

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

PRIME LOCATION PROPERTIES, LLC,)
) Petitioner,)
) v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
) Respondent.)

PCB No. 09-67
(UST Appeal)

ORIGINAL

NOTICE

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Illinois Pollution Control Board
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Illinois Pollution Control Board
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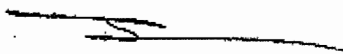
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Prime Location Properties, LLC
Attn: Joe Keebler
P.O. Box 242
Carbondale, IL 62903

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a RESPONSE TO PETITIONER'S POST-HEARING BRIEF, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Thomas Davis, Chief
Environmental Bureau
Office of the Illinois Attorney General
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Springfield, Illinois 62706
217/782-7968
Dated: July 6, 2009

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

PRIME LOCATION PROPERTIES, LLC,)	
Petitioner,)	
v.)	PCB No. 09-67
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	
Respondent.)	

RESPONSE TO PETITIONER'S POST-HEARING BRIEF

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by its counsel Thomas Davis, Assistant Attorney General, and hereby submits its Response to the Petitioner's Post-Hearing Brief to the Illinois Pollution Control Board ("Board").

I. BURDEN OF PROOF

Section 105.112(a) of the Board's procedural rules (35 Ill. Adm. Code 105.112(a)) provides that the burden of proof shall be on the petitioner. The primary focus of the Board must remain on the adequacy of the permit application (or, as is the case here, the High Priority Corrective Action Plan and Budget) and the information submitted by the applicant to the Illinois EPA. John Sexton Contractors Company v. Illinois EPA, PCB 88-139 (February 23, 1989), p. 5. Further, the ultimate burden of proof remains on the party initiating an appeal of an Illinois EPA final decision. John Sexton Contractors Company v. Illinois Pollution Control Board, 201 Ill. App. 3d 415, 425-426, 558 N.E.2d 1222, 1229 (1st Dist. 1990).

Thus Prime Locations ("Petitioner") must demonstrate to the Board that it has satisfied its burden before the Board can enter an order reversing or modifying the Illinois EPA's decision under review. At hearing the Petitioner placed documents into evidence but did not call any witnesses. The case is based upon the record at the time the decision was made by the Illinois EPA. The record in

front of the Board clearly supports the Illinois EPA decision. In this case, Petitioner simply failed to meet their burden of proof.

II. STANDARD OF REVIEW

Section 57.8(i) of the Environmental Protection Act (“Act”) grants an individual the right to appeal a determination of the Illinois EPA to the Board pursuant to Section 40 of the Act (415 ILCS 5/57.8(i)). Section 40 of the Act (415 ILCS 5/40) is the general appeal section for permits and has been used by the legislature as the basis for this type of appeal to the Board. When reviewing an Illinois EPA decision on a submitted corrective action plan and/or budget, the Board must decide whether or not the proposals, as submitted to the Illinois EPA, demonstrate compliance with the Act and Board regulations. Broderick Teaming Company v. Illinois EPA, PCB 00-187 (December 7, 2000).

The Board will not consider new information not before the Illinois EPA prior to its determination on appeal. The Illinois EPA’s final decision frames the issues on appeal. Todd’s Service Station v. Illinois EPA, PCB 03-2 (January 22, 2004), p. 4. In deciding whether the Illinois EPA’s decision under appeal here was appropriate, the Board must therefore look to the documents within the Administrative Record (“Record”).¹ Normally, relevant testimony presented at hearing would also be considered; however, no testimony was given at the hearing on June 17, 2009. Based on the information within the Record, along with the relevant law, the Illinois EPA respectfully requests that the Board enter an order affirming the Illinois EPA’s decision.

¹ Citations to the Administrative Record will hereinafter be made as, “AR, p. ____.” References to the transcript of the hearing will be made as, “TR, p. ____.” References to the Supplemental Administrative Record will be made as “Supp. AR, p. ____.”

III. INTRODUCTION

The information submitted to the Illinois EPA by Petitioner that led to the issuance of the final decision under appeal fully supports the content and conclusion of the final decision, in that the Petitioner failed to demonstrate that the information they submitted to the Illinois EPA and upon which the Illinois EPA based its decision supported any other conclusion than that reached by the Illinois EPA when it issued its January 27, 2009 decision letter. The Board's review of the Administrative Record should yield the same conclusion as that reached by the Illinois EPA. The Illinois EPA relies upon the owner/operator and their consultants to provide full information regarding the on-site conditions and remediation activities. It is this information that the Illinois EPA relies upon to form its decisions. In this case, the information submitted by the Petitioner supports the decision of the Illinois EPA. It is important to point out that what information the Illinois EPA reviews is totally within the control of the owner/operator and their consultant. Simply, if it is not submitted to the Illinois EPA, the Illinois EPA cannot review it.

IV. STATEMENT OF FACTS

The facts in the Illinois EPA record supporting this motion are as follows:

1. Metropolis Tire and Oil Company, Inc. transferred the property located at 600 W. 10th Street in Metropolis, Illinois to Prime Location Properties, LLC via quitclaim deed for the consideration of \$10.00 on March 20, 2006. (Petition, Exhibit 4)
2. Metropolis Tire and Oil Company, Inc. was the owner of tanks located at a gasoline service station located at 600 W. 10th Street in Metropolis, Illinois prior to the execution of the quit claim deed. The underground storage tanks at issue were located on the

- property which stored gasoline and kerosene. (December, 2001, 45-Day Report Addendum, Appendix D) (Record Exhibit #5)
3. Metropolis Tire and Oil Company, Inc. had retained CW3M to conduct remediation activities at the site. (December, 2001, 45-Day Report Addendum)(Record Exhibit #5)
 4. Once deeded to Prime Locations, Environmental Management, Inc. was hired to conduct remediation activities at the site. (Record Exhibit #28)
 5. LUST Incident Number 20011314 was issued to Metropolis Tire and Oil Company for an August 1, 2001 incident. (August 1, 2001 HazMat Report Incident)
 6. In the 45-Day Report Addendum submitted to the Illinois EPA by the Petitioner in December 2001, the Petitioner stated that they could not locate all the USTs. (Record Exhibit #5)
 7. For this initial incident a High Priority Corrective Action Plan was submitted on August 22, 2005 and approved with modifications on November 23, 2005. Petitioner submitted a proposed excavation area map dated August 2, 2005 in its High Priority Corrective Action Plan that showed the delineation of the excavation area and that there were clean borings surrounding the area. (Record Exhibit #23 & #24) See Attachment B.
 8. In Attachment A of the November 23, 2005 Illinois EPA decision letter, it was noted in Section 1 as follows:

"The following items listed below are in excess of the minimum requirements necessary to comply with Title XVI and/or 35 Ill. Adm. Code. For the purpose of reimbursement, since these activities are in excess of those necessary to meet the minimum requirements of the Title XVI of the Act, costs for such activities are

not reimbursable (Sections 57.5(a) and 57.7(c)(4)(C) of the Act, 35 Ill. Adm. Code 732.505(c) and 732.606(o)).

A) Any activities that are not associated with the proposed excavation as shown on the proposed excavation area map dated August 2, 2005. Please note only UST#2 and #3 have shown evidence of a possible release; and therefore, are associated with Incident #20011314. Furthermore, any additional USTs that are found on-site and contamination that may be associated with these USTs must be reported as a new release and addressed accordingly.”² (Record Exhibit #24)

9. In 2006, LUST Incident Number 20061558 was issued to Prime Locations for the same site. (Record Exhibit #33)
10. An amended Corrective Action Plan and Budget was submitted for the site on November 10, 2008 and received November 14, 2008. (Record Exhibit #36)
11. This Corrective Action Plan was rejected on January 27, 2009, for the following reasons:

“A) During the investigations activities associated with Incident #20011314 soil and groundwater contamination were not identified in the vicinity of USTs#3 through #7. However, three years later during the removal of these USTs, soil contamination was identified in these areas. Therefore, Incident #20061558 is a new release and is not considered a re-reporting of Incident #20011314.

² Please note that the consultants that worked on the site numbered the tanks differently. The quoted language from the 2005 documents list the 2001 incident tanks as tanks #2 and #3 in the same manner as CW3M listed them. EMI, the subsequent consultant, numbered those tanks #1 and #2 and therefore the 2009 correspondence also refers to them in that manner. For clarity of this brief, except when quoting exact language, the tanks shall be referred to in the same way as the Petitioner’s current consultant as tanks #1 and #2.

B) Pursuant to 35 Ill. Adm. Code 734.210(c) and 734.210(e), the 20-and 45-day reporting requirements must be fulfilled.

C) In addition, pursuant to 35 Ill. Adm. Code 734.310(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.” (Record Exhibit #38)

12. The plan budget was rejected for the following reason:

“Pursuant to Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b), the associated budget is rejected for the following reason:

The Illinois EPA has not approved the plan with which the budget is associated. Until such time as the plan is approved, a determination regarding the associated budget – i.e., a determination as to whether costs associated with materials, activities, and services are reasonable; whether costs are consistent with the associated technical plan; whether costs will be incurred in the performance of corrective action activities; whether costs will not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and whether costs exceed the maximum payment amounts set forth in Subpart H of 35 Ill. Adm. Code 734 – cannot be made (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b)).

In addition, please note most of the costs in the proposed budget will have to be submitted as Early Action costs.” (Record Exhibit #38)

V. ISSUE

The issue before the Board is framed by the Illinois EPA decision letter and is as follows:

WHETHER Incident # 20061558 is a new incident under the Act and regulations thereunder requiring a new deductible; 20- and 45-day reports; and a site investigation plan?

VI. ARGUMENT

On November 10, 2008, the Petitioner filed its amended Corrective Action Plan and Budget. The Illinois EPA issued a decision letter on January 27, 2009 rejecting this submittal. The Illinois EPA's denial letter frames the issues on appeal. Pulitzer Community Newspapers, Inc. v. EPA, PCB 90-142 (Dec. 20, 1990). In the January 27, 2009 decision letter, the Illinois EPA cited to the requirements of the Act and regulations that the Petitioner did not comply with.

ISSUE: WHETHER INCIDENT # 20061558 IS A NEW INCIDENT UNDER THE ACT AND REGULATIONS THEREUNDER REQUIRING A NEW DEDUCTIBLE; 20- AND 45-DAY REPORTS; AND A SITE INVESTIGATION PLAN.

The question before the Board is whether Incident # 20061558 is a new incident under the Act and regulations thereunder requiring a new deductible; 20- and 45-day reports; and a site investigation plan. It is clear from the record that Incident #20011314 was called into IEMA on August 1, 2001 and that 20-day and 45-day reports were submitted to the Illinois EPA. Also submitted were a Site Classification Plan and a Corrective Action Plan and Budget. These documents clearly show that the release was centered around tanks #1 and #2 and that tanks #3 through #7 were not included in the release. Indeed, the reports submitted to the Illinois EPA show that not only were there clean borings around the plume associated with tanks #1 and #2, but that three out of the remaining five tanks could not be located. The 45-Day Report Addendum states there were seven USTs registered. However, currently the existence and locations of all tanks have not been identified. While the location of four

USTs was later confirmed; the potential location of two additional USTs has merely been speculated. Further, nothing about the location of the seventh UST was ever mentioned. The 45-Day Report Addendum also states that once all tank locations have been identified, their exact location and status would be forwarded to the IEPA. It should be noted that the locations of the three unknown tanks were discovered during the excavation activities that were approved for Incident #20011314. The four additional USTs were not in the defined contamination plume, they were tanks the Petitioner just wanted to remove.

Further, site investigation activities (borings MW-1, SB-1 and PI-1) performed during April 23, 2002 and May 14, 2003 for Incident #20011314 did not show any contamination near the tanks that were outside of the defined contamination plume. This indicates a release did not occur in this area prior to the dates of this sampling.

A map submitted at the time clearly shows the area of excavation and the clean borings surrounding that area. In an Illinois EPA decision letter, dated November 23, 2005, the Illinois EPA noted that "any activities that are not associated with the proposed excavation as shown on the proposed excavation area map dated August 2, 2005" would be "in excess of the minimum requirements necessary to comply with Title XVI and/or 35 Ill. Adm. Code" and therefore were not reimbursable. This final decision was not appealed.

The Petitioner in its brief contends that the decisions made by the Illinois EPA regarding this site prior to 2006 were in error. The Petitioner actually lists all of the decisions that it now disagrees with. However, it is important to note none of these decisions were appealed when the decision was rendered. The Board has held that a condition imposed in a permit, not appealed to the Board under Section 40(a)(1), may not be appealed in a subsequent permit. Panhandle Eastern Pipe Line Co. v. IEPA, PCB 98-102, slip op. at 30 (Jan 21, 1999). Further, the Illinois EPA is not authorized under

Illinois law to change its final decision. This principle is well-established. Reichhold Chemicals, Inc. v. PCB, 204 Ill. App. 3d 674, 561 N.E.2d 1343 (3d Dist. 1990). The Illinois EPA is bound to its November 23, 2005 final decision. Mick's Garage v. IEPA, PCB 03-126 (Dec. 18, 2003).

Further, in its brief, the Petitioner makes quite a few assumptions regarding the actions of the prior consultant, assuming what their actions meant on several occasions. (Pet. Brief, p.5). Such assumptions and assignment of motives after the fact are just attempts to muddy the record. The Petitioner had an opportunity to call the former consultants during hearing, but failed to do so. The Illinois EPA would request that such assumptions be disregarded by the Board in their review of the case because none of these assumptions were before the Illinois EPA at the time of the decisions the Petitioner now contests. The Administrative Record stands for itself, especially when no testimony clarifying motives or actions taken over four years ago was presented.

The Petitioner also seems to contend that the Office of State Fire Marshal (OSFM) should determine the applicable deductible. The law is well settled that the OSFM's decisions do not determine the applicable deductible. Section 22.18b(d)(3)(G) of the Act provides that the deductible application must be submitted to the Illinois EPA and that the Illinois EPA makes the deductible determination. Mick's Garage v. IEPA, PCB 03-126 (Dec. 18, 2003).

The Petitioner also casts aspersions in its brief by stating that the Illinois EPA is trying to protect a fund over the clean-up obligations of the site. That is a ridiculous statement. The Illinois EPA is a creature of statute and the LUST fund and its remediations are very highly regulated by State law and Board regulations. The Illinois EPA can only approve that which is allowed for under the Act and regulations. If following the law and regulations prohibits someone from accessing money improperly from the LUST fund, then that is exactly what the Illinois EPA has been tasked to do. Further the Petitioner states that it is "frustrated" and that this issue has already been decided by the

Board "over the Agency's continual disagreement". (Pet. Brief, p. 11) It is interesting to note that the Petitioner then goes on to cite a case brought against OFSM, not Illinois EPA. Mac Investments v. OFSM, PCB 01-129 (Dec. 19, 2002). Then it states the Illinois EPA directly challenged that case in Swif-T-Food Mart v. IEPA, PCB 03-185 (May 20, 2004). It should, however, be apparent that those two cases were about different issues and how different State agencies, tasked with different duties under Illinois law, handled those issues. It is also important to note that the facts in this case and the facts in Swif-T Food Mart are distinguishable. In Swif-T Food Mart, the second incident number was issued prior to any site classification or other work performed on the site. This case has had site investigation performed at the site and maps were submitted to the Illinois EPA that clearly shows that there were clean borings around the area of contamination and that the plume had been defined for Incident # 20011314.

To summarize, the Petitioner purchased a property and is now stuck with decisions that the prior owner and consultant made. The Petitioner is trying at this late date to change those decisions by creating a controversy in order to get the November 23, 2005 decision before the Board in the hopes of getting that decision overturned. However, as noted above, the Board has already ruled in such cases that a condition imposed in a permit, not appealed to the Board under Section 40(a)(1), may not be appealed in a subsequent permit. Panhandle Eastern Pipe Line Co. v. IEPA, PCB 98-102, slip op. at 30 (Jan 21, 1999).

As stated above argument, the Petitioner's brief fails to present any tangible or persuasive argument on which the Board could rely in reversing the Illinois EPA's final decision. The Petitioner fails to meet its burden of proof.

ADDITIONAL ARGUMENT: REJECTION OF BUDGET

In regards to the rejection of the budget, a proposed budget may not be approved unless the corresponding plan is approved. The corresponding plan has not been approved. The Administrative Record, along with the Act and the Board's regulations, supports the final decision of the Illinois EPA in denying the budget.

ADDITIONAL ARGUMENT: FILING OF ADMINISTRATIVE RECORD

The Petitioner argues that the Illinois EPA should be barred from filing any other pleading or document in this matter or that the Board should immediately award the Petitioner the result it seeks. (Pet. Brief, p. 12). The Petitioner has not shown any hardship due to the lateness of the record. The Board has not sua sponte disallowed the record and in fact accepted its filing. A motion was made at hearing to allow the filing of the record and such filing was allowed. Further, Petitioner's counsel was permitted to proffer several documents at the hearing to which the Illinois EPA had little to no objection to allowing into the record. Counsel was also allowed a full hearing by which to present any evidence he chose and failed to present any witnesses. The Petitioner has not shown how it was prejudiced by the late filing of the record; therefore their request should be denied.

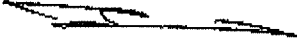
VII. CONCLUSION

For all the reasons and arguments included herein, the Illinois EPA respectfully requests that the Board affirm the Illinois EPA's January 27, 2009 final decision. The Petitioner has not met even its *prima facie* burden of proof, and certainly has not met its ultimate burden of proof. For these reasons, the Illinois EPA respectfully requests that the Board affirm the Illinois EPA's final decision.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



Thomas Davis, Chief
Environmental Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-7968
Dated: July 6, 2009

This filing submitted on recycled paper.

ATTACHMENT A

Relevant Law

415 ILCS 5/57.7, Leaking underground storage tanks; site investigation and corrective action.

(a) Site investigation.

- (1) For any site investigation activities required by statute or rule, the owner or operator shall submit to the Agency for approval a site investigation plan designed to determine the nature, concentration, direction of movement, rate of movement, and extent of the contamination as well as 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.
- (2) Any owner or operator intending to seek payment from the Fund shall submit to the Agency for approval a site investigation budget that includes, but is not limited to, an accounting of all costs associated with the implementation and completion of the site investigation plan.
- (3) Remediation objectives for the applicable indicator contaminants shall be determined using the tiered approach to corrective action objectives rules adopted by the Board pursuant to this Title and Title XVII of this Act. For the purposes of this Title, "Contaminant of Concern" or "Regulated Substance of Concern" in the rules means the applicable indicator contaminants set forth in subsection (d) of this Section and the rules adopted thereunder.
- (4) 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.
- (5) Within 30 days after completing the site investigation, the owner or operator shall submit to the Agency for approval a site investigation completion report. At a minimum the report shall include all of the following:
 - (A) Executive summary.
 - (B) Site history.
 - (C) Site-specific sampling methods and results.
 - (D) Documentation of all field activities, including quality assurance.
 - (E) Documentation regarding the development of proposed remediation objectives.
 - (F) Interpretation of results.
 - (G) Conclusions.

(b) Corrective action.

- (1) If the site investigation confirms none of the applicable indicator contaminants exceed the proposed remediation objectives, within 30 days after completing the site investigation the owner or operator shall submit to the Agency for approval a corrective action completion report in accordance with this Section.
- (2) If any of the applicable indicator contaminants exceed the remediation objectives approved for the site, 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. The plan shall describe the selected remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the site. At a minimum, the report shall include all of the following:
 - (A) Executive summary.
 - (B) Statement of remediation objectives.
 - (C) Remedial technologies selected.
 - (D) Confirmation sampling plan.
 - (E) Current and projected future use of the property.
 - (F) Applicable preventive, engineering, and institutional controls including long-term reliability, operating, and maintenance plans, and monitoring procedures.
 - (G) A schedule for implementation and completion of the plan.
- (3) Any owner or operator intending to seek payment from the Fund shall submit to the Agency for approval a corrective action budget that includes, but is not limited to, an accounting of all costs associated with the implementation and completion of the corrective action plan.
- (4) 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.
- (5) 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.
- (6) 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 must submit a status report for Agency review. The status report must 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.

- (7) 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 must also submit a revised budget.

(c) Agency review and approval.

- (1) Agency approval of any plan and associated budget, as described in this subsection (c), shall be considered final approval for purposes of seeking and obtaining payment from the Underground Storage Tank Fund if the costs associated with the completion of any such plan are less than or equal to the amounts approved in such budget.
- (2) In the event the Agency fails to approve, disapprove, or modify any plan or report submitted pursuant to this Title in writing within 120 days of the receipt by the Agency, the plan or report shall be considered to be rejected by operation of law for purposes of this Title and rejected for purposes of payment from the Underground Storage Tank Fund.
 - (A) For purposes of those plans as identified in paragraph (5) of this subsection (c), the Agency's review may be an audit procedure. Such review or audit shall be consistent with the procedure for such review or audit as promulgated by the Board under Section 57.14. The Agency has the authority to establish an auditing program to verify compliance of such plans with the provisions of this Title.
 - (B) For purposes of corrective action plans submitted pursuant to subsection (b) of this Section for which payment from the Fund is not being sought, the Agency need not take action on such plan until 120 days after it receives the corrective action completion report required under subsection (b) of this Section. In the event the Agency approved the plan, it shall proceed under the provisions of this subsection (c).
- (3) In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title.

- (4) For any plan or report received after June 24, 2002, any action by the Agency to disapprove or modify a plan submitted pursuant to this Title shall be provided to the owner or operator in writing within 120 days of the receipt by the Agency or, in the case of a site investigation plan or corrective action plan for which payment is not being sought, within 120 days of receipt of the site investigation completion report or corrective action completion report, respectively, and shall be accompanied by:
- (A) an explanation of the Sections of this Act which may be violated if the plans were approved;
 - (B) an explanation of the provisions of the regulations, promulgated under this Act, which may be violated if the plan were approved;
 - (C) an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and
 - (D) a statement of specific reasons why the Act and the regulations might not be met if the plan were approved.

Any action by the Agency to disapprove or modify a plan or report or the rejection of any plan or report by operation of law shall be subject to appeal to the Board in accordance with the procedures of Section 40. If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, an amended plan shall be submitted to the Agency within 35 days of receipt of the Agency's written notification

- (5) For purposes of this Title, the term "plan" shall include:
- (A) Any site investigation plan submitted pursuant to subsection (a) of this Section;
 - (B) Any site investigation budget submitted pursuant to subsection (a) of this Section;
 - (C) Any corrective action plan submitted pursuant to subsection (b) of this Section;
or
 - (D) Any corrective action plan budget submitted pursuant to subsection (b) of this Section.
- (d) For purposes of this Title, the term "indicator contaminant" shall mean, unless and until the Board promulgates regulations to the contrary, the following: (i) if an underground storage tank contains gasoline, the indicator parameter shall be BTEX and Benzene; (ii) if the tank contained petroleum products consisting of middle distillate or heavy ends, then the indicator parameter shall be determined by a scan of PNA's taken from the location where contamination is most likely to be present; and (iii) if the tank contained used oil, then the indicator contaminant shall be those chemical constituents which indicate the type of petroleum stored in an underground

storage tank. All references in this Title to groundwater objectives shall mean Class I groundwater standards or objectives as applicable.

- (e)(1) Notwithstanding the provisions of this Section, an owner or operator may proceed to conduct site investigation or corrective action prior to the submittal or approval of an otherwise required plan. If the owner or operator elects to so proceed, an applicable plan shall be filed with the Agency at any time. Such plan shall detail the steps taken to determine the type of site investigation or corrective action which was necessary at the site along with the site investigation or corrective action taken or to be taken, in addition to costs associated with activities to date and anticipated costs.
- (2) Upon receipt of a plan submitted after activities have commenced at a site, the Agency shall proceed to review in the same manner as required under this Title. In the event the Agency disapproves all or part of the costs, the owner or operator may appeal such decision to the Board. The owner or operator shall not be eligible to be reimbursed for such disapproved costs unless and until the Board determines that such costs were eligible for payment.
- (f) All investigations, plans, and reports conducted or prepared under this Section shall be conducted or prepared under the supervision of a licensed professional engineer and in accordance with the requirements of this Title.

35 Ill. Adm. Code 734.210, Early Action, states as follows:

- a) Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions within 24 hours after the release:
 - 1) Report the release to IEMA (e.g., by telephone or electronic mail);
 - 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
 - 3) Identify and mitigate fire, explosion and vapor hazards.
- b) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must perform the following initial abatement measures:
 - 1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;
 - 2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

- 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
 - 4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator must comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;
 - 5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and
 - 6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.
- c) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.
- d) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information must include, but is not limited to, the following:
- 1) Data on the nature and estimated quantity of release;
 - 2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;
 - 3) Results of the site check required at subsection (b)(5) of this Section; and
 - 4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part.

- e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.
- f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal (see 41 Ill. Adm. Code 160, 170, 180, 200). The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment of early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank [415 ILCS 5/57.6(b)]. Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank.*
- g) For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.

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

- h) The owner or operator must determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.
 - 1) At a minimum, for each UST that is removed, the owner or operator must collect and analyze soil samples as indicated in subsections (h)(1)(A). The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.
 - A) One sample must be collected from each UST excavation wall. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If an area of contamination

cannot be identified on a wall, the sample must be collected from the center of the wall length at a point located one-third of the distance from the excavation floor to the ground surface. For walls that exceed 20 feet in length, one sample must be collected for each 20 feet of wall length, or fraction thereof, and the samples must be evenly spaced along the length of the wall.

- B) Two samples must be collected from the excavation floor below each UST with a volume of 1,000 gallons or more. One sample must be collected from the excavation floor below each UST with a volume of less than 1,000 gallons. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If areas of contamination cannot be identified, the samples must be collected from below each end of the UST if its volume is 1,000 gallons or more, and from below the center of the UST if its volume is less than 1,000 gallons.
 - C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must be collected from a location representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a length of piping run excavation being sampled, the sample must be collected from the center of the length being sampled. For UST piping abandoned in place, the samples must be collected in accordance with subsection (h)(2)(B) of this Section.
 - D) If backfill is returned to the excavation, one representative sample of the backfill must be collected for each 100 cubic yards of backfill returned to the excavation.
 - E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.
- 2) At a minimum, for each UST that remains in place, the owner or operator must collect and analyze soil samples as follows. The Agency must allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.
- A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for

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

- B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.
 - C) If auger refusal occurs during the drilling of a boring required under subsection (h)(2)(A) or (B) of this Section, the boring must be drilled in an alternate location that will allow the boring to be drilled to the required depth. The alternate location must not be more than five feet from the boring's original location. If auger refusal occurs during drilling of the boring in the alternate location, drilling of the boring must cease and the soil samples collected from the location in which the boring was drilled to the greatest depth must be analyzed for the applicable indicator contaminants.
 - D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.
- 3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) of this Section are met, within 30 days after the completion of early action activities the owner or operator must

submit a report demonstrating compliance with those remediation objectives. The report must include, but not be limited to, the following:

- A) A characterization of the site that demonstrates compliance with the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - B) Supporting documentation, including, but not limited to, the following:
 - i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);
 - ii) Analytical results, chain of custody forms, and laboratory certifications for all samples collected pursuant to this subsection (h); and
 - iii) A table comparing the analytical results of all samples collected pursuant to this subsection (h) to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and C) A site map containing only the information required under Section 734.440 of this Part.
- 4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, the owner or operator must continue in accordance with Subpart C of this Part:
- A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);
 - B) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or
 - C) There is evidence that contaminated soils may be or may have been in contact with groundwater, unless:
 - i) The owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping; and
 - ii) The Agency determines that further groundwater investigation is not necessary.

35 Ill. Adm. Code 734.310, Site Investigation – General, states as follows:

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.

35 Ill. Adm. Code 734.315, Stage 1 Site Investigation, states as follows:

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.

35 Ill. Adm. Code 734.320, Stage 2 Site Investigation, states as follows:

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.

35 Ill. Adm. Code 734.325, Stage 3 Site Investigation, states as follows:

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.

35 Ill. Adm. Code 734.505 Review of Plans, Budgets, or Reports, states as follows:

- 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.

35 III. Adm. Code 734.510 Standards for Review of Plans, Budgets, or Reports, states as follows:

- 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.

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STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on July 6, 2009 I served true and correct copies of a RESPONSE TO PETITIONER'S POST-HEARING BRIEF to the Board and to the Petitioner and Hearing Officer by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

ORIGINAL

Fred C. Prillaman
Patrick Shaw
Mohan, Alewelt, Prillaman & Adami
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323

Prime Location Properties, LLC
Attn: Joe Keebler
P.O. Box 242
Carbondale, IL 62903

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Thomas Davis, Chief
Environmental Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-7968



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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

ORIGINAL

FAX TRANSMITTAL SHEET
ENVIRONMENTAL BUREAU, SPRINGFIELD, IL
FAX NO. (217) 524-7740

DATE: July 6, 2009
TO: John Therriault, Illinois Pollution Control Board
FAX NO. 312-814-3669
FROM: Tom Davis
PHONE NO. 217-782-7968
NUMBER OF PAGES: 36 Yes No
HARD COPY TO FOLLOW: Yes No

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Contact Person: Tom
Phone No. 217-782-7968

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NOTES: