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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 888

REVIEW OF REMEDIATION COSTS FOR RIVER EDGE REDEVELOPMENT ZONE SITE
REMEDATION TAX CREDIT

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AUTHORITY: Implementing and authorized by Section 58.14a of the Environmental Protection Act [415 ILCS 5/58.14a].

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Section 888.100 General

This Part sets forth the procedures to be followed by Remediation Applicants to obtain Agency review and approval of remediation costs before applying for the River Edge Redevelopment Zone Site Remediation Tax Credit under Section 201(n) of the Illinois Income Tax Act [35 ILCS 5/201(n)]. This Part contains procedures for preliminary reviews of estimated remediation costs and reviews of remediation costs actually incurred, establishes fees for the Agency's reviews, provides for appeals of Agency determinations, and includes examples of remediation costs and ineligible costs.

Section 888.105 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act.

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

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

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

"Board" means the Illinois Pollution Control Board.

"DCEO" means the Department of Commerce and Economic Opportunity.

"Person" means individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, including the United States Government and each department, agency and instrumentality of the United States. [415 ILCS 5/58.2]

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

"Regulated substance" means any hazardous substance as defined under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). [415 ILCS 5/58.2]

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

"Remedial action" means activities associated with compliance with the provisions of Sections 58.6 and 58.7 of the Act, including, but not limited to, the conduct of site investigations, preparation of work plans and reports, removal or treatment of

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contaminants, construction and maintenance of engineered barriers, and/or implementation of institutional controls. [415 ILCS 5/58.2]

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

"Remediation costs" means reasonable costs paid for investigating and remediating regulated substances of concern consistent with the remedy selected for the site. "Remediation costs" do not include any costs incurred before January 1, 2007, any costs incurred after the issuance of a No Further Remediation Letter under Section 58.10 of the Act, or any costs incurred more than 12 months before acceptance into the Site Remediation Program under 35 Ill. Adm. Code 740. [415 ILCS 5/58.2]

"Remediation objective" means a goal to be achieved in performing remedial action, including but not limited to the concentration of a contaminant, an engineered barrier or engineered control, or an institutional control established under Section 58.5 of the Act or 35 Ill. Adm. Code 740.

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

"River Edge Redevelopment Zone" means an area of the State certified by the Department of Commerce and Economic Opportunity as a River Edge Redevelopment Zone pursuant to the River Edge Redevelopment Zone Act. [65 ILCS 115/10-3]

"Site" means any single location, place, tract of land or parcel of property or portion thereof, including contiguous property separated by a public right-of-way. [415 ILCS 5/58.2] This term also includes, but is not limited to, all buildings and improvements present at that location, place or tract of land.

"Site Remediation Program" means the Agency's Site Remediation Program established under Title XVII of the Act and 35 Ill. Adm. Code 740.

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Section 888.110 Severability

If any Section, subsection, sentence, or clause of this Part is judged invalid, such adjudication shall not affect the validity of this Part as a whole or any Section, subsection, sentence, or clause thereof not judged invalid.

Section 888.115 Preliminary Review of Estimated Remediation Costs

- a) The Remediation Applicant for any remediation site enrolled in the Site Remediation Program may request a preliminary review of estimated remediation costs by submitting a budget plan along with the Remedial Action Plan required under 35 Ill. Adm. Code 740.450. No budget plan shall be accepted for review by the Agency unless a Remedial Action Plan satisfying the requirements of 35 Ill. Adm. Code 740.450 also has been submitted. The budget plan shall be submitted on forms prescribed and provided by the Agency and shall include, but not be limited to, the following information:
 - 1) Identification of applicant and remediation site:
 - A) The full legal name, address and telephone number of the Remediation Applicant, any authorized agents acting on behalf of the Remediation Applicant, and any contact persons to whom inquiries and correspondence must be addressed;
 - B) The address, site name, tax parcel identification numbers and Illinois inventory identification number for the remediation site for which the River Edge Redevelopment Zone Site Remediation Tax Credit is being sought and the date of acceptance of the site into the Site Remediation Program;
 - C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the Remediation Applicant.
 - 2) Line item estimates of the costs that the Remediation Applicant anticipates will be incurred for the development and implementation of the Remedial Action Plan, including but not limited to:
 - A) Site investigation activities:
 - i) Drilling costs;

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- ii) Physical soil analysis;
 - iii) Monitoring well installation;
 - iv) Disposal costs.
- B) Sampling and analysis activities:
- i) Soil analysis costs;
 - ii) Groundwater analysis costs;
 - iii) Well purging costs;
 - iv) Water disposal costs.
- C) Remedial activities:
- i) Groundwater remediation costs;
 - ii) Excavation and disposal costs;
 - iii) Land farming costs;
 - iv) Above-ground bio-remediation costs;
 - v) Land application costs;
 - vi) Low temperature thermal treatment costs;
 - vii) Backfill costs;
 - viii) In-situ soil remediation costs.
- D) Report preparation costs.
- 3) A certification, signed by the Remediation Applicant or authorized agent and notarized, as follows:

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

- 4) Certification from the Department of Commerce and Economic Opportunity that the remediation site is located in a River Edge Redevelopment Zone. The certification must clearly identify the remediation site by name, address, tax parcel identification numbers, and Illinois inventory identification number.
 - 5) The original signature of the Remediation Applicant or authorized agent acting on behalf of the Remediation Applicant.
- b) Budget plans shall be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered shall be delivered during the Agency’s normal business hours. There is no fee for the review of budget plans under this Section.
- c) The time for the Agency to review the budget plan begins on the date that the Agency receives the budget plan. The Agency’s record of the date of receipt of the budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from registered or certified mail. The Remediation Applicant may waive the time for review. The time frames for the Agency review are:
- 1) If the budget plan is submitted with the Remedial Action Plan, the submission of the budget plan shall be deemed an automatic 60-day waiver of the applicable review period for the Remedial Action Plan, as set forth in 35 Ill. Adm. Code 740.505(d). In this instance, the Agency shall have 120 days from its receipt of the two documents to make a final determination on the two documents.

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- 2) If the budget plan is not submitted with the Remedial Action Plan, the budget plan may not be submitted until after the Agency has made a final determination on the Remedial Action Plan. If the budget plan is submitted after the Agency has approved, or approved with conditions, the Remedial Action Plan, the Agency shall have 60 days from its receipt of the budget plan to make a final determination on the budget plan.
 - 3) If an amended Remedial Action Plan or amended budget plan is submitted before an Agency final determination on the Remedial Action Plan and budget plan, the Agency shall have 120 days from its receipt of the amended document to make a final determination on the two documents.
 - 4) If an amended budget plan is submitted without an amended Remedial Action Plan and after the Agency's final determination on the Remedial Action Plan, the Agency shall have 60 days from its receipt of the amended budget plan to make a final determination on the amended budget plan.
- d) The Agency shall review the budget plan and the Remedial Action Plan to determine, in accordance with Sections 888.135 and 888.140 of this Part, whether the estimated costs are remediation costs. Upon completion of the preliminary review, the Agency shall notify the Remediation Applicant in writing of its final determination to approve, disapprove or modify the estimated remediation costs submitted in the budget plan.
- 1) If a budget plan is disapproved or approved with modification of estimated remediation costs, the written notification shall contain the following information as applicable:
 - A) An explanation of the specific type of information or documentation, if any, that the Agency deems the Remediation Applicant did not provide;
 - B) The reasons for the disapproval or modification of estimated remediation costs;
 - C) Citations to statutory or regulatory provisions upon which the determination is based.

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- 2) The Agency may combine the notification of its final determination on a budget plan with the notification of its final determination on the corresponding Remedial Action Plan.
 - 3) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have taken place on the postmarked date that the notice is mailed.
- e) Revision and Resubmission
- 1) If the Agency disapproves a Remedial Action Plan or approves a Remedial Action Plan with conditions in accordance with 35 Ill. Adm. Code 740, the Agency may return the corresponding budget plan to the Remediation Applicant without review. If the Remedial Action Plan is amended as a result of the Agency action, the Remediation Applicant may submit a revised budget plan for review. No additional fee shall be required for this review.
 - 2) If the Remedial Action Plan is amended by the Remediation Applicant and the Remediation Applicant intends to submit the Agency's final determination on the budget plan in accordance with Section 888.125(c) of this Part, the budget plan shall be revised accordingly and resubmitted for Agency review. No additional fee shall be required for this review.
- f) If the Agency disapproves or modifies the budget plan or fails to issue a final determination within the applicable review period, the Remediation Applicant may, within 35 days after receipt of the final determination or expiration of the deadline, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.
- g) The Agency's acceptance of a certification that neither the Remediation Applicant, nor any related party (as described in Section 201(n) of the Illinois Income Tax Act [35 ILCS 5/201(n)]), nor any person whose tax attributes the Remediation Applicant has succeeded to under section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release for which the River Edge Redevelopment Zone Site Remediation Tax Credit is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

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Section 888.120 Application for Review of Remediation Costs

- a) The Remediation Applicant for any remediation site enrolled in the Site Remediation Program may submit an application for review of remediation costs. No application shall be submitted until a No Further Remediation Letter has been issued and the No Further Remediation Letter (or an affidavit under 35 Ill. Adm. Code 740.620(a)(2) stating that the No Further Remediation Letter has been issued by operation of law) has been recorded in the chain of title for the site, all in accordance with Title XVII of the Act and 35 Ill. Adm. Code 740. The application shall be submitted on forms prescribed and provided by the Agency and shall include, but not be limited to, the following information:
 - 1) Identification of applicant and remediation site:
 - A) The full legal name, address and telephone number of the Remediation Applicant, any authorized agents acting on behalf of the Remediation Applicant, and any contact persons to whom inquiries and correspondence must be addressed;
 - B) The address, site name, tax parcel identification numbers and Illinois inventory identification number for the remediation site for which the River Edge Redevelopment Zone Site Remediation Tax Credit is being sought and the date of acceptance of the site into the Site Remediation Program;
 - C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the Remediation Applicant;
 - 2) A true and correct copy of the No Further Remediation Letters (or affidavits under 35 Ill. Adm. Code 740.620(a)(2) stating that the No Further Remediation Letters have been issued by operation of law) for the remediation site as recorded in the chain of title for the site and certified by the appropriate County Recorder or Registrar of Titles;
 - 3) Itemization and documentation of remediation activities at the remediation site for which the River Edge Redevelopment Zone Site Remediation Tax Credit is sought and for the costs of remediation incurred by the Remediation Applicant at the site, including invoices, billings and dated, legible receipts along with canceled checks or other Agency-approved methods of proof of payment;

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- 4) A certification, signed by the Remediation Applicant or authorized agent and notarized, as follows:

I, _____ (name of Remediation Applicant, if individual, or authorized agent of Remediation Applicant), hereby certify that:

The site for which this application for a River Edge Redevelopment Zone Site Remediation Tax Credit is submitted is the same site as the site for which the No Further Remediation Letter was issued;

All the costs included in this application were incurred at the site and for the regulated substances or pesticides for which the No Further Remediation Letter was issued;

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

None of the costs included in this application were incurred before January 1, 2007, or more than 12 months before the enrollment of the site in the Site Remediation Program, or after the date of issuance of the No Further Remediation Letter;

Neither _____ (“I” if Remediation Applicant is certifying or name of Remediation Applicant if authorized agent is certifying), nor any related party (as described in Section 201(n) of the Illinois Income Tax Act [35 ILCS 5/201(n)]), nor any person whose tax attributes _____ (“I” if Remediation Applicant is certifying or name of Remediation Applicant if authorized agent is certifying) have (has) succeeded to under section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release of regulated substances or pesticides for which the No Further Remediation Letter was issued.

- 5) Certification from the Department of Commerce and Economic Opportunity that the remediation site is located in a River Edge Redevelopment Zone. The certification must clearly identify the remediation site by name, address, tax parcel identification numbers, and Illinois inventory identification number.

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- 6) The original signature of the Remediation Applicant or of the authorized agent acting on behalf of the Remediation Applicant.
- b) The application for review shall be accompanied by the applicable fee for review as provided in Section 888.130 of this Part. Applications shall be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered shall be delivered during the Agency's normal business hours.
- c) The Agency's acceptance of a certification that neither the Remediation Applicant, nor any related party (as described in Section 201(n) of the Illinois Income Tax Act [35 ILCS 5/201(n)]), nor any person whose tax attributes the Remediation Applicant has succeeded to under section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release for which the River Edge Redevelopment Zone Site Remediation Tax Credit is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

Section 888.125 Agency Review of Application for Review of Remediation Costs

- a) The Agency shall review the application for review of remediation costs to determine, in accordance with Sections 888.135 and 888.140 of this Part, whether the costs incurred are remediation costs.
- b) The Agency shall have 60 days after the receipt of an application for review to make a final determination on the application. The Agency's record of the date of receipt of the application shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from registered or certified mail. The Remediation Applicant may waive the time for review. Submittal of an amended application restarts the time for review.
- c) Further Review by the Agency
 - 1) If a preliminary review of a budget plan has been obtained under Section 888.115 of this Part, the Remediation Applicant may submit, along with the application, supporting documentation, and the applicable fee under Section 888.130 of this Part, a copy of the Agency's final determination on the budget plan accompanied by a certification, signed by the Remediation Applicant or authorized agent and notarized, as follows:

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- I, _____ (name of Remediation Applicant, if individual, or name of authorized agent of Remediation Applicant), hereby certify that the actual remediation costs incurred at the site for line items (list line items to which certification applies) and identified in the application for review of remediation costs are equal to or less than the costs approved for the corresponding line items in the attached budget plan determination.
- 2) If the budget plan determination and certification are submitted pursuant to subsection (c)(1) of this Section, the Agency may, but is not required to, conduct further review of the certified line item costs incurred for development and implementation of the Remedial Action Plan and may approve such costs as submitted. The Agency's further review shall be limited to confirming that costs approved in the Agency's budget plan determination were actually incurred by the Remediation Applicant for development and implementation of the Remedial Action Plan.
 - 3) If the certification in subsection (c)(1) of this Section does not apply to all line items as approved in the budget plan, the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved. In that review, the Agency shall not reconsider the appropriateness of any activities, materials, labor, equipment, structures, or services already approved by the Agency for the development and implementation of the Remedial Action Plan.
- d) Upon completion of the review, the Agency shall notify the Remediation Applicant in writing of its final determination to approve, disapprove, or modify the remediation costs submitted in the application. If an application is disapproved or approved with modification of remediation costs, the written notification shall contain the following information as applicable:
- 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the Remediation Applicant did not provide;
 - 2) The reasons for the disapproval or modification of remediation costs;
 - 3) Citations to statutory or regulatory provisions upon which the determination is based.
- e) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The

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Agency's determination shall be deemed to have taken place on the postmarked date that the notice is mailed.

- f) If the Agency disapproves or modifies the application for review or fails to issue a final determination within the applicable review period, the Remediation Applicant may, within 35 days after receipt of the final determination or expiration of the deadline, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.
- g) *The Agency shall review applications for review of remediation costs in consultation with the Department of Commerce and Economic Opportunity.* [415 ILCS 5/58.14a(a)]

Section 888.130 Fees and Manner of Payment

- a) There is no fee for the preliminary review of estimated remediation costs under Section 888.115 of this Part.
- b) The fee for the review of an application for review of remediation costs under Section 888.125 of this Part is \$250 for each remediation site reviewed.
- c) The fee for a review under this Part shall be in addition to any other fees, payments, or assessments under Title XVII of the Act and 35 Ill. Adm. Code 740. The fee shall be paid by check or money order made payable to "Treasurer - State of Illinois, for Deposit in the Hazardous Waste Fund". The check or money order shall include the Illinois inventory identification number and the Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the Remediation Applicant.

Section 888.135 Remediation Costs

- a) Activities, materials, labor, equipment, structure, and service costs that may be approved by the Agency as remediation costs for the River Edge Redevelopment Zone Site Remediation Tax Credit under Section 201(n) of the Illinois Income Tax Act [35 ILCS 5/201(n)] include, but are not limited to, the following:
 - 1) Preparation of bid documents and contracts for procurement of contractors, subcontractors, analytical and testing laboratories, labor, services, and suppliers of equipment and materials;

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- 2) Engineering services performed in accordance with Section 58.6 of the Act and implementing regulations at 35 Ill. Adm. Code 740.235 and 740.405;
- 3) Site assessment and remedial investigation activities conducted in accordance with 35 Ill. Adm. Code 740.410, 740.415, 740.420, and 740.430;
- 4) Report or plan preparation conducted in accordance with 35 Ill. Adm. Code 740.425, 740.435, 740.445, 740.450, and 740.455;
- 5) Collection, analysis or measurement of site samples in accordance with 35 Ill. Adm. Code 740.415(d);
- 6) Groundwater monitoring well installation, operation, maintenance and construction materials;
- 7) Removal, excavation, consolidation, preparation, containerization, packaging, transportation, treatment or off-site disposal of wastes, environmental media (e.g., soils, sediments, groundwater, surface water, debris), containers or equipment contaminated with regulated substances or pesticides at concentrations exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with 35 Ill. Adm. Code 740.445. Activities must be in compliance with all applicable state or federal statutes and regulations;
- 8) Clean backfill materials in quantities necessary to replace soils excavated and disposed of off-site that were contaminated with regulated substances or pesticides at levels exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with 35 Ill. Adm. Code 740.445;
- 9) Transportation, preparation and placement of clean backfill materials pursuant to an approved Remedial Action Plan in accordance with 35 Ill. Adm. Code 740.450;
- 10) Design, testing, permitting, construction, monitoring, and maintenance of on-site treatment systems pursuant to an approved Remedial Action Plan in accordance with 35 Ill. Adm. Code 740.450;

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- 11) Engineering costs associated with preparation of a budget plan in accordance with Section 888.115 of this Part or an application for review of remediation costs in accordance with Section 888.120 of this Part if prepared before the issuance of the No Further Remediation Letter (by the Agency or by operation of law);
 - 12) Removal or replacement of concrete, asphalt or paving to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with 35 Ill. Adm. Code 740.450;
 - 13) Clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with 35 Ill. Adm. Code 740.450;
 - 14) Placement of clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with 35 Ill. Adm. Code 740.450;
 - 15) Destruction or dismantling and reassembly of above-grade structures to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with 35 Ill. Adm. Code 740.450;
 - 16) Costs associated with obtaining a special waste generator identification number, not to exceed \$100.
- b) A Remediation Applicant may submit a request for review of remediation costs that includes an itemized accounting and documentation of costs associated with activities, materials, labor, equipment, structures, or services not identified in subsection (a) of this Section if the Remediation Applicant submits detailed information demonstrating that those items are necessary for compliance with 35 Ill. Adm. Code 740, 35 Ill. Adm. Code 742, and the approved Remedial Action Plan.

Section 888.140 Ineligible Costs

Costs ineligible for the River Edge Redevelopment Zone Site Remediation Tax Credit under Section 201(n) of the Illinois Income Tax Act [35 ILCS 5/201(n)] include, but are not limited to, the following:

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- a) Costs not incurred by the Remediation Applicant;
- b) Costs incurred for activities, materials, labor, or services relative to remediation at a site other than the site for which the No Further Remediation Letter was issued;
- c) Costs for remediating a release or substantial threat of a release of regulated substances or pesticides that was caused or contributed to in any material respect by the Remediation Applicant, any related party (as described in Section 201(n) of the Illinois Income Tax Act [35 ILCS 5/201(n)]), or any person whose tax attributes the Remediation Applicant has succeeded to under section 381 of the Internal Revenue Code;
- d) Costs incurred before January 1, 2007, or more than 12 months before enrollment of the site in the Site Remediation Program, or after the date of issuance of a No Further Remediation Letter issued pursuant to Section 58.10 of the Act and 35 Ill. Adm. Code 740;
- e) Costs associated with material improvements to the extent that such improvements are not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with 35 Ill. Adm. Code 740.450;
- f) Costs or losses resulting from business interruption;
- g) Costs incurred as a result of vandalism, theft, negligence, or fraudulent activity by the Remediation Applicant or the agent of the Remediation Applicant;
- h) Costs incurred as a result of negligence in the practice of professional engineering as defined in Section 4 of the Professional Engineering Practice Act of 1989 [225 ILCS 325/4];
- i) Costs incurred as a result of negligence by any contractor, subcontractor, or other person providing remediation services at the site;
- j) Costs associated with replacement of above-grade structures destroyed or damaged during remediation activities to the extent destruction or damage and the replacement is not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with 35 Ill. Adm. Code 740.450;
- k) Attorney fees;

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

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- z) 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 35 Ill. Adm. Code 732.105 or 734.125 of the Board's regulations and Section 57.12 of the Act;
- aa) Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release or its effects in accordance with the minimum requirements of the Act and regulations;
- bb) 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;
- cc) Handling charges for subcontractor costs that have been billed directly to the Remediation Applicant;
- dd) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;
- ee) Costs associated with oversight by a Remediation Applicant or a Remediation Applicant's authorized agent;
- ff) Handling charges charged by persons other than the Remediation Applicant's primary contractor;
- gg) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release;
- hh) 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;
- ii) Costs associated with the repair or replacement of potable water supply lines;
- jj) 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;

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- kk) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment;
- ll) Costs associated with corrective action to achieve remediation objectives that are more stringent than Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742;
- mm) 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.