part awaiting forwarding of vouchers to the Office of the State Comptroller.~~

3) Owners and operators must submit elections to defer low priority groundwater monitoring or high priority corrective action activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

4) The Agency must review elections to defer low priority groundwater monitoring or high priority corrective action activities to determine whether the requirements of subsection (b) of this Section are met. The Agency must notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.

   A) The Agency must mail notices of final action on an election to defer by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.

   B) Any action by the Agency to reject an election, or the rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

5)~~3)~~ Upon approval of an election ~~receiving written notification that an owner or operator elects~~ to defer low priority groundwater monitoring or high

priority corrective action activities ~~corrective action~~ until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment and move up based solely on the date the Agency receives a complete ~~the~~ written election of deferral, with the earliest dates having the highest priority. ~~The Agency's record of the date of receipt shall be deemed conclusive, unless a contrary date is proven by a dated, signed receipt from registered or certified mail.~~

6)~~4)~~ As funds become available the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the owner's or operator's site. After such notification the owner or operator shall commence corrective action.

7)~~5)~~ Authorization of payment of encumbered funds for deferred low priority groundwater monitoring or high priority corrective action ~~corrective action~~ activities shall be approved in accordance with the requirements of Subpart F of this Part.

8~~6)~~ The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred site classification pursuant to Section 732.306 of this Part with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.

b) An owner or operator who elects to defer ~~site classification,~~ low priority groundwater monitoring or high priority corrective action ~~, or remediation~~ activities under subsection (a) of this Section shall submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:

1) The Agency has approved the owner's or operator's low priority groundwater monitoring or high priority corrective action budget plan;

2) The owner or operator has been determined eligible to seek payment from the Fund;

3)~~1)~~ The early action requirements of Subpart B of this Part have been met; ~~and~~

4) Groundwater contamination does not exceed the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling in accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation

objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but is not limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

~~2) The release does not pose a threat to human health or the environment through migratory pathways following the investigation of migration pathways requirements of Section 732.307(g) of this Part.~~

c) An owner or operator may, at any time, withdraw the election to defer low priority groundwater monitoring or high priority corrective action activities. ~~commence corrective action upon the availability of funds at any time.~~ The owner or operator must notify the Agency ~~shall be notified~~ in writing of the withdrawal. Upon such withdrawal, the owner or operator shall proceed with corrective action in accordance with the requirements of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.407 Alternative Technologies

a) An owner or operator may choose to use an alternative technology for corrective action in response to a release of petroleum at a High Priority site. Corrective action plans proposing the use of alternative technologies shall be submitted to the Agency in accordance with Section 732.405 of this Part. In addition to the requirements for corrective action plans contained in Section 732.404, the owner or operator who seeks approval of an alternative technology shall submit documentation along with the corrective action plan demonstrating that:

1) The proposed alternative technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and all corrective action remediation objectives necessary to comply with the Act and regulations and to protect human health or the environment;

2) The proposed alternative technology will not adversely affect human health or the environment;

3) The owner or operator will obtain all Agency permits necessary to legally authorize use of the alternative technology;

4) The owner or operator will implement a program to monitor whether the requirements of subsection (a)(1) of this Section have been met; and

5) Within one year from the date of Agency approval the owner or operator will provide to the Agency monitoring program results establishing whether the proposed alternative technology will successfully achieve compliance with the requirements of subsection (a)(1) of this Section and any other applicable regulations. The Agency may require interim reports as necessary to track the progress of the alternative technology. The Agency will specify in the approval when those interim reports shall be submitted to the Agency.

b) An owner or operator intending to seek payment ~~or reimbursement~~ for costs associated with the use of an alternative technology shall submit a corresponding budget plan in accordance with Section 732.405 of this Part. In addition to the requirements for corrective action budget plans at Section 732.404 of this Part, the budget plan must demonstrate that the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies. The budget plan must compare the costs of at least two other alternative technologies to the costs of the proposed alternative technology, if other alternative technologies are available and are technically feasible.

c) If an owner or operator has received approval of a corrective action plan and associated budget plan from the Agency prior to implementing the plan and the alternative technology fails to satisfy the requirements of subsection (a)(1) or (a)(2) of this Section, such failure shall not make the owner or operator ineligible to seek payment ~~or reimbursement~~ for the activities associated with the subsequent performance of a corrective action using conventional technology. However, in no case shall the total payment ~~or reimbursement~~ for the site exceed the statutory maximums. Owners or operators implementing alternative technologies without obtaining pre-approval shall be ineligible to seek payment ~~or reimbursement~~ for the subsequent performance of a corrective action using conventional technology.

d) The Agency may require remote monitoring of an alternative technology. The monitoring may include, but is not limited to, monitoring the alternative technology's operation and progress in achieving the applicable remediation objectives.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.408 Remediation Objectives

For sites requiring High Priority corrective action or for which the owner or operator has elected to conduct corrective action pursuant to Section 732.300(b), 732.400(b) or 732.400(c) of this

Part, the owner or operator shall propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 must determine the following parameters on a site-specific basis:

Hydraulic conductivity (K)
Soil bulk density ($\rho_b$)
Soil particle density ($\rho_s$)
Moisture content (w)
Organic carbon content ($f_{oc}$)

Board Note: Failure to use site-specific remediation objectives on-site and to utilize available groundwater ordinances as institutional controls may result in certain corrective action costs being ineligible for payment from the Fund. See Section 732.606(~~eee~~ddd) and (~~fff~~eee) of this Part.

(Source: Amended at 29 Ill. Reg. ____________, effective _____________)

Section 732.409 Groundwater Monitoring and Corrective Action Completion Reports

a) Within 30 days after completing the performance of a Low Priority groundwater monitoring plan or High Priority corrective action plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report or a corrective action completion report.

1) The Low Priority groundwater monitoring completion report shall include, but is not ~~be~~ limited to, a narrative describing the implementation and completion of all elements of the groundwater monitoring plan and the procedures used for collection and analysis of samples, analytical results in tabular form, actual analytical results, laboratory certification and any other information or documentation relied upon by the Licensed Professional Engineer or Licensed Professional Geologist in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site.

2) The High Priority corrective action completion report shall include, but is not ~~be~~ limited to, a narrative and timetable describing the implementation and completion of all elements of the corrective action plan and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. Documentation of any water supply well survey

conducted pursuant to Section 732.404(e) of this Part must include, but is not limited to, the following:

A) One or more maps, to an appropriate scale, showing the following:

i) The location of the community water supply wells and other potable water supply wells identified pursuant to Section 732.404(e) of this Part, and the setback zone for each well;

ii) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to Section 732.404(e) of this Part;

iii) The current extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

iv) The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

B) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to Section 732.404(e) of this Part;

C) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to Section 732.404(e) of this Part, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

D) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of Section 732.404(e) of this Part and that the documentation submitted pursuant to this Section includes the information obtained as a result of the survey.

3) A High Priority corrective action completion report shall demonstrate the following:

A) For sites submitting a site classification report under Section 732.309 of this Part:

i) Applicable indicator contaminant groundwater objectives are not exceeded at the property boundary line or 200 feet from the UST system, whichever is less, as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

ii) Class III resource groundwater quality standards for Class III special use resource groundwater within 200 feet of the UST system are not exceeded as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

iii) The release of petroleum does not threaten human health or human safety due to the presence or migration, through natural or manmade pathways, of petroleum in concentration sufficient to harm human health or human safety or to cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

iv) The release of petroleum does not threaten any surface water body; and

v) The release of petroleum does not threaten any potable water supply.

B) For sites submitting a site classification completion report under Section 732.312 of this Part, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 of this Part for any applicable exposure route not excluded from further consideration under Section 732.312 of this Part.

b) The applicable report shall be ~~submitted on forms prescribed and provided by the Agency, and, if specified by the Agency by written notice, in an electronic format, shall be signed by the owner or operator, and shall be~~ accompanied by a certification from a Licensed Professional Engineer, in accordance with subsection (a) of this Section, that the information presented in the applicable report is accurate and complete, that groundwater monitoring or corrective action have been completed in accordance with the requirements of the Act and this Subpart D, and that no further remediation is required at the site. ~~With the exception of Federal Landholding Entities subject to Section 732.703(d), the owner or must sign and submit, with the corrective action completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate~~

~~on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:~~

> ~~I hereby affirm that I have reviewed the attached report and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further affirm that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the corrective action completion report.~~

c) The Agency shall have the authority to review and approve, reject or require modification of any report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.411 Off-site Access

a) An owner or operator seeking to comply with the best efforts requirements of Section 732.404(c) of this Part must demonstrate compliance with the requirements of this Section.

b) In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:

1) Citation to Title XVI ~~Section 57~~ of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;

2) That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c ~~22.2(c)~~ of the Act;

3) That, in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by the investigation;

4) If contamination results from a release by the owner or operator, the owner or operator will conduct all associated remediation at its own expense;

5) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release; and

6) A reasonable time to respond to the letter, not less than 30 days.

c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the corrective action completion report, the following documentation:

1) A sworn affidavit, signed by the owner or operator identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and

2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.

d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:

1) The physical and chemical characteristics, including toxicity, persistence and potential for migration, of applicable indicator contaminants at the property boundary line;

2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;

3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;

4) The potential effects of residual contamination on nearby surface water and groundwater;

5) The proximity, quality and current and future uses of nearby surface water and groundwater, including ~~setback zones and~~ regulated recharge areas, wellhead protection areas, and setback zones of potable water supply wells;

6) Any known or suspected natural or man-made migration pathways existing in or near the suspected area of off-site contamination;

7) The nature and use of the part of the off-site property that is the suspected area of contamination;

8) Any existing on-site engineered barriers or institutional controls that might have an impact on the area of suspected off-site contamination, and the nature and extent of such impact; and

9) Any other applicable information assembled in compliance with this Part.

e) The Agency shall issue a No Further Remediation Letter to an owner or operator subject to this Section and otherwise entitled to such issuance only if the owner or operator has, in accordance with this Section, either completed any requisite off-site corrective action or demonstrated to the Agency's satisfaction an inability to obtain off-site access despite best efforts.

f) The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access is denied.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

SUBPART E: REVIEW OF ~~SELECTION AND REVIEW PROCEDURES FOR~~ PLANS, BUDGET PLANS, AND REPORTS

Section 732.500 General

~~a)~~ The Agency shall have the authority to review any plan, budget plan, or report, including any amended plan, budget plan, or report, submitted pursuant to this Part. All such reviews shall be subject to the procedures set forth in the Act and this Subpart E.

~~b) For purposes of this Part, "plan" shall mean:~~

~~1) Any physical soil classification or groundwater investigation plan or associated budget plan submitted pursuant to Subpart C of this Part;~~

~~2) Any groundwater monitoring plan or associated budget plan submitted pursuant to Subpart D of this Part; or~~

~~3) Any site-specific corrective action plan or associated budget plan submitted pursuant to Subpart D of this Part.~~

~~c) For purposes of this Part, "report" shall mean:~~

~~1) Any early action report or free product removal report submitted pursuant to Subpart B of this Part;~~

~~2) Any site classification completion report submitted pursuant to Subpart C;~~

~~3) Any annual groundwater monitoring report submitted pursuant to Subpart D of this Part;~~

~~4) Any groundwater monitoring completion report submitted pursuant to Subpart D of this Part; or~~

~~5) Any corrective action completion report submitted pursuant to Subpart D of this Part or Section 732.300(b) or 732.400(b).~~

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.501 Submittal of Plans or Reports (Repealed)

~~All plans or reports shall be made on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Plans or reports shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.~~

(Source: Repealed at ______ Ill. Reg.___________, effective ________________)

Section 732.502 Completeness Review (Repealed)

~~a) The Agency shall review for completeness all plans submitted pursuant to this Part 732. The completeness review shall be sufficient to determine whether all information and documentation required by the Agency form for the particular plan are present. The review shall not be used to determine the technical sufficiency of a particular plan or of the information or documentation submitted along with the plan.~~

~~b) The Agency shall have 45 days from the receipt of a plan to finish the completeness review. If the completeness review finds that the plan is complete, the Agency shall so notify the owner or operator in writing and proceed, where appropriate, to approval, rejection or modification of the substantive portions of the plan. If the completeness review finds that the plan is incomplete, the Agency shall notify the owner or operator in writing. The notification shall include an explanation of the specific type of information or documentation that the Agency deems necessary to complete the plan.~~

~~1) The Agency may, to the extent consistent with Agency deadlines, provide the owner or operator with a reasonable opportunity to correct deficiencies prior to a final determination on completeness.~~

~~2) The Agency shall mail notice of incompleteness by registered or certified mail, post marked with a date stamp and with return receipt requested.~~

~~The decision shall be deemed to have taken place on the post marked date that such notice is mailed.~~

~~3) All time limits for Agency final action on a plan or report shall be calculated from the date the Agency receives a plan or report. Receipt of an amended plan or report, after a notice of incompleteness, shall restart all time limits for Agency final action on that plan or report.~~

~~c) Any budget plan submitted must be preceded or accompanied by an associated technical plan in order for the budget plan to be deemed complete.~~

~~d) The failure of the Agency to notify an owner or operator within 45 days that a plan is incomplete shall result in the plan being deemed complete. Any action by the Agency pursuant to this Section shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for in the review of permit decisions in Section 40 of the Act.~~

(Source: Repealed at _______ Ill. Reg.____________, effective ________________)

Section 732.503 ~~Full~~ Review of Plans, Budget Plans, or Reports

a) The Agency may review ~~In addition to the completeness review for plans conducted pursuant to Section 732.502 of this Part, the Agency may conduct a full review of plans or reports selected in accordance with the requirements of Section 732.504 of this Part. A full review may include~~ any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any ~~the~~ plan, budget plan, or report selected for review. The Agency may also ~~full review also may include the~~ review ~~of~~ any other plans, budget plans, or reports submitted in conjunction with the site.

b) The Agency shall have the authority to approve, reject or require modification of any plan, budget plan, or report it reviews ~~that has been given a full review~~. The Agency shall notify the owner or operator in writing of its final action on any such plan, budget plan, or report, except in the case of 20 day, 45 day or free product removal reports, in which case no notification is necessary. Except as provided in subsections (c) and (d) ~~and (e)~~ of this Section, if the Agency fails to notify the owner or operator of its final action on a plan, budget plan, or report within 120 days after the receipt of a plan, budget plan, or report, the owner or operator may deem the plan, budget plan, or report rejected by operation of law. If the Agency rejects a plan, budget plan, or report or requires modifications, the written notification shall contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete the ~~full~~ review;

2) An explanation of the Sections of the Act or regulations that may be violated if the plan, budget plan, or report is approved; and

3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the plan, budget plan, or report is approved.

c) For High Priority corrective action plans submitted by owners or operators not seeking payment ~~reimbursement~~ from the Fund, the Agency may delay final action on such plans until 120 days after it receives the corrective action completion report required pursuant to Section 732.409 of this Part.

d) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete plan, budget plan, or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 60 days.

e) The Agency shall mail notices of final action on plans, budget plans, or reports by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.

f) Any action by the Agency to reject or require modification, or rejection by failure to act, of a plan, budget plan, or report shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. ~~If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, a revised plan or report shall be submitted to the Agency within 35 days after the receipt of the Agency's written notification. If no revised plan or report is submitted to the Agency or no appeal to the Board is filed within the specified time frames, the plan or report shall be deemed approved as modified by the Agency. If any plan or report is rejected by operation of law, in lieu of an immediate appeal to the Board the owner or operator may either resubmit the plan or report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decisions in Section 40 of the Act.~~

~~g) Notification of Selection for Full Review~~

~~1) Owners or operators submitting plans shall be notified by the Agency within 60 days after the date the plan is deemed complete if the plan has not been selected for full review in accordance with Section 732.504 of this Part. Failure of the Agency to so notify the owner or operator shall mean that the plan has been selected for full review. Notification by the Agency that the plan has not been selected for full review shall constitute approval of the plan.~~

~~2) Owners or operators submitting reports shall be notified by the Agency within 60 days after the receipt of the report if the report has not been selected for full review in accordance with Section 732.504 of this Part, except in the case of 20 day, 45 day or free product reports, in which case no notification of selection is necessary. Failure of the Agency to so notify the owner or operator shall mean that the report has been selected for full review. Notification by the Agency that the report has not been selected for full review shall constitute approval of the report.~~

~~3) Notice shall be sent and the date of notification shall be computed in accordance with subsection (e) of this Section.~~

g)~~h)~~ In accordance with Sections 732.306 and 732.406 of this Part, upon the approval of any budget plan by the Agency, the Agency shall include as part of the final notice to the owner or operator a notice of insufficient funds if the Fund does not contain sufficient funds to provide payment of the total costs approved in the budget plan.~~statement of whether or not the Fund contains sufficient resources in order to immediately commence the approved measures.~~

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.504 Selection of Plans or Reports for Full Review (Repealed)

~~a) The Agency shall select for full review a reasonable number of each type of plan or report. The number of plans or reports selected for full review shall be determined by the Agency based on the resources available to the Agency, the potential environmental impact at the site, the financial and technical complexity of the plan or report, and experience with prior reviews. To assure consistency and fairness in the selection process, the Agency shall follow a selection process that has the following goals:~~

~~1) A full technical and financial review of every "High Priority" corrective action plan, associated budget plan, and completion report submitted pursuant to Subpart D of this Part;~~

~~2) A full technical and financial review of every corrective action plan, associated budget plan, and completion report submitted pursuant to Sections 732.300(b) or 732.400© of this Part;~~

~~3) A full technical review of approximately 20% of the site classification reports submitted pursuant to Subpart C of this Part;~~

~~4) Site Classification Plans~~

~~A) A full technical review of any site classification plan (including physical soil classification and groundwater investigation plans)~~

for which the associated site classification report was selected for full review or that has an associated budget plan exceeding the typical cost for such plans as determined by the Agency;

B) A full financial review of any site classification budget plan exceeding the typical cost for such plans as determined by the Agency;

5) "Low Priority" Groundwater Monitoring Plans

A) A full technical review of any "Low Priority" groundwater monitoring plan that has an associated budget plan exceeding the typical cost for such plans as determined by the Agency;

B) A full financial review of any "Low Priority" groundwater monitoring budget plan exceeding the typical cost for such plans as determined by the Agency;

6) A full technical review of any "Low Priority" annual groundwater sampling and analysis report or any groundwater monitoring completion report submitted pursuant to Subpart D of this Part;

7) A full technical review of any 20-day report, 45-day report, or free product report submitted pursuant to Subpart B of this Part in conjunction with the review of another plan or report selected in accordance with this Section.

b) The Agency may conduct a full review of any plan or report not selected in accordance with the provisions of this Section if the Agency has reason to believe that such review is necessary in conjunction with the review of another plan or report selected for that site.

c) Notwithstanding any other limitations on reviews, the Agency may conduct a full technical review on any plan or report identified in this Section that concerns a site for which an investigation has been or may be initiated pursuant to Section 732.105 of this Part.

d) Agency decisions on whether or not to select a plan or report for full review shall not be subject to appeal.

(Source: Repealed at ______ Ill. Reg.___________, effective ________________)

Section 732.505 Standards for Review of Plans, Budget Plans, or Reports

a) A full technical review shall consist of a detailed review of the steps proposed or completed to accomplish the goals of the plan and to achieve compliance with the Act and regulations. Items to be reviewed, if applicable, shall include, but is not

~~be~~ limited to, number and placement of wells and borings, number and types of samples and analysis, results of sample analysis, and protocols to be followed in making determinations. The overall goal of the technical review for plans shall be to determine if the plan is sufficient to satisfy the requirements of the Act and regulations and has been prepared in accordance with generally accepted engineering practices or principles of professional geology. The overall goal of the technical review for reports shall be to determine if the plan has been fully implemented in accordance with generally accepted engineering practices or principles of professional geology, if the conclusions are consistent with the information obtained while implementing the plan, and if the requirements of the Act and regulations have been satisfied.

b) If the Licensed Professional Engineer or Licensed Professional Geologist certifies that there is no evidence that, through natural or manmade pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces, the Licensed Professional Engineer's or Licensed Professional Geologist's certification to that effect shall be presumed correct unless the Agency's review reveals objective evidence to the contrary.

c) A ~~full~~ financial review shall consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed shall include, but are not ~~be~~ limited to, costs associated with any materials, activities or services that are included in the budget plan. The overall goal of the financial review shall be to assure that costs associated with materials, activities and services shall be reasonable, shall be consistent with the associated technical plan, shall be incurred in the performance of corrective action activities, ~~and~~ shall not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

SUBPART F: PAYMENT FROM THE FUND ~~OR REIMBURSEMENT~~

Section 732.601 Applications for Payment

a) An owner or operator seeking payment from the Fund shall submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The owner or operator may submit an application for partial payment or final payment ~~for materials, activities or services contained in an approved budget plan~~. Costs for which payment is sought must be approved in a budget plan, provided, however, that no budget plan shall be required for early action activities conducted pursuant to Subpart B of this Part other than free product removal activities conducted

more than 45 days after confirmation of the presence of free product. ~~An application for payment also may be submitted for materials, activities or services for early action conducted pursuant to Subpart B of this Part and for which no budget plan is required.~~

b) A complete application for payment shall consist of the following elements:

1) A certification from a Licensed Professional Engineer or a Licensed Professional Geologist acknowledged by the owner or operator that the work performed has been in accordance with a technical plan approved by the Agency or, for early action activities, in accordance with Subpart B of this Part;

2) A statement of the amounts approved in the corresponding budget plan and the amounts actually sought for payment along with a certified statement by the owner or operator that the amounts so sought have been expended in conformance with the elements of a budget plan approved by the Agency;

3) A copy of the OSFM or Agency eligibility and deductibility determination;

4) Proof that approval of the payment requested will not exceed the limitations set forth in the Act and Section 732.604 of this Part;

5) A federal taxpayer identification number and legal status disclosure certification;

6) A private insurance coverage ~~Private Insurance Coverage~~ form;

7) A minority/women's business ~~Minority/Women's Business Usage~~ form; ~~and~~

8) Designation ~~designation~~ of the address to which payment and notice of final action on the application for payment are to be sent;~~.~~

9) An accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed; and

10) Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.

c) The address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change in address.

d) Applications for payment and change of address forms shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

e) Applications for partial or final payment may be submitted no more frequently than once every 90 days.

f) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part, other than costs associated with free product removal activities conducted more than 45 days after confirmation of the presence of free product, ~~or applications for payment/budget plans submitted pursuant to Sections 732.305(e), 732.312(l), 732.405(e), and 732.405(f) of this Part,~~ in no case shall the Agency review an application for payment unless there is an approved budget plan on file corresponding to the application for payment.

g) In no case shall the Agency authorize payment to an owner or operator in amounts greater than the amounts approved by the Agency in a corresponding budget plan. Revised cost estimates or increased costs resulting from revised procedures must be submitted to the Agency for review in accordance with Subpart E of this Part using amended budget plans as required under ~~in accordance with Section 732.305(e) or 732.405(e) of~~ this Part.

h) Applications for payment of costs associated with site classification may not be submitted prior to approval or modification of the site classification completion report.

i) Applications for payment of costs associated with site classification, low priority groundwater monitoring, or high priority corrective action that was deferred pursuant to Section 732.306 or 732.406 of this Part may not be submitted prior to approval or modification of the corresponding site classification completion report, low priority groundwater monitoring completion report, or high priority corrective action completion report.

j) All applications for payment of corrective action costs must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. For releases for which the Agency issued a No Further Remediation Letter prior to the effective date of this subsection (j), all applications for payment must be submitted no later than one year after the effective date of this subsection (j).

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.602 Review of Applications for Payment

a) At a minimum, the Agency must review each application for payment submitted pursuant to this Part to determine the following:

1) whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part;

2) for costs incurred pursuant to Subpart B of this Part, other than free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought are reasonable, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part;

3) for costs incurred pursuant to Subpart C of this Part and free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought exceed the amounts approved in the corresponding budget plan, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part and a plan approved by the Agency; and

4) Whether the amounts sought are eligible for payment.

~~The Agency shall conduct a review of any application for payment submitted pursuant to this Part. Each application for payment shall be reviewed to determine whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part and whether the amounts sought for payment have been certified in accordance with Section 732.601(b)(2) of this Part as equal to or less than the amounts approved in the corresponding budget plan. Any action by the Agency pursuant to this subsection shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.~~

~~b) The Agency may conduct a full review of any application for payment:~~

~~1) If the amounts sought for payment exceed the amounts approved in the corresponding budget plan;~~

~~2) If the Agency has reason to believe that the application for payment is fraudulent; or~~

~~3) If the application for payment includes costs for early action activities conducted pursuant to Subpart B of this Part and either of the following circumstances exists:~~

~~A) The application for payment is solely for early action costs that have not been approved as part of a prior budget plan; or~~

~~B) The application for payment includes early action costs that have not been approved as part of a prior budget plan, except that only the portion of the application for the unapproved early action costs may be given a full review.~~

b)~~c)~~ When conducting a ~~full~~ review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) ~~subsection (d)~~ of this Section.

c)~~d)~~ ~~A full review of an application for payment shall be sufficient to determine which line items contained in the application for payment have caused the application for payment to exceed the corresponding approved budget plan pursuant to subsection (b)(1) of this Section, which line items, if any, are ineligible for payment pursuant to subsection (b)(2) or (b)(3) of this Section, and whether there is sufficient documentation to demonstrate that line items have been completed in accordance with a plan approved by the Agency.~~ The Agency's ~~A full~~ review may include review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The ~~full~~ review also may include the review of any plans, budget plans, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

d)~~e)~~ Following a review, the Agency shall have the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency shall notify the owner or operator in writing of its final action on any such application for payment. Except as provided in subsection (e) ~~subsection (f)~~ of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law. If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification shall contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete the ~~full~~ review;

2) An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and

3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.

e)~~f)~~ An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete application for payment by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 30 days.

f)~~g)~~ The Agency shall mail notices of final action on applications for payment by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. The Agency shall mail notices of final action on applications for payment, and direct the Comptroller to mail payments to the owner or operator, at the address designated for receipt of payment in the application for payment or on a change of address form, provided by the Agency, submitted subsequent to submittal of the application for payment.

g)~~h)~~ Any action by the Agency to deny payment for an application for payment or portion thereof or to require modification shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. ~~If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, a revised application for payment shall be submitted to the Agency within 35 days after the receipt of the Agency's written notification. If no revised application for payment is submitted to the Agency or no appeal to the Board is filed within the specified time frames, the application for payment shall be deemed approved as modified by the Agency and payment shall be authorized in the amount approved.~~

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.603 Authorization for Payment; Priority List

a) Within 60 days after notification to an owner or operator that the application for payment or a portion thereof has been approved by the Agency or by operation of law, the Agency shall forward to the Office of the State Comptroller in accordance with subsection (d) or (e) of this Section a voucher in the amount approved. If the owner or operator has filed an appeal with the Board of the Agency's final decision on an application for payment, the Agency shall have 60 days after the final resolution of the appeal to forward to the Office of the State Comptroller a voucher in the amount ordered as a result of the appeal. Notwithstanding the time limits imposed by this Section, the Agency shall not forward vouchers to the Office of the State Comptroller until sufficient funds are available to issue payment.

b) The following rules shall apply regarding deductibles:

1) Any deductible, as determined by the OSFM or the Agency, shall be subtracted from any amount approved for payment by the Agency or by operation of law or ordered by the Board or courts;

2) Only one deductible shall apply per occurrence;

3) If multiple incident numbers are issued for a single site in the same calendar year, only one deductible shall apply for those incidents, even if the incidents relate to more than one occurrence; and

4) Where more than one deductible determination is made, the higher deductible shall apply.

c) The Agency shall instruct the Office of the State Comptroller to issue payment to the owner or operator at the address designated in accordance with Section 732.601(b)(8) or (c) of this Part. In no case shall the Agency authorize the Office of the State Comptroller to issue payment to an agent, designee, or entity that ~~who~~ has conducted corrective action activities for the owner or operator.

d) For owners or operators who have deferred site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, payment shall be authorized from funds encumbered pursuant to Section 732.306(a)(6) or 732.406(a)(6)~~732.306(a)(4) or 732.406(a)(4)~~ of this Part upon approval of the application for payment by the Agency or by operation of law.

e) For owners or operators not electing to defer site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, the Agency shall form a priority list for payment for the issuance of vouchers pursuant to subsection (a) of this Section.

1) All such applications for payment shall be assigned a date that is the date upon which the complete application for partial or final payment was received by the Agency. This date shall determine the owner's ~~owner~~ or operator's priority for payment in accordance with subsection (e)(2) of this Section, with the earliest dates receiving the highest priority.

2) Once payment is approved by the Agency or by operation of law or ordered by the Board or courts, the application for payment shall be assigned priority in accordance with subsection (e)(1) of this Section. The assigned date shall be the only factor determining the priority for payment for those applications approved for payment.

(Source: Amended at ______ Ill. Reg.______, effective ________________)

Section 732.604 Limitations on Total Payments

a) Limitations per occurrence:

1) <u>The Agency must not approve any payment from the Fund to pay an owner or operator for costs of corrective action incurred by the owner or operator in an amount in excess of $1,000,000 per occurrence.</u> ~~THE AGENCY SHALL NOT APPROVE ANY PAYMENT FROM THE FUND TO PAY AN OWNER OR OPERATOR FOR COSTS OF CORRECTIVE ACTION INCURRED BY SUCH OWNER OR OPERATOR IN AN AMOUNT IN EXCESS OF $1,000,000 PER OCCURRENCE. (Section 57.8(g) of the Act)~~

2) <u>The Agency must not approve any payment from the Fund to pay an owner or operator for costs of indemnification of the owner or operator in an amount in excess of $1,000,000 per occurrence.</u> ~~THE AGENCY SHALL NOT APPROVE ANY PAYMENT FROM THE FUND TO PAY AN OWNER OR OPERATOR FOR COSTS OF INDEMNIFICATION OF SUCH OWNER OR OPERATOR IN AN AMOUNT IN EXCESS OF $1,000,000 PER OCCURRENCE. (Section 57.8(g) of the Act)~~

b) Aggregate limitations:

1) <u>Notwithstanding any other provision of this Part, the Agency must not approve payment to an owner or operator from the Fund for costs of corrective action or indemnification incurred during a calendar year in excess of the following amounts based on the number of petroleum underground storage tanks owned or operated by the owner or operator in Illinois:</u>

| <u>Amount</u> | <u>Number of Tanks</u> |
| --- | --- |
| <u>$1,000,000</u> | <u>fewer than 101</u> |
| <u>$2,000,000</u> | <u>101 or more</u> |

~~NOTWITHSTANDING ANY OTHER PROVISION OF THIS Part 732, THE AGENCY SHALL NOT APPROVE PAYMENT TO AN OWNER OR OPERATOR FROM THE FUND FOR COSTS OF CORRECTIVE ACTION OR INDEMNIFICATION INCURRED DURING A CALENDAR YEAR IN EXCESS OF THE FOLLOWING AMOUNTS BASED ON THE NUMBER OF PETROLEUM UNDERGROUND STORAGE TANKS OWNED OR OPERATED BY SUCH OWNER OR OPERATOR IN ILLINOIS:~~

~~AMOUNT NUMBER OF TANKS~~

~~$1,000,000 FEWER THAN 101~~
~~$2,000,000 101 OR MORE~~

2) Costs incurred in excess of the aggregate amounts set forth in subsection (b)(1) of this Section will not be eligible for payment in subsequent years. ~~COSTS INCURRED IN EXCESS OF THE AGGREGATE AMOUNTS SET FORTH IN subsection (b)(1) of this Section SHALL NOT BE ELIGIBLE FOR PAYMENT IN SUBSEQUENT YEARS. (Section 57.8(d) of the Act)~~

c) *For purposes of* subsection (b) of this Section, *requests submitted by any of the agencies, departments, boards, committees or commissions of the State of Illinois shall be acted upon as claims from a single owner or operator* [415 ILCS 5/57.8(d)(2)]. ~~FOR PURPOSES OF subsection (b) of this Section, REQUESTS SUBMITTED BY ANY OF THE AGENCIES, DEPARTMENTS, BOARDS, COMMITTEES OR COMMISSIONS OF THE STATE OF ILLINOIS SHALL BE ACTED UPON AS CLAIMS FROM A SINGLE OWNER OR OPERATOR. (Section 57.8(d) of the Act)~~

d) *For purposes of* subsection (b) of this Section, *owner or operator includes*;

1) *any subsidiary, parent, or joint stock company of the owner or operator*; *and*

2) *any company owned by any parent, subsidiary, or joint stock company of the owner or operator* [415 ILCS 5/57.8(d)(3)].

~~FOR PURPOSES OF subsection (b) of this Section, OWNER OR OPERATOR INCLUDES;~~

~~1) ANY SUBSIDIARY, PARENT, OR JOINT STOCK COMPANY OF THE OWNER OR OPERATOR; AND~~

~~2) ANY COMPANY OWNED BY ANY PARENT, SUBSIDIARY, OR JOINT STOCK COMPANY OF THE OWNER OR OPERATOR. (Section 57.8(d) of the Act)~~

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.605 Eligible Corrective Action Costs

a) Types of costs that may be eligible for payment from the Fund include those for corrective action activities and for materials or services provided or performed in conjunction with corrective action activities. Such activities and services may include but are not limited to reasonable costs for:

1) Early action activities conducted pursuant to Subpart B of this Part;

2) Engineer or geologist ~~Engineering~~ oversight services;

3) Remedial investigation and design;

~~4) Feasibility studies;~~

4)~~5)~~ Laboratory services necessary to determine site classification and whether the established remediation ~~corrective action~~ objectives have been met;

5)~~6)~~ The installation ~~Installation~~ and operation of groundwater investigation and groundwater monitoring wells;

6)~~7)~~ The removal, treatment, transportation, and disposal of soil contaminated by petroleum at levels in excess of the established remediation ~~corrective action~~ objectives;

7)~~8)~~ The removal, treatment, transportation, and disposal of water contaminated by petroleum at levels in excess of the established remediation ~~corrective action~~ objectives;

8)~~9)~~ The placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established remediation ~~corrective action~~ objectives;

9)~~10)~~ Groundwater corrective action systems;

10)~~11)~~ Alternative technology, including but not limited to feasibility studies approved by the Agency;

11)~~12)~~ Recovery of free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water ~~phase petroleum from groundwater~~;

12)~~13)~~ The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the OSFM ~~Office of State Fire Marshal~~;

13~~14)~~ Costs incurred as a result of a release of petroleum because of vandalism, theft or fraudulent activity by a party other than an owner, operator or agent of an owner or operator;

14)15) Engineer or geologist Engineering costs associated with seeking payment or reimbursement from the Fund including, but not limited to, completion of an application for partial or final payment;

15)16) Costs associated with obtaining an Eligibility and Deductibility Determination from the OSFM or the Agency;

16)17) Costs for destruction and replacement of concrete, asphalt, or and paving to the extent necessary to conduct corrective action and if the concrete, asphalt, or paving was installed prior to the initiation of corrective action activities, the destruction and replacement has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer, and the destruction and replacement and its costs are approved by the Agency in writing prior to the destruction and replacement. The costs for destruction and replacement of concrete, asphalt, and paving must not be paid more than once. Costs associated with the replacement of concrete, asphalt, or paving must not be paid in excess of the cost to install, in the same area and to the same depth, the same material that was destroyed (e.g., replacing four inches of concrete with four inches of concrete);

17)18) The destruction or dismantling and reassembly of above grade structures in response to a release of petroleum if such activity has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer and such activity and its costs are approved by the Agency in writing prior to the destruction or dismantling and re-assembly. Such costs must not be paid in excess of a total $10,000 per occurrence. For purposes of this subsection (a)(17) (a)(18), destruction, dismantling or reassembly of above grade structures does not include costs associated with replacement of pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies; and

18)19) Preparation of reports submitted pursuant to Section 732.202(h)(3) of this Part, free product removal plans and associated budget plans, free product removal reports, site classification plans (including physical soil classification and groundwater investigation plans) and associated budget plans, site classification reports, groundwater monitoring plans and associated budget plans, groundwater monitoring completion reports, High Priority corrective action plans and associated budget plans, and High Priority corrective action completion reports;.

19) Costs associated with the removal or abandonment of a potable water supply well, and replacement of the well or connection to a public water supply, whichever is less, if a Licensed Professional Engineer or Licensed Professional Geologist certifies that such activity is necessary to the performance of corrective action and that the property served by the well

cannot receive an adequate supply of potable water from an existing source other than the removed or abandoned well, and the Agency approves such activity in writing. If the well being removed or abandoned is a public water supply well, the Licensed Professional Engineer or Licensed Professional Geologist is required to certify only that the removal or abandonment of the well is necessary to the performance of corrective action; and

20) Costs associated with the repair or replacement of potable water supply lines damaged to the point of requiring repair or replacement as a direct result of the release, if such activity is certified by a Licensed Professional Engineer or Licensed Professional Geologist as necessary for the protection of the potable water supply and approved by the Agency in writing.

b) An owner or operator may submit a budget plan or application for partial or final payment that includes an itemized accounting of costs associated with activities, materials or services not identified in subsection (a) of this Section if the owner or operator submits detailed information demonstrating that the activities, materials or services not identified in subsection (a) of this Section are essential to the completion of the minimum corrective action requirements of the Act and this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.606 Ineligible Corrective Action Costs

Costs ineligible for payment from the Fund include but are not limited to:

a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Appendix C of this Part, during early action activities conducted pursuant to Section 732.202(f), and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Appendix C of this Part during early action activities conducted pursuant to Section 732.202(f) of this Part;

b) Costs or losses resulting from business interruption;

c) Costs incurred as a result of vandalism, theft or fraudulent activity by the owner or operator or agent of an owner or operator including the creation of spills, leaks or releases;

d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies, including

but not limited to those structures destroyed or damaged during corrective action activities;

e) *Costs of corrective action ~~or indemnification~~ incurred by an owner or operator prior to July 28, 1989* [415 ILCS 5/57.8(j)];

f) Costs associated with the procurement of a generator identification number;

g) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs ~~*Legal defense costs* including *legal costs for seeking payment under* these regulations *unless the owner or operator prevails before the Board* and the Board authorizes payment of legal fees [415 ILCS 5/57.8(l)]~~;

h) Purchase costs of non-expendable materials, supplies, equipment or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment or tools;

i) Costs associated with activities that violate any provision of the Act or Board, OSFM or Agency regulations;

j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 732.105 of this Part and Section 57.12 of the Act;

k) Costs for removal, disposal or abandonment of a UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;

l) Costs associated with the installation of new USTs, the repair of existing USTs and removal and disposal of USTs determined to be ineligible by the Office of the State Fire Marshal;

m) Costs exceeding those contained in a budget plan or amended budget plan approved by the Agency;

n) Costs of corrective action ~~or indemnification~~ incurred before providing notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;

o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

p) Costs associated with improperly installed sampling or monitoring wells;

q) Costs associated with improperly collected, transported, or analyzed laboratory samples;

r) Costs associated with the analysis of laboratory samples not approved by the Agency ~~for constituents other than applicable indicator contaminants or groundwater objectives~~;

s) Costs for any corrective activities, services or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;

t) Interest or finance costs charged as direct costs;

u) Insurance costs charged as direct costs;

v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;

w) Costs associated with the compaction and density testing of backfill material;

x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;

y) Costs related to activities, materials or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act [415 ILCS 5] and regulations;

z) Costs incurred after completion of early action activities in accordance with Subpart B by owners or operators choosing, pursuant to Section 732.300(b) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;

aa) Costs incurred after completion of site classification activities in accordance with Subpart C by owners or operators choosing, pursuant to Section 732.400(b) or (c) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;

bb) Costs of alternative technology that exceed the costs of conventional technology;

cc) Costs for ~~investigative~~ activities and related services or materials ~~for developing a High Priority corrective action plan~~ that are unnecessary, ~~or~~ inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;

dd) Costs to prepare site classification plans and associated budget plans under Section 732.305 of this Part, to perform site classification under Section 732.307 of this Part, or to prepare site classification completion reports under Section 732.309 of this Part, for sites where owners or operators have elected to classify under Section 732.312 of this Part;

ee) Costs to prepare site classification plans and associated budget plans under Section 732.312 of this Part, to perform site classification under Section 732.312 of this Part, or to prepare site classification completion reports under Section 732.312 of this Part, for sites where owners or operators have performed classification activities under Sections 732.305, 732.307, or 732.309 of this Part;

ff) Costs requested that are based on mathematical errors;

gg) Costs that lack supporting documentation;

hh) Costs proposed as part of a budget plan that are unreasonable;

ii) Costs incurred during early action that are unreasonable;

jj) Costs incurred on or after the date the owner or operator enters ~~at a site that has entered~~ the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release;

kk) Costs incurred ~~for additional remediation~~ after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (kk) does not apply to the following:

1) Costs~~, except costs~~ incurred for MTBE remediation pursuant to Section 732.310(i)(2) of this Part;

2) Monitoring well abandonment costs;

3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;

4) Costs associated with seeking payment from the Fund; and

5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release;

ll) Handling charges for subcontractor ~~subcontractors~~ costs that have been billed directly to the owner or operator;

mm) Handling charges for subcontractor subcontractor's costs when the contractor has not submitted proof of payment of the subcontractor costs paid the subcontractor;

nn) Costs associated with standby and demurrage; and

oo) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 732.405(f) of this Part, that a revised corrective action plan is required,; provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment reimbursement if they meet the requirements of this Part;.

pp) Costs incurred after the effective date of an owner's or operator's election to proceed in accordance with 35 Ill. Adm. Code 734;

qq) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 732.203(a)(5) of this Part;

rr) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;

ss) Handling charges for subcontractor costs where any person with a direct or indirect financial interest in the contractor has a direct or indirect financial interest in the subcontractor;

ss) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 732.605(a)(16) of this Part;

tt) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Section 732.605(a)(16) or (17) of this Part;

uu) Costs associated with oversight by an owner or operator;

vv) Handling charges charged by persons other than the owner's or operator's primary contractor;

ww) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 732.605(a)(16) of this Part;

xx) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;

yy) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 732.605(a)(19) of this Part;

zz) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 732.605(a)(20) of this Part;

aaa) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 732.605(a)(19) or (20) of this Part;

bbb) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget plan;

ccc) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;

ddd) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (dddfff) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release;

eee) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

(Source: Amended at 29 Ill. Reg._________, effective ________________)

Section 732.607 Payment for Handling Charges

Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table:

| Subcontract or Field Purchase Cost: | Eligible Handling Charges as a Percentage of Cost: |
|---|---|
| $0 - $5,000 | 12% |
| $5,001 - $15,000 | $600 + 10% of amt. over $5,000 |
| $15,001 - $50,000 | $1,600 + 8% of amt. over $15,000 |

$50,001 - $100,000.................$4,400 + 5% of amt. over $50,000
$100,001 - $1,000,000...........$6,900 + 2% of amt. over $100,000

*Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table* (Section 57.8(g) of the Act):

| *SUBCONTRACT OR FIELD PURCHASE COST:* | *ELIGIBLE HANDLING CHARGES AS A PERCENTAGE OF COST:* |
|---|---|
| *$0 -$5,000* | *12%* |
| *$5,001 -$15,000* | *$600 PLUS 10% OF AMOUNT OVER $5,000* |
| *$15,001 -$50,000* | *$1,600 PLUS 8% OF AMOUNT OVER $15,000* |
| *$50,001 -$100,000* | *$4,400 PLUS 5% OF AMOUNTOVER $50,000* |
| *$100,001 - $1,000,000* | *$6,900 PLUS 2% OF AMOUNT OVER $100,000* [415 ILCS 5/57.8 (f)] |

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.608 Apportionment of Costs

a) The Agency may apportion payment of costs if:

1) *The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and* THE OWNER OR OPERATOR WAS DEEMED ELIGIBLE TO ACCESS THE FUND FOR PAYMENT OF CORRECTIVE ACTION COSTS FOR SOME, BUT NOT ALL, OF THE UNDERGROUND STORAGE TANKS AT THE SITE; AND

2) *The owner or operator failed to justify all costs attributable to each underground storage tank at the site.* [415 ILCS 5/57.8(m)] THE OWNER OR OPERATOR FAILED TO JUSTIFY ALL COSTS ATTRIBUTABLE TO EACH UNDERGROUND STORAGE TANK AT THE SITE. (Derived from Section 57.8(m) of the Act)

b) The Agency will determine, based on volume or number of tanks, which method of apportionment will be most favorable to the owner or operator. The Agency will notify the owner or operator of such determination in writing.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.610 Indemnification

a) An owner or operator seeking indemnification from the Fund for payment of costs incurred as a result of a release of petroleum from an underground storage tank must submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

1) A complete application for payment must contain the following:

A) A certified statement by the owner or operator of the amount sought for payment;

B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof must include, but is not limited to, the following:

i) A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement certified by the owner or operator as a true and correct copy; and

ii) Documentation demonstrating that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator;

C) A copy of the OSFM or Agency eligibility and deductibility determination;

D) Proof that approval of the indemnification requested will not exceed the limitations set forth in the Act and Section 732.604 of this Part;

E) A federal taxpayer identification number and legal status disclosure certification;

F) A private insurance coverage form; and

G) Designation of the address to which payment and notice of final action on the request for indemnification are to be sent to the owner or operator.

2) The owner's or operator's address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change of address.

3) Applications for payment must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

b)~~a)~~ The ~~Upon submittal of a request for indemnification for payment of costs incurred as a result of a release of petroleum from an underground storage tank, the~~ Agency shall review applications ~~the application~~ for payment in accordance with this Subpart F. In addition, the Agency must review each application for payment to determine the following:

1) Whether the application contains all of the information and supporting documentation required by subsection (a) of this Section;

2) Whether there is sufficient documentation of a legally enforceable judgment entered against the owner or operator in a court of law, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator;

3) Whether there is sufficient documentation that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; and

4) Whether the amounts sought for indemnification are eligible for payment.

c)~~b)~~ If the application for payment of the costs of indemnification is deemed complete and otherwise satisfies all applicable requirements of this Subpart F, the Agency shall forward the request for indemnification to the Office of the Attorney General for review and approval in accordance with Section 57.8(c) of the Act. The owner or operator's request for indemnification shall not be placed on the priority list for payment until the Agency has received the written approval of the Attorney General. The approved application for payment shall then enter the priority list established at Section 732.603(e)(1) ~~Section 732.603(d)(1)~~ of this Part based on the date the complete application was received by the Agency in accordance with Section 57.8(c) of the Act.

d) Costs ineligible for indemnification from the Fund include, but are not limited to:

1) Amounts an owner or operator is not legally obligated to pay pursuant to a judgment entered against the owner or operator in a court of law, a final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or any settlement entered into by the owner or operator;

2) Amounts of a judgment, final order, determination, or settlement that do not arise out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator;

3) Amounts incurred prior to July 28, 1989;

4) Amounts incurred prior to notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;

5) Amounts arising out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank for which the owner or operator is not eligible to access the Fund;

6) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;

7) Amounts associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;

8) Amounts associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 732.105 of this Part and Section 57.12 of the Act;

9) Amounts associated with a release that has not been reported to IEMA or is not required to be reported to IEMA;

10) Amounts incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release; and

11) Amounts incurred after the effective date of the owner's or operator's election to proceed in accordance with 35 Ill. Adm. Code 734.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.612 Determination and Collection of Excess Payments

a) If, for any reason, the Agency determines that an excess payment has been paid from the Fund, the Agency may take steps to collect the excess amount pursuant to subsection (c) of this Section.

1) Upon identifying an excess payment, the Agency shall notify the owner or operator receiving the excess payment by certified or registered mail, return receipt requested.

2) The notification letter shall state the amount of the excess payment and the basis for the Agency's determination that the payment is in error.

3) The Agency's determination of an excess payment shall be subject to appeal to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.

b) An excess payment from the Fund includes, but is not limited to:

1) Payment for a non-corrective action cost;

2) Payment in excess of the limitations on payments set forth in Sections 732.604 and 732.607 and Subpart H of this Part;

3) Payment received through fraudulent means;

4) Payment calculated on the basis of an arithmetic error;

5) Payment calculated by the Agency in reliance on incorrect information; or.

6) Payment of costs that are not eligible for payment.

c) Excess payments may be collected using any of the following procedures:

1) Upon notification of the determination of an excess payment in accordance with subsection (a) of this Section or pursuant to a Board order affirming such determination upon appeal, the Agency may attempt to negotiate a payment schedule with the owner or operator. Nothing in this subsection (c)(1) of this Section shall prohibit the Agency from exercising at any time its options at subsection (c)(2) or (c)(3) of this Section or any other collection methods available to the Agency by law.

2) If an owner or operator submits a subsequent claim for payment after previously receiving an excess payment from the Fund, the Agency may deduct the excess payment amount from any subsequently approved payment amount. If the amount subsequently approved is insufficient to

recover the entire amount of the excess payment, the Agency may use the procedures in this Section or any other collection methods available to the Agency by law to collect the remainder.

3) The Agency may deem an excess payment amount to be a claim or debt owed the Agency, and the Agency may use the Comptroller's Setoff System for collection of the claim or debt in accordance with Section 10.5 of the "State Comptroller Act." [15 ILCS 405/10.05] (1993).

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.614 Audits and Access to Records; Records Retention

a) Owners or operators that submit a report, plan, budget, application for payment, or any other data or document under this Part, and Licensed Professional Engineers and Licensed Professional Geologists that certify such report, plan, budget, application for payment, data, or document, must maintain all books, records, documents, and other evidence directly pertinent to the report, plan, budget, application for payment, data, or document, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.

b) The Agency or any of its duly authorized representatives must have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners, or operators, Licensed Professional Engineers, and Licensed Professional Geologists must provide proper facilities for such access and inspection.

c) Owners, or operators, Licensed Professional Engineers, and Licensed Professional Geologists must maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:

1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;

2) For books, records, documents, or other evidence relating to an appeal, litigation, or other dispute or claim, the expiration of 3 years after the date of the final disposition of the appeal, litigation, or other dispute or claim; or

3) The expiration of any other applicable record retention period.

(Source: Added at ___Ill. Reg. ___________, effective _______________)

SUBPART G: NO FURTHER REMEDIATION LETTERS
AND RECORDING REQUIREMENTS

Section 732.701 Issuance of a No Further Remediation Letter

a) Upon approval by the Agency of a report submitted pursuant to Section 732.202(h)(3) of this Part, a No Further Action site classification report, a Low Priority groundwater monitoring completion report, or a High Priority corrective action completion report, the Agency shall issue to the owner or operator a No Further Remediation Letter. The No Further Remediation Letter shall have the legal effect prescribed in Section 57.10 of the Act. The No Further Remediation Letter shall be denied if the Agency rejects or requires modification of the applicable report.

b) The Agency shall have 120 days after the date of receipt of a complete report to issue a No Further Remediation Letter and may include the No Further Remediation Letter as part of the notification of approval of the applicable report in accordance with Subpart E of this Part. If the Agency fails to send the No Further Remediation Letter within 120 days, it shall be deemed denied by operation of law.

c) The notice of denial of a No Further Remediation Letter by the Agency may be included with the notification of rejection or modification of the applicable report. The reasons for the denial shall be stated in the notification. The denial shall be considered a final determination appealable to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for a No Further Remediation Letter is denied by operation of law, in lieu of an immediate repeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.

d) The Agency shall mail the No Further Remediation Letter by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the postmarked date that the letter is mailed.

e) The Agency at any time may correct errors in No Further Remediation Letters that arise from oversight, omission or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency shall mail the corrected letter to the owner or operator as set forth in subsection (d) ~~(c)~~ of this Section. The corrected letter shall be perfected by recording in accordance with the requirements of Section 732.703 of this Part.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.702 Contents of a No Further Remediation Letter

A No Further Remediation Letter issued pursuant to this Part shall include all of the following:

a) An acknowledgment that the requirements of the applicable report were satisfied;

b) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries, or, for purposes of Section 732.703(d) of this Part, other means sufficient to identify site location with particularity;

c) A statement that the ~~The~~ remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;

d) A statement that the Agency's issuance of the No Further Remediation Letter signifies that:

1) *All corrective action requirements* under Title XVI of the Act and this Part ~~732~~ *applicable to the occurrence have been complied with;*

2) *All corrective action concerning the remediation of the occurrence has been completed; and*

3) *No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment* [415 ILCS 5/57.10(c)(1)-(3)], or, if the No Further Remediation Letter is issued pursuant to Section 732.411(e) of this Part, that the owner or operator has demonstrated to the Agency's satisfaction an inability to obtain access to an off-site property despite best efforts and therefore is not required to perform corrective action on the off-site property in order to satisfy the corrective action requirements of this Part, but is not relieved of responsibility to clean up portions of the release that have migrated off-site;

e) The prohibition under Section 732.703(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;

f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;

g) The recording obligations pursuant to Section 732.703 of this Part;

h) The opportunity to request a change in the recorded land use pursuant to Section 732.703(e) ~~732.704(e)~~ of this Part;

i) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]; and

j) Any other provisions agreed to by the Agency and the owner or operator.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.703 Duty to Record a No Further Remediation Letter

a) Except as provided in subsections (c) and (d) of this Section, an owner or operator receiving a No Further Remediation Letter from the Agency pursuant to this Subpart G shall submit the letter, with a copy of any applicable institutional controls (as set forth in 35 Ill. Adm. Code 742, Subpart J) proposed as part of a corrective action completion report, to the office of the recorder or the registrar of titles ~~Office of the Recorder or the Registrar of Titles~~ of the county in which the site is located within 45 days after receipt of the letter. The letter and any attachments shall be filed in accordance with Illinois law so that they form ~~it forms~~ a permanent part of the chain of title for the site. Upon the lapse of the 45-day period for recording, pursuant to Section 732.704(a)(5) of this Part, the Agency may void an unrecorded No Further Remediation Letter for failure to record it in a timely manner.

b) Except as provided in subsections (c) and (d) of this Section, a No Further Remediation Letter shall be perfected upon the date of the official recording of such letter. The owner or operator shall obtain and submit to the Agency, within 30 days after the official recording date, a certified or otherwise accurate and official copy of the letter and any attachments as recorded. An unperfected No Further Remediation Letter is effective only as between the Agency and the owner or operator. ~~The Agency may, pursuant to Section 732.704(a)(5) of this Part, void a No Further Remediation Letter for failure to perfect in a timely manner in accordance with subsection (a) of this Section.~~

c) For sites located in a highway authority right-of-way ~~an Illinois Department of Transportation (IDOT) right-of-way~~, the following requirements shall apply:

1) In order for the No Further Remediation Letter to be perfected, the highway authority with jurisdiction over the right-of-way ~~IDOT~~ must enter into a Memorandum of Agreement (MOA) with the Agency. The MOA must include, but is not limited to:

A) The name of the site, if any, and any highway authority ~~IDOT~~ or Agency identifiers (e.g., incident number, Illinois inventory identification number);

B) The address of the site (or other description sufficient to identify the location of the site with certainty);

C) A copy of the No Further Remediation Letter for each site subject to the MOA;

D) Procedures for tracking sites subject to the MOA so that all highway authority offices and personnel ~~IDOT bureaus~~ whose responsibilities (e.g., land acquisition, maintenance, construction, utility permits) may affect land use limitations will have notice of any environmental concerns and land use limitations applicable to a site;

E) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the site to any other agency, private person or entity and the steps that will be taken to ensure the long-term integrity of any land use limitations including, but not limited to, the following:

  i) Upon creation of a deed, the recording of the No Further Remediation Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742, with copies of the recorded instruments sent to the Agency within 30 days after recording;

  ii) Any other arrangements necessary to ensure that property that is conveyed or transferred remains subject to any land use limitations approved and implemented as part of the corrective action plan and the No Further Remediation Letter; and

  iii) Notice to the Agency at least 60 days prior to any such intended conveyance or transfer indicating the mechanism(s) to be used to ensure that any land use limitations will be operated or maintained as required in the corrective action plan and No Further Remediation Letter; and

F) Provisions for notifying the Agency if any actions taken by the highway authority ~~IDOT~~ or its permittees at the site result in the

failure or inability to restore the site to meet the requirements of the corrective action plan and the No Further Remediation Letter.

2) Failure to comply with the requirements of this subsection (c) may result in voidance of the No Further Remediation Letter pursuant to Section 732.704 of this Part as well as any other penalties that may be available.

d) For sites located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title, the following requirements shall apply:

1) To perfect a No Further Remediation Letter containing any restriction on future land use(s), the Federal Landholding Entity or Entities responsible for the site must enter into a Land Use Control Memorandum of Agreement (LUC MOA) with the Agency that requires the Federal Landholding Entity to do, at a minimum, the following:

A) Identify the location on the Federally Owned Property of the site subject to the No Further Remediation Letter. Such identification shall be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identify the site in question with particularity;

B) Implement periodic site inspection procedures that ensure oversight by the Federal Landholding Entities of any land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

C) Implement procedures for the Federal Landholding Entities to periodically advise the Agency of continued compliance with all maintenance and inspection requirements set forth in the LUC MOA;

D) Implement procedures for the Federal Landholding Entities to notify the Agency of any planned or emergency changes in land use that may adversely impact land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

E) Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of the site or sites subject to the No Further Remediation Letter, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure the No Further

Remediation Letter is recorded on the chain of title upon transfer of the property; and

F) Attach to the LUC MOA a copy of the No Further Remediation Letter for each site subject to the LUC MOA.

2) To perfect a No Further Remediation letter containing no restriction(s) on future land use, the Federal Landholding Entity shall submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter shall be filed in accordance with Illinois law so it forms a permanent part of the chain of title. The Federal Landholding Entity shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter demonstrating that the recording requirements have been satisfied.

3) Failure to comply with the requirements of this subsection (d) and the LUC MOA may result in voidance of the No Further Remediation Letter as well as any other penalties that may be available.

e) At no time shall any site for which a land use limitation has been imposed as a result of corrective action under this Part be used in a manner inconsistent with the land use limitation set forth in the No Further Remediation Letter. The land use limitation specified in the No Further Remediation Letter may be revised only by the perfecting of a subsequent No Further Remediation Letter, issued pursuant to Title XVII of the Act and regulations thereunder, following further investigation or remediation that demonstrates the attainment of objectives appropriate for the new land use.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.704 Voidance of a No Further Remediation Letter

a) The No Further Remediation Letter shall be voidable if site activities are not carried out in full compliance with the provisions of this Part, and 35 Ill. Adm. Code 742 where applicable, or the remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter include, but shall not be limited to:

1) Any violations of institutional controls or land use restrictions, if applicable;

2) The failure of the owner or operator or any subsequent transferee to operate and maintain preventive, engineering and institutional controls ~~or comply with a groundwater monitoring plan, if applicable~~;

3) Obtaining the No Further Remediation Letter by fraud or misrepresentation;

4) Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based which:

   A) were not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based;

   B) results in the following:

      i) the site no longer satisfying the criteria of a No Further Action site classification;

      ii) the site no longer satisfying the criteria of a Low Priority site classification;

      iii) failing to meet the remediation ~~remedial~~ objectives established for a High Priority site; and

   C) pose a threat to human health or the environment;

5) Upon the lapse of the 45 day period for recording ~~perfection of~~ the No Further Remediation Letter ~~for recording~~, the failure to record and thereby perfect the No Further Remediation Letter in a timely manner;

6) The disturbance ~~Disturbance~~ or removal of contamination left in place under an approved plan;

7) The failure to comply with the requirements of Section 732.703(c) and the Memorandum of Agreement entered in accordance with Section 732.703(c) for a site that is located in a highway authority right-of-way ~~an IDOT right-of-way~~;

8) The failure to comply with the requirements of Section 732.703(d) and the LUC MOA entered in accordance with Section 732.703(d) for a site located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title;

9) The failure to comply with the requirements of Section 732.703(d) of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 732.703(d) within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation

Letter to any entity that will not remain or become a Federal Landholding Entity; or

10) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1015(b)(5) and (c).

b) If the Agency seeks to void a No Further Remediation Letter, it shall provide Notice of Voidance ~~notice~~ to the current title holder of the site and the owner or operator at his or her last known address.

1) The Notice of Voidance ~~notice~~ shall specify the cause for the voidance and describe the facts in support of the cause.

2) The Agency shall mail Notices of Voidance by registered or certified mail, date stamped with return receipt requested.

c) Within 35 days after receipt of the Notice of Voidance, the current title holder and owner or operator of the site at the time the No Further Remediation Letter was issued may appeal the Agency's decision to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.

d) If the Board fails to take final action within 120 days, unless such time period is waived by the petitioner, the petition shall be deemed denied and the petitioner shall be entitled to an appellate court order pursuant to subsection (d) of Section 41 of the Act. The Agency shall have the burden of proof in such action.

1) If the Agency's action is appealed, the action shall not become effective until the appeal process has been exhausted and a final decision is reached by the Board or courts.

A) Upon receiving a notice of appeal, the Agency shall file a Notice of lis pendens with the office of the recorder or the registrar of titles ~~Office of the Recorder or the Registrar of Titles~~ for the county in which the site is located. The notice shall be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site.

B) If the Agency's action is not upheld on appeal, the Notice of lis pendens shall be removed in accordance with Illinois law within 45 days after receipt of the final decision of the Board or the courts.

2) If the Agency's action is not appealed or is upheld on appeal, the Agency shall submit the Notice of Voidance to the office of the recorder or the registrar of titles ~~Office of the Recorder or the Registrar of Titles~~ for the county in which the site is located. The Notice shall be filed in

accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

SUBPART H: MAXIMUM PAYMENT AMOUNTS

Section 732.800 Applicability

a) Methods for Determining Maximum Amounts. This Subpart H provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. All costs associated with conducting corrective action are grouped into the tasks set forth in Sections 732.810 through 732.850 of this Part.

1) The first method for determining the maximum amount that can be paid for each task is to use the maximum amounts for each task set forth in those Sections, and in Section 732.870. In some cases the maximum amounts are specific dollar amounts, and in other cases the maximum amounts are determined on a site-specific basis.

2) As an alternative to using the amounts set forth in Sections 732.810 through 732.850 of this Part, the second method for determining the maximum amounts that can be paid for one or more tasks is bidding in accordance with Section 732.855 of this Part. As stated in that Section, when bidding is used, if the lowest bid for a particular task is less than the amount set forth in Sections 732.810 through 732.850, the amount in Sections 732.810 through 732.850 of this Part may be used instead of the lowest bid.

3) The third method for determining maximum amounts that can be paid from the Fund applies to unusual or extraordinary circumstances. The maximum amounts for such circumstances can be determined in accordance with Section 732.860 of this Part.

b) The costs listed under each task set forth in Sections 732.810 through 732.850 of this Part identify only some of the costs associated with each task. They are not intended as an exclusive list of all costs associated with each task for the purposes of payment from the Fund.

c) This Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. Whether a particular cost is eligible for payment must be determined in accordance with Subpart F of this Part.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.810 UST Removal or Abandonment Costs

Payment for costs associated with UST removal or abandonment of each UST must not exceed the amounts set forth in this Section. Such costs must include, but are not limited to, those associated with the excavation, removal, disposal, and abandonment of UST systems.

| UST Volume | Maximum Total Amount per UST |
| --- | --- |
| 110 – 999 gallons | $2,100 |
| 1,000 – 14,999 gallons | $3,150 |
| 15,000 or more gallons | $4,100 |

(Source: Added at _________ Ill. Reg.____________, effective _________________)

Section 732.815 Free Product or Groundwater Removal and Disposal

Payment for costs associated with the removal and disposal of free product or groundwater must not exceed the amounts set forth in this Section. Such costs must include, but are not limited to, those associated with the removal, transportation, and disposal of free product or groundwater, and the design, construction, installation, operation, maintenance, and closure of free product or groundwater removal systems.

a) Payment for costs associated with each round of free product or groundwater removal via hand bailing or a vacuum truck must not exceed a total of $0.68 per gallon or $200, whichever is greater.

b) Payment for costs associated with the removal of free product or groundwater via a method other than hand bailing or vacuum truck must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part. Such costs must include, but are not limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product and groundwater removal systems.

(Source: Added at _________ Ill. Reg.____________, effective _________________)

Section 732.820 Drilling, Well Installation, and Well Abandonment

Payment for costs associated with drilling, well installation, and well abandonment must not exceed the amounts set forth in this Section.

a) Payment for costs associated with each round of drilling must not exceed the following amounts. Such costs must include, but not be limited to, those associated with mobilization, drilling labor, decontamination, and drilling for the purposes of soil sampling or well installation.

| Type of Drilling | Maximum Total Amount |
| --- | --- |

| | |
|---|---|
| Hollow-stem auger | greater of $23 per foot or $1,500 |
| Direct-push platform | |
| - for sampling or other non-injection purposes | greater of $18 per foot or $1,200 |
| - for injection purposes | greater of $15 per foot or $1,200 |

b) Payment for costs associated with the installation of monitoring wells, excluding drilling, must not exceed the following amounts. Such costs must include, but are not limited to, those associated with well construction and development.

| Type of Borehole | Maximum Total Amount |
|---|---|
| Hollow-stem auger | $16.50/foot (well length) |
| Direct-push platform | $12.50/foot (well length) |

c) Payment for costs associated with the installation of recovery wells, excluding drilling, must not exceed the following amounts. Such costs must include, but are not limited to, those associated with well construction and development.

| Well Diameter | Maximum Total Amount |
|---|---|
| 4 or 6 inches | $25/foot (well length) |
| 8 inches or greater | $41/foot (well length) |

d) Payment for costs associated with the abandonment of monitoring wells must not exceed $10 per foot of well length.

(Source: Added at _________ Ill. Reg.____________, effective _________________)

Section 732.825 Soil Removal and Disposal

Payment for costs associated with soil removal, transportation, and disposal must not exceed the amounts set forth in this Section. Such costs must include, but are not limited to, those associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives or visibly contaminated fill removed pursuant to Section 732.202(f) of this Part, and the purchase, transportation, and placement of material used to backfill the resulting excavation.

a) Payment for costs associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives, visibly contaminated fill removed pursuant to Section 732.202(f) of this Part, and concrete, asphalt, or paving overlying such contaminated soil or fill must not exceed a total of $57 per cubic yard.

1) Except as provided in subsection (a)(2) of this Section, the volume of soil removed and disposed of must be determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 732.202(f) of this Part must be determined in accordance with Section Appendix C of this Part.

b) Payment for costs associated with the purchase, transportation, and placement of material used to backfill the excavation resulting from the removal and disposal of soil must not exceed a total of $20 per cubic yard.

1) Except as provided in subsection (b)(2) of this Section, the volume of backfill material must be determined by the following equation using the dimensions of the backfilled excavation:

(Excavation Length x Excavation Width x Excavation Depth) x 1.05.

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of backfill material used to replace soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 732.202(f) of this Part must be determined in accordance with Section Appendix C of this Part.

c) Payment for costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action must not exceed a total of $6.50 per cubic yard. The volume of soil removed and returned must be determined by the following equation using the dimensions of the excavation resulting from the removal of the soil:

(Excavation Length x Excavation Width x Excavation Depth).

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

(Source: Added at _________ Ill. Reg.____________, effective ________________)

Section 732.830 Drum Disposal

Payment for costs associated with the purchase, transportation, and disposal of 55-gallon drums containing waste generated as a result of corrective action (e.g., boring cuttings, water bailed for well development or sampling, hand-bailed free product) must not exceed the following amounts or a total of $500, whichever is greater.

| Drum Contents | Maximum Total Amount per Drum |
|---|---|
| Solid waste | $250 |
| Liquid waste | $150 |

(Source: Added at ________ Ill. Reg.___________, effective ________________)

Section 732.835 Sample Handling and Analysis

Payment for costs associated with sample handling and analysis must not exceed the amounts set forth in Section Appendix D of this Part. Such costs must include, but are not limited to, those associated with the transportation, delivery, preparation, and analysis of samples, and the reporting of sample results. For laboratory analyses not included in this Section, the Agency may determine reasonable maximum payment amounts on a site-specific basis.

(Source: Added at ________ Ill. Reg.___________, effective ________________)

Section 732.840 Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures

a) Payment for costs associated with concrete, asphalt, and paving installed as an engineered barrier, other than replacement concrete, asphalt, and paving, must not exceed the following amounts. Costs associated with the replacement of concrete, asphalt, and paving used as an engineered barrier are subject to the maximum amounts set forth in subsection (b) of this Section instead of this subsection (a).

| Depth of Material | | Maximum Total Amount per Square Foot |
|---|---|---|
| Asphalt and paving – | 2 inches | $1.65 |
| | 3 inches | $1.86 |
| | 4 inches | $2.38 |
| Concrete – | any depth | $2.38 |

b) Payment for costs associated with the replacement of concrete, asphalt, and paving must not exceed the following amounts:

| Depth of Material | | Maximum Total Amount per Square Foot |
|---|---|---|
| Asphalt and paving – | 2 inches | $1.65 |
| | 3 inches | $1.86 |
| | 4 inches | $2.38 |
| | 6 inches | $3.08 |
| Concrete – | 2 inches | $2.45 |
| | 3 inches | $2.93 |
| | 4 inches | $3.41 |
| | 5 inches | $3.89 |
| | 6 inches | $4.36 |
| | 8 inches | $5.31 |

For depths other than those listed in this subsection, the Agency must determine reasonable maximum payment amounts on a site-specific basis.

c) Payment for costs associated with the destruction or the dismantling and reassembly of above grade structures must not exceed the time and material amounts set forth in Section 732.850 of this Part. The total cost for the destruction or the dismantling and reassembly of above grade structures must not exceed $10,000 per site.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.845 Professional Consulting Services

Payment for costs associated with professional consulting will be reimbursed on time and material basis pursuant to Section 732.850. ~~must not exceed the amounts set forth in this Section.~~Such costs must include, but are not limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; vehicle charges; lodging; meals; and the preparation, review, certification, and submission of all plans, budget plans, reports, applications for payment, and other documentation.

~~a) Early Action and Free Product Removal. Payment of costs for professional consulting services associated with early action and free product removal activities conducted pursuant to Subpart B of this Part must not exceed the following amounts:~~

~~1) Payment for costs associated with preparation for the abandonment or removal of USTs must not exceed a total of $960.~~

~~2) Payment for costs associated with early action field work and field oversight must not exceed a total of $390 per half-day, plus travel costs in~~

accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) If one or more USTs are removed, one half-day for each leaking UST that is removed, not to exceed a total of ten half-days, plus one half-day for each 225 cubic yards, or fraction thereof, of visibly contaminated fill material removed and disposed of in accordance with Section 732.202(f) of this Part;

B) If one or more USTs remain in place, one half-day for every four soil borings, or fraction thereof, drilled pursuant to Section 732.202(h)(2) of this Part; and

C) One half-day if a UST line release is repaired.

3) Payment for costs associated with the preparation and submission of 20-day and 45-day reports, including, but not limited to, field work not covered by subsection (a)(2) of this Section, must not exceed a total of $4,800.

4) Payment for costs associated with the preparation and submission of free product removal plans and the installation of free product removal systems must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part.

5) Payment for costs associated with the field work and field oversight for free product removal must not exceed a total of $390 per half-day, plus travel costs in accordance with subsection (e) of this Section. The Agency must determine the reasonable number of half-days on a site-specific basis.

6) Payment for costs associated with the preparation and submission of free product removal reports must not exceed a total of $1,600 per report.

7) Payment for costs associated with the preparation and submission of reports submitted pursuant to Section 732.202(h)(3) of this Part must not exceed a total of $500.

b) Site Evaluation and Classification. Payment of costs for professional consulting services associated with site evaluation and classification activities conducted pursuant to Subpart C of this Part must not exceed the following amounts:

1) For site evaluation and classifications conducted pursuant to Section 732.307 of this Part, payment for costs associated with the preparation and submission of site classification plans, site classification preparation, field

~~work, field oversight, and the preparation and submission of the site classification completion report must not exceed a total of $9,870.~~

~~2) For site evaluation and classifications conducted pursuant to Section 732.312 of this Part, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part. For owners and operators that elect to proceed in accordance with 35 Ill. Adm. Code 734, costs incurred after the notification of election must be payable from the Fund in accordance with that Part.~~

~~c) Low Priority Corrective Action. Payment of costs for professional consulting services associated with low priority corrective action activities conducted pursuant to Subpart D of this Part must not exceed the following amounts:~~

~~1) Payment for costs associated with the preparation and submission of low priority groundwater monitoring plans must not exceed a total of $3,200.~~

~~2) Payment for costs associated with low priority groundwater monitoring field work and field oversight must not exceed a total of $390 per half-day, up to a maximum of seven half-days, plus travel costs in accordance with subsection (e) of this Section.~~

~~3) Payment for costs associated with the preparation and submission of the first year groundwater monitoring report must not exceed a total of $2,560.~~

~~4) Payment for costs associated with the preparation and submission of the second year groundwater monitoring report must not exceed a total of $2,560.~~

~~5) Payment for costs associated with the preparation and submission of low priority groundwater monitoring completion report must not exceed a total of $2,560.~~

~~d) High Priority Corrective Action. Payment of costs for professional consulting services associated with high priority corrective action activities conducted pursuant to Subpart D of this Part must not exceed the following amounts:~~

~~1) Payment for costs associated with the preparation and submission of investigation plans for sites classified pursuant to Section 732.307 of this Part must not exceed the following:~~

~~A) A total of $3,200 for plans to investigate on-site contamination.~~

~~B) A total of $3,200 for plans to investigate off-site contamination.~~

~~2) Payment for costs associated with field work and field oversight to define the extent of contamination resulting from the release must not exceed a total of $390 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:~~

~~A) One half-day for every four soil borings, or fraction thereof, drilled as part of the investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed must be included in subsection (d)(2)(B) of this Section instead of this subsection (d)(2)(A); and~~

~~B) One half-day for each monitoring well installed as part of the investigation.~~

~~3) Payment for costs associated with well surveys conducted pursuant to Section 732.404(e)(1) of this Part must not exceed a total of $160.00. Payment for costs associated with well surveys conducted pursuant to Section 732.404(e)(2) of this Part must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part.~~

~~4) For conventional technology, payment for costs associated with the preparation and submission of corrective action plans must not exceed a total of $5,120. For alternative technologies, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part.~~

~~5) Payment for costs associated with high priority corrective action field work and field oversight must not exceed the following amounts:~~

~~A) For conventional technology, a total of $390 per half-day, not to exceed one half-day for each 225 cubic yards, or fraction thereof, of soil removed and disposed, plus travel costs in accordance with subsection (e) of this Section.~~

~~B) For alternative technologies, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part.~~

~~6) Development of Tier 2 and Tier 3 Remediation Objectives. Payment of costs for professional consulting services associated with the development of Tier 2 and Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742 must not exceed the following amounts:~~

A) Payment for costs associated with field work and field oversight for the development of remediation objectives must not exceed a total of $390 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

i) One half-day for every four soil borings, or fraction thereof, drilled solely for the purpose of developing remediation objectives. Borings in which monitoring wells are installed must be included in subsection (d)(6)(A)(ii) of this Section instead of this subsection (d)(6)(A)(i); and

ii) One half-day for each monitoring well installed solely for the purpose of developing remediation objectives.

B) Excluding costs set forth in subsection (d)(6)(A) of this Section, payment for costs associated with the development of Tier 2 or Tier 3 remediation objectives must not exceed a total of $800.

7) Payment for costs associated with Environmental Land Use Controls and Highway Authority Agreements used as institutional controls pursuant to 35 Ill. Adm. Code 742 must not exceed a total of $800.00 per Environmental Land Use Control or Highway Authority Agreement.

8) Payment for costs associated with the preparation and submission of high priority corrective action completion reports must not exceed a total of $5,120.

e) Payment for costs associated with travel, including, but not limited to, travel time, per diem, mileage, transportation, vehicle charges, lodging, and meals, must not exceed the following amounts. Costs for travel must be allowed only when specified elsewhere in this Part.

| Distance to Site (land miles) | Maximum Total Amount per calendar day |
|---|---|
| 0 to 29 | $140 |
| 30 to 59 | $220 |
| 60 or more | $300 |

Distances must be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site must be measured from the consultant's office that is closest to the site.

f) If a plan must be amended due to unforeseen circumstances, costs associated with the amendment of the plan and its associated budget plan must not exceed a total of $640.

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

Section 732.850 Payment on Time and Materials Basis

This Section sets forth the maximum amounts that may be paid when payment is allowed on a time and materials basis.

a) Payment for costs associated with activities that have a maximum payment amount set forth in other Sections of this Subpart H (e.g, sample handling and analysis, drilling, well installation and abandonment, or drum disposal, or consulting fees for plans, field work, field oversight, and reports) must not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 732.-860 of this Part.

b) Maximum payment amounts for costs associated with activities that do not have a maximum payment amount set forth in other Sections of this Subpart H must be determined by the Agency on a site-specific basis, provided, however, that personnel costs must not exceed the amounts set forth in Section Appendix E of this Part. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work. Owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

BOARD NOTE: Alternative technology costs in excess of the costs of conventional technology are ineligible for payment from the Fund. See Sections 732.407(b) and 732.606(bb) of this Part.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing.

a) A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the

owner or operator, or the owner's or operator's primary contractor, has a financial interest.

b) The bids must be summarized on forms prescribed and provided by the Agency. The bid summary form, along with copies of the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.

c) The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.860 Unusual or Extraordinary Circumstances

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payment amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. Examples of unusual or extraordinary circumstances may include, but are not limited to, an inability to obtain a minimum of three bids pursuant to Section 732.855 of this Part due to a limited number of persons providing the service needed.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.865 Handling Charges

Payment of handling charges must not exceed the amounts set forth in Section 732.607 of this Part.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.870 Increase in Maximum Payment Amounts

The maximum payment amounts set forth in this Subpart H must be adjusted annually by an inflation factor determined by the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business.

a) The inflation factor must be calculated each year by dividing the latest published annual Implicit Price Deflator for Gross National Product by the annual Implicit Price Deflator for Gross National Product for the previous year. The inflation factor must be rounded to the nearest 1/100th. In no case must the inflation factor be more than five percent in a single year.

b) Adjusted maximum payment amounts must become effective on July 1 of each year and must remain in effect through June 30 of the following year. The first adjustment must be made on July 1, 2006 by multiplying the maximum payment amounts set forth in this Subpart H by the applicable inflation factor. Subsequent adjustments must be made by multiplying the latest adjusted maximum payment amounts by the latest inflation factor.

c) The Agency must post the inflation factors on its website no later than the date they become effective. The inflation factors must remain posted on the website in subsequent years to aid in the calculation of adjusted maximum payment amounts.

d) Adjusted maximum payment amounts must be applied as follows:

1) For costs approved by the Agency in writing prior to the date the costs are incurred, the applicable maximum payment amounts must be the amounts in effect on the date the Agency received the budget in which the costs were proposed. Once the Agency approves a cost, the applicable maximum payment amount for the cost must not be increased (e.g, by proposing the cost in a subsequent budget).

2) For costs not approved by the Agency in writing prior to the date the costs are incurred, including but not limited to early action costs, the applicable maximum payments amounts must be the amounts in effect on the date the costs were incurred.

3) Owners and operators must have the burden of requesting the appropriate adjusted maximum payment amounts in budgets and applications for payment.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.875 Agency Review of Payment Amounts

At least every three years, the Agency must review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report must identify amounts that are not consistent with the prevailing market rates

and suggest changes needed to make the amounts consistent with the prevailing market rates. The Board must publish notice of receipt of the report in the *Environmental Register* and on the Board's web page.

(Source: Added at ________ Ill. Reg.___________, effective _______________)

Section 732.APPENDIX A Indicator Contaminants

| TANK CONTENTS | INDICATOR CONTAMINANTS |
|---|---|
| GASOLINE | Benzene ~~benzene~~ |
| leaded(1), unleaded, premium, and gasohol | Ethylbenzene ~~ethylbenzene~~ |
| | Toluene ~~toluene~~ |
| | Xylene ~~xylene~~ |
| | Methyl tertiary butyl ether (MTBE) |
| MIDDLE DISTILLATE AND HEAVY ENDS | |
| aviation turbine fuels(1) | Benzene ~~benzene~~ |
| jet fuels | Ethylbenzene ~~ethylbenzene~~ |
| | Toluene ~~toluene~~ |
| | Xylene ~~xylene~~ |
| diesel fuels | Acenaphthene |
| gas turbine fuel oils | Anthracene |
| heating fuel oils | Benzo ~~benzo~~(a)anthracene |
| illuminating oils | Benzo ~~benzo~~ (a)pyrene |
| kerosene | Benzo ~~benzo~~ (b)fluoranthene |
| lubricants | Benzo ~~benzo~~ (k)fluoranthene |
| liquid asphalt and dust laying oils | Chrysene |
| cable oils | dibenzo(a,h)anthracene |
| crude oil, crude oil fractions | Fluoranthene |
| petroleum feedstocks | Fluorene |
| petroleum fractions | Indeno ~~indeno~~(1,2,3-c,d)pyrene |
| heavy oils | Naphthalene ~~Napthalene~~ |
| transformer oils(2) | Pyrene |
| hydraulic fluids(3) | Acenaphthylene |
| petroleum spirits(4) | Benzo(g,h,i)perylene |
| mineral spirits(4), Stoddard solvents(4) | Phenanthrene |
| high-flash aromatic naphthas(4) | ~~other non-carcinogenic PNAs (total) (6)~~ |
| VM&P naphthas(4) | |
| moderately volatile hydrocarbon solvents(4) | |
| petroleum extender oils(4) | |
| USED OIL | Screening ~~screening~~ sample(5) |

(1) lead is also an indicator contaminant
(2) the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants
(3) barium is also an indicator contaminant
(4) the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B are also indicator contaminants
(5) used oil indicator contaminants shall be based on the results of a used oil soil sample analysis - refer to Section 732.310(g)
~~(6) acenaphthylene, benzo(g,h,i)perylene and phenanthrene~~

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.APPENDIX~~Appendix~~ B Additional Parameters

Volatiles
1. Benzene
2. Bromoform
3. Carbon tetrachloride
4. Chlorobenzene
5. Chloroform
6. Dichlorobromomethane
7. 1,2-Dichloroethane
8. 1,1-Dichloroethene
9. cis-1,2-Dichloroethylene
10. trans-1,2-Dichloroethylene
11. Dichloromethane (Methylene chloride)
12. 1,2-Dichloropropane
13. 1,3-Dichloropropylene (cis + trans)
14. Ethylbenzene
15. Styrene
16. Tetrachloroethylene
17. Toluene
18. 1,1,1-Trichloroethane
19. 1,1,2-Trichloroethane
20. Trichloroethylene
21. Vinyl chloride
22. Xylenes (total)

Base/Neutrals
1. Bis(2-chloroethyl)ether
2. Bis(2-ethylhexyl)phthalate
3. 1,2-Dichlorobenzene
4. 1,4-Dichlorobenzene
5. Hexachlorobenzene
6. Hexachlorocyclopentadiene
7. *n*-Nitrosodi-*n*-propylamine

8. *n*-Nitrosodiphenylamine
9. 1,2,4-Trichlorobenzene

Polynuclear Aromatics
1. Acenaphthene
2. Anthracene
3. Benzo(a)anthracene
4. Benzo(a)pyrene
5. Benzo(b)fluoranthene
6. Benzo(k)fluoranthene
7. Chrysene
8. Dibenzo(a,h)anthracene
9. Fluoranthene
10. Fluorene
11. Indeno(1,2,3-c,d)pyrene
12. Naphthalene
13. Pyrene
14. Acenaphthylene
15. Benzo(g,h,i)perylene
16. Phenanthrene

~~17. Other Non-Carcinogenic PNAs (total)~~

Metals (total inorganic and organic forms)
1. Arsenic
2. Barium
3. Cadmium
4. Chromium (total)
5. Lead
6. Mercury
7. Selenium

~~Acids~~

~~1. Pentachlorophenol~~

~~2. Phenol (total)~~

~~3. 2,4,6-Trichlorophenol~~

~~Pesticides~~

~~1. Aldrin~~

~~2. alpha-BHC~~

~~3. Chlordane~~

~~4. 4,4'-DDD~~

~~5. 4,4'-DDE~~

~~6. 4,4-DDT~~

~~7. Dieldrin~~

~~8. Endrin~~

~~9. Heptachlor~~

10. Heptachlor epoxide
11. Lindane (gamma-BHC)
12. Toxaphene

Polychlorinated Biphenyls
1. Polychlorinated Biphenyls (as Decachlorobiphenyl)

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.APPENDIXAppendix C Backfill Volumes and Weights

| Volume of Tank in Gallons | Maximum amount of backfill material to be removed in: | | Maximum amount of backfill material to be replaced in: | |
|---|---|---|---|---|
| | Cubic yards | tons | Cubic yards | tons |
| <285 | 54 | 91 | 56 | 94 |
| 285 to 299 | 55 | 92 | 57 | 96 |
| 300 to 559 | 56 | 94 | 58 | 97 |
| 560 to 999 | 67 | 113 | 70 | 118 |
| 1000 to 1049 | 81 | 136 | 87 | 146 |
| 1050 to 1149 | 89 | 150 | 96 | 161 |
| 1150 to 1999 | 94 | 158 | 101 | 170 |
| 2000 to 2499 | 112 | 188 | 124 | 208 |
| 2500 to 2999 | 128 | 215 | 143 | 240 |
| 3000 to 3999 | 143 | 240 | 161 | 270 |
| 4000 to 4999 | 175 | 294 | 198 | 333 |
| 5000 to 5999 | 189 | 318 | 219 | 368 |
| 6000 to 7499 | 198 | 333 | 235 | 395 |
| 7500 to 8299 | 206 | 346 | 250 | 420 |
| 8300 to 9999 | 219 | 368 | 268 | 450 |
| 10,000 to 11,999 | 252 | 423 | 312 | 524 |
| 12,000 to 14,999 | 286 | 480 | 357 | 600 |
| >15,000 | 345 | 580 | 420 | 706 |

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

Site specific information may be used to determine the weight of backfill material if site conditions such as backfill material, soil moisture content, and soil conditions differ significantly from the default values.

BOARD NOTE: The weight of backfill material is calculated by using the default bulk density values listed in the TACO regulations at 35 Ill. Adm. Code 742, Appendix C, Table B. The weight of backfill material to be removed is based on a dry bulk density value of 1.8 g/cm$^3$ for sand and a moisture content of 10 percent, which equals 1.98 g/cm$^3$. The Board has rounded the removed backfill density to 2.0 g/cm$^3$. The weight of backfill material to be replaced is based on a dry bulk density value of 2.0 g/cm$^3$ for gravel.

(Source: Amended at ______ Ill. Reg.___________, effective ________________)

Section 732.APPENDIX D Sample Handling and Analysis

| | Max. Total Amount per Sample |
|---|---|
| | |
| Chemical | |
| BETX Soil with MTBE | $85 |
| BETX Water with MTBE | $81 |
| COD (Chemical Oxygen Demand) | $30 |
| Corrosivity | $15 |
| Flash Point or Ignitability Analysis EPA 1010 | $33 |
| FOC (Fraction Organic Carbon) | $38 |
| Fat, Oil, & Grease (FOG) | $60 |
| LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 732.AppendixB of this Part | $693 |
| Organic Carbon (ASTM-D 2974-87) | $33 |
| Dissolved Oxygen (DO) | $24 |
| Paint Filter (Free Liquids) | $14 |
| PCB / Pesticides (combination) | $222 |
| PCBs | $111 |
| Pesticides | $140 |
| PH | $14 |
| Phenol | $34 |
| Polynuclear Aromatics PNA, or PAH SOIL | $152 |
| Polynuclear Aromatics PNA, or PAH WATER | $152 |
| Reactivity | $68 |
| SVOC - Soil (Semi-volatile Organic Compounds) | $313 |
| SVOC - Water (Semi-volatile Organic Compounds) | $313 |
| TKN (Total Kjeldahl) "nitrogen" | $44 |
| TOC (Total Organic Carbon) EPA 9060A | $31 |
| TPH (Total Petroleum Hydrocarbons) | $122 |
| VOC (Volatile Organic Compound) - Soil (Non-Aqueous) | $175 |
| VOC (Volatile Organic Compound) - Water | $169 |
| | |
| Geo-Technical | |
| Bulk Density ASTM D4292 / D2937 | $22 |
| Ex-Situ Hydraulic Conductivity / Permeability | $255 |
| Moisture Content ASTM D2216-90 / D4643-87 | $12 |
| Porosity | $30 |
| Rock Hydraulic Conductivity Ex-Situ | $350 |

| | |
|---|---|
| Sieve / Particle Size Analysis ASTM D422-63 / D1140-54 | $145 |
| Soil Classification ASTM D2488-90 / D2487-90 | $68 |
| | |
| Metals | |
| Arsenic TCLP Soil | $16 |
| Arsenic Total Soil | $16 |
| Arsenic Water | $18 |
| Barium TCLP Soil | $10 |
| Barium Total Soil | $10 |
| Barium Water | $12 |
| Cadmium TCLP Soil | $16 |
| Cadmium Total Soil | $16 |
| Cadmium Water | $18 |
| Chromium TCLP Soil | $10 |
| Chromium Total Soil | $10 |
| Chromium Water | $12 |
| Cyanide TCLP Soil | $28 |
| Cyanide Total Soil | $34 |
| Cyanide Water | $34 |
| Iron TCLP Soil | $10 |
| Iron Total Soil | $10 |
| Iron Water | $12 |
| Lead TCLP Soil | $16 |
| Lead Total Soil | $16 |
| Lead Water | $18 |
| Mercury TCLP Soil | $19 |
| Mercury Total Soil | $10 |
| Mercury Water | $26 |
| Selenium TCLP Soil | $16 |
| Selenium Total Soil | $16 |
| Selenium Water | $15 |
| Silver TCLP Soil | $10 |
| Silver Total Soil | $10 |
| Silver Water | $12 |
| Metals TCLP Soil (a combination of all RCRA metals) | $103 |
| Metals Total Soil (a combination of all RCRA metals) | $94 |
| Metals Water (a combination of all RCRA metals) | $119 |
| | |
| Soil preparation for Metals TCLP Soil (one fee per sample) | $79 |
| Soil preparation for Metals Total Soil (one fee per sample) | $16 |
| Water preparation for Metals Water (one fee per sample) | $11 |
| | |
| Other | |
| En Core® Sampler, purge-and-trap sampler, or equivalent | $10 |

| sampling device | |
|---|---|
| Sample Shipping (*maximum total amount for shipping all samples collected in a calendar day) | $50* |

(Source: Added at _________ Ill. Reg.___________, effective ________________)

Section 732.APPENDIX E Personnel Titles and Rates

| Title | Degree Required | Ill. License Req'd. | Min. Yrs. Experience | Max. Hourly Rate |
|---|---|---|---|---|
| Engineer I | Bachelor's in Engineering | None | 0 | $75 |
| Engineer II | Bachelor's in Engineering | None | 2 | $85 |
| Engineer III | Bachelor's in Engineering | None | 4 | $100 |
| Professional Engineer | Bachelor's in Engineering | P.E. | 4 | $110 |
| Senior Prof. Engineer | Bachelor's in Engineering | P.E. | 8 | $130 |
| Geologist I | Bachelor's in Geology or Hydrogeology | None | 0 | $70 |
| Geologist II | Bachelor's in Geology or Hydrogeology | None | 2 | $75 |
| Geologist III | Bachelor's in Geology or Hydrogeology | None | 4 | $88 |
| Professional Geologist | Bachelor's in Geology or Hydrogeology | P.G. | 4 | $92 |
| Senior Prof. Geologist | Bachelor's in Geology or Hydrogeology | P.G. | 8 | $110 |
| Scientist I | Bachelor's in a Natural or Physical Science | None | 0 | $60 |
| Scientist II | Bachelor's in a Natural or Physical Science | None | 2 | $65 |
| Scientist III | Bachelor's in a Natural or Physical Science | None | 4 | $70 |
| Scientist IV | Bachelor's in a Natural or Physical Science | None | 6 | $75 |
| Senior Scientist | Bachelor's in a Natural or Physical Science | None | 8 | $85 |
| Project Manager | None | None | 8[1] | $90 |
| Senior Project Manager | None | None | 12[1] | $100 |
| Technician I | None | None | 0 | $45 |
| Technician II | None | None | 2[1] | $50 |
| Technician III | None | None | 4[1] | $55 |
| Technician IV | None | None | 6[1] | $60 |
| Senior Technician | None | None | 8[1] | $65 |
| Account Technician I | None | None | 0 | $35 |
| Account Technician II | None | None | 2[2] | $40 |
| Account Technician III | None | None | 4[2] | $45 |
| Account Technician IV | None | None | 6[2] | $50 |
| Senior Acct. Technician | None | None | 8[2] | $55 |
| Administrative Assistant I | None | None | 0 | $25 |
| Administrative Assistant II | None | None | 2[3] | $30 |
| Administrative Assistant III | None | None | 4[3] | $35 |
| Administrative Assistant IV | None | None | 6[3] | $40 |
| Senior Admin. Assistant | None | None | 8[3] | $45 |
| Draftperson/CAD I | None | None | 0 | $40 |
| Draftperson/CAD II | None | None | 2[4] | $45 |
| Draftperson/CAD III | None | None | 4[4] | $50 |
| Draftperson/CAD IV | None | None | 6[4] | $55 |

| Senior Draftperson/CAD | None | None | 8[4] | $60 |
|---|---|---|---|---|

[1] Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.
[2] Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.
[3] Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.
[4] Equivalent work-related or college level education with significant coursework in drafting or computer aided design ("CAD") can be substituted for all or part of the specified experience requirements.

(Source: Added at _________ Ill. Reg.___________, effective ________________)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND UNDERGROUND STORAGE TANK PROGRAMS

PART 734
PETROLEUM UNDERGROUND STORAGE TANKS
(RELEASES REPORTED ON OR AFTER JUNE 24, 2002)

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734.115 Definitions
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734.125 Agency Authority to Initiate Investigative, Preventive, or Corrective Action
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734.APPENDIX A Indicator Contaminants

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734.APPENDIX C Backfill Volumes
734.APPENDIX D Sample Handling and Analysis
734.APPENDIX E Personnel Titles and Rates

AUTHORITY: Implementing Sections 22.12 and 57 - 57.17 and authorized by Sections 5, 22, 27, and 57.14A of the Environmental Protection Act [415 ILCS 5/5, 22, 22.12, 27, and 57 - 57.17]

SOURCE: Adopted in R04-22/23 at 29 Ill. Reg.____________, effective ______________.

NOTE: Italics denotes statutory language.

SUBPART A: GENERAL

Section 734.100 Applicability

a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to Illinois Emergency Management Agency (IEMA) on or after the effective date of this Part in accordance with the Office of State Fire Marshal (OSFM) regulations. This Part does ~~It does~~ not apply to owners or operators of sites for which the OSFM does not require a report to IEMA or for which the OSFM has issued or intends to issue a certificate of removal or abandonment pursuant to Section 57.5 of the Act [415 ILCS 5/57.5].

1) For releases reported on or after June 24, 2002, but prior to the effective date of these rules, and for owners and operators electing prior to the effective date of this Part to proceed in accordance with Title XVI of the Act as amended by P.A. 92-0554, the Agency may deem that one or more requirements of this Part have been satisfied, based upon activities conducted prior to the effective date of this Part, even though the activities were not conducted in strict accordance with the requirements of this Part. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the effective date of these rules may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

2) Costs incurred pursuant to a budget approved prior to the effective date of these rules must be reimbursed in accordance with the amounts approved in the budget and must not be subject to the maximum payment amounts set forth in Subpart H of this Part.

b) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior

to June 24, 2002, may elect to proceed in accordance with this Part pursuant to Section 734.105 of this Part.

c) Upon the receipt of a corrective action order issued by the OSFM on or after June 24, 2002, and pursuant to Section 57.5(g) of the Act [415 ILCS 5/57.5(g)], where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit, must conduct corrective action in accordance with this Part.

d) Owners or operators subject to this Part by law or by election must proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 734.125 of this Part to expedite investigative, preventive, or corrective action by an owner or operator or to initiate such action.

e) The following underground storage tank systems are excluded from the requirements of this Part:

1) Equipment or machinery that contains petroleum substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks.

2) Any underground storage tank system whose capacity is 110 gallons or less.

3) Any underground storage tank system that contains a de minimis concentration of petroleum substances.

4) Any emergency spill or overfill containment underground storage tank system that is expeditiously emptied after use.

5) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act [33 USC 1251 *et seq*. (1972)].

6) Any UST system holding hazardous waste listed or identified under Subtitle C of the Solid Waste Disposal Act [42 USC 3251 *et seq*.] or a mixture of such hazardous waste or other regulated substances.

Section 734.105 Election to Proceed under Part 734

a) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.

b) Except as provided in Section 734.100(c) of this Part, owners or operators of underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.

c) Owners and operators electing pursuant to this Section to proceed in accordance with this Part must submit with their election a summary of the activities conducted to date and a proposed starting point for compliance with this Part. The Agency must review and approve, reject, or modify the submission in accordance with the procedures contained in Subpart E of this Part. The Agency may deem a requirement of this Part to have been met, based upon activities conducted prior to an owner's or operator's election, even though the activities were not conducted in strict accordance with the requirement. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the election may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

d) If the owner or operator elects to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election must be payable from the Underground Storage Tank Fund in the same manner as was allowable under the law applicable to the owner or operator prior to the notification of election. Corrective action costs incurred after the notification of election must be payable from the Fund in accordance with this Part.

e) This Section does not apply to any release for which the Agency has issued a No Further Remediation Letter.

Section 734.110 Severability

If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication must not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 734.115 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 must be the same as those applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

"Alternative Technology" means a process or technique, other than conventional technology, used to perform a corrective action with respect to soils contaminated by releases of petroleum from an underground storage tank.

"Board" means the Illinois Pollution Control Board.

“Bodily Injury” *means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank* [415 ILCS 5/57.2].

“Community Water Supply” *means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents* [415 ILCS 5/3.145].

“Confirmation of a release” means the confirmation of a release of petroleum in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Confirmed Release" means a release of petroleum that has been confirmed in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Conventional Technology" means a process or technique to perform a corrective action by removal, transportation, and disposal of soils contaminated by a release of petroleum from an underground storage tank in accordance with applicable laws and regulations, but without processing to remove petroleum from the soils.

“Corrective Action” *means activities associated with compliance with the provisions of Sections 57.6 and 57.7* of the Act [415 ILCS 5/57.2].

“County highway” means county highway as defined in the Illinois Highway Code [605 ILCS 5].

“District road” means district road as defined in the Illinois Highway Code [605 ILCS 5].

“Environmental Land Use Control” means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200.

“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 simple by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

“Fill Material” *means non-native or disturbed materials used to bed and backfill around an underground storage tank* [415 ILCS 5/57.2].

“Financial interest” means any ownership interest, legal or beneficial, or being in the relationship of director, officer, employee, or other active participant in the affairs of a party. Financial interest does not include ownership of publicly traded stock.

"Free Product" means a contaminant that is present as a non-aqueous phase liquid for chemicals whose melting point is less than 30° C (e.g., liquid not dissolved in water).

"Full Accounting" means a compilation of documentation to establish, substantiate, and justify the nature and extent of the corrective action costs incurred by an owner or operator.

“Fund” *means the Underground Storage Tank Fund* [415 ILCS 5/57.2].

“GIS” means Geographic Information System.

“GPS” means Global Positioning System.

“Groundwater” *means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure* [415 ILCS 5/3.210].

“Half-day” means four hours, or a fraction thereof, of billable work time. Half-days must be based upon the total number of hours worked in one calendar day. The total number of half-days per calendar day may exceed two.

"Handling Charges" means administrative, insurance, and interest costs and a

reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.

"Heating oil" *means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy, No. 5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker c* [415 ILCS 5/57.2].

"Highway authority" means the Illinois Department of Transportation *with respect to a State highway;* the Illinois State Toll Highway Authority with respect to a toll highway; *the county board with respect to a county highway or a county unit district road if a discretionary function is involved and the county superintendent of highways if a ministerial function is involved; the highway commissioner with respect to a township or district road not in a county or unit road district; or the corporate authorities of a municipality with respect to a municipal street* [605 ILCS 5/2-213].

"Highway Authority Agreement" means an agreement with a highway authority that meets the requirements of 35 Ill. Adm. Code 742.1020.

"IEMA" means the Illinois Emergency Management Agency.

"Indemnification" *means indemnification of an owner or operator for the amount of judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by any agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator* [415 ILCS 5/57.2].

"Indicator contaminants" means the indicator contaminants set forth in Section 734.405 of this Part.

"Institutional Control" means a legal mechanism for imposing a restriction on land use as described in 35 Ill. Adm. Code 742.Subpart J.

"Land Use Control Memorandum of Agreement" 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" *means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering* [415 ILCS 5/57.2].

"Licensed Professional Geologist" *means a person licensed under the laws of the State of Illinois to practice as a professional geologist* [415 ILCS 5/57.2].

"Man-made Pathway" means a constructed route that may allow for the transport of mobile petroleum free-liquid or petroleum-based vapors including but not limited to sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches, or previously excavated and filled areas.

"Monitoring Well" means a water well intended for the purpose of determining groundwater quality or quantity.

"Natural Pathway" means a natural route for the transport of mobile petroleum free-liquid or petroleum-based vapors including but not limited to soil, groundwater, sand seams and lenses, and gravel seams and lenses.

"Non-community water supply" *means a public water supply that is not a community water supply* [415 ILCS 5/3.145].

"Occurrence" *means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank* [415 ILCS 5/57.2].

"OSFM" means the Office of the State Fire Marshal.

"Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (Derived from 42 USC 6991)

BOARD NOTE: A person who voluntarily undertakes action to remove an underground storage tank system from the ground must not be deemed an "operator" merely by the undertaking of such action.

"Owner" means:

> In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;
>
> In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use. (Derived from 42 USC 6991)

"Perfect" or "Perfected" means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 734.715(c) and (d) of this

Part.

"Person" means, for the purposes of interpreting the definitions of the terms "owner" or "operator," an 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 and must include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 USC 6991)

“Petroleum” means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). (Derived from 42 USC 6991)

“Potable” *means generally fit for human consumption in accordance with accepted water supply principles and practices* [415 ILCS 5/3.340].

"Practical quantitation limit" (“PQL”) 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 734.120 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 734.120 of this Part.

“Property Damage” *means physical injury to, destruction of, or contamination of tangible property* owned by a person other than an owner or operator of the UST from which a release of petroleum has occurred and which tangible property is located off the site where the release occurred. Property damage includes *all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank* [415 ILCS 5/57.2].

“Public Water Supply” *means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well*

*structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a "community water supply" or a "non-community water supply"* [415 ILCS 5/3.365].

"Registration" means registration of an underground storage tank with the OSFM in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4].

"Regulated Recharge Area" *means a compact geographic area, as determined by the Board,* [35 Ill. Adm. Code Subtitle F] *the geology of which renders a potable resource groundwater particularly susceptible to contamination* [415 ILCS 5/3.390].

"Regulated Substance" means any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USC 9601(14)] (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act [42 USC 6921 et seq.]), and petroleum. (Derived from 42 USC 6991)

"Release" *means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils* [415 ILCS 5/57.2].

"Residential Tank" means an underground storage tank located on property used primarily for dwelling purposes.

"Residential Unit" means a structure used primarily for dwelling purposes including multi-unit dwellings such as apartment buildings, condominiums, cooperatives, or dormitories.

"Right-of-way" means *the land, or interest therein, acquired for or devoted to a highway* [605 ILCS 5/2-217].

"Setback Zone" *means a geographic area, designated pursuant to the Act* [415 ILCS 5/14.1, 5/14.2, 5/14.3] *or regulations* [35 Ill. Adm. Code Subtitle F], *containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwater* [415 ILCS 5/3.450].

"Site" *means any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way* [415 ILCS 5/57.2].

“State highway” means state highway as defined in the Illinois Highway Code [605 ILCS 5].

“Street” means street as defined in the Illinois Highway Code [605 ILCS 5].

"Surface Body of Water" or "Surface Water Body" means a natural or man-made body of water on the ground surface including but not limited to lakes, ponds, reservoirs, retention ponds, rivers, streams, creeks, and drainage ditches. Surface body of water does not include puddles or other accumulations of precipitation, run-off, or groundwater in UST excavations.

“Toll highway” means toll highway as defined in the Toll Highway Act, 605 ILCS 10.

“Township road” means township road as defined in the Illinois Highway Code [605 ILCS 5].

"Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected thereto:

> Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
>
> Septic tank;
>
> Pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 [49 USC App. 1671 et seq.], or the Hazardous Liquid Pipeline Safety Act of 1979 [49 USC App. 2001 et seq.], or which is an intrastate pipeline facility regulated under State laws as provided in either of these provisions of law, and that is determined by the Secretary of Energy to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
>
> Surface impoundment, pit, pond, or lagoon;
>
> Storm water or waste water collection system;
>
> Flow-through process tank;
>
> Liquid trap or associated gathering lines directly related to oil or gas

production and gathering operations; or

Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated on or above the surface of the floor. (Derived from 42 USC § 6991)

*The term "underground storage tank" shall also mean an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit* [415 ILCS 5/57.2].

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wellhead Protection Area" means the wellhead protection area of a community water supply well as determined under the Agency's wellhead protection program pursuant to 42 USC § 300h-7.

Section 734.120 Incorporations by Reference

a) The Board incorporates the following material by reference:

ASTM. American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 (610) 832-9585

ASTM D 2487-93, Standard Test Method for Classification of Soils for Engineering Purposes, approved September 15, 1993.

NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 605-6000 or (800) 553-6847

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

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

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

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

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

"Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition (September 1986), as amended by Updates I, IIA, III, and IIIA (Final Update IIIA dated April 1998), Doc. No. 955-001-00000-1.

b) This Section incorporates no later editions or amendments.

Section 734.125 Agency Authority to Initiate Investigative, Preventive, or Corrective Action

a) *The Agency has the authority to do either of the following:*

1) *Provide notice to the owner or operator, or both, of an underground storage tank whenever there is a release or substantial threat of a release of petroleum from such tank. Such notice shall include the identified investigation or response action and an opportunity for the owner or operator, or both, to perform the response action.*

2) *Undertake investigative, preventive or corrective action whenever there is a release or a substantial threat of a release of petroleum from an underground storage tank* [415 ILCS 5/57.12(c)].

b) *If notice has been provided under this Section, the Agency has the authority to require the owner or operator, or both, of an underground storage tank to undertake preventive or corrective action whenever there is a release or substantial threat of a release of petroleum from such tank* [415 ILCS 5/57.12(d)].

Section 734.130 Licensed Professional Engineer or Licensed Professional Geologist Supervision

All investigations, plans, budgets, and reports conducted or prepared under this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part, must be conducted or prepared under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist. Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part must be prepared under the supervision of a Licensed Professional Engineer.

Section 734.135 Form and Delivery of Plans, Budgets, and Reports; Signatures and Certifications

a) All plans, budgets, and reports must be submitted to the Agency on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format.

b) All plans, budgets, and reports must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt executed by Agency personnel acknowledging receipt of documents by hand delivery or messenger or from certified or registered mail.

c) All plans, budgets, and reports must be signed by the owner or operator and list the owner's or operator's full name, address, and telephone number.

d) All plans, budgets, and reports submitted pursuant to this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part, must contain the following certification from a Licensed Professional Engineer or Licensed Professional Geologist. Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part must contain the following certification from a Licensed Professional Engineer.

> I certify under penalty of law that all activities that are the subject of this plan, budget, or report were conducted under my supervision or were conducted under the supervision of another Licensed Professional Engineer or Licensed Professional Geologist and reviewed by me; that this plan, budget, or report and all attachments were prepared under my supervision; that, to the best of my knowledge and belief, the work described in the plan, budget, or report has been completed in accordance with the Environmental Protection Act [415 ILCS 5], 35 Ill. Adm. Code 734, and generally accepted standards and practices of my profession; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or representations to the Agency, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

e) Except in the case of sites subject to Section 734.715(c) or (d) of this Part, reports documenting the completion of corrective action at a site must contain a form addressing site ownership. At a minimum, the form must identify the land use limitations proposed for the site, if land use limitations are proposed; the site's common address, legal description, and real estate tax/parcel index number; and the names and addresses of all title holders of record of the site or any portion of the site. The form must also contain the following certification, by original signature, of all title holders of record of the site or any portion of the site, or the agent(s) of such person(s):

I hereby affirm that I have reviewed the attached report entitled
and dated , and that I accept the terms and conditions set forth therein, including any land use limitations, that apply to property I own. I further affirm that I have no objection to the recording of a No Further Remediation Letter containing the terms and conditions identified in the report upon the property I own.

Section 734.140 Development of Remediation Objectives

The owner or operator must propose remediation objectives for the applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742.

BOARD NOTE: Several provisions of this Part require the owner or operator to determine whether contamination exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742. Please note that these requirements do not limit the owner's or operator's ability to use Tier 2 or Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742.

a) The owner or operator may develop remediation objectives at any time during site investigation or corrective action. Prior to developing Tier 2 or Tier 3 remediation objectives the owner or operator must propose the development of remediation objectives in the appropriate site investigation plan or corrective action plan. Documentation of the development of remediation objectives must be included as a part of the appropriate plan or report.

b) Any owner or operator intending to seek payment from the Fund shall, prior to the development of Tier 2 or Tier 3 remediation objectives, propose the costs for such activities in the appropriate budget. The costs should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part.

c) Upon the Agency's approval of a plan that includes the development of remediation objectives, the owner or operator must proceed to develop remediation objectives in accordance with the plan.

d) If, following the approval of any plan or associated budget that includes the development of remediation objectives, an owner or operator determines that a revised plan or budget is necessary, the owner or operator must submit, as applicable, an amended plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

e) Notwithstanding any requirement under this Part for the submission of a plan or budget that includes the development of remediation objectives, an owner or operator may proceed to develop remediation objectives prior to the submittal or approval of an otherwise required plan or budget. However, any such plan or budget must be submitted to the Agency for review and approval, rejection, or

modification in accordance with the procedures contained in Subpart E of this Part prior to receiving payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (e) of this Section are advised that they may not be entitled to full payment. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

Section 734.145 Notification of Field Activities

The Agency may require owners and operators to notify the Agency of field activities prior to the date the field activities take place. The notice must include information prescribed by the Agency, and may include, but is not be limited to, a description of the field activities to be conducted, the person conducting the activities, and the date, time, and place the activities will be conducted. The Agency may, but is not required to, allow notification by telephone, facsimile, or electronic mail. This Section does not apply to activities conducted within 45 days plus 14 days after initial notification to IEMA of a release, or to free product removal activities conducted within 45 days plus 14 days after the confirmation of the presence of free product.

Section 734.150 LUST Advisory Committee

Once each calendar quarter the Agency must meet with a LUST Advisory Committee to discuss the Agency's implementation of this Part, provided that the Agency or members of the Committee raise one or more issues for discussion. The LUST Advisory Committee must consist of the following individuals: one member designated by the Illinois Petroleum Marketers Association, ~~one~~ two members designated by the Illinois Petroleum Council, one member designated by the American Consulting Engineers Council of Illinois, one member designated by the Illinois Society of Professional Engineers, one member designated by the Illinois Chapter of the American Institute of Professional Geologists, one member designated by the Professionals of Illinois for the Protection of the Environment, one member designated by the Illinois Association of Environmental Laboratories, one member designated by the Illinois Environmental Regulatory Group, one member designated by the Office of the State Fire Marshal, and one member designated by the Illinois Department of Transportation. Members of the LUST Advisory Committee must serve without compensation.

SUBPART B: EARLY ACTION

Section 734.200 General

*Owners and operators of underground storage tanks shall, in response to all confirmed releases of petroleum, comply with all applicable statutory and regulatory reporting and response requirements* [415 ILCS 5/57.6(a)]. No work plan or corresponding budget must be required for conducting early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product.

Section 734.205 Agency Authority to Initiate

Pursuant to Sections 734.100 or 734.125 of this Part, the Agency must have the authority to require or initiate early action activities in accordance with the remainder of this Subpart B.

Section 734.210 Early Action

a) Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions within 24 hours after the release:

1) Report the release to IEMA (e.g., by telephone or electronic mail);

2) Take immediate action to prevent any further release of the regulated substance to the environment; and

3) Identify and mitigate fire, explosion and vapor hazards.

b) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must perform the following initial abatement measures:

1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;

2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator must comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;

5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.

c) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.

d) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information must include, but is not limited to, the following:

1) Data on the nature and estimated quantity of release;

2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;

3) Results of the site check required at subsection (b)(5) of this Section; and

4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part.

e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.

f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal* (see 41 Ill. Adm. Code 160, 170, 180, 200). *The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment of early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank* [415 ILCS 5/57.6(b)]. Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank.

g) For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.

BOARD NOTE: Owners or operators seeking payment from the Fund are to first notify IEMA of a suspected release and then confirm the release within 14 days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and 170.580. The Board is setting the beginning of the payment period at subsection (g) to correspond to the notification and confirmation to IEMA.

h) The owner or operator must determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

1) At a minimum, for each UST that is removed, the owner or operator must collect and analyze soil samples as indicated in subsections (h)(1)(A). The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.

A) One sample must be collected from each UST excavation wall. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified on a wall, the sample must be collected from the center of the wall length at a point located one-third of the distance from the excavation floor to the ground surface. For walls that exceed 20 feet in length, one sample must be collected for each 20 feet of wall length, or fraction thereof, and the samples must be evenly spaced along the length of the wall.

B) Two samples must be collected from the excavation floor below each UST with a volume of 1,000 gallons or more. One sample must be collected from the excavation floor below each UST with a volume of less than 1,000 gallons. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If areas of contamination cannot be identified, the samples must be collected from below each end of the UST if its volume is 1,000 gallons or more, and

from below the center of the UST if its volume is less than 1,000 gallons.

C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must be collected from a location representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a length of piping run excavation being sampled, the sample must be collected from the center of the length being sampled. For UST piping abandoned in place, the samples must be collected in accordance with subsection (h)(2)(B) of this Section.

D) If backfill is returned to the excavation, one representative sample of the backfill must be collected for each 100 cubic yards of backfill returned to the excavation.

E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.

2) At a minimum, for each UST that remains in place, the owner or operator must collect and analyze soil samples as follows. The Agency must allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.

A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for each 20 feet of side length, or fraction thereof, and the borings must be evenly spaced along the side. The borings must be drilled in the native soil surrounding the UST(s) and as close practicable to, but not more than five feet from, the backfill material surrounding the UST(s). Each boring must be drilled to a depth of 30 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 30 feet below grade.

B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.

C) If auger refusal occurs during the drilling of a boring required under subsection (h)(2)(A) or (B) of this Section, the boring must be drilled in an alternate location that will allow the boring to be drilled to the required depth. The alternate location must not be more than five feet from the boring's original location. If auger refusal occurs during drilling of the boring in the alternate location, drilling of the boring must cease and the soil samples collected from the location in which the boring was drilled to the greatest depth must be analyzed for the applicable indicator contaminants.

D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) of this Section are met, within 30 days after the completion of early action activities the owner or operator must submit a report demonstrating compliance with those remediation objectives. The report must include, but not be limited to, the following:

A) A characterization of the site that demonstrates compliance with the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

B) Supporting documentation, including, but not limited to, the following:

i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);

ii) Analytical results, chain of custody forms, and laboratory certifications for all samples collected pursuant to this subsection (h); and

iii) A table comparing the analytical results of all samples collected pursuant to this subsection (h) to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

C) A site map containing only the information required under Section 734.440 of this Part.

4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, the owner or operator must continue in accordance with Subpart C of this Part:

A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);

B) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or

C) There is evidence that contaminated soils may be or may have been in contact with groundwater, unless:

i) The owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping; and

ii) The Agency determines that further groundwater investigation is not necessary.

Section 734.215 Free Product Removal

a) Under any circumstance in which conditions at a site indicate the presence of free product, owners or operators must remove, to the maximum extent practicable, free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water, while initiating or continuing any actions required pursuant to this Part or other applicable laws or regulations. In meeting the requirements of this Section, owners or operators must:

1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, State, and federal regulations;

2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

3) Handle any flammable products in a safe and competent manner to prevent fires or explosions;

4) Within 45 days after the confirmation of presence of free product from a UST, prepare and submit to the Agency a free product removal report. The report must, at a minimum, provide the following:

A) The name of the persons responsible for implementing the free product removal measures;

B) The estimated quantity, type and thickness of free product observed or measured in wells, boreholes, and excavations;

C) The type of free product recovery system used;

D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

E) The type of treatment applied to, and the effluent quality expected from, any discharge;

F) The steps that have been or are being taken to obtain necessary permits for any discharge;

G) The disposition of the recovered free product;

H) The steps taken to identify the source and extent of the free product; and

I) A schedule of future activities necessary to complete the recovery of free product still exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or still present as a sheen on groundwater in the tank removal excavation or on surface water. The schedule must include, but not be limited to, the submission of plans and budgets required pursuant to subsections (c) and (d) of this Section; and

5) If free product removal activities are conducted more than 45 days after confirmation of the presence of free product, submit free product removal reports quarterly or in accordance with a schedule established by the Agency.

b) For purposes of payment from the Fund, owners or operators are not required to obtain Agency approval for free product removal activities conducted within 45 days after the confirmation of the presence of free product.

c) If free product removal activities will be conducted more than 45 days after the confirmation of the presence of free product, the owner or operator must submit to the Agency for review a free product removal plan. The plan must be submitted with the free product removal report required under subsection (a)(4) of this Section. Free product removal activities conducted more than 45 days after the confirmation of the presence of free product must not be considered early action activities.

d) Any owner or operator intending to seek payment from the Fund must, prior to conducting free product removal activities more than 45 days after the confirmation of the presence of free product, submit to the Agency a free product removal budget with the corresponding free product removal plan. The budget must include, but not be limited to, an estimate of all costs associated with the development, implementation, and completion of the free product removal plan, excluding handling charges. The budget should be consistent with the eligible and ineligible costs listed in Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget the Agency may require a comparison between the costs of the proposed method of free product removal and other methods of free product removal.

e) Upon the Agency's approval of a free product removal plan, or as otherwise directed by the Agency, the owner or operator must proceed with free product removal in accordance with the plan.

f) Notwithstanding any requirement under this Part for the submission of a free product removal plan or free product removal budget, an owner or operator may

proceed with free product removal in accordance with this Section prior to the submittal or approval of an otherwise required free product removal plan or budget. However, any such removal plan and budget plan must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (f) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

g) If, following approval of any free product removal plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to complete free product removal, the owner or operator must submit, as applicable, an amended free product removal plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended removal plan and budget plan in accordance with Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all free product removal plans and associated budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

Section 734.220 Application for Payment of Early Action Costs

Owners or operators intending to seek payment for early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product, are not required to submit a corresponding budget plan. The application for payment may be submitted to the Agency upon completion of the early action activities in accordance with the requirements at Subpart F of this Part, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product. Applications for payment of free product removal activities conducted more than 45 days after confirmation of the presence of free product may be submitted upon completion of the free product removal activities.

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

Section 734.300 General

Unless the owner or operator submits a report pursuant to Section 734.210(h)(3) of this Part demonstrating that the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, the owner or operator must investigate the

site, conduct corrective action, and prepare plans, budgets, and reports in accordance with the requirements of this Subpart C.

Section 734.305 Agency Authority to Initiate

Pursuant to Section 734.100 or 734.125 of this Part, the Agency has the authority to require or initiate site investigation and corrective action activities in accordance with the remainder of this Subpart C.

Section 734.310 Site Investigation – General

The investigation of the release must proceed in three stages as set forth in this Part. If, after the completion of any stage, the extent of the soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release has been defined, the owner or operator must cease investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part.

a) Prior to conducting site investigation activities pursuant to Section 734.315, 734.320, or 734.325 of this Part, the owner or operator must submit to the Agency for review a site investigation plan. The plan must be designed to satisfy the minimum requirements set forth in the applicable Section and to collect the information required to be reported in the site investigation plan for the next stage of the site investigation, or in the site investigation completion report, whichever is applicable.

b) Any owner or operator intending to seek payment from the Fund must, prior to conducting any site investigation activities, submit to the Agency a site investigation budget with the corresponding site investigation plan. The budget must include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the site investigation plan, excluding handling charges and costs associated with monitoring well abandonment. Costs associated with monitoring well abandonment must be included in the corrective action budget. Site investigation budgets should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. A budget for a Stage 1 site investigation must consist of a certification signed by the owner or operator, and by a Licensed Professional Engineer or Licensed Professional Geologist, that the costs of the Stage 1 site investigation will not exceed the amounts set forth in Subpart H of this Part.

c) *Upon the Agency's approval of a site investigation plan, or as otherwise directed by the Agency, the owner or operator shall conduct a site investigation in accordance with the plan* [415 ILCS 5/57.7(a)(4)].

d) If, following the approval of any site investigation plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to determine, within the area addressed in the applicable stage of the investigation, the nature, concentration, direction of movement, rate of movement, and extent of the contamination, or the significant physical features of the site and surrounding area that may affect contaminant transport and risk to human health and safety and the environment, the owner or operator must submit, as applicable, an amended site investigation plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all site investigation plans and associated budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

e) Notwithstanding any requirement under this Part for the submission of a site investigation plan or budget, an owner or operator may proceed to conduct site investigation activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required site investigation plan or budget. However, any such plan or budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to receiving payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (e) of this Section are advised that they may not be entitled to full payment. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

Section 734.315 Stage 1 Site Investigation

The Stage 1 site investigation must be designed to gather initial information regarding the extent of on-site soil and groundwater contamination that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

a) The Stage 1 site investigation must consist of the following:

1) Soil investigation.

A) Up to four borings must be drilled around each independent UST field where one or more UST excavation samples collected pursuant to 734.210(h), excluding backfill samples, exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. One additional boring must be drilled as close as practicable to each UST field if a

groundwater investigation is not required under subsection (a)(2) of this Section. The borings must be advanced through the entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings must be drilled below the groundwater table only if site- specific conditions warrant.

B) Up to two borings must be drilled around each UST piping run where one or more piping run samples collected pursuant to Section 734.210(h) exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. One additional boring must be drilled as ~~a~~ close as practicable to each UST piping run if a groundwater investigation is not required under subsection (a)(2) of this Section. The borings must be advanced through the entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings must be drilled below the groundwater table only if site-specific conditions warrant.

C) One soil sample must be collected from each five-foot interval of each boring drilled pursuant to subsections (a)(1)(A) and (B) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval. All samples must be analyzed for the applicable indicator contaminants.

2) Groundwater investigation.

A) A groundwater investigation is required under the following circumstances:

i) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

ii) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or

iii) There is evidence that contaminated soils may be or may have been in contact with groundwater, except that, if the owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and

demonstrates to the Agency that no recharge is evident during the 24 hours following pumping, the owner or operator does not have to complete a groundwater investigation, unless the Agency's review reveals that further groundwater investigation is necessary.

B) If a groundwater investigation is required, the owner or operator must install five groundwater monitoring wells. One monitoring well must be installed in the location where groundwater contamination is most likely to be present. The four remaining wells must be installed at the property boundary line or 200 feet from the UST system, whichever is less, in opposite directions from each other. The wells must be installed in locations where they are most likely to detect groundwater contamination resulting from the release and provide information regarding the groundwater gradient and direction of flow.

C) One soil sample must be collected from each five-foot interval of each monitoring well installation boring drilled pursuant to subsection (a)(2)(B) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval. All soil samples exhibiting signs of contamination must be analyzed for the applicable indicator contaminants. For borings that do not exhibit any signs of soil contamination, samples from the following intervals must be analyzed for the applicable indicator contaminants, provided that the samples must not be analyzed if other soil sampling conducted to date indicates that soil contamination does not extend to the location of the monitoring well installation boring:

i) The five-foot intervals intersecting the elevations of soil samples collected pursuant to Section 734.210(h), excluding backfill samples, that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

ii) The five-foot interval immediately above each five-foot interval identified in subsection (a)(2)(C)(i) of this Section; and

iii) The five-foot interval immediately below each five-foot interval identified in subsection (a)(2)(C)(i) of this Section.

D) Following the installation of the groundwater monitoring wells, groundwater samples must be collected from each well and analyzed for the applicable indicator contaminants.

E) As a part of the groundwater investigation an in-situ hydraulic conductivity test must be performed in the first fully saturated layer below the water table. If multiple water bearing units are encountered, an in-situ hydraulic conductivity test must be performed on each such unit.

i) Wells used for hydraulic conductivity testing must be constructed in a manner that ensures the most accurate results.

ii) The screen must be contained within the saturated zone.

3) An initial water supply well survey in accordance with Section 734.445(a) of this Part.

b) The Stage 1 site investigation plan must consist of a certification signed by the owner or operator, and by a Licensed Professional Engineer or Licensed Professional Geologist, that the Stage 1 site investigation will be conducted in accordance with this Section.

c) If none of the samples collected as part of the Stage 1 site investigation exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If one or more of the samples collected as part of the Stage 1 site investigation exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, within 30 days after completing the Stage 1 site investigation the owner or operator must submit to the Agency for review a Stage 2 site investigation plan in accordance with Section 734.320 of this Part.

Section 734.320 Stage 2 Site Investigation

The Stage 2 site investigation must be designed to complete the identification of the extent of soil and groundwater contamination at the site that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The investigation of any off-site contamination must be conducted as part of the Stage 3 site investigation.

a) The Stage 2 site investigation must consist of the following:

1) The additional drilling of soil borings and collection of soil samples necessary to identify the extent of soil contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. Soil samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants; and

2) The additional installation of groundwater monitoring wells and collection of groundwater samples necessary to identify the extent of groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. If soil samples are collected from a monitoring well boring, the samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

b) The Stage 2 site investigation plan must include, but not be limited to, the following:

1) An executive summary of Stage 1 site investigation activities and actions proposed in the Stage 2 site investigation plan to complete the identification of the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

2) A characterization of the site and surrounding area, including, but not limited to, the following:

A) The current and projected post-remediation uses of the site and surrounding properties; and

B) The physical setting of the site and surrounding area including, but not limited to, features relevant to environmental, geographic, geologic, hydrologic, hydrogeologic, and topographic conditions;

3) The results of the Stage 1 site investigation, including but not limited to the following:

A) One or more site maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater

monitoring wells completed to date, and the groundwater flow direction;

B) One or more site maps meeting the requirements of Section 734.440 that show the locations of all samples collected to date and analyzed for the applicable indicator contaminants;

C) One or more site maps meeting the requirements of Section 734.440 that show the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

D) One or more cross-sections of the site that show the geology of the site and the horizontal and vertical extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

E) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of the Stage 1 site investigation;

F) One or more tables comparing the analytical results of the samples collected to date to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

G) Water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of the Stage 1 site investigation; and

H) For soil borings and groundwater monitoring wells installed as part of the Stage 1 site investigation, soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part; and

4) A Stage 2 sampling plan that includes, but is not limited to, the following:

A) A narrative justifying the activities proposed as part of the Stage 2 site investigation;

B) A map depicting the location of additional soil borings and groundwater monitoring wells proposed to complete the identification of the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation

objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

C) The depth and construction details of the proposed soil borings and groundwater monitoring wells.

c) If the owner or operator proposes no site investigation activities in the Stage 2 site investigation plan and none of the applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, upon submission of the Stage 2 site investigation plan the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If the owner or operator proposes no site investigation activities in the Stage 2 site investigation plan and applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, within 30 days after the submission of the Stage 2 site investigation plan the owner or operator must submit to the Agency for review a Stage 3 site investigation plan in accordance with Section 734.325 of this Part.

d) If the results of a Stage 2 site investigation indicate that none of the applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, upon completion of the Stage 2 site investigation the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If the results of the Stage 2 site investigation indicate that applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, within 30 days after the completion of the Stage 2 site investigation the owner or operator must submit to the Agency for review a Stage 3 site investigation plan in accordance with Section 734.325 of this Part.

Section 734.325 Stage 3 Site Investigation

The Stage 3 site investigation must be designed to identify the extent of off-site soil and groundwater contamination that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

a) The Stage 3 site investigation must consist of the following:

1) The drilling of soil borings and collection of soil samples necessary to identify the extent of soil contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. Soil

samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants; and

2) The installation of groundwater monitoring wells and collection of groundwater samples necessary to identify the extent of groundwater contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. If soil samples are collected from a monitoring well boring, the samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

b) The Stage 3 site investigation plan must include, but is not limited to, the following:

1) An executive summary of Stage 2 site investigation activities and actions proposed in the Stage 3 site investigation plan to identify the extent of soil and groundwater contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

2) The results of the Stage 2 site investigation, including but not limited to the following:

A) One or more site maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater monitoring wells completed as part of the Stage 2 site investigation;

B) One or more site maps meeting the requirements of Section 734.440 that show the locations of all groundwater monitoring wells completed to date, and the groundwater flow direction;

C) One or more site maps meeting the requirements of Section 734.440 that show the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

D) One or more cross-sections of the site that show the geology of the site and the horizontal and vertical extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

E) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of the Stage 2 site investigation;

F) One or more tables comparing the analytical results of the samples collected to date to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

G) For soil borings and groundwater monitoring wells installed as part of the Stage 2 site investigation, soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part; and

3) A Stage 3 sampling plan that includes, but is not limited to, the following:

A) A narrative justifying the activities proposed as part of the Stage 3 site investigation;

B) A map depicting the location of soil borings and groundwater monitoring wells proposed to identify the extent of soil and groundwater contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

C) The depth and construction details of the proposed soil borings and groundwater monitoring wells.

c) Upon completion of the Stage 3 site investigation the owner or operator must proceed with the submission of a site investigation completion report that meets the requirements of Section 734.330 of this Part.

Section 734.330 Site Investigation Completion Report

*Within 30 days after completing the site investigation, the owner or operator shall submit to the Agency for approval a site investigation completion report* [415 ILCS 5/57.7(a)(5)]. At a minimum, a site investigation completion report must contain the following:

a) A history of the site with respect to the release;

b) A description of the site, including but not limited to the following:

1) General site information, including but not limited to the site's and surrounding area's regional location; geography, hydrology, geology, hydrogeology, and topography; existing and potential migration pathways and exposure routes; and current and projected post-remediation uses;

2) One or more maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater monitoring wells completed as part of site investigation, and the groundwater flow direction;

3) One or more maps showing the horizontal extent of soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

4) One or more map cross-sections showing the horizontal and vertical extent of soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

5) Soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part for all borings drilled and all groundwater monitoring wells installed as part of site investigation;

6) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of site investigation;

7) A table comparing the analytical results of samples collected as part of site investigation to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

8) The water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of site investigation; and

c) A conclusion that includes, but is not limited to, an assessment of the sufficiency of the data in the report.

Section 734.335 Corrective Action Plan

a) *If any of the applicable indicator contaminants exceed the* most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants*, within 30 days after the Agency approves the site investigation completion report*, *the owner or operator shall submit to the Agency for approval*

*a corrective action plan designed to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release.* [415 ILCS 5/57.7(b)(2)]. The corrective action plan must address all media impacted by the UST release and must contain, at a minimum, the following information:

1) An executive summary that identifies the objectives of the corrective action plan and the technical approach to be utilized to meet such objectives. At a minimum, the summary must include the following information:

   A) The major components (e.g., treatment, containment, removal) of the corrective action plan;

   B) The scope of the problems to be addressed by the proposed corrective action, including but not limited to the specific indicator contaminants and the physical area; and

   C) A schedule for implementation and completion of the plan;

2) A statement of the remediation objectives proposed for the site;

3) A description of the remedial technologies selected and how each fits into the overall corrective action strategy, including but not limited to the following:

   A) The feasibility of implementing the remedial technologies;

   B) Whether the remedial technologies will perform satisfactorily and reliably until the remediation objectives are achieved;

   C) A schedule of when the remedial technologies are expected to achieve the applicable remediation objectives and a rationale for the schedule; and

   D) For alternative technologies, the information required under Section 734.340 of this Part;

4) A confirmation sampling plan that describes how the effectiveness of the corrective action activities will be monitored or measured during their implementation and after their completion;

5) A description of the current and projected future uses of the site;

6) A description of any engineered barriers or institutional controls proposed for the site that will be relied upon to achieve remediation objectives. The

description must include, but not be limited to, an assessment of their long-term reliability and operating and maintenance plans;

7) A description of water supply well survey activities required pursuant to Sections 734.445(b) and (c) of this Part that were conducted as part of site investigation; and

8) Appendices containing references and data sources relied upon in the report that are organized and presented logically, including but not limited to field logs, well logs, and reports of laboratory analyses.

b) Any owner or operator intending to seek payment from the Fund must, prior to conducting any corrective action activities beyond site investigation, submit to the Agency a corrective action budget with the corresponding corrective action plan. The budget must include, but is not limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the corrective action plan, excluding handling charges. The budget should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget the Agency may require a comparison between the costs of the proposed method of remediation and other methods of remediation.

c) *Upon the Agency's approval of a corrective action plan, or as otherwise directed by the Agency, the owner or operator shall proceed with corrective action in accordance with the plan* [415 ILCS 5/57.7(b)(4)].

d) Notwithstanding any requirement under this Part for the submission of a corrective action plan or corrective action budget, except as provided at Section 734.340 of this Part, an owner or operator may proceed to conduct corrective action activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required corrective action plan or budget. However, any such plan and budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

e) If, following approval of any corrective action plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to mitigate any threat to human health, human safety, or the environment resulting

from the underground storage tank release, the owner or operator must submit, as applicable, an amended corrective action plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all corrective action plans and associated budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

Section 734.340 Alternative Technologies

a) An owner or operator may choose to use an alternative technology for corrective action in response to a release. Corrective action plans proposing the use of alternative technologies must be submitted to the Agency in accordance with Section 734.335 of this Part. In addition to the requirements for corrective action plans contained in Section 734.335, the owner or operator who seeks approval of an alternative technology must submit documentation along with the corrective action plan demonstrating that:

1) The proposed alternative technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and remediation objectives necessary to comply with the Act and regulations and to protect human health and safety and the environment;

2) The proposed alternative technology will not adversely affect human health and safety or the environment;

3) The owner or operator will obtain all Agency permits necessary to legally authorize use of the alternative technology;

4) The owner or operator will implement a program to monitor whether the requirements of subsection (a)(1) of this Section have been met; and

5) Within one year from the date of Agency approval the owner or operator will provide to the Agency monitoring program results establishing whether the proposed alternative technology will successfully achieve compliance with the requirements of subsection (a)(1) of this Section and any other applicable regulations. The Agency may require interim reports as necessary to track the progress of the alternative technology. The Agency will specify in the approval when those interim reports must be submitted to the Agency.

b) An owner or operator intending to seek payment for costs associated with the use of an alternative technology must submit a corresponding budget in accordance with Section 734.335 of this Part. In addition to the requirements for a corrective action budget at Section 734.335 of this Part, the budget must demonstrate that

the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies. The budget plan must compare the costs of at least two other available alternative technologies to the costs of the proposed alternative technology, if other alternative technologies are available and are technically feasible.

c) If an owner or operator has received approval of a corrective action plan and associated budget from the Agency prior to implementing the plan and the alternative technology fails to satisfy the requirements of subsection (a)(1) or (a)(2) of this Section, such failure must not make the owner or operator ineligible to seek payment for the activities associated with the subsequent performance of a corrective action using conventional technology. However, in no case must the total payment for the site exceed the statutory maximums. Owners or operators implementing alternative technologies without obtaining pre-approval must be ineligible to seek payment for the subsequent performance of a corrective action using conventional technology.

d) The Agency may require remote monitoring of an alternative technology. The monitoring may include, but is not limited to, monitoring the alternative technology's operation and progress in achieving the applicable remediation objectives.

Section 734.345 Corrective Action Completion Report

a) *Within 30 days after the completion of a corrective action plan that achieves applicable remediation objectives the owner or operator shall submit to the Agency for approval a corrective action completion report. The report shall demonstrate whether corrective action was completed in accordance with the approved corrective action plan and whether the remediation objectives approved for the site, as well as any other requirements of the plan, have been achieved* [415 ILCS 5/57.7(b)(5)]. At a minimum, the report must contain the following information:

1) An executive summary that identifies the overall objectives of the corrective action and the technical approach utilized to meet those objectives. At a minimum, the summary must contain the following information:

A) A brief description of the site, including but not limited to a description of the release, the applicable indicator contaminants, the contaminated media, and the extent of soil and groundwater contamination that exceeded the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

B) The major components (e.g., treatment, containment, removal) of the corrective action;

C) The scope of the problems corrected or mitigated by the corrective action; and

D) The anticipated post-corrective action uses of the site and areas immediately adjacent to the site;

2) A description of the corrective action activities conducted, including but not limited to the following:

A) A narrative description of the field activities conducted as part of corrective action;

B) A narrative description of the remedial actions implemented at the site and the performance of each remedial technology utilized;

C) Documentation of sampling activities conducted as part of corrective action, including but not limited to the following:

i) Sample collection information, including but not limited to the sample collector's name, the date and time of sample collection, the collection method, and the sample location;

ii) Sample preservation and shipment information, including but not limited to field quality control;

iii) Analytical procedure information, including but not limited to the method detection limits and the practical quantitation limits;

iv) Chain of custody and control; and

v) Field and lab blanks; and

D) Soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part for all borings drilled and all groundwater monitoring wells installed as part of corrective action;

3) A narrative description of any special conditions relied upon as part of corrective action, including but not limited to information regarding the following:

A) Engineered barriers utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives;

B) Institutional controls utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives, including but not limited to a legible copy of any such controls;

C) Other conditions, if any, necessary for protection of human health and safety and the environment that are related to the issuance of a No Further Remediation Letter; and

D) Any information required pursuant to Section 734.350 of this Part regarding off-site access;

4) An analysis of the effectiveness of the corrective action that compares the confirmation sampling results to the remediation objectives approved for the site. The analysis must present the remediation objectives in an appropriate format (e.g., tabular and graphical displays) such that the information is organized and presented logically and the relationships between the different investigations for each medium are apparent;

5) A conclusion that identifies the success in meeting the remediation objectives approved for the site, including but not limited to an assessment of the accuracy and completeness of the data in the report;

6) Appendices containing references and data sources relied upon in the report that are organized and presented logically, including but not limited to field logs, well logs, and reports of laboratory analyses;

7) The water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of corrective action; and

8) A site map containing only the information required under Section 734.440 of this Part. The site map must also show any engineered barriers utilized to achieve remediation objectives.

b) The owner or operator is not required to perform remedial action on an off-site property, even where complete performance of a corrective action plan would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 734.350 of this Part.

Section 734.350 Off-site Access

a) An owner or operator seeking to comply with the best efforts requirements of Section 734.345(b) of this Part must demonstrate compliance with the requirements of this Section.

b) In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:

1) Citation to Title XVI of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;

2) That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c of the Act;

3) That, in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by the investigation;

4) If contamination results from a release by the owner or operator, the owner or operator will conduct all associated remediation at its own expense;

5) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release; and

6) A reasonable time to respond to the letter, not less than 30 days.

c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the corrective action completion report, the following documentation:

1) A sworn affidavit, signed by the owner or operator, identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and

2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.

d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:

1) The physical and chemical characteristics, including toxicity, persistence and potential for migration, of applicable indicator contaminants at the property boundary line;

2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;

3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;

4) The potential effects of residual contamination on nearby surface water and groundwater;

5) The proximity, quality and current and future uses of nearby surface water and groundwater, including regulated recharge areas, wellhead protection areas, and setback zones of a potable water supply wells;

6) Any known or suspected natural or man-made migration pathways existing in or near the suspected area of off-site contamination;

7) The nature and use of the part of the off-site property that is the suspected area of contamination;

8) Any existing on-site engineered barriers or institutional controls that might have an impact on the area of suspected off-site contamination, and the nature and extent of such impact; and

9) Any other applicable information assembled in compliance with this Part.

e) The Agency must issue a No Further Remediation Letter to an owner or operator subject to this Section and otherwise entitled to such issuance only if the owner or operator has, in accordance with this Section, either completed any requisite off-site corrective action or demonstrated to the Agency's satisfaction an inability to obtain off-site access despite best efforts.

f) The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access is denied.

Section 734.355 Status Report

a) *If within 4 years after the approval of any corrective action plan the applicable remediation objectives have not been achieved and the owner or operator has not*

*submitted a corrective action completion report, the owner or operator shall submit a status report for Agency review. The status report shall include, but is not limited to, a description of the remediation activities taken to date, the effectiveness of the method of remediation being used, the likelihood of meeting the applicable remediation objectives using the current method of remediation, and the date the applicable remediation objectives are expected to be achieved* [415 ILCS 5/57.7(b)(6)].

b) *If the Agency determines any approved corrective action plan will not achieve applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit to the Agency for approval a revised corrective action plan. If the owner or operator intends to seek payment from the Fund, the owner or operator shall also submit a revised budget* [415 ILCS 5/57.7(b)(7)]. The revised corrective action plan and any associated budget must be submitted in accordance with Section 734.335 of this Part.

c) Any action by the Agency to require a revised corrective action plan pursuant to subsection (b) of this Section must be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

SUBPART D: MISCELLANEOUS PROVISIONS

Section 734.400 General

This Subpart D applies to all activities conducted under this Part and all plans, budgets, reports, and other documents submitted under this Part.

Section 734.405 Indicator Contaminants

a) For purposes of this Part, the term "indicator contaminants" must mean the parameters identified in subsections (b) through (i) of this Section.

b) For gasoline, including but not limited to leaded, unleaded, premium and gasohol, the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and methyl tertiary butyl ether (MTBE), except as provided in subsection (h) of this Section. For leaded gasoline, lead must also be an indicator contaminant.

c) For aviation turbine fuels, jet fuels, diesel fuels, gas turbine fuel oils, heating fuel oils, illuminating oils, kerosene, lubricants, liquid asphalt and dust laying oils, cable oils, crude oil, crude oil fractions, petroleum feedstocks, petroleum fractions, and heavy oils, the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Appendix B of this Part. For leaded aviation turbine fuels, lead must also be an indicator contaminant.

d) For transformer oils the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics and the polychlorinated biphenyl parameters listed in Appendix B of this Part.

e) For hydraulic fluids the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, the polynuclear aromatics listed in Appendix B of this Part, and barium.

f) For petroleum spirits, mineral spirits, Stoddard solvents, high-flash aromatic naphthas, moderately volatile hydrocarbon solvents, and petroleum extender oils, the indicator contaminants must be the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B of this Part. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

g) For used oil, the indicator contaminants must be determined by the results of a used oil soil sample analysis. In accordance with Section 734.210(h) of this Part, soil samples must be collected from the walls and floor of the used oil UST excavation if the UST is removed, or from borings drilled along each side of the used oil UST if the UST remains in place. The sample that appears to be the most contaminated as a result of a release from the used oil UST must then be analyzed for the following parameters. If none of the samples appear to be contaminated a soil sample must be collected from the floor of the used oil UST excavation below the former location of the UST if the UST is removed, or from soil located at the same elevation as the bottom of the used oil UST if the UST remains in place, and analyzed for the following parameters:

1) All volatile, base/neutral, polynuclear aromatic, and metal parameters listed at Appendix B of this Part and any other parameters the Licensed Professional Engineer or Licensed Professional Geologist suspects may be present based on UST usage. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

2) The used oil indicator contaminants must be those volatile, base/neutral, and metal parameters listed at Appendix B of this Part or as otherwise identified at subsection (g)(1) of this Section that exceed their remediation objective at 35 Ill. Adm. Code 742 in addition to benzene, ethylbenzene, toluene, total xylenes, and polynuclear aromatics listed in Appendix B of this Part.

3) If none of the parameters exceed their remediation objective, the used oil indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Appendix B of this Part.

h) Unless an owner or operator elects otherwise pursuant to subsection (i) of this Section, the term "indicator contaminants" must not include MTBE for any release reported to the Illinois Emergency Management Agency prior to June 1, 2002 (the effective date of amendments establishing MTBE as an indicator contaminant).

i) An owner or operator exempt from having to address MTBE as an indicator contaminant pursuant to subsection (h) of this Section may elect to include MTBE as an indicator contaminant under the circumstances listed in subsections (1) or (2) of this subsection (i). Elections to include MTBE as an indicator contaminant must be made by submitting to the Agency a written notification of such election signed by the owner or operator. The election must be effective upon the Agency's receipt of the notification and cannot be withdrawn once made. Owners or operators electing to include MTBE as an indicator contaminant must remediate MTBE contamination in accordance with the requirements of this Part.

1) If the Agency has not issued a No Further Remediation Letter for the release; or

2) If the Agency has issued a No Further Remediation Letter for the release and the release has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 Ill. Adm. Code 742.

Section 734.410 Remediation Objectives

The owner or operator must propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 must determine the following parameters on a site-specific basis:

Hydraulic conductivity (K)
Soil bulk density ($\rho_b$)
Soil particle density ($\rho_s$)
Moisture content (w)
Organic carbon content ($f_{oc}$)

Board Note: Failure to use site-specific remediation objectives on-site and to utilize available groundwater ordinances as institutional controls may result in certain corrective action costs being ineligible for payment from the Fund. See Section 734.630(~~bbb~~aaa) and (~~ccc~~bbb) of this Part.

Section 734.415 Data Quality

a) The following activities must be conducted in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No.

SW-846, incorporated by reference at Section 734.120 of this Part, or other procedures as approved by the Agency:

1) All field sampling activities, including but not limited to activities relative to sample collection, documentation, preparation, labeling, storage and shipment, security, quality assurance and quality control, acceptance criteria, corrective action, and decontamination procedures;

2) All field measurement activities, including but not limited to activities relative to equipment and instrument operation, calibration and maintenance, corrective action, and data handling; and

3) All quantitative analysis of samples to determine concentrations of indicator contaminants, including but not limited to activities relative to facilities, equipment and instrumentation, operating procedures, sample management, test methods, equipment calibration and maintenance, quality assurance and quality control, corrective action, data reduction and validation, reporting, and records management. Analyses of samples that require more exacting detection limits than, or that cannot be analyzed by standard methods identified in, "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, must be conducted in accordance with analytical protocols developed in consultation with and approved by the Agency.

b) The analytical methodology used for the analysis of indicator contaminants must have a practical quantitation limit at or below the most stringent objectives or detection levels set forth in 35 Ill. Adm. Code 742 or determined by the Agency pursuant to Section 734.140 of this Part.

c) All field or laboratory measurements of samples to determine physical or geophysical characteristics must be conducted in accordance with applicable ASTM standards incorporated by reference at 35 Ill. Adm. Code 742.210, or other procedures as approved by the Agency.

Section 734.420 Laboratory Certification

All quantitative analyses of samples collected on or after January 1, 2003, and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180 must be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. A certification from the accredited laboratory stating that the samples were analyzed in accordance with the requirements of this Section must be included with the sample results when they are submitted to the Agency. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 must be deemed invalid.

Section 734.425 Soil Borings

a) Soil borings must be continuously sampled to ensure that no gaps appear in the sample column.

b) Any water bearing unit encountered must be protected as necessary to prevent cross-contamination during drilling.

c) Soil boring logs must be kept for all soil borings. The logs must be submitted in the corresponding site investigation plan, site investigation completion report, or corrective action completion report on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. At a minimum, soil boring logs must contain the following information:

1) Sampling device, sample number, and amount of recovery;

2) Total depth of boring to the nearest 6 inches;

3) Detailed field observations describing materials encountered in boring, including but not limited to soil constituents, consistency, color, density, moisture, odors, and the nature and extent of sand or gravel lenses or seams equal to or greater than 1 inch in thickness;

4) Petroleum hydrocarbon vapor readings (as determined by continuous screening of borings with field instruments capable of detecting such vapors);

5) Locations of sample(s) used for physical or chemical analysis;

6) Groundwater levels while boring and at completion; and

7) Unified Soil Classification System (USCS) soil classification group symbols in accordance with ASTM Standard D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference in Section 734.120 of this Part, or other Agency approved method.

Section 734.430 Monitoring Well Construction and Sampling

a) At a minimum, all monitoring well construction must satisfy the following requirements:

1) Wells must be constructed in a manner that will enable the collection of representative groundwater samples;

2) Wells must be cased in a manner that maintains the integrity of the borehole. Casing material must be inert so as not to affect the water sample. Casing requiring solvent-cement type couplings must not be used;

3) Wells must be screened to allow sampling only at the desired interval. Annular space between the borehole wall and well screen section must be packed with clean, well-rounded and uniform material sized to avoid clogging by the material in the zone being monitored. The slot size of the screen must be designed to minimize clogging. Screens must be fabricated from material that is inert with respect to the constituents of the groundwater to be sampled;

4) Annular space above the well screen section must be sealed with a relatively impermeable, expandable material such as cement/bentonite grout that does not react with or in any way affect the sample, in order to prevent contamination of groundwater samples and groundwater and avoid interconnections. The seal must extend to the highest known seasonal groundwater level;

5) The annular space must be backfilled with expanding cement grout from an elevation below the frost line and mounded above the surface and sloped away from the casing so as to divert surface water away;

6) Wells must be covered with vented caps and equipped with devices to protect against tampering and damage. Locations of wells must be clearly marked and protected against damage from vehicular traffic or other activities associated with expected site use; and

7) Wells must be developed to allow free entry of groundwater, minimize turbidity of the sample, and minimize clogging.

b) Monitoring well construction diagrams must be completed for each monitoring well. The well construction diagrams must be submitted in the corresponding site investigation plan, site investigation completion report, or corrective action completion report on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format.

c) Static groundwater elevations in each well must be determined and recorded following well construction and prior to each sample collection to determine the gradient of the groundwater table, and must be reported in the corresponding site investigation plan, site investigation completion report or corrective action completion report.

Section 734.435 Sealing of Soil Borings and Groundwater Monitoring Wells

Boreholes and monitoring wells must be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120.

Section 734.440 Site Map Requirements

At a minimum, all site maps submitted to the Agency must meet the following requirements:

a) The maps must be of sufficient detail and accuracy to show required information;

b) The maps must contain the map scale, an arrow indicating north orientation, and the date the map was created; and

c) The maps must show the following:

1) The property boundary lines of the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release;

2) The uses of the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release;

3) The locations of all current and former USTs at the site, and the contents of each UST; and

4) All structures, other improvements, and other features at the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release, including but not limited to buildings, pump islands, canopies, roadways and other paved areas, utilities, easements, rights-of-way, and actual or potential natural or man-made pathways.

Section 734.445 Water Supply Well Survey

a) At a minimum, the owner or operator must conduct a water supply well survey to identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells must include, but not be limited to, the following:

1) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;

2) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois

Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and

3) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.

b) In addition to the potable water supply wells identified pursuant to subsection (a) of this Section, the owner or operator must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:

1) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

2) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants is located.

c) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to subsections (a) or (b) of this Section. The additional investigation may include, but is not limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

d) Documentation of the water supply well survey conducted pursuant to this Section must include, but not be limited to, the following:

1) One or more maps, to an appropriate scale, showing the following:

A) The location of the community water supply wells and other potable water supply wells identified pursuant to this Section, and the setback zone for each well;

B) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to this Section;

C) The current extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

D) The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The information required under this subsection (d)(1)(D) is not required to be shown in a site investigation report if modeling is not performed as part of site investigation;

2) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to this Section;

3) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to this Section, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

4) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of this Section and that the documentation submitted pursuant to subsection (d) of this Section includes the information obtained as a result of the survey.

Section 734.450 Deferred Site Investigation or Corrective Action; Priority List for Payment

a) An owner or operator who has received approval for any budget submitted pursuant to this Part and who is eligible for payment from the Fund may elect to defer site investigation or corrective action activities until funds are available in an amount equal to the amount approved in the budget if the requirements of subsection (b) of this Section are met.

1) Approvals of budgets must be pursuant to Agency review in accordance with Subpart E of this Part.

2) The Agency must monitor the availability of funds and must provide notice of insufficient funds to owners or operators in accordance with Section 734.505(g) of this Part.

3) Owners and operators must submit elections to defer site investigation or corrective action activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

4) The Agency must review elections to defer site investigation or corrective action activities to determine whether the requirements of subsection (b) of this Section are met. The Agency must notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.

    A) The Agency must mail notices of final action on an election to defer by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.

    B) Any action by the Agency to reject an election, or the rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

5) Upon approval of an election to defer site investigation or corrective action activities until funds are available, the Agency must place the site on a priority list for payment and notification of availability of sufficient funds. Sites must enter the priority list for payment based solely on the date the Agency receives a complete written election of deferral, with the earliest dates having the highest priority.

6) As funds become available the Agency must encumber funds for each site in the order of priority in an amount equal to the total of the approved budget for which deferral was sought. The Agency must then notify owners or operators that sufficient funds have been allocated for the owner

or operator's site. After such notification the owner or operator must commence site investigation or corrective action activities.

7) Authorization of payment of encumbered funds for deferred site investigation or corrective action activities must be approved in accordance with the requirements of Subpart F of this Part.

b) An owner or operator who elects to defer site investigation or corrective action activities under subsection (a) of this Section must submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:

1) The Agency has approved the owner's or operator's site investigation budget or corrective action budget;

2) The owner or operator has been determined eligible to seek payment from the Fund;

3) The early action requirements of Subpart B of this Part have been met;

4) Groundwater contamination does not exceed the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling in accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 734.445 of this Part.

c) An owner or operator may, at any time, withdraw the election to defer site investigation or corrective action activities. The Agency must be notified in writing of the withdrawal. Upon such withdrawal, the owner or operator must proceed with site investigation or corrective action, as applicable, in accordance with the requirements of this Part.

## SUBPART E: REVIEW OF PLANS, BUDGETS, AND REPORTS

### Section 734.500 General

The Agency has the authority to review any plan, budget, or report, including any amended plan, budget, or report, submitted pursuant to this Part. All such reviews are subject to the procedures set forth in the Act and this Subpart E.

### Section 734.505 Review of Plans, Budgets, or Reports

a) The Agency may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Agency may also review any other plans, budgets, or reports submitted in conjunction with the site.

b) The Agency has the authority to approve, reject, or require modification of any plan, budget, or report it reviews. The Agency must notify the owner or operator in writing of its final action on any such plan, budget, or report, except in the case of 20 day, 45 day, or free product removal reports, in which case no notification is necessary. Except as provided in subsections (c) and (d) of this Section, if the Agency fails to notify the owner or operator of its final action on a plan, budget, or report within 120 days after the receipt of a plan, budget, or report, the owner or operator may deem the plan, budget, or report rejected by operation of law. If the Agency rejects a plan, budget, or report or requires modifications, the written notification must contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete its review;

2) An explanation of the Sections of the Act or regulations that may be violated if the plan, budget, or report is approved; and

3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the plan, budget, or report is approved.

c) For corrective action plans submitted by owners or operators not seeking payment from the Fund, the Agency may delay final action on such plans until 120 days after it receives the corrective action completion report required pursuant to Section 734.345 of this Part.

d) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete plan, budget, or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver must be for a minimum of 60 days.

e) The Agency must mail notices of final action on plans, budgets, or reports by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.

f) Any action by the Agency to reject or require modifications, or rejection by failure to act, of a plan, budget, or report must be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

g) In accordance with Section 734.450 of this Part, upon the approval of any budget by the Agency, the Agency must include as part of the final notice to the owner or operator a notice of insufficient funds if the Fund does not contain sufficient funds to provide payment of the total costs approved in the budget.

Section 734.510 Standards for Review of Plans, Budgets, or Reports

a) A technical review must consist of a detailed review of the steps proposed or completed to accomplish the goals of the plan and to achieve compliance with the Act and regulations. Items to be reviewed, if applicable, must include, but not be limited to, number and placement of wells and borings, number and types of samples and analysis, results of sample analysis, and protocols to be followed in making determinations. The overall goal of the technical review for plans must be to determine if the plan is sufficient to satisfy the requirements of the Act and regulations and has been prepared in accordance with generally accepted engineering practices or principles of professional geology. The overall goal of the technical review for reports must be to determine if the plan has been fully implemented in accordance with generally accepted engineering practices or principles of professional geology, if the conclusions are consistent with the information obtained while implementing the plan, and if the requirements of the Act and regulations have been satisfied.

b) A financial review must consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed must include, but are not limited to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H of this Part.

## SUBPART F: PAYMENT FROM THE FUND

### Section 734.600 General

The Agency has the authority to review any application for payment or reimbursement and to authorize payment or reimbursement from the Fund or such other funds as the legislature directs for corrective action activities conducted pursuant to the Act and this Part. For purposes of this Part and unless otherwise provided, the use of the word "payment" must include reimbursement. The submittal and review of applications for payment and the authorization for payment must be in accordance with the procedures set forth in the Act and this Subpart F.

### Section 734.605 Applications for Payment

a) An owner or operator seeking payment from the Fund must submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The owner or operator may submit an application for partial payment or final payment. Costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to Subpart B of this Part other than free product removal activities conducted more than 45 days after confirmation of the presence of free product.

b) A complete application for payment must consist of the following elements:

1) A certification from a Licensed Professional Engineer or a Licensed Professional Geologist acknowledged by the owner or operator that the work performed has been in accordance with a technical plan approved by the Agency or, for early action activities, in accordance with Subpart B of this Part;

2) A statement of the amounts approved in the corresponding budget and the amounts actually sought for payment along with a certified statement by the owner or operator that the amounts so sought have been expended in conformance with the elements of a budget approved by the Agency;

3) A copy of the OSFM or Agency eligibility and deductibility determination;

4) Proof that approval of the payment requested will not exceed the limitations set forth in the Act and Section 734.620 of this Part;

5) A federal taxpayer identification number and legal status disclosure certification;

6) Private insurance coverage form(s);

7) A minority/women's business form;

8) Designation of the address to which payment and notice of final action on the application for payment are to be sent;

9) An accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed; and

10) Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.

c) The address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change in address.

d) Applications for payment and change of address forms must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

e) Applications for partial or final payment may be submitted no more frequently than once every 90 days.

f) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part, other than costs associated with free product removal activities conducted more than 45 days after confirmation of the presence of free product, in no case must the Agency review an application for payment unless there is an approved budget on file corresponding to the application for payment.

g) In no case must the Agency authorize payment to an owner or operator in amounts greater than the amounts approved by the Agency in a corresponding budget. Revised cost estimates or increased costs resulting from revised procedures must be submitted to the Agency for review in accordance with Subpart E of this Part using amended budgets plans as required under this Part.

h) Applications for payment of costs associated with a Stage 1, Stage 2, or Stage 3 site investigation may not be submitted prior to the approval or modification of a site investigation plan for the next stage of the site investigation or the site investigation completion report, whichever is applicable.

i) Applications for payment of costs associated with site investigation or corrective action that was deferred pursuant to Section 734.450 of this Part may not be

submitted prior to approval or modification of the corresponding site investigation plan, site investigation completion report, or corrective action completion report.

j) All applications for payment of corrective action costs must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. For releases for which the Agency issued a No Further Remediation Letter prior to the effective date of this subsection (j), all applications for payment must be submitted no later than one year after the effective date of this subsection (j).

Section 734.610 Review of Applications for Payment

a) At a minimum, the Agency must review each application for payment submitted pursuant to this Part to determine the following:

1) Whether the application contains all of the elements and supporting documentation required by Section 734.605(b) of this Part;

2) For costs incurred pursuant to Subpart B of this Part, other than free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought are reasonable, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part;

3) For costs incurred pursuant to Subpart C of this Part and free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought exceed the amounts approved in the corresponding budget, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part and a plan approved by the Agency; and

4) Whether the amounts sought are eligible for payment.

b) When conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section.

c) The Agency's review may include a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

d) Following a review, the Agency has the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency must notify the owner or operator in writing of its final action on any such application for payment. Except as provided in subsection (e) of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law. If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification must contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete the review;

2) An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and

3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.

e) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete application for payment by submitting written notice to the Agency prior to the applicable deadline. Any waiver must be for a minimum of 30 days.

f) The Agency must mail notices of final action on applications for payment by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed. The Agency must mail notices of final action on applications for payment, and direct the Comptroller to mail payments to the owner or operator, at the address designated for receipt of payment in the application for payment or on a change of address form, provided by the Agency, submitted subsequent to submittal of the application for payment.

g) Any action by the Agency to deny payment for an application for payment or portion thereof or to require modification must be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

Section 734.615 Authorization for Payment; Priority List

a) Within 60 days after notification to an owner or operator that the application for payment or a portion thereof has been approved by the Agency or by operation of law, the Agency must forward to the Office of the State Comptroller in accordance with subsection (d) or (e) of this Section a voucher in the amount approved. If the owner or operator has filed an appeal with the Board of the

Agency's final decision on an application for payment, the Agency must have 60 days after the final resolution of the appeal to forward to the Office of the State Comptroller a voucher in the amount ordered as a result of the appeal. Notwithstanding the time limits imposed by this Section, the Agency must not forward vouchers to the Office of the State Comptroller until sufficient funds are available to issue payment.

b) The following rules must apply regarding deductibles:

1) Any deductible, as determined by the OSFM or the Agency, must be subtracted from any amount approved for payment by the Agency or by operation of law, or ordered by the Board or courts;

2) Only one deductible must apply per occurrence;

3) If multiple incident numbers are issued for a single site in the same calendar year, only one deductible must apply for those incidents, even if the incidents relate to more than one occurrence; and

4) Where more than one deductible determination is made, the higher deductible must apply.

c) The Agency must instruct the Office of the State Comptroller to issue payment to the owner or operator at the address designated in accordance with Section 734.605(b)(8) or (c) of this Part. In no case must the Agency authorize the Office of the State Comptroller to issue payment to an agent, designee, or entity that has conducted corrective action activities for the owner or operator.

d) For owners or operators who have deferred site classification or corrective action in accordance with Section 734.450 of this Part, payment must be authorized from funds encumbered pursuant to Section 734.450(a)(6) of this Part upon approval of the application for payment by the Agency or by operation of law.

e) For owners or operators not electing to defer site investigation or corrective action in accordance with Section 734.450 of this Part, the Agency must form a priority list for payment for the issuance of vouchers pursuant to subsection (a) of this Section.

1) All such applications for payment must be assigned a date that is the date upon which the complete application for partial or final payment was received by the Agency. This date must determine the owner’s or operator's priority for payment in accordance with subsection (e)(2) of this Section, with the earliest dates receiving the highest priority.

2) Once payment is approved by the Agency or by operation of law or ordered by the Board or courts, the application for payment must be

assigned priority in accordance with subsection (e)(1) of this Section. The assigned date must be the only factor determining the priority for payment for those applications approved for payment.

Section 734.620 Limitations on Total Payments

a) Limitations per occurrence:

1) *The Agency shall not approve any payment from the Fund to pay an owner or operator for costs of corrective action incurred by such owner or operator in an amount in excess of $1,500,000 per occurrence* [415 ILCS 5/57.8(g)(1)]; and

2) *The Agency shall not approve any payment from the Fund to pay an owner or operator for costs of indemnification of such owner or operator in an amount in excess of $1,500,000 per occurrence* [415 ILCS 5/57.8(g)(2)].

b) Aggregate limitations:

1) *Notwithstanding any other provision of this* Part*, the Agency shall not approve payment to an owner or operator from the Fund for costs of corrective action or indemnification incurred during a calendar year in excess of the following amounts based on the number of petroleum underground storage tanks owned or operated by such owner or operator in Illinois:*

A) For calendar years prior to 2002:

| Amount | Number of Tanks |
|---|---|
| $1,000,000 | fewer than 101 |
| $2,000,000 | 101 or more |

B) For calendar years 2002 and later:

| *Amount* | *Number of Tanks* |
|---|---|
| *$2,000,000* | *fewer than 101* |
| *$3,000,000* | *101 or more* |

[415 ILCS 5/57.8(d)]

2) *Costs incurred in excess of the aggregate amounts set forth in* subsection (b)(1) of this Section *shall not be eligible for payment in subsequent years.* [415 ILCS 5/57.8(d)(1)]

c) *For purposes of* subsection (b) of this Section, *requests submitted by any of the agencies, departments, boards, committees or commissions of the State of Illinois shall be acted upon as claims from a single owner or operator.* [415 ILCS 5/57.8(d)(2)]

d) *For purposes of* subsection (b) of this Section, *owner or operator includes*;

1) *any subsidiary, parent, or joint stock company of the owner or operator*; *and*

2) *any company owned by any parent, subsidiary, or joint stock company of the owner or operator.* [415 ILCS 5/57.8(d)(3)]

Section 734.625 Eligible Corrective Action Costs

a) Types of costs that may be eligible for payment from the Fund include those for corrective action activities and for materials or services provided or performed in conjunction with corrective action activities. Such activities and services may include, but are not limited to, reasonable costs for:

1) Early action activities conducted pursuant to Subpart B of this Part;

2) Engineer or geologist oversight services;

3) Remedial investigation and design;

4) Laboratory services necessary to determine site investigation and whether the established remediation objectives have been met;

5) The installation and operation of groundwater investigation and groundwater monitoring wells;

6) The removal, treatment, transportation, and disposal of soil contaminated by petroleum at levels in excess of the established remediation objectives;

7) The removal, treatment, transportation, and disposal of water contaminated by petroleum at levels in excess of the established remediation objectives;

8) The placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established remediation objectives;

9) Groundwater corrective action systems;

10) Alternative technology, including but not limited to feasibility studies approved by the Agency;

11) Recovery of free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water;

12) The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the OSFM;

13) Costs incurred as a result of a release of petroleum because of vandalism, theft, or fraudulent activity by a party other than an owner or operator or agent of an owner or operator;

14) Engineer or geologist costs associated with seeking payment from the Fund, including but not limited to completion of an application for partial or final payment;

15) Costs associated with obtaining an Eligibility and Deductibility Determination from the OSFM or the Agency;

16) Costs for destruction and replacement of concrete, asphalt, or paving to the extent necessary to conduct corrective action if the concrete, asphalt, or paving was installed prior to the initiation of corrective action activities, the destruction and replacement has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer, and the destruction and replacement and its costs are approved by the Agency in writing prior to the destruction and replacement. The destruction and replacement of concrete, asphalt, and paving must not be paid more than once. Costs associated with the replacement of concrete, asphalt, or paving must not be paid in excess of the cost to install, in the same area and to the same depth, the same material that was destroyed (e.g., replacing four inches of concrete with four inches of concrete);

17) The destruction or dismantling and reassembly of above grade structures in response to a release of petroleum if such activity has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer and such activity and its costs are approved by the Agency in writing prior to the destruction or dismantling and re-assembly. Such costs must not be paid in excess of a total of $10,000 per occurrence. For purposes of this subsection (a)(17), destruction, dismantling, or reassembly of above grade structures does not include costs associated with replacement of pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies;

18) Preparation of reports submitted pursuant to Section 734.210(h)(3) of this Part, free product removal plans and associated budgets, free product removal reports, site investigation plans and associated budgets, site investigation completion reports, corrective action plans and associated budgets, and corrective action completion reports;

19) Costs associated with the removal or abandonment of a potable water supply well, and replacement of the well or connection to a public water supply, whichever is less, if a Licensed Professional Engineer or Licensed Professional Geologist certifies that such activity is necessary to the performance of corrective action and that the property served by the well cannot receive an adequate supply of potable water from an existing source other than the removed or abandoned well, and the Agency approves such activity in writing. If the well being removed or abandoned is a public water supply well, the Licensed Professional Engineer or Licensed Professional Geologist is required to certify only that the removal or abandonment of the well is necessary to the performance of corrective action; and

20) Costs associated with the repair or replacement of potable water supply lines damaged to the point of requiring repair or replacement as a direct result of the release, if such activity is certified by a Licensed Professional Engineer or Licensed Professional Geologist as necessary for the protection of the potable water supply and approved by the Agency in writing.

b) An owner or operator may submit a budget or application for partial or final payment that includes an itemized accounting of costs associated with activities, materials, or services not identified in subsection (a) of this Section if the owner or operator submits detailed information demonstrating that the activities, materials, or services not identified in subsection (a) of this Section are essential to the completion of the minimum corrective action requirements of the Act and this Part.

Section 734.630 Ineligible Corrective Action Costs

Costs ineligible for payment from the Fund include but are not limited to:

a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Appendix C of this Part, during early action activities conducted pursuant to Section 734.210(f) of this Part, and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Appendix C of this Part during early action activities conducted pursuant to Section 734.210(f) of this Part;

b) Costs or losses resulting from business interruption;

c) Costs incurred as a result of vandalism, theft, or fraudulent activity by the owner or operator or agent of an owner or operator, including the creation of spills, leaks, or releases;

d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies, including but not limited, to those structures destroyed or damaged during corrective action activities;

e) *Costs of corrective action incurred by an owner or operator prior to July 28, 1989* [415 ILCS 5/57.8(j)];

f) Costs associated with the procurement of a generator identification number;

g) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;

h) Purchase costs of non-expendable materials, supplies, equipment, or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools;

i) Costs associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;

j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 734.125 of this Part and Section 57.12 of the Act;

k) Costs for removal, disposal, or abandonment of a UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;

l) Costs associated with the installation of new USTs, the repair of existing USTs, and removal and disposal of USTs determined to be ineligible by the OSFM;

m) Costs exceeding those contained in a budget or amended budget approved by the Agency;

n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;

o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

p) Costs associated with improperly installed sampling or monitoring wells;

q) Costs associated with improperly collected, transported, or analyzed laboratory samples;

r) Costs associated with the analysis of laboratory samples not approved by the Agency;

s) Costs for any corrective activities, services, or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;

t) Interest or finance costs charged as direct costs;

u) Insurance costs charged as direct costs;

v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;

w) Costs associated with the compaction and density testing of backfill material;

x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;

y) Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations;

z) Costs of alternative technology that exceed the costs of conventional technology;

aa) Costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;

bb) Costs requested that are based on mathematical errors;

cc) Costs that lack supporting documentation;

dd) Costs proposed as part of a budget that are unreasonable;

ee) Costs incurred during early action that are unreasonable;

ff) Costs incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release;

gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (gg) does not apply to the following:

1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;

2) Monitoring well abandonment costs;

3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;

4) Costs associated with seeking payment from the Fund; and

5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release;

hh) Handling charges for subcontractor costs that have been billed directly to the owner or operator;

ii) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;

jj) Costs associated with standby and demurrage;

kk) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 734.355(b) of this Part, that a revised corrective action plan is required, provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment if they meet the requirements of this Part;

ll) Costs incurred prior to the effective date of an owner's or operator's election to proceed in accordance with this Part, unless such costs were incurred for activities approved as corrective action under this Part;

mm) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 734.215(a)(5) of this Part;

nn) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;

~~oo) Handling charges for subcontractor costs where any person with a direct or indirect financial interest in the contractor has a direct or indirect financial interest in the subcontractor;~~

oo) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 734.625(a)(16) of this Part;

pp) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Sections 734.625(a)(16) or (17) of this Part;

qq) Costs associated with oversight by an owner or operator;

rr) Handling charges charged by persons other than the owner's or operator's primary contractor;

ss) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 734.625(a)(16) of this Part;

tt) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;

uu) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 734.625(a)(19) of this Part;

vv) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 734.625(a)(20) of this Part;

ww) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 734.625(a)(19) or (20) of this Part;

xx) For sites electing under Section 734.105 of this Part to proceed in accordance with this Part, costs incurred pursuant to Section 734.210 of this Part;

yy) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget;

zz) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;

aaa) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (~~bbb~~aaa) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.

bbb) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

Section 734.635 Payment for Handling Charges

Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table:

| Subcontract or Field Purchase Cost: | Eligible Handling Charges as a Percentage of Cost: |
|---|---|
| $0 - $5,000 | 12% |
| $5,001 - $15,000 | $600 + 10% of amt. over $5,000 |
| $15,001 - $50,000 | $1,600 + 8% of amt. over $15,000 |
| $50,001 - $100,000 | $4,400 + 5% of amt. over $50,000 |
| $100,001 - $1,000,000 | $6,900 + 2% of amt. over $100,000 |

Section 734.640 Apportionment of Costs

a) The Agency may apportion payment of costs if:

1) *The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and*

2) *The owner or operator failed to justify all costs attributable to each underground storage tank at the site.* [415 ILCS 5/57.8(m)]

b) The Agency will determine, based on volume or number of tanks, which method of apportionment will be most favorable to the owner or operator. The Agency will notify the owner or operator of such determination in writing.

Section 734.645 Subrogation of Rights

*Payment of any amount from the fund for corrective action or indemnification shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or indemnification for which the fund has compensated such owner, operator, or person from the person responsible or liable for the release* [415 ILCS 5/57.8(h)].

Section 734.650 Indemnification

a) An owner or operator seeking indemnification from the Fund for payment of costs incurred as a result of a release of petroleum from an underground storage tank must submit to the Agency a request for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

1) A complete application for payment must contain the following:

A) A certified statement by the owner or operator of the amount sought for payment;

B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof must include, but not be limited to, the following:

i) A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement certified by the owner or operator as a true and correct copy; and

ii) Documentation demonstrating that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator;

C) A copy of the OSFM or Agency eligibility and deductibility determination;

D) Proof that approval of the indemnification requested will not exceed the limitations set forth in the Act and Section 734.620 of this Part;

E) A federal taxpayer identification number and legal status disclosure certification;

F) A private insurance coverage form; and

G) Designation of the address to which payment and notice of final action on the request for indemnification are to be sent to the owner or operator.

2) The owner's or operator's address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change of address.

3) Applications for payment must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

b) The Agency must review applications for payment in accordance with this Subpart F. In addition, the Agency must review each application for payment to determine the following:

1) Whether the application contains all of the information and supporting documentation required by subsection (a) of this Section;

2) Whether there is sufficient documentation of a legally enforceable judgment entered against the owner or operator in a court of law, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator;

3) Whether there is sufficient documentation that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; and

4) Whether the amounts sought for indemnification are eligible for payment.

c) If the application for payment of the costs of indemnification is deemed complete and otherwise satisfies all applicable requirements of this Subpart F, the Agency must forward the request for indemnification to the Office of the Attorney General for review and approval in accordance with Section 57.8(c) of the Act. The owner or operator's request for indemnification must not be placed on the priority list for payment until the Agency has received the written approval of the Attorney General. The approved application for payment must then enter the priority list established at Section 734.615(e)(1) of this Part based on the date the complete application was received by the Agency in accordance with Section 57.8(c) of the Act.

d) Costs ineligible for indemnification from the Fund include, but are not limited to:

1) Amounts an owner or operator is not legally obligated to pay pursuant to a judgment entered against the owner or operator in a court of law, a final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or any settlement entered into by the owner or operator;

2) Amounts of a judgment, final order, determination, or settlement that do not arise out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator;

3) Amounts incurred prior to July 28, 1989;

4) Amounts incurred prior to notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;

5) Amounts arising out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank for which the owner or operator is not eligible to access the Fund;

6) Legal fees or costs, including but not limited to, legal fees or costs for seeking payment under this Part, unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;

7) Amounts associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;

8) Amounts associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 734.125 of this Part and Section 57.12 of the Act;

9) Amounts associated with a release that has not been reported to IEMA or is not required to be reported to IEMA;

10) Amounts incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release; and

11) Amounts incurred prior to the effective date of the owner's or operator's election to proceed in accordance with this Part.

Section 734.655 Costs Covered by Insurance, Agreement, or Court Order

*Costs of corrective action or indemnification incurred by an owner or operator which have been paid to an owner or operator under a policy of insurance, another written agreement, or a court order are not eligible for payment* from the Fund. *An owner or operator who receives payment under a policy of insurance, another written agreement, or a court order shall reimburse the State to the extent such payment covers costs for which payment was received from the Fund* [415 ILCS 5/57.8(e)].

Section 734.660 Determination and Collection of Excess Payments

a) If, for any reason, the Agency determines that an excess payment has been paid from the Fund, the Agency may take steps to collect the excess amount pursuant to subsection (c) of this Section.

1) Upon identifying an excess payment, the Agency must notify the owner or operator receiving the excess payment by certified or registered mail, return receipt requested.

2) The notification letter must state the amount of the excess payment and the basis for the Agency's determination that the payment is in error.

3) The Agency's determination of an excess payment must be subject to appeal to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.

b) An excess payment from the Fund includes, but is not limited to:

1) Payment for a non-corrective action cost;

2) Payment in excess of the limitations on payments set forth in Sections 734.620 and 734.635 and Subpart H of this Part;

3) Payment received through fraudulent means;

4) Payment calculated on the basis of an arithmetic error;

5) Payment calculated by the Agency in reliance on incorrect information; or

6) Payment of costs that are not eligible for payment.

c) Excess payments may be collected using any of the following procedures:

1) Upon notification of the determination of an excess payment in accordance with subsection (a) of this Section or pursuant to a Board order affirming such determination upon appeal, the Agency may attempt to negotiate a payment schedule with the owner or operator. Nothing in this subsection (c)(1) of this Section must prohibit the Agency from exercising at any time its options at subsection (c)(2) or (c)(3) of this Section or any other collection methods available to the Agency by law.

2) If an owner or operator submits a subsequent claim for payment after previously receiving an excess payment from the Fund, the Agency may deduct the excess payment amount from any subsequently approved payment amount. If the amount subsequently approved is insufficient to recover the entire amount of the excess payment, the Agency may use the procedures in this Section or any other collection methods available to the Agency by law to collect the remainder.

3) The Agency may deem an excess payment amount to be a claim or debt owed the Agency, and the Agency may use the Comptroller's Setoff System for collection of the claim or debt in accordance with Section 10.5 of the "State Comptroller Act." [15 ILCS 405/10.05]

Section 734.665 Audits and Access to Records; Records Retention

a) Owners or operators that submit a report, plan, budget, application for payment, or any other data or document under this Part~~, and Licensed Professional Engineers and Licensed Professional Geologists that certify such report, plan, budget, application for payment, data, or document,~~ must maintain all books, records, documents, and other evidence directly pertinent to the report, plan, budget, application for payment, data, or document, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.

b) The Agency or any of its duly authorized representatives must have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners~~,~~ or operators~~, Licensed Professional Engineers, and Licensed~~

~~Professional Geologists~~ must provide proper facilities for such access and inspection.

c) Owners~~,~~ or operators~~, Licensed Professional Engineers, and Licensed Professional Geologists~~ must maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:

1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;

2) For books, records, documents, or other evidence relating to an appeal, litigation, or other dispute or claim, the expiration of 3 years after the date of the final disposition of the appeal, litigation, or other dispute or claim; or

3) The expiration of any other applicable record retention period.

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

### Section 734.700 General

Subpart G provides the procedures for the issuance of No Further Remediation Letters under Title XVI and this Part. Subpart G also sets forth the recording requirements and the circumstances under which the letter may be voidable.

### Section 734.705 Issuance of a No Further Remediation Letter

a) Upon approval by the Agency of a report submitted pursuant to Section 734.210(h)(3) of this Part or a corrective action completion report, the Agency must issue to the owner or operator a No Further Remediation Letter. The No Further Remediation Letter must have the legal effect prescribed in Section 57.10 of the Act. The No Further Remediation Letter must be denied if the Agency rejects or requires modification of the applicable report.

b) The Agency must have 120 days after the date of receipt of the applicable report to issue a No Further Remediation Letter and may include the No Further Remediation Letter as part of the notification of approval of the report in accordance with Subpart E of this Part. If the Agency fails to send the No Further Remediation Letter within 120 days, it must be deemed denied by operation of law.

c) The notice of denial of a No Further Remediation Letter by the Agency may be included with the notification of rejection or modification of the applicable report. The reasons for the denial of the letter must be stated in the notification. The

denial must be considered a final determination appealable to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for a No Further Remediation Letter is denied by operation of law in lieu of an immediate repeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.

d) The Agency must mail the No Further Remediation Letter by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that the letter is mailed.

e) The Agency at any time may correct errors in No Further Remediation Letters that arise from oversight, omission, or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency must mail the corrected letter to the owner or operator as set forth in subsection (d) of this Section. The corrected letter must be perfected by recording in accordance with the requirements of Section 734.715 of this Part.

Section 734.710 Contents of a No Further Remediation Letter

A No Further Remediation Letter issued pursuant to this Part must include all of the following:

a) An acknowledgment that the requirements of the applicable report were satisfied;

b) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries, or, for the purposes of Section 734.715(d) of this Part, other means sufficient to identify the site location with particularity;

c) A statement that the remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;

d) A statement that the Agency's issuance of the No Further Remediation Letter signifies that:

1) *All statutory and regulatory corrective action requirements applicable to the occurrence have been complied with;*

2) *All corrective action concerning the remediation of the occurrence has been completed; and*

3) *No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment* [415 ILCS 5/57.10(c)(1)-(3)], or, if the No Further Remediation Letter is issued pursuant to Section 734.350(e) of this Part, that the owner or operator has demonstrated to the Agency's satisfaction an inability to obtain access to an off-site property despite best efforts and therefore is not required to perform corrective action on the off-site property in order to satisfy the corrective action requirements of this Part, but is not relieved of responsibility to clean up portions of the release that have migrated off-site;

e) The prohibition under Section 734.715(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;

f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;

g) The recording obligations pursuant to Section 734.715 of this Part;

h) The opportunity to request a change in the recorded land use pursuant to Section 734.715(e) of this Part;

i) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]; and

j) Any other provisions agreed to by the Agency and the owner or operator.

Section 734.715 Duty to Record a No Further Remediation Letter

a) Except as provided in subsections (c) and (d) of this Section, an owner or operator receiving a No Further Remediation Letter from the Agency pursuant to this Subpart G must submit the letter, with a copy of any applicable institutional controls (as set forth in 35 Ill. Adm. Code 742, Subpart J) proposed as part of a corrective action completion report, to the office of the recorder or the registrar of titles of the county in which the site is located within 45 days after receipt of the letter. The letter and any attachments must be filed in accordance with Illinois law so that they form a permanent part of the chain of title for the site. Upon the lapse of the 45 day period for recording, pursuant to Section 734.720(a)(5) of this Part the Agency may void an unrecorded No Further Remediation Letter for failure to record it in a timely manner.

b) Except as provided in subsections (c) and (d) of this Section, a No Further Remediation Letter must be perfected upon the date of the official recording of such letter. The owner or operator must obtain and submit to the Agency, within 30 days after the official recording date, a certified or otherwise accurate and official copy of the letter and any attachments as recorded. An unperfected No Further Remediation Letter is effective only as between the Agency and the owner or operator.

c) For sites located in a highway authority right-of-way, the following requirements must apply:

1) In order for the No Further Remediation Letter to be perfected, the highway authority with jurisdiction over the right-of-way must enter into a Memorandum of Agreement (MOA) with the Agency. The MOA must include, but is not limited to:

A) The name of the site, if any, and any highway authority or Agency identifiers (e.g., incident number, Illinois inventory identification number);

B) The address of the site (or other description sufficient to identify the location of the site with certainty);

C) A copy of the No Further Remediation Letter for each site subject to the MOA;

D) Procedures for tracking sites subject to the MOA so that all highway authority offices and personnel whose responsibilities (e.g., land acquisition, maintenance, construction, utility permits) may affect land use limitations will have notice of any environmental concerns and land use limitations applicable to a site;

E) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the site to any other agency, private person or entity and the steps that will be taken to ensure the long-term integrity of any land use limitations including, but not limited to, the following:

i) Upon creation of a deed, the recording of the No Further Remediation Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742, with copies of the recorded instruments sent to the Agency within 30 days after recording;

ii) Any other arrangements necessary to ensure that property that is conveyed or transferred remains subject to any land use limitations approved and implemented as part of the corrective action plan and the No Further Remediation Letter; and

iii) Notice to the Agency at least 60 days prior to any such intended conveyance or transfer indicating the mechanism(s) to be used to ensure that any land use limitations will be operated or maintained as required in the corrective action plan and No Further Remediation Letter; and

F) Provisions for notifying the Agency if any actions taken by the highway authority or its permittees at the site result in the failure or inability to restore the site to meet the requirements of the corrective action plan and the No Further Remediation Letter.

2) Failure to comply with the requirements of this subsection (c) may result in voidance of the No Further Remediation Letter pursuant to Section 734.720 of this Part as well as any other penalties that may be available.

d) For sites located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title, the following requirements must apply:

1) To perfect a No Further Remediation Letter containing any restriction on future land use(s), the Federal Landholding Entity or Entities responsible for the site must enter into a Land Use Control Memorandum of Agreement (LUC MOA) with the Agency that requires the Federal Landholding Entity to do, at a minimum, the following:

A) Identify the location on the Federally Owned Property of the site subject to the No Further Remediation Letter. Such identification must be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identify the site in question with particularity;

B) Implement periodic site inspection procedures that ensure oversight by the Federal Landholding Entities of any land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

C) Implement procedures for the Federal Landholding Entities to periodically advise the Agency of continued compliance with all

maintenance and inspection requirements set forth in the LUC MOA;

D) Implement procedures for the Federal Landholding Entities to notify the Agency of any planned or emergency changes in land use that may adversely impact land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

E) Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of the site or sites subject to the No Further Remediation Letter, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure the No Further Remediation Letter is recorded on the chain of title upon transfer of the property; and

F) Attach to the LUC MOA a copy of the No Further Remediation Letter for each site subject to the LUC MOA.

2) To perfect a No Further Remediation letter containing no restriction(s) on future land use, the Federal Landholding Entity must submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter must be filed in accordance with Illinois law so it forms a permanent part of the chain of title. The Federal Landholding Entity must obtain and submit to the Agency, within 30 days after recording, a copy of the letter demonstrating that the recording requirements have been satisfied.

3) Failure to comply with the requirements of this subsection (d) and the LUC MOA may result in voidance of the No Further Remediation Letter as well as any other penalties that may be available.

e) At no time must any site for which a land use limitation has been imposed as a result of corrective action under this Part be used in a manner inconsistent with the land use limitation set forth in the No Further Remediation Letter. The land use limitation specified in the No Further Remediation Letter may be revised only by the perfecting of a subsequent No Further Remediation Letter, issued pursuant to Title XVII of the Act and regulations thereunder, following further investigation or remediation that demonstrates the attainment of objectives appropriate for the new land use.

Section 734.720 Voidance of a No Further Remediation Letter

a) The No Further Remediation Letter must be voidable if site activities are not carried out in full compliance with the provisions of this Part, and 35 Ill. Adm.

Code 742 where applicable, or the remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter include, but not be limited to:

1) Any violations of institutional controls or land use restrictions, if applicable;

2) The failure of the owner or operator or any subsequent transferee to operate and maintain preventive, engineering, and institutional controls;

3) Obtaining the No Further Remediation Letter by fraud or misrepresentation;

4) Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based that:

   A) were not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based;

   B) results in the failure to meet the remediation objectives established for the site; and

   C) pose a threat to human health or the environment;

5) Upon the lapse of the 45 day period for recording the No Further Remediation Letter, the failure to record and thereby perfect the No Further Remediation Letter in a timely manner;

6) The disturbance or removal of contamination left in place under an approved plan;

7) The failure to comply with the requirements of Section 734.715(c) of this Part and the Memorandum of Agreement entered in accordance with Section 734.715(c) of this Part for a site that is located in a highway authority right-of-way;

8) The failure to comply with the requirements of Section 734.715(d) of this Part and the LUC MOA entered in accordance with Section 734.715(d) of this Part for a site located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title;

9) The failure to comply with the requirements of Section 734.715(d) of this Part or the failure to record a No Further Remediation Letter perfected in

accordance with Section 734.715(d) of this Part within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation Letter to any entity that will not remain or become a Federal Landholding Entity; or

10) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1015(b)(5) and (c).

b) If the Agency seeks to void a No Further Remediation Letter, it must provide a Notice of Voidance to the current title holder of the site and the owner or operator at his or her last known address.

1) The Notice of Voidance must specify the cause for the voidance and describe the facts in support of the cause.

2) The Agency must mail Notices of Voidance by registered or certified mail, date stamped with return receipt requested.

c) Within 35 days after receipt of the Notice of Voidance, the current title holder and owner or operator of the site at the time the No Further Remediation Letter was issued may appeal the Agency's decision to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.

d) If the Board fails to take final action within 120 days, unless such time period is waived by the petitioner, the petition must be deemed denied and the petitioner must be entitled to an appellate court order pursuant to subsection (d) of Section 41 of the Act. The Agency must have the burden of proof in such action.

1) If the Agency's action is appealed, the action must not become effective until the appeal process has been exhausted and a final decision is reached by the Board or courts.

A) Upon receiving a notice of appeal, the Agency must file a Notice of lis pendens with the office of the recorder or the registrar of titles for the county in which the site is located. The notice must be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site.

B) If the Agency's action is not upheld on appeal, the Notice of lis pendens must be removed in accordance with Illinois law within 45 days after receipt of the final decision of the Board or the courts.

2) If the Agency's action is not appealed or is upheld on appeal, the Agency must submit the Notice of Voidance to the office of the recorder or the registrar of titles for the county in which the site is located. The Notice

must be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

## SUBPART H: MAXIMUM PAYMENT AMOUNTS

### Section 734.800 Applicability

a) Methods for Determining Maximum Amounts. This Subpart H provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. All costs associated with conducting corrective action are grouped into the tasks set forth in Sections 734.810 through 734.850 of this Part.

1) The first method for determining the maximum amount that can be paid for each task is to use the maximum amounts for each task set forth in those Sections, and Section 734.870. In some cases the maximum amounts are specific dollar amounts, and in other cases the maximum amounts are determined on a site-specific basis.

2) As an alternative to using the amounts set forth in Sections 734.810 through 734.850 of this Part, the second method for determining the maximum amounts that can be paid for one or more tasks is bidding in accordance with Section 734.855 of this Part. As stated in that Section, when bidding is used, if the lowest bid for a particular task is less than the amount set forth in Sections 734.810 through 734.850, the amount in Sections 734.810 through 734.850 of this Part may be used instead of the lowest bid.

3) The third method for determining maximum amounts that can be paid from the Fund applies to unusual or extraordinary circumstances. The maximum amounts for such circumstances can be determined in accordance with Section 734.860 of this Part.

b) The costs listed under each task set forth in Sections 734.810 through 734.850 of this Part identify only some of the costs associated with each task. They are not intended as an exclusive list of all costs associated with each task for the purposes of payment from the Fund.

c) This Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. Whether a particular cost is eligible for payment must be determined in accordance with Subpart F of this Part.

### Section 734.810 UST Removal or Abandonment Costs

Payment for costs associated with UST removal or abandonment of each UST must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the excavation, removal, disposal, and abandonment of UST systems.

| UST Volume | Maximum Total Amount per UST |
|---|---|
| 110 – 999 gallons | $2,100 |
| 1,000 – 14,999 gallons | $3,150 |
| 15,000 or more gallons | $4,100 |

Section 734.815 Free Product or Groundwater Removal and Disposal

Payment for costs associated with the removal and disposal of free product or groundwater must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the removal, transportation, and disposal of free product or groundwater, and the design, construction, installation, operation, maintenance, and closure of free product or groundwater removal systems.

a) Payment for costs associated with each round of free product or groundwater removal via hand bailing or a vacuum truck must not exceed a total of $0.68 per gallon or $200, whichever is greater.

b) Payment for costs associated with the removal of free product or groundwater via a method other than hand bailing or vacuum truck must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part. Such costs must include, but are not limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product and groundwater removal systems.

Section 734.820 Drilling, Well Installation, and Well Abandonment

Payment for costs associated with drilling, well installation, and well abandonment must not exceed the amounts set forth in this Section.

a) Payment for costs associated with each round of drilling must not exceed the following amounts. Such costs must include, but are not limited to, those associated with mobilization, drilling labor, decontamination, and drilling for the purposes of soil sampling or well installation.

| Type of Drilling | Maximum Total Amount |
|---|---|
| Hollow-stem auger | greater of $23 per foot or $1,500 |
| Direct-push platform | |
| - for sampling or other non-injection purposes | greater of $18 per foot or $1,200 |
| - for injection purposes | greater of $15 per foot or $1,200 |

b) Payment for costs associated with the installation of monitoring wells, excluding drilling, must not exceed the following amounts. Such costs must include, but are not limited to, those associated with well construction and development.

| Type of Borehole | Maximum Total Amount |
|---|---|
| Hollow-stem auger | $16.50/foot (well length) |
| Direct-push platform | $12.50/foot (well length) |

c) Payment for costs associated with the installation of recovery wells, excluding drilling, must not exceed the following amounts. Such costs must include, but not be limited to, those associated with well construction and development.

| Well Diameter | Maximum Total Amount |
|---|---|
| 4 or 6 inches | $25.00/foot (well length) |
| 8 inches or greater | $41.00/foot (well length) |

d) Payment for costs associated with the abandonment of monitoring wells must not exceed $10 per foot of well length.

Section 734.825 Soil Removal and Disposal

Payment for costs associated with soil removal, transportation, and disposal must not exceed the amounts set forth in this Section. Such costs must include, but are not limited to, those associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives or visibly contaminated fill removed pursuant to Section 734.210(f) of this Part, and the purchase, transportation, and placement of material used to backfill the resulting excavation.

a) Payment for costs associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives, visibly contaminated fill removed pursuant to Section 734.210(f) of this Part, and concrete, asphalt, or paving overlying such contaminated soil or fill must not exceed a total of $57 per cubic yard.

1) Except as provided in subsection (a)(2) of this Section, the volume of soil removed and disposed must be determined by the following equation using the dimensions of the resulting excavation:

(Excavation Length x Excavation Width x Excavation Depth) x 1.05.

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 734.210(f) of this Part must be determined in accordance with Appendix C of this Part.

b) Payment for costs associated with the purchase, transportation, and placement of material used to backfill the excavation resulting from the removal and disposal of soil must not exceed a total of $20 per cubic yard.

1) Except as provided in subsection (b)(2) of this Section, the volume of backfill material must be determined by the following equation using the dimensions of the backfilled excavation:

(Excavation Length x Excavation Width x Excavation Depth) x 1.05.

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of backfill material used to replace soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 734.210(f) of this Part must be determined in accordance with Appendix C of this Part.

c) Payment for costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action must not exceed a total of $6.50 per cubic yard. The volume of soil removed and returned must be determined by the following equation using the dimensions of the excavation resulting from the removal of the soil:

(Excavation Length x Excavation Width x Excavation Depth).

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

Section 734.830 Drum Disposal

Payment for costs associated with the purchase, transportation, and disposal of 55-gallon drums containing waste generated as a result of corrective action (e.g., boring cuttings, water bailed for well development or sampling, hand-bailed free product) must not exceed the following amounts or a total of $500, whichever is greater.

| Drum Contents | Maximum Total Amount per Drum |
|---|---|
| Solid waste | $250 |
| Liquid waste | $150 |

Section 734.835 Sample Handling and Analysis

Payment for costs associated with sample handling and analysis must not exceed the amounts set forth in Section 734.Appendix D of this Part. Such costs must include, but are not limited to,

those associated with the transportation, delivery, preparation, and analysis of samples, and the reporting of sample results. For laboratory analyses not included in this Section, the Agency may determine reasonable maximum payment amounts on a site-specific basis.

Section 734.840 Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures

a) Payment for costs associated with concrete, asphalt, and paving installed as an engineered barrier, other than replacement concrete, asphalt, and paving, must not exceed the following amounts. Costs associated with the replacement of concrete, asphalt, and paving used as an engineered barrier are subject to the maximum amounts set forth in subsection (b) of this Section instead of this subsection (a).

| Depth of Material | | Maximum Total Amount per Square Foot |
|---|---|---|
| Asphalt and paving – | 2 inches | $1.65 |
| | 3 inches | $1.86 |
| | 4 inches | $2.38 |
| Concrete – | any depth | $2.38 |

b) Payment for costs associated with the replacement of concrete, asphalt, and paving must not exceed the following amounts:

| Depth of Material | | Maximum Total Amount per Square Foot |
|---|---|---|
| Asphalt and paving – | 2 inches | $1.65 |
| | 3 inches | $1.86 |
| | 4 inches | $2.38 |
| | 6 inches | $3.08 |
| Concrete – | 2 inches | $2.45 |
| | 3 inches | $2.93 |
| | 4 inches | $3.41 |
| | 5 inches | $3.89 |
| | 6 inches | $4.36 |
| | 8 inches | $5.31 |

For depths other than those listed in this subsection, the Agency must determine reasonable maximum payment amounts on a site-specific basis.

c) Payment for costs associated with the destruction or the dismantling and reassembly of above grade structures must not exceed the time and material amounts set forth in Section

734.850 of this Part. The total cost for the destruction or the dismantling and reassembly of above grade structures must not exceed $10,000 per site.

Section 734.845 Professional Consulting Services

Payment for costs associated with professional consulting services will be reimbursed on time and material basis pursuant to Section 734.850. ~~must not exceed the amounts set forth in this Section.~~ Such costs must include, but are not limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; vehicle charges; lodging; meals; and the preparation, review, certification, and submission of all plans, budgets, reports, applications for payment, and other documentation.

~~a) Early Action and Free Product Removal. Payment of costs for professional consulting services associated with early action and free product removal activities conducted pursuant to Subpart B of this Part must not exceed the following amounts:~~

~~1) Payment for costs associated with preparation for the abandonment or removal of USTs must not exceed a total of $960.~~

~~2) Payment for costs associated with early action field work and field oversight must not exceed a total of $390 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:~~

~~A) If one or more USTs are removed, one half-day for each leaking UST that is removed, not to exceed a total of ten half-days, plus one half-day for each 225 cubic yards, or fraction thereof, of visibly contaminated fill material removed and disposed of in accordance with Section 734.210(f) of this Part;~~

~~B) If one or more USTs remain in place, one half-day for every four soil borings, or fraction thereof, drilled pursuant to Section 734.210(h)(2) of this Part; and~~

~~C) One half-day if a UST line release is repaired.~~

~~3) Payment for costs associated with the preparation and submission of 20-day and 45-day reports, including, but not limited to, field work not covered by subsection (a)(2) of this Section, must not exceed a total of $4,800.~~

~~4) Payment for costs associated with the preparation and submission of free product removal plans and the installation of free product removal systems must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part.~~

5) Payment for costs associated with Stage 3 site investigations will be reimbursed pursuant to Section 734.850.

6) Payment for costs associated with the preparation and submission of reports submitted pursuant to Section 734.210(h)(3) of this Part must not exceed a total of $500.

b) Site Investigation. Payment of costs for professional consulting services associated with site investigation activities conducted pursuant to Subpart C of this Part must not exceed the following amounts:

1) Payment for costs associated with Stage 1 site investigation preparation must not exceed a total of $1,600.

2) Payment for costs associated with Stage 1 field work and field oversight must not exceed a total of $390 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 1 site investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed must be included in subsection (b)(2)(B) of this Section instead of this subsection (b)(2)(A); and

B) One half-day for each monitoring well installed as part of the Stage 1 site investigation.

3) Payment for costs associated with the preparation and submission of Stage 2 site investigation plans must not exceed a total of $3,200.

4) Payment for costs associated with Stage 2 field work and field oversight must not exceed a total of $390 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 2 site investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed must be included in subsection (b)(4)(B) of this Section instead of this subsection (b)(4)(A); and

B) One half-day for each monitoring well installed as part of the Stage 2 site investigation.

5) Payment for costs associated with the preparation and submission of Stage 3 site investigation plans must not exceed a total of $3,200.

6) Payment for costs associated with Stage 3 field work and field oversight must not exceed a total of $390 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 3 site investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed must be included in subsection (b)(6)(B) of this Section instead of this subsection (b)(6)(A); and

B) One half-day for each monitoring well installed as part of the Stage 3 site investigation.

7) Payment for costs associated with well surveys conducted pursuant to Section 734.445(b) of this Part must not exceed a total of $160. Payment for costs associated with well surveys conducted pursuant to Section 734.445(c) of this Part must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part.

8) Payment for costs associated with the preparation and submission of site investigation completion reports must not exceed a total of $1,600.

c) Corrective Action. Payment of costs for professional consulting services associated with corrective action activities conducted pursuant to Subpart C of this Part must not exceed the following amounts:

1) For conventional technology, payment for costs associated with the preparation and submission of corrective action plans must not exceed a total of $5,120. For alternative technologies, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part.

2) Payment for costs associated with corrective action field work and field oversight must not exceed the following amounts:

A) For conventional technology, a total of $390 per half-day, not to exceed one half-day for each 225 cubic yards, or fraction thereof, of soil removed and disposed, plus travel costs in accordance with subsection (e) of this Section.

B) For alternative technologies, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part.

3) Payment for costs associated with Environmental Land Use Controls and Highway Authority Agreements used as institutional controls pursuant to 35 Ill. Adm. Code 742 must not exceed a total of $800 per Environmental Land Use Control or Highway Authority Agreement.

4) Payment for costs associated with the preparation and submission of corrective action completion reports must not exceed a total of $5,120.

d) Development of Tier 2 and Tier 3 Remediation Objectives. Payment of costs for professional consulting services associated with the development of Tier 2 and Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742 must not exceed the following amounts:

1) Payment for costs associated with field work and field oversight for the development of remediation objectives must not exceed a total of $390 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled solely for the purpose of developing remediation objectives. Borings in which monitoring wells are installed must be included in subsection (d)(1)(B) of this Section instead of this subsection (d)(1)(A); and

B) One half-day for each monitoring well installed solely for the purpose of developing remediation objectives.

2) Excluding costs set forth in subsection (d)(1) of this Section, payment for costs associated with the development of Tier 2 or Tier 3 remediation objectives must not exceed a total of $800.

e) Payment for costs associated with travel, including, but not limited to, travel time, per diem, mileage, transportation, vehicle charges, lodging, and meals, must not exceed the following amounts. Costs for travel must be allowed only when specified elsewhere in this Part.

| Distance to site (land miles) | Maximum total amount per calendar day |
|---|---|
| 0 to 29 | $140 |
| 30 to 59 | $220 |
| 60 or more | $300 |

~~Distances must be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site must be measured from the consultant's office that is closest to the site.~~

~~f) If a plan must be amended due to unforeseen circumstances, costs associated with the amendment of the plan and its associated budget must not exceed a total of $640.~~

Section 734.850 Payment on Time and Materials Basis

This Section sets forth the maximum amounts that may be paid when payment is allowed on a time and materials basis.

a) Payment for costs associated with activities that have a maximum payment amount set forth in other sections of this Subpart H (e.g, sample handling and analysis, drilling, well installation and abandonment, or drum disposal~~, or consulting fees for plans, field work, field oversight, and reports~~) must not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 734.860 of this Part.

b) Maximum payment amounts for costs associated with activities that do not have a maximum payment amount set forth in other Sections of this Subpart H must be determined by the Agency on a site-specific basis, provided, however, that personnel costs must not exceed the amounts set forth in Appendix E of this Part. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work. Owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

BOARD NOTE: Alternative technology costs in excess of the costs of conventional technology are ineligible for payment from the Fund. See Sections 734.340(b) and 734.630(z) of this Part.

Section 734.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing.

a) A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.

b) The bids must be summarized on forms prescribed and provided by the Agency. The bid summary form, along with copies of the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.

c) The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H, in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.

Section 734.860 Unusual or Extraordinary Circumstances

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payment amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. Examples of unusual or extraordinary circumstances include, but are not limited to, an inability to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited number of persons providing the service needed.

Section 734.865 Handling Charges

Payment of handling charges must not exceed the amounts set forth in Section 734.635 of this Part.

Section 734.870 Increase in Maximum Payment Amounts

The maximum payment amounts set forth in this Subpart H must be adjusted annually by an inflation factor determined by the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business.

a) The inflation factor must be calculated each year by dividing the latest published annual Implicit Price Deflator for Gross National Product by the annual Implicit Price Deflator for Gross National Product for the previous year. The inflation

factor must be rounded to the nearest 1/100th. In no case must the inflation factor be more than five percent in a single year.

b) Adjusted maximum payment amounts must become effective on July 1 of each year and must remain in effect through June 30 of the following year. The first adjustment must be made on July 1, 2006, by multiplying the maximum payment amounts set forth in this Subpart H by the applicable inflation factor. Subsequent adjustments must be made by multiplying the latest adjusted maximum payment amounts by the latest inflation factor.

c) The Agency must post the inflation factors on its website no later than the date they become effective. The inflation factors must remain posted on the website in subsequent years to aid in the calculation of adjusted maximum payment amounts.

d) Adjusted maximum payment amounts must be applied as follows:

1) For costs approved by the Agency in writing prior to the date the costs are incurred, the applicable maximum payment amounts must be the amounts in effect on the date the Agency received the budget in which the costs were proposed. Once the Agency approves a cost, the applicable maximum payment amount for the cost must not be increased (e.g, by proposing the cost in a subsequent budget).

2) For costs not approved by the Agency in writing prior to the date the costs are incurred, including, but not limited to, early action costs, the applicable maximum payment amounts must be the amounts in effect on the date the costs were incurred.

3) Owners and operators must have the burden of requesting the appropriate adjusted maximum payment amounts in budgets and applications for payment.

Section 734.875 Agency Review of Payment Amounts

No less than every three years the Agency must review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report must identify amounts that are not consistent with the prevailing market rates and suggest changes needed to make the amounts consistent with the prevailing market rates. The Board must publish notice of receipt of the report in the *Environmental Register* and on the Board's web page.

Section 734.APPENDIX A Indicator Contaminants

| TANK CONTENTS | INDICATOR CONTAMINANTS |
|---|---|
| GASOLINE | Benzene |
| leaded[1], unleaded, premium and gasohol | Ethylbenzene |
| | Toluene |
| | Xylene |
| | Methyl tertiary butyl ether (MTBE) |
| MIDDLE DISTILLATE AND HEAVY ENDS | |
| aviation turbine fuels[1] | Benzene |
| jet fuels | Ethylbenzene |
| | Toluene |
| | Xylene |
| diesel fuels | Acenaphthene |
| gas turbine fuel oils | Anthracene |
| heating fuel oils | Benzo(a)anthracene |
| illuminating oils | Benzo(a)pyrene |
| Kerosene | Benzo (b)fluoranthene |
| Lubricants | Benzo (k)fluoranthene |
| liquid asphalt and dust laying oils | Chrysene |
| cable oils | Dibenzo(a,h)anthracene |
| crude oil, crude oil fractions | Fluoranthene |
| petroleum feedstocks | Fluorene |
| petroleum fractions | Indeno(1,2,3-c,d)pyrene |
| heavy oils | Naphthalene |
| transformer oils[2] | Pyrene |
| hydraulic fluids[3] | Acenaphthylene |
| petroleum spirits[4] | Benzo(g,h,i)perylene |
| mineral spirits[4], Stoddard solvents[4] | Phenanthrene |
| high-flash aromatic naphthas[4] | |
| VM&P naphthas[4] | |
| moderately volatile hydrocarbon solvents[4] | |
| petroleum extender oils[4] | |
| USED OIL | Screening sample[5] |

1 lead is also an indicator contaminant

2 the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants

3 barium is also an indicator contaminant

4 the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B are also indicator contaminants

5 used oil indicator contaminants must be based on the results of a used oil soil sample analysis - refer to Section 734.405(g) of this Part

Section 734.APPENDIX B Additional Parameters

Volatiles

| | |
|---|---|
| 1. | Benzene |
| 2. | Bromoform |
| 3. | Carbon tetrachloride |
| 4. | Chlorobenzene |
| 5. | Chloroform |
| 6. | Dichlorobromomethane |
| 7. | 1,2-Dichloroethane |
| 8. | 1,1-Dichloroethene |
| 9. | cis-1,2-Dichloroethylene |
| 10. | Trans-1,2-Dichloroethylene |
| 11. | Dichloromethane (Methylene chloride) |
| 12. | 1,2-Dichloropropane |
| 13. | 1,3-Dichloropropylene (cis + trans) |
| 14. | Ethylbenzene |
| 15. | Styrene |
| 16. | Tetrachloroethylene |
| 17. | Toluene |
| 18. | 1,1,1-Trichloroethane |
| 19. | 1,1,2-Trichloroethane |
| 20. | Trichloroethylene |
| 21. | Vinyl chloride |
| 22. | Xylenes (total) |

Base/Neutrals

| | |
|---|---|
| 1. | Bis(2-chloroethyl)ether |
| 2. | Bis(2-ethylhexyl)phthalate |
| 3. | 1,2-Dichlorobenzene |
| 4. | 1,4-Dichlorobenzene |
| 5. | Hexachlorobenzene |
| 6. | Hexachlorocyclopentadiene |
| 7. | *n*-Nitrosodi-*n*-propylamine |
| 8. | *n*-Nitrosodiphenylamine |
| 9. | 1,2,4-Trichlorobenzene |

Polynuclear Aromatics

| | |
|---|---|
| 1. | Acenaphthene |
| 2. | Anthracene |
| 3. | Benzo(a)anthracene |
| 4. | Benzo(a)pyrene |
| 5. | Benzo(b)fluoranthene |
| 6. | Benzo(k)fluoranthene |
| 7. | Chrysene |

8. Dibenzo(a,h)anthracene
9. Fluoranthene
10. Fluorene
11. Indeno(1,2,3-c,d)pyrene
12. Naphthalene
13. Pyrene
14. Acenaphthylene
15. Benzo(g,h,i)perylene
16. Phenanthrene

Metals (total inorganic and organic forms)

1. Arsenic
2. Barium
3. Cadmium
4. Chromium (total)
5. Lead
6. Mercury
7. Selenium

Polychlorinated Biphenyls

1. Polychlorinated Biphenyls
   (as Decachlorobiphenyl)

Section 734.APPENDIX C Backfill Volumes

| Volume of Tank in Gallons | Maximum amount of backfill material to be removed: | Maximum amount of backfill material to be replaced: |
|---|---|---|
| | Cubic yards | Cubic yards |
| <285 | 54 | 56 |
| 285 to 299 | 55 | 57 |
| 300 to 559 | 56 | 58 |
| 560 to 999 | 67 | 70 |
| 1000 to 1049 | 81 | 87 |
| 1050 to 1149 | 89 | 96 |
| 1150 to 1999 | 94 | 101 |
| 2000 to 2499 | 112 | 124 |
| 2500 to 2999 | 128 | 143 |
| 3000 to 3999 | 143 | 161 |
| 4000 to 4999 | 175 | 198 |
| 5000 to 5999 | 189 | 219 |
| 6000 to 7499 | 198 | 235 |
| 7500 to 8299 | 206 | 250 |
| 8300 to 9999 | 219 | 268 |
| 10,000 to 11,999 | 252 | 312 |
| 12,000 to 14,999 | 286 | 357 |
| >15,000 | 345 | 420 |

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

Section 734.APPENDIX D Sample Handling and Analysis

| | Max. Total Amount per Sample |
|---|---|
| | |
| Chemical | |
| BETX Soil with MTBE | $85 |
| BETX Water with MTBE | $81 |
| COD (Chemical Oxygen Demand) | $30 |
| Corrosivity | $15 |
| Flash Point or Ignitability Analysis EPA 1010 | $33 |
| FOC (Fraction Organic Carbon) | $38 |
| Fat, Oil, & Grease (FOG) | $60 |
| LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 734.AppendixB of this Part | $693 |
| Organic Carbon (ASTM-D 2974-87) | $33 |
| Dissolved Oxygen (DO) | $24 |
| Paint Filter (Free Liquids) | $14 |

| | |
|---|---|
| PCB / Pesticides (combination) | $222 |
| PCBs | $111 |
| Pesticides | $140 |
| PH | $14 |
| Phenol | $34 |
| Polynuclear Aromatics PNA, or PAH SOIL | $152 |
| Polynuclear Aromatics PNA, or PAH WATER | $152 |
| Reactivity | $68 |
| SVOC - Soil (Semi-volatile Organic Compounds) | $313 |
| SVOC - Water (Semi-volatile Organic Compounds) | $313 |
| TKN (Total Kjeldahl) "nitrogen" | $44 |
| TOC (Total Organic Carbon) EPA 9060A | $31 |
| TPH (Total Petroleum Hydrocarbons) | $122 |
| VOC (Volatile Organic Compound) - Soil (Non-Aqueous) | $175 |
| VOC (Volatile Organic Compound) - Water | $169 |
| | |
| Geo-Technical | |
| Bulk Density ASTM D4292 / D2937 | $22 |
| Ex-Situ Hydraulic Conductivity / Permeability | $255 |
| Moisture Content ASTM D2216-90 / D4643-87 | $12 |
| Porosity | $30 |
| Rock Hydraulic Conductivity Ex-Situ | $350 |
| Sieve / Particle Size Analysis ASTM D422-63 / D1140-54 | $145 |
| Soil Classification ASTM D2488-90 / D2487-90 | $68 |
| | |
| Metals | |
| Arsenic TCLP Soil | $16 |
| Arsenic Total Soil | $16 |
| Arsenic Water | $18 |
| Barium TCLP Soil | $10 |
| Barium Total Soil | $10 |
| Barium Water | $12 |
| Cadmium TCLP Soil | $16 |
| Cadmium Total Soil | $16 |
| Cadmium Water | $18 |
| Chromium TCLP Soil | $10 |
| Chromium Total Soil | $10 |
| Chromium Water | $12 |
| Cyanide TCLP Soil | $28 |
| Cyanide Total Soil | $34 |
| Cyanide Water | $34 |
| Iron TCLP Soil | $10 |
| Iron Total Soil | $10 |
| Iron Water | $12 |

| | |
|---|---|
| Lead TCLP Soil | $16 |
| Lead Total Soil | $16 |
| Lead Water | $18 |
| Mercury TCLP Soil | $19 |
| Mercury Total Soil | $10 |
| Mercury Water | $26 |
| Selenium TCLP Soil | $16 |
| Selenium Total Soil | $16 |
| Selenium Water | $15 |
| Silver TCLP Soil | $10 |
| Silver Total Soil | $10 |
| Silver Water | $12 |
| Metals TCLP Soil (a combination of all RCRA metals) | $103 |
| Metals Total Soil (a combination of all RCRA metals) | $94 |
| Metals Water (a combination of all RCRA metals) | $119 |
| | |
| Soil preparation for Metals TCLP Soil (one fee per sample) | $79 |
| Soil preparation for Metals Total Soil (one fee per sample) | $16 |
| Water preparation for Metals Water (one fee per sample) | $11 |
| | |
| Other | |
| En Core® Sampler, purge-and-trap sampler, or equivalent sampling device | $10 |
| Sample Shipping (*maximum total amount for shipping all samples collected in a calendar day) | $50* |

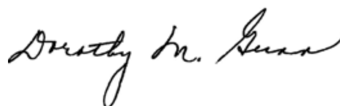
Section 734.APPENDIX E Personnel Titles and Rates

| Title | Degree Required | Ill. License Req'd. | Min. Yrs. Experience | Max. Hourly Rate |
|---|---|---|---|---|
| Engineer I | Bachelor's in Engineering | None | 0 | $75 |
| Engineer II | Bachelor's in Engineering | None | 2 | $85 |
| Engineer III | Bachelor's in Engineering | None | 4 | $100 |
| Professional Engineer | Bachelor's in Engineering | P.E. | 4 | $110 |
| Senior Prof. Engineer | Bachelor's in Engineering | P.E. | 8 | $130 |
| Geologist I | Bachelor's in Geology or Hydrogeology | None | 0 | $70 |
| Geologist II | Bachelor's in Geology or Hydrogeology | None | 2 | $75 |
| Geologist III | Bachelor's in Geology or Hydrogeology | None | 4 | $88 |
| Professional Geologist | Bachelor's in Geology or Hydrogeology | P.G. | 4 | $92 |
| Senior Prof. Geologist | Bachelor's in Geology or Hydrogeology | P.G. | 8 | $110 |
| Scientist I | Bachelor's in a Natural or Physical Science | None | 0 | $60 |
| Scientist II | Bachelor's in a Natural or Physical Science | None | 2 | $65 |
| Scientist III | Bachelor's in a Natural or Physical Science | None | 4 | $70 |
| Scientist IV | Bachelor's in a Natural or Physical Science | None | 6 | $75 |
| Senior Scientist | Bachelor's in a Natural or Physical Science | None | 8 | $85 |

| Project Manager | None | None | 8[1] | $90 |
|---|---|---|---|---|
| Senior Project Manager | None | None | 12[1] | $100 |
| Technician I | None | None | 0 | $45 |
| Technician II | None | None | 2[1] | $50 |
| Technician III | None | None | 4[1] | $55 |
| Technician IV | None | None | 6[1] | $60 |
| Senior Technician | None | None | 8[1] | $65 |
| Account Technician I | None | None | 0 | $35 |
| Account Technician II | None | None | 2[2] | $40 |
| Account Technician III | None | None | 4[2] | $45 |
| Account Technician IV | None | None | 6[2] | $50 |
| Senior Acct. Technician | None | None | 8[2] | $55 |
| Administrative Assistant I | None | None | 0 | $25 |
| Administrative Assistant II | None | None | 2[3] | $30 |
| Administrative Assistant III | None | None | 4[3] | $35 |
| Administrative Assistant IV | None | None | 6[3] | $40 |
| Senior Admin. Assistant | None | None | 8[3] | $45 |
| Draftperson/CAD I | None | None | 0 | $40 |
| Draftperson/CAD II | None | None | 2[4] | $45 |
| Draftperson/CAD III | None | None | 4[4] | $50 |
| Draftperson/CAD IV | None | None | 6[4] | $55 |
| Senior Draftperson/CAD | None | None | 8[4] | $60 |

[1] Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.
[2] Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.
[3] Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.
[4] Equivalent work-related or college level education with significant coursework in drafting or computer aided design ("CAD") can be substituted for all or part of the specified experience requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 1, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board