

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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AUTHORITY: Implementing Sections 22.12 and 57.19 and authorized by Sections 5, 22, 27, and 57.14A of the Environmental Protection Act [415 ILCS 5/5, 22, 22.12, 27, and 57.19]

SOURCE: Adopted in R04-22/23 at 30 Ill. Reg.5090, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. 16151, effective November 21, 2007; amended in R11-22 at 36 Ill. Reg. 4898 effective March 19, 2012..

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) in accordance with the Office of State Fire Marshal (OSFM) regulations. This Part 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 prior to June 8, 2010, the Agency may deem that one or more requirements of this Part have been satisfied, based upon activities conducted prior to June 8, 2010, 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 June 8, 2010 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 March 1, 2006 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) This Part *applies to all* releases subject to Title XVI of the Act *for which a No Further Remediation Letter is issued on or after June 8, 2010, provided that costs incurred prior to June 8, 2010 shall be payable from the UST Fund in the same manner as allowed under the law in effect at the time the costs were incurred and releases for which corrective action was completed prior to June 8, 2010 shall be eligible for a No Further Remediation Letter in the same manner as allowed under the law in effect at the time the corrective action was completed.* [415 ILCS 5/57.13] Costs incurred pursuant to a plan approved by the Agency prior to June 8, 2010 must be reviewed in accordance with the law in effect at the time the plan was approved. Any budget associated with such a plan must also be reviewed in accordance with the law in effect at the time the plan was approved.
- 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.

(Source: Amended at 36 Ill. Reg. 4898 effective March 19, 2012).

#### Section 734.105 Election to Proceed under Part 734

- a) 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.
- b) 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.

- c) This Section does not apply to any release for which the Agency has issued a No Further Remediation Letter.

(Source: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

#### 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].

"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)

*Any person who has submitted to the Agency a written election to proceed under the underground storage tank program and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "No Further Remediation Letter" by the Agency pursuant to the underground storage tank program [415 ILCS 5/57.2].*

"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" 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 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 Property” means residential property as defined in 35 Ill. Adm. Code 742.200.

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

“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.

“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 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected to the following:

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.

(Source: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

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 D2487-10, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System) (January 1, 2010)

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.

(Source: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

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 to the Agency 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: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

#### 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 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, 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.

### 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::

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

BOARD NOTE: The OSFM rules for the reporting of UST releases are found at 41 Ill. Adm. Code 176.320(a).

- 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
- 3) Immediately 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) through (E). 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 USTs and as close practicable to, but not more than five feet from, the backfill material surrounding the USTs. 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) 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.

(Source: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

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 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 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.

#### Section 734.360 Application of Certain TACO Provisions

*For purposes of payment from the Fund, corrective action activities required to meet the minimum requirements of this Part shall include, but not be limited to, the following use of the Board's Tiered Approach to Corrective Action Objectives rules adopted under Title XVII of the Act: [415 ILCS 5/57.7(c)(3)(A)]:*

- a) *For the site where the release occurred, the use of Tier 2 remediation objectives that are no more stringent than Tier 1 remediation objectives. [415 ILCS 5/57.7(c)(3)(A)(i)]*
- b) *The use of industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property. [415 ILCS 5/57.7(c)(3)(A)(ii)]*
- c) 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, the groundwater ordinance must be used as an institutional control, provided that the Agency may approve remediation to the extent necessary to remediate or prevent groundwater contamination of off-site property that is not subject to a groundwater ordinance already approved by the Agency for use as an institutional control.
- d) If the use of a groundwater ordinance as an institutional control is not required pursuant to subsection (c) of this Section, another institutional control must be used in accordance with 35 Ill. Adm. Code 742 to address groundwater contamination at the site where the release occurred, provided that the Agency may approve remediation to the extent necessary to remediate or prevent groundwater contamination at off-site property that is not subject to a groundwater ordinance or other institutional control that it used to address

groundwater contamination. Institutional controls used to comply with this subsection (d) include, but are not limited to, the following:

- 1) Groundwater ordinances that are not required to be used as institutional controls pursuant to subsection (c) of this Section.
- 2) No Further Remediation Letters that prohibit the use and installation of potable water supply wells at the site.

(Source: Added at 36 Ill. Reg. 4898 effective March 19, 2012)

#### 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(aaa) and (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 March 1, 2006, all applications for payment must be submitted no later than March 1, 2007.

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:

<i>Amount</i>	<i>Number of Tanks</i>
<i>\$2,000,000</i>	<i>fewer than 101</i>
<i>\$3,000,000</i>	<i>101 or more</i>

[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 action 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;
  - 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; and

- 6) Costs associated with activities conducted under Section 734.632 of this Part;
- 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. This subsection (nn) does not apply to costs associated with activities conducted under Section 734.632 of this Part;
- 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) (Reserved);
- 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 (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;-
- ccc) Costs associated with on-site corrective action to achieve Tier 2 remediation objectives that are more stringent than Tier 1 remediation objectives;
- ddd) Costs associated with corrective action to achieve remediation objectives other than industrial/commercial property remediation objectives, unless the owner or

operator demonstrates that the property being remediated is residential property or is being developed into residential property. This subsection (ddd) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(c) or (d) of this Part to remediate or prevent groundwater contamination at off-site property;

- eee) Costs associated with groundwater remediation if a groundwater ordinance must be used as an institutional control under Section 734.360(c) of this Part. This subsection (eee) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(c) of this Section to remediate or prevent groundwater contamination at off-site property;
- fff) Costs associated with on-site groundwater remediation if an institutional control is required to address on-site groundwater remediation under Section 734.360(d) of this Part. This subsection (fff) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(d) to remediate or prevent groundwater contamination at off-site property.

(Source: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

#### Section 734.632 Eligible Corrective Action Costs Incurred After NFR Letter

Notwithstanding Section 734.360(gg) and (nn) of this Part, the *following shall be considered corrective action activities eligible for payment from the Fund even when an owner or operator conducts these activities after the issuance of a No Further Remediation Letter. Corrective action conducted under this Section and costs incurred under this Section must comply with the requirements of Title XVI of the Act and this Part, including, but not limited to, requirements for the submission and Agency approval of corrective action plans and budgets, corrective action completion reports, and applications for payment, provided that no plan, budget, or report is required for activities conducted pursuant to subsection (d) or (e) of this Section.*

- a) *Corrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial property remediation objectives pursuant to Section 57.7(c)(3)(A)(ii) of the Act and Section 734.360(b) of this Part is being developed into residential property.*
- b) *Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because a groundwater ordinance used as an institutional control pursuant to Section 57.7(c)(3)(A)(iii) of the Act and Section 734.360(c) of this Part can no longer be used as an institutional control.*
- c) *Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because an on-site groundwater use restriction used as an institutional control pursuant to Section 57.7(c)(3)(A)(iv) of*

the Act and Section 734.360(d) of this Part *must be lifted in order to allow the installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner or operator.*

- d) *The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed Tier 1 residential property remediation objectives, if industrial/commercial property remediation objectives were used pursuant to Section 57.7(c)(3)(A)(ii) of the Act and Section 734.360(b) of this Part and the owner or operator demonstrates that the contamination is the result of the release for which the owner or operator is eligible to seek payment from the Fund and disposal of the soil is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement. Costs eligible for payment under this subsection (d) are the costs to transport the soil to a properly permitted disposal site and disposal site fees, and may include, but are not limited to, costs for: disposal site waste characterization sampling; disposal site authorization, scheduling, and coordination; field oversight; disposal fees; and preparation of applications for payment.*
- e) *The disposal of water exceeding groundwater remediation objectives that is removed from an excavation on the site where the release occurred if a groundwater ordinance is used as an institutional control pursuant to Section 57.7(c)(3)(A)(iii) of the Act and Section 734.360(c) of this Part, or if an on-site groundwater use restriction is used as an institutional control pursuant to Section 57.7(c)(3)(A)(iv) of the Act and Section 734.360(d) of this Part, and the owner or operator demonstrates that the excavation is located within the measured or modeled extent of groundwater contamination resulting from the release for which the owner or operator is eligible to seek payment from the Fund and disposal of the groundwater is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement. [415 ILCS 5/57.19].*
- f) Consulting fees for corrective action conducted pursuant to subsections (a), (b), and (c) of this Section. Consulting fees shall be subject to Subpart H of this Part.

(Source: Added at 36 Ill. Reg. 4898 effective March 19, 2012)

#### 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 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 must provide proper facilities for such access and inspection.
- c) Owners or operators 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, except for *off-site contamination related to the occurrence that has not been remediated due to denial of access to the off-site property*:
  - 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)];*
- 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 avoidance 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.

(Source: Amended at 31 Ill. Reg. 16151, effective November 21, 2007)

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

Payment for costs associated with removal 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, and disposal 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: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

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:

$$(\text{Excavation Length} \times \text{Excavation Width} \times \text{Excavation Depth}) \times 1.05.$$

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:

$$(\text{Excavation Length} \times \text{Excavation Width} \times \text{Excavation Depth}) \times 1.05.$$

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:

$$(\text{Excavation Length} \times \text{Excavation Width} \times \text{Excavation Depth}).$$

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 a time and materials basis pursuant to Section 734.850. 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.

#### 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) 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. Bidding is optional. Bidding is allowed *only if the owner or operator demonstrates that corrective action cannot be performed for amounts less than or equal to maximum payment* [415 ILCS 5/57.7(c)(3)(C)] set forth in this Part. Once a maximum payment amount is determined via bidding in accordance with this Section, the Agency may approve the maximum payment amount in amended budgets and other subsequent budgets submitted for the same incident.

- a) Bidding must be *publicly-noticed, competitive, and sealed bidding that includes, at a minimum, the following:*
  - 1) *The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable.*
    - A) The invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. Invitations for bids may include, but shall not be limited to, contract terms and conditions, including but not limited to warranty and bonding or other security requirements, and qualification requirements, which may include, but shall not be limited to, factors to be considered in determining whether a bidder is responsible pursuant to subsection (d) of this Section. The time during which bids may be submitted must begin on the date the invitation for bids is issued and must end at the time and date set

for opening of the bids. In no case shall the time for bid submission be less than 14 days.

- B) Each bid must be stamped with the date and time of receipt, and stored unopened in a secure place until the time and date set for opening the bids. Bids must not be accepted from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.
- 2) *At least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published by the owner or operator in a local paper of general circulation for the area in which the site is located. The owner or operator must also provide a copy of the public notice to the Agency. The notice must be received by the Agency at least 14 days prior to the date set in the invitation for the opening of bids.*
  - 3) *Bids must be opened publicly by the owner or operator in the presence of one or more witnesses at the time and place designated in the invitation for bids.*
    - A) *The name of each bidder, the amount of each bid, and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section.*
    - B) *After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection.*
    - C) *The person opening the bids may not serve as a witness. The names of the persons opening the bids and the names of all witnesses must be recorded and submitted to the Agency on the bid summary form required under subsection (b) of this Section.*
  - 4) *Bids must be unconditionally accepted by the owner or operator without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.*
  - 5) *Correction or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with subsection (c) of this*

*Section. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator.*

- 6) *The owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section.*
  - 7) *All bidding documentation must be retained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency for inspection and copying during normal business hours. [415 ILCS 5/57.7(c)(3)(B)]*
- b) All bids must be summarized on forms prescribed and provided by the Agency. The bid summary forms, along with copies of the invitation for bids, the public notice required under subsection (a)(2) of this Section, proof of publication of the notice, and each bid received, must be submitted to the Agency in the associated budget.
  - c) Corrections to bids are allowed only to the extent the corrections are not contrary to the best interest of the owner or operator and the fair treatment of other bidders. If a bid is corrected, copies of both the original bid and the revised bid must be submitted in accordance with subsection (b) of this Section along with an explanation of the corrections made.
- 1) **Mistakes Discovered Before Opening.** A bidder may correct mistakes discovered before the time and date set for opening of bids by withdrawing his or her bid and submitting a revised bid prior to the time and date set for opening of bids.
  - 2) **Mistakes Discovered After Opening of a Bid but Before Award of the Winning Bid.**
    - A) If the owner or operator knows or has reason to conclude that a mistake has been made, the owner or operator must request the bidder to confirm the information. Situations in which confirmation should be requested include obvious or apparent

errors on the face of the document or a price unreasonably lower than the others submitted.

- B) If the mistake and the intended correct information are clearly evident on the face of the bid, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid are typographical errors, errors extending unit prices, transportation errors, and mathematical errors.
- C) If the mistake and the intended correct information are not clearly evident on the face of the bid, the low bid may be withdrawn if:
  - i) a mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident; or
  - ii) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.
- 3) Mistakes shall not be corrected after selection of the winning bid unless the Agency determines that it would be unconscionable not to allow the mistake to be corrected (e.g., the mistake would result in a windfall to the owner or operator).
- 4) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the invitation for bid, the correction or waiver of which would not be prejudicial to the owner or operator (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The owner or operator must waive the informalities or allow correction depending on which is in the owner's or operator's best interest.
- d) For purposes of this Section, factors to be considered in determining whether a bidder is responsible include, but are not limited to, the following:
  - 1) The bidder has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
  - 2) The bidder is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;

- 3) The bidder has a satisfactory record of performance. Bidders who are or have been deficient in current or recent contact performance in dealing with the owner or operator or other clients may be deemed “not responsible” unless the deficiency is shown to have been beyond the reasonable control of the bidder; and
- 4) The bidder has a satisfactory record of integrity and business ethics. Bidders who are under investigation or indictment for criminal or civil actions that bear on the subject of the bid, or that create a reasonable inference or appearance of a lack of integrity on the part of the bidder, may be declared not responsible for the particular subject of the bid.

(Source: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

#### 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.

(Source: Amended at 36 Ill. Reg. 4898 effective March 19, 2012)

#### 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

GASOLINE  
leaded<sup>1</sup>, unleaded, premium and gasohol

INDICATOR CONTAMINANTS

Benzene  
Ethylbenzene  
Toluene  
Xylene  
Methyl tertiary butyl ether (MTBE)

## MIDDLE DISTILLATE AND HEAVY ENDS

aviation turbine fuels<sup>1</sup>

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

heavy oils

transformer oils<sup>2</sup>

hydraulic fluids<sup>3</sup>

petroleum spirits<sup>4</sup>

mineral spirits<sup>4</sup>, Stoddard solvents<sup>4</sup>

high-flash aromatic naphthas<sup>4</sup>

VM&P naphthas<sup>4</sup>

moderately volatile hydrocarbon solvents<sup>4</sup>

petroleum extender oils<sup>4</sup>

Benzene

Ethylbenzene

Toluene

Xylene

Acenaphthene

Anthracene

Benzo(a)anthracene

Benzo(a)pyrene

Benzo (b)fluoranthene

Benzo (k)fluoranthene

Chrysene

Dibenzo(a,h)anthracene

Fluoranthene

Fluorene

Indeno(1,2,3-c,d)pyrene

Naphthalene

Pyrene

Acenaphthylene

Benzo(g,h,i)perylene

Phenanthrene

## USED OIL

Screening sample<sup>5</sup>

<sup>1</sup> lead is also an indicator contaminant

<sup>2</sup> the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants

<sup>3</sup> barium is also an indicator contaminant

<sup>4</sup> the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B are also indicator contaminants

<sup>5</sup> 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: Cubic yards	Maximum amount of backfill material to be replaced: 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
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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.	Min. Yrs.	Max.
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		License Req'd.	Experience	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 <sup>1</sup>	\$90
Senior Project Manager	None	None	12 <sup>1</sup>	\$100
Technician I	None	None	0	\$45
Technician II	None	None	2 <sup>1</sup>	\$50
Technician III	None	None	4 <sup>1</sup>	\$55
Technician IV	None	None	6 <sup>1</sup>	\$60
Senior Technician	None	None	8 <sup>1</sup>	\$65
Account Technician I	None	None	0	\$35
Account Technician II	None	None	2 <sup>2</sup>	\$40
Account Technician III	None	None	4 <sup>2</sup>	\$45
Account Technician IV	None	None	6 <sup>2</sup>	\$50
Senior Acct. Technician	None	None	8 <sup>2</sup>	\$55
Administrative Assistant I	None	None	0	\$25
Administrative Assistant II	None	None	2 <sup>3</sup>	\$30
Administrative Assistant III	None	None	4 <sup>3</sup>	\$35
Administrative Assistant IV	None	None	6 <sup>3</sup>	\$40
Senior Admin. Assistant	None	None	8 <sup>3</sup>	\$45
Draftperson/CAD I	None	None	0	\$40
Draftperson/CAD II	None	None	2 <sup>4</sup>	\$45
Draftperson/CAD III	None	None	4 <sup>4</sup>	\$50
Draftperson/CAD IV	None	None	6 <sup>4</sup>	\$55
Senior Draftperson/CAD	None	None	8 <sup>4</sup>	\$60

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.