

**TITLE 35: ENVIRONMENTAL PROTECTION**  
**SUBTITLE G: WASTE DISPOSAL**  
**CHAPTER I: POLLUTION CONTROL BOARD**  
**PART 740**  
**SITE REMEDIATION PROGRAM**

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**AUTHORITY:** Implementing Sections 58 through 58.8 and 58.10 through 58.15 and authorized by Sections 58.5, 58.6, 58.7, 58.11 58.14, and 58.15 of the Environmental Protection Act [415 ILCS 5/58 through 58.8 and 58.10 through 58.15].

SOURCE: Adopted in R97-11 at 21 Ill. Reg. 7889, effective July 1, 1997; amended in R98-27 at 22 Ill. Reg.19580, effective October 26, 1998; amended in R01-27 and R01-29 at 26 Ill. Reg. 7197, effective April 25, 2002; amended in R03-20 at 28 Ill. Reg. 3870, effective February 17, 2004.

NOTE: Italics denote statutory language.

## **SUBPART A: GENERAL**

### **Section 740.100 Purpose**

The purposes of this Part are:

- a) To establish *the procedures for the investigative and remedial activities at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and for the review and approval of those activities* [415 ILCS 5/58.1(a)(1)];
- b) To establish procedures to be followed to obtain Illinois Environmental Protection Agency review and approval of remediation costs before applying for the environmental remediation tax credit under Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]; and
- c) *To establish and administer a program for the payment of remediation costs to be known as the Brownfields Site Restoration Program whereby the Agency, with the assistance of the Department of Commerce and Economic Opportunity (DCEO) through the program, shall provide remediation applicants with financial assistance for the investigation and remediation of abandoned or underutilized properties.* [415 ILCS 5/58.15(B)(a)(1)]

(Source: Amended at 28 Ill. Reg. 3870, effective February 17, 2004)

### **Section 740.105 Applicability**

- a) The procedures set forth in this Part may be used by any person required under the Act or electing to perform investigative or remedial activities at a site where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum unless:
  - 1) The site is on the National Priorities List (Appendix B of 40 CFR 300);
  - 2) The investigative and remedial activities for which Agency review, evaluation and approval are requested are required under a current State or federal solid or hazardous waste permit or are closure requirements for a solid or hazardous waste treatment, storage or disposal site under applicable State or federal laws and implementing regulations;

- 3) The investigative and remedial activities for which Agency review, evaluation and approval are requested are required under State or federal underground storage tank laws and implementing regulations; or
  - 4) The investigative and remedial activities for which Agency review, evaluation and approval are requested are required by a federal court order or an order issued by the United States Environmental Protection Agency and compliance with this Part would be contrary to the terms of that order.
- b) Any person whose site is excluded under subsection (a) may utilize the provisions of this Part to the extent allowed by federal law, federal authorization, or by other federal approval.
  - c) Any person whose site has previously enrolled in the Agency voluntary program and whose site is otherwise eligible under Title XVII of the Environmental Protection Act (Act) [415 ILCS 5] and this Part may elect in accordance with Section 58.1(b) of the Act to use the procedures provided in this Part. In determining compliance with Title XVII of the Act and this Part for activities at such sites, the Agency may accept any documents that are comparable to those required to be submitted under this Part.
  - d) Except for sites excluded under subsection (a), investigative or remedial activities at agricultural facilities may be performed under this Part.
  - e) All applicable requirements of this Part, including those for plans and reports, shall be satisfied prior to the issuance of a No Further Remediation Letter.

#### **Section 740.110 Permit Waiver**

A STATE PERMIT OR PERMIT REVISION WHICH IS NOT OTHERWISE REQUIRED BY FEDERAL LAW OR REGULATIONS SHALL NOT BE REQUIRED FOR REMEDIAL ACTIVITIES UNDERTAKEN PURSUANT TO THE PROVISIONS OF THIS Part THAT OCCUR ENTIRELY ON THE remediation SITE. (Section 58.4 of the Act)

#### **Section 740.115 Agency Authority**

NOTHING IN THIS Part SHALL LIMIT THE AUTHORITY OF THE AGENCY TO PROVIDE NOTICE UNDER SUBSECTION (q) OF SECTION 4 of the Act OR TO UNDERTAKE INVESTIGATIVE, PREVENTIVE OR CORRECTIVE ACTION UNDER ANY OTHER APPLICABLE PROVISIONS OF the ACT. (Section 58.9(e) of the Act) The Agency may use the procedures of this Part, as appropriate (e.g., service agreements, determination of remediation objectives, and recording requirements), for remediation sites where the Remediation Applicant (RA) is seeking a release pursuant to Section 4(y) of the Act.

#### **Section 740.120 Definitions**

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the 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.

*"Abandoned property" means real property previously used for, or that has the potential to be used for, commercial or industrial purposes that reverted to the ownership of the State, a county or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default, or settlement, including conveyance by deed in lieu of foreclosure; or privately owned property that has been vacant for a period of not less than 3 years from the time an application is made to the Department of Commerce and Economic Opportunity. [415 ILCS 5/58.15(B)(b)(2)]*

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

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

"Agency travel costs" means costs incurred and documented for travel in accordance with 80 Ill. Adm. Code 2800 and 3000 by individuals employed by the Agency. Such costs include costs for lodging, meals, travel, automobile mileage, vehicle leasing, tolls, taxi fares, parking and miscellaneous items.

*"Agrichemical facility" means a site on which agricultural pesticides are stored or handled, or both, in preparation for end use, or distributed. The term does not include basic manufacturing facility sites. [415 ILCS 5/58.2]*

*"ASTM" means the American Society for Testing and Materials. [415 ILCS 5/58.2]*

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

"Board" means the Pollution Control Board.

*"Contaminant of concern" or "regulated substance of concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry. [415 ILCS 5/58.2]*

"Costs" means all costs incurred by the Agency in providing services pursuant to a Review and Evaluation Services Agreement.

"DCEO" means the Department of Commerce and Economic Opportunity (previously known as the Department of Commerce and Community Affairs).

"Federal Landholding Entity" means that federal department, agency or instrumentality with the authority to occupy and control the day-to-day use, operation, and management of Federally Owned Property.

“Federally Owned Property” means real property owned in fee by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

"Groundwater management zone" or "GMZ" means a three-dimensional region containing groundwater being managed to mitigate impairment caused by the release of contaminants of concern at a remediation site.

"Indirect costs" means those costs incurred by the Agency that cannot be attributed directly to a specific site but are necessary to support the site-specific activities, including, but not limited to, such expenses as managerial and administrative services, building rent and maintenance, utilities, telephone and office supplies.

“Institutional Control” means a legal mechanism for imposing a restriction on land use.

"Laboratory costs" means costs for services and materials associated with identifying, analyzing, and quantifying chemical compounds in samples at a laboratory.

“Land Use Control Memorandum of Agreement” or “LUC MOA” means an agreement entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limits or places requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment, or that is used to perfect a No Further Remediation Letter that contains land use restrictions.

*"Licensed Professional Engineer" or "LPE" means a person, corporation or partnership licensed under the laws of this State to practice professional engineering. [415 ILCS 5/58.2]*

"Other contractual costs" means costs for contractual services not otherwise specifically identified, including, but not limited to, printing, blueprints, photography, film processing, computer services and overnight mail.

"Perfect" or "Perfected" means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 740.621 and 740.622 of this Part.

*"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]

"Personal services costs" means costs relative to the employment of individuals by the Agency. Such costs include, but are not limited to, hourly wages and fringe benefits.

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

"Practical quantitation limit" or "PQL" or "Estimated quantitation limit" means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 740.125 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 740.125 of this Part.

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

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

*"Regulated substance" means any hazardous substance as defined under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) and petroleum products, including crude oil or*

*any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).* [415 ILCS 5/58.2]

*"Regulated substance of concern" or "contaminant of concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry.* [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 contaminants, construction and maintenance of engineered barriers, and/or implementation of institutional controls.* [415 ILCS 5/58.2]

*"Remediation Applicant" or "RA" 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. For purposes of Subparts G and I of this Part, "Remediation Costs" shall not include costs incurred prior to January 1, 1998, costs incurred after the issuance of a No Further Remediation Letter under Subpart F of this Part, or costs incurred more than 12 months prior to acceptance into the Site Remediation Program under this Part.* [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 Section 740.Subpart D of this Part.*

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

*"Residential property" means any real property that is used for habitation by individuals, or where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas. [415 ILCS 5/58.2]*

"Review and Evaluation Licensed Professional Engineer" or "RELPE" means the licensed professional engineer with whom a Remediation Applicant has contracted to perform review and evaluation services under the direction of the Agency.

*"Site" means any single location, place, tract of land or parcel of property or portion thereof, including contiguous property separated by a public right-of-way. [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.

"Soil management zone" or "SMZ" means a three dimensional region containing soil being managed to mitigate contamination caused by the release of contaminants at a remediation site.

*"Underutilized property" means real property of which less than 35% of the commercially usable space of the property and improvements thereon are used for their most commercially profitable and economically productive uses. [415 ILCS 5/58.15(B)(b)(2)]*

(Source: Amended at 28 Ill. Reg. 3870, effective February 17, 2004)

### **Section 740.125      Incorporations by Reference**

The Board incorporates the following material by reference. These incorporations include no later amendments or editions.

- a)      ASTM. \_American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. (610) 299-5400

ASTM E 1527-00, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, vol. 11.04, approved May 10, 2000.

- b) U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. (202) 783-3238
- "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," USEPA Publication No. SW-846 (Third Edition (September 1986), as amended by Updates I, IIA, III, and IIIA (April 1998)). Doc. No. 955-001-00000-1.
- c) NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. (703) 605-6000 or 1-800-553-6847
- "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010 (June 1991);
- "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111 (May 1994);
- "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039 (December 1988) (revised July 1991);
- "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129 (August 1992);
- "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131 (August 1995).
- d) United States Environmental Protection Agency, Office of Emergency and Remedial Response, Washington, D.C. 20460.
- "A Compendium of Superfund Field Operations Methods," EPA/540/0-87-001, OSWER Directive 9355.0-14 (December 1987);
- "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume I: Solids and Ground Water, Appendices A and B," EPA/625/R-93/003a (May 1993);
- "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume II: The Vadose Zone, Field Screening and Analytical Methods, Appendices C and D," EPA/625/R-93/003b (May 1993).

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### **Section 740.130 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.

## **SUBPART B: APPLICATIONS AND AGREEMENTS FOR REVIEW AND EVALUATION SERVICES**

### **Section 740.200 General**

This Subpart sets forth the requirements to be followed by Remediation Applicants (RA) in applying for review and evaluation services from the Agency, provides for approval or denial of applications by the Agency, and sets forth the requirements to be followed in entering into or terminating agreements to provide review and evaluation services and any related services that the RA may request.

### **Section 740.205 Submittal of Application and Agreement**

Site Remediation Program Applications (Applications) and Review and Evaluation Services Agreements (Agreements) shall be submitted to the Agency on forms prescribed and provided by the Agency with attachments as necessary. Applications and Agreements may be combined into one form. Applications and Agreements 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.

### **Section 740.210 Contents of Application and Agreement**

- a) The Application shall, at a minimum, contain the following information:
  - 1) The full legal name, address, and telephone number of the RA, the remediation site owner, if different from the RA, and any authorized agents acting on behalf of the RA or remediation site owner, and any contact persons to whom inquiries and correspondence must be addressed;
  - 2) The original signature of the RA or of the authorized agent acting on behalf of the RA;
  - 3) For applicants other than the remediation site owner, written permission from the owner, or the authorized agent of the owner, for conducting investigative and remedial activities:
    - A) Where the remediation site extends across property boundaries, written permission must be obtained from the owner of each affected property;
    - B) The written permission shall clearly identify the remediation site for which services are sought;
    - C) The written permission shall contain the original signature of the owner;and

- D) Where the RA is authorized by law to act on behalf of the owner of the remediation site, the RA shall provide written documentation of that authority;
- 4) The remediation site address, site name, the Illinois inventory identification number, if assigned, and the approximate size of the remediation site in acres;
- 5) A statement of the nature of the No Further Remediation Letter requested:
  - A) The statement shall indicate whether the RA is requesting a No Further Remediation Letter under Section 58.10 of the Act for:
    - i) A limited number of recognized environmental conditions and related contaminants of concern as specified by the RA and identified by a focused site investigation under Section 740.430 of this Part; or
    - ii) All recognized environmental conditions and related contaminants of concern for the remediation site as identified by a comprehensive site investigation under Section 740.420 of this Part; or
  - B) The statement shall indicate whether the RA is requesting a release under Section 4(y) of the Act;
- 6) A statement identifying the recognized environmental conditions and related contaminants of concern for which the RA is seeking the No Further Remediation Letter as follows:
  - A) If the RA is requesting a No Further Remediation Letter under subsection (a)(5)(A)(i) above, the RA shall specify, to the extent reasonably possible, the limited recognized environmental conditions to be addressed, including the related contaminants of concern; or
  - B) If the RA is requesting a No Further Remediation Letter under subsection (a)(5)(A)(ii) above, the RA shall generally state that all recognized environmental conditions and related contaminants of concern identified by the comprehensive site investigation to be conducted under Section 740.420 of this Part shall be addressed;
- 7) Site base map(s) of sufficient detail and accuracy to show all of the following:
  - A) A distance of at least 1,000 feet around the remediation site at a scale no smaller than one inch equal to 200 feet;
  - B) Map scale, north arrow orientation, date, and location of the site with respect to township, range and section;
  - C) Remediation site boundary lines, with the owners of property adjacent to the remediation site clearly indicated, if reasonably identifiable; and
  - D) Surrounding land uses (e.g., residential property, industrial/commercial property, agricultural property, and conservation property);
- 8) Identification of the following:
  - A) Any support services being sought from the Agency in addition to the review and evaluation services; and
  - B) Anticipated schedule;
- 9) A statement of the current use of the remediation site and of post-remediation uses;

- 10) A list of all Agency permits pertaining to the remediation site currently held by the owner and operator;
  - 11) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA; and
  - 12) The signature of the RA certifying the accuracy and completeness of the application.
- b) The Agreement may include the conditions set forth in subsection (c), as well as any additional support services to be provided by the Agency, as set forth in subsection (d) and as may be requested by the RA, and any terms and conditions necessary to accomplish those services.
- c) EXCEPT FOR SITES EXCLUDED under Section 740.105 or 740.215 of this Part, THE AGENCY SHALL, SUBJECT TO AVAILABLE RESOURCES, AGREE TO PROVIDE REVIEW AND EVALUATION SERVICES FOR ACTIVITIES CARRIED OUT PURSUANT TO THIS Part FOR WHICH THE RA REQUESTED THE SERVICES in writing. As a condition for providing services, THE AGENCY MAY REQUIRE THAT THE RA FOR A remediation SITE:
- 1) CONFORM WITH THE PROCEDURES OF the Act and this Part;
  - 2) ALLOW FOR OR OTHERWISE ARRANGE remediation SITE VISITS OR OTHER remediation SITE EVALUATION BY THE AGENCY WHEN SO REQUESTED;
  - 3) AGREE TO PERFORM THE Remedial Action PLAN AS APPROVED UNDER THIS Part;
  - 4) AGREE TO PAY ANY REASONABLE COSTS INCURRED AND DOCUMENTED BY THE AGENCY IN PROVIDING SUCH SERVICES pursuant to this Part;
  - 5) MAKE AN ADVANCE PARTIAL PAYMENT TO THE AGENCY FOR SUCH ANTICIPATED SERVICES;
    - A) An advance partial payment in the amount of \$500 may be submitted along with the Application and Agreement forms; or
    - B) The applicant may request on a form provided by the Agency that the Agency estimate the total costs to the Agency of providing the requested services and assess an advance partial payment in an amount acceptable to the Agency but not to exceed \$5,000 or one-half of the total anticipated costs of the Agency, whichever is less;
  - 6) DEMONSTRATE, IF NECESSARY, AUTHORITY TO ACT ON BEHALF OF OR IN LIEU OF THE OWNER OR OPERATOR. (Sections 58.7(b)(1)(A)-(F) of the Act)
- d) In addition to review and evaluation services, the RA may request and the Agency may provide other types of support services under terms and conditions agreed to by the parties and set forth in the Agreement. Additional services offered by the Agency include, but are not limited to:
- 1) Sample collection and analyses;
  - 2) Assistance with community relations; and
  - 3) Coordination and communication between the RA and other governmental entities.

### **Section 740.215 Approval or Denial of Application and Agreement**

- a) The Agency shall have 30 days from the receipt of an Application to approve or deny the Application. The Agency's record of the date of receipt of an Application shall be deemed conclusive unless a contrary date is proved by a dated, signed receipt from the Agency or certified or registered mail. Reasons for denial of an Application shall include, but not be limited to, the following:
  - 1) The application is deemed incomplete;
  - 2) The remediation site or the investigative and remedial activities requested by the RA do not satisfy the applicability requirements set forth at Section 740.105 of this Part; or
  - 3) The Agency does not have the resources available to provide review and evaluation services as requested in the Application.
- b) The Agency shall notify the RA in writing whether the Application is approved or denied. The notification shall be made by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's final determination shall be deemed to have taken place on the post-marked date that the notice is mailed. If the Agency denies an Application for services, the notice of denial shall state the reasons for the denial.
- c) The RA may agree to waive the review deadline under this Section at the request of the Agency or on its own discretion.
- d) Except for denials under subsection (a)(3) above, if the Agency denies an Application, the RA may, within 35 days after receipt of the final determination, file an appeal with the Board. If the Agency fails to make the final determination on an Application within the time frame provided under subsections (a) or (c) above, that failure shall be deemed a denial of the Application, which the RA may appeal within 35 days after the expiration of the deadline. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act. If the Application or Agreement is denied, in lieu of an immediate appeal to the Board, the RA may either resubmit the Application or Agreement to the Agency or file a joint request for a 90-day extension in the manner provided for extensions of permit decisions in Section 40 of the Act [415 ILCS 5/40].

### **Section 740.220 Acceptance and Modification of Application and Agreement**

- a) A signed Agreement shall become effective upon approval by the Agency of the Application and the receipt of the advance partial payment in an amount determined under Section 740.210(c) of this Part.
- b) Upon approval of the Application and receipt of the signed Agreement and advance partial payment, recordkeeping for services conducted by the Agency shall be initiated as provided in Subpart C of this Part.
- c) Modifications to the Application or Agreement shall be by mutual agreement of the parties and may be initiated by the RA or the Agency at any time. All modifications to the Application or Agreement shall be in writing and shall become effective upon signing

by the RA and acceptance by the Agency unless another date is provided in the modification.

- d) If the Agency denies any request for modifications to the Application or Agreement, the RA may file an appeal within 35 days after receipt of notice of the Agency's denial. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for modifications to the Application or Agreement is denied, in lieu of an immediate appeal to the Board, the RA may either resubmit the request for modification to the Agency or file a joint request for a 90-day extension in the manner provided for extensions of permit decisions in Section 40 of the Act [415 ILCS 5/40].

#### **Section 740.225 Termination of Agreement by the Remediation Applicant (RA)**

- a) AN RA REQUESTING SERVICES UNDER this Part MAY, AT ANY TIME, NOTIFY THE AGENCY, IN WRITING, THAT AGENCY SERVICES PREVIOUSLY REQUESTED ARE NO LONGER WANTED. WITHIN 180 DAYS AFTER RECEIPT OF THE NOTICE, THE AGENCY SHALL PROVIDE THE RA WITH A FINAL INVOICE FOR SERVICES PROVIDED UNTIL THE DATE OF receipt of SUCH NOTIFICATION. (Section 58.7(b)(3) of the Act)
- b) Within 45 days after the receipt of a final invoice prepared under subsection (a) above and Section 740.310 of this Part, the RA shall submit full payment to the Agency for any unpaid oversight costs the Agency has identified in the invoice. Submittal and manner of payment shall be as provided under Sections 740.315 and 740.320 of this Part.
- c) Upon finding that the RA has paid all oversight costs, the Agency shall notify the RA in writing by certified mail, return receipt requested, that the Agreement is terminated.

#### **Section 740.230 Termination of Agreement by the Agency**

- a) The Agency may terminate the Review and Evaluation Services Agreement if the RA:
- 1) Fails to comply with the requirements of Title XVII of the Act or this Part;
  - 2) Violates any terms or conditions or fails to fulfill any obligations of the Agreement;
  - 3) Fails to proceed in a timely and appropriate manner consistent with the schedule set forth in the Application, Remedial Action Plan, or as subsequently modified by agreement with the Agency; or
  - 4) Fails to address an imminent and substantial threat to human life, health or the environment in a timely and effective manner.
- b) Prior to termination of an Agreement the Agency shall notify the RA in writing of its intention to terminate the Agreement and the reasons for the intended termination. Except for terminations under subsection (a)(4) above, the Agency shall provide the RA with a reasonable opportunity of not less than 15 days to correct deficiencies.
- c) The Agency shall notify the RA in writing of its final decision to terminate the Agreement. The notice of termination shall be made in accordance with Section 740.215(b) of this Part. The notice of termination shall state the reasons for the termination.

- d) Except for terminations under subsection (a)(4) above, if the Agency terminates an Agreement, the RA may, within 35 days after receipt of the final determination, 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. In lieu of an immediate appeal to the Board, the RA may file a joint request for a 90-day extension of the time to file an appeal in the manner provided for extensions of permit decisions in Section 40 of the Act [415 ILCS 5/40].
- e) A request for payment for all unpaid costs incurred by the Agency under the Agreement to the date of termination may be included with the notice of termination or may be sent as soon thereafter as practicable, but no later than 180 days after the Agency's issuance of the notice of termination. The request for payment shall comply with Section 740.310 of this Part. Within 45 days after the receipt of the request for payment the RA shall submit full payment to the Agency. Submittal and manner of payment shall be as provided in Sections 740.315 and 740.320 of this Part.

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

AN RA MAY ELECT TO CONTRACT WITH A LICENSED PROFESSIONAL ENGINEER WHO WILL PERFORM REVIEW AND EVALUATION SERVICES ON BEHALF OF AND UNDER THE DIRECTION OF THE AGENCY RELATIVE TO THE SITE ACTIVITIES.

(Section 58.7(c) of the Act)

- a) Prior to entering into a contract with an RA under this Part, the Review and Evaluation Licensed Professional Engineer (RELPE) shall provide the RA with the information detailed in Part 740.Appendix B.
- b) PRIOR TO ENTERING INTO THE CONTRACT WITH THE RELPE, THE RA SHALL NOTIFY THE AGENCY OF THE RELPE TO BE SELECTED. In making the notification, the RA shall submit the information detailed in Part 740.Appendix B as provided by the RELPE. THE AGENCY AND THE RA SHALL DISCUSS THE POTENTIAL TERMS OF THE CONTRACT. (Section 58.7(c)(1) of the Act)
- c) AT A MINIMUM, THE CONTRACT WITH THE RELPE SHALL PROVIDE THAT THE RELPE WILL SUBMIT ANY plans or REPORTS DIRECTLY TO THE AGENCY, WILL TAKE HIS OR HER DIRECTIONS FOR WORK ASSIGNMENTS FROM THE AGENCY, AND WILL PERFORM THE ASSIGNED WORK ON BEHALF OF THE AGENCY. (Section 58.7(c)(2) of the Act)
  - 1) The contract with the RELPE shall set forth the scope of work for which the RA has engaged the RELPE and the effective date of the contract.
  - 2) Costs incurred by the RELPE shall be paid directly to the RELPE by the RA as provided in the contractual agreement between the RA and the RELPE.
  - 3) The Agency shall not be liable for any activities conducted by the RELPE or for any costs incurred by the RELPE.
- d) REASONABLE COSTS INCURRED BY THE AGENCY for oversight of the RELPE and its review and evaluation services SHALL BE PAID BY THE RA DIRECTLY TO THE AGENCY IN ACCORDANCE WITH THE TERMS OF THE REVIEW AND

EVALUATION SERVICES AGREEMENT ENTERED INTO UNDER this Part.  
(Section 58.7(c)(3) of the Act)

- e) IN NO EVENT SHALL THE RELPE ACTING ON BEHALF OF THE AGENCY BE AN EMPLOYEE OF THE RA OR THE OWNER OR OPERATOR OF THE SITE OR BE AN EMPLOYEE OF ANY OTHER PERSON THE RA HAS CONTRACTED TO PROVIDE SERVICES RELATIVE TO THE SITE. (Section 58.7(c)(4) of the Act)

### **SUBPART C: RECORDKEEPING, BILLING AND PAYMENT**

#### **Section 740.300 General**

This Subpart sets forth the requirements to be followed in requesting and submitting payments for Agency costs incurred under this Part.

#### **Section 740.305 Recordkeeping for Agency Services**

- a) Costs incurred by the Agency shall be tracked within the Agency by the use of site-specific codes. The following types of costs shall be documented as applicable:
- 1) Personal services costs and indirect costs;
  - 2) Agency travel costs;
  - 3) Professional and artistic services contractual costs;
  - 4) Laboratory costs;
  - 5) Other contractual costs; and
  - 6) Other costs as agreed.
- b) Vouchers associated with review and evaluation services for sites under this Part shall be identified by the assigned site-specific codes.
- c) All Agency personnel performing review and evaluation services or other support services for a site under this Part shall allocate their time to that site using the assigned site-specific codes.

#### **Section 740.310 Request for Payment**

- a) The Agency shall prepare a written request for payment for costs incurred for services provided under the Agreement. Costs shall be documented, and the documentation shall be made available to the RA upon written request. Requests for payment shall be submitted to the RA no more than quarterly unless the request is at the conclusion or termination of an Agreement.
- b) The first request for payment shall reflect the deduction of any advance partial payment from the costs incurred. A request for payment shall not be sent until the advance partial payment has been depleted.
- c) Within 35 days after the receipt of a request for payment, the RA may appeal the reasonableness of any request for payment. Appeals of any request which do not exceed, in the aggregate, the Agency's cost estimate provided under Section 740.210(c)(5) or \$5,000, whichever is greater, shall be limited to the grounds that the services on which

the request is based were not actually performed. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act. In lieu of an immediate appeal to the Board, the RA may file a joint request for a 90-day extension of the time to file an appeal in the manner provided for extensions of permit decisions in Section 40 of the Act [415 ILCS 5/40].

### **Section 740.315 Submittal of Payment**

Unless appealed in accordance with Section 740.310(c) of this Part, payments for costs incurred by the Agency for the performance of services under this Part shall be submitted to the Agency within 45 days after receipt of the request for payment, except for advance partial payments, which may be submitted along with the Application and Agreement or subsequent to the receipt of the Agency's determination under Section 740.210(b)(2)(E)(ii) of this Part.

### **Section 740.320 Manner of Payment**

Payment shall be made 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 or Social Security Number of the RA entering into an Agreement under this Part. Payment shall be mailed or delivered to the address designated by the Agency in the request for payment. Payments that are hand-delivered shall be delivered during the Agency's normal business hours.

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

### **Section 740.400 General**

This Subpart sets forth the requirements for site investigations, determination of remediation objectives, and the form and content of plans and reports submitted to the Agency under this Part.

### **Section 740.405 Conduct of Site Activities and Preparation of Plans and Reports by Licensed Professional Engineer (LPE)**

All remediation site activities shall be conducted by, or under the supervision of, a Licensed Professional Engineer (LPE). All plans and reports submitted for review and evaluation shall be prepared by, or under the supervision of, an LPE.

### **Section 740.410 Form and Delivery of Plans and Reports, Signatories and Certifications**

- a) All plans and reports prepared under this Part shall be submitted to the Agency on forms prescribed and provided by the Agency with attachments and accompanying documentation as necessary. Plans and reports shall be mailed or delivered to the

address designated by the Agency on the forms. Plans and reports that are hand-delivered to the Agency shall be delivered during the Agency's normal business hours.

- b) All plans and reports submitted to the Agency shall include:
- 1) The full legal name, address and telephone number of the Remediation Applicant (RA) or any authorized agent acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
  - 2) The original signature of the RA or of any authorized agent acting on behalf of the RA;
  - 3) The name of the LPE responsible for site activities and preparation of the plan or report, the date of preparation, registration number, license expiration date, and professional seal; and
  - 4) Except as provided in subsection (c) of this Section, the LPE responsible for the site investigations, remedial activities, and preparation of the plans or reports shall affirm by original signature as follows:

“I attest that all site investigations or remedial activities, including review of laboratory data, that are the subject of this plan or report were performed under my direction and this document and all attachments were prepared under my direction or reviewed by me, and, to the best of my knowledge and belief, the work described in the plan or report has been designed or completed in accordance with the Act, 35 Ill. Adm. Code 740, and generally accepted engineering practices, and the information presented, including any qualified laboratory data, is accurate and complete.”
- c) If the investigation relies in whole or in part upon investigations or remedial activities conducted before the affirming LPE's assumption of responsibility for site activities, then the LPE is not required to affirm that those portions of the investigation or remedial activities were carried out under his or her direction. However, the LPE shall review the documentation of the prior investigations or remedial activities and evaluate their suitability for compliance with Title XVII of the Act and this Part. Such information may be submitted to the Agency for consideration along with the LPE's written evaluation of suitability, but the Agency shall not be required to accept the information as evidence of compliance with any requirements of the Act or this Part.
- d) *The RA may elect to prepare and submit for review and approval any and all reports and plans required under this Part individually following the completion of each such activity or concurrently following the completion of all activities, or in any other combination. [415 ILCS 5/58.6(f)]*

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

## **Section 740.415 Site Investigation -- General**

A site investigation shall be performed under this Part to identify, as indicated within the RA's application for review and evaluation services, all or specified recognized environmental conditions existing at the remediation site, the related contaminants of concern, and associated factors that will aid in the identification of risks to human health, safety and the environment, the determination of remediation objectives, and the design and implementation of a Remedial Action Plan.

- a) If the RA has elected under the application for review and evaluation services to obtain a No Further Remediation Letter covering all recognized environmental conditions and related contaminants of concern for the remediation site, then the procedures provided under Sections 740.420 and 740.425 of this Part shall be followed.
- b) If the RA has elected under the application for review and evaluation services to obtain a No Further Remediation Letter covering a limited number of recognized environmental conditions and related contaminants of concern as specified by the RA, then the procedures at Sections 740.430 and 740.435 of this Part shall be followed.
- c) The RA may revise an election at any time by initiating a modification of the Review and Evaluation Services Agreement under Section 740.220 of this Part and performing the appropriate site investigation, if necessary.
- d) Site investigations shall satisfy the following data quality objectives for field and laboratory operations to ensure that all data is scientifically valid and of known precision and accuracy:
  - 1) All field sampling activities relative to sample collection, documentation, preparation, labeling, storage, shipment and security, quality assurance and quality control, acceptance criteria, corrective action, and decontamination procedures shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control) and Vol. Two (Field Manual), incorporated by reference at Section 740.125 of this Part. If approved by the Agency, such activities also may be conducted in accordance with ASTM standards, methods identified in "A Compendium of Superfund Field Operations Methods" (EPA/540/0-87-001, OSWER Directive 9355.0-14, December 1987), "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume I: Solids and Ground Water, Appendices A and B" (EPA/625/R-93/003a, May 1993), "Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volume II:

The Vadose Zone, Field Screening and Analytical Methods, Appendices C and D" (EPA/625/R-93/003b, May 1993), incorporated by reference at Section 740.125 of this Part, or other procedures.

- 2) All field measurement activities relative to equipment and instrument operation, calibration and maintenance, corrective action, and data handling shall be conducted in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at Section 740.125 of this Part, or with an equipment or instrument manufacturer's or vendor's published standard operating procedures.
- 3) All laboratory quantitative analysis of samples to determine concentrations of regulated substances or pesticides shall be conducted fully in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), incorporated by reference at Section 740.125 of this Part, relative to all facilities, equipment and instrumentation, operating procedures, sample management, test methods, equipment calibration and maintenance, quality assurance and quality control, corrective action, data reduction and validation, reporting, and records management. The practical quantitation limit (PQL) of the test methods selected must be less than or equal to the most protective Tier 1 soil remediation objectives in 35 Ill. Adm. Code 742.Appendix B, applicable groundwater remediation objectives under 35 Ill. Adm Code\_742.Appendix B, or, if already determined, the remediation objective concentrations for the site. If a contaminant of concern is not identified in Part 742 or the remediation objectives for the site have not been determined, the PQL shall equal the lowest concentration that reliably can be achieved within specified limits of precision and accuracy during routine laboratory operating conditions but shall not be greater than ten times the method detection limit.
- 4) All field or laboratory measurements of samples to determine physical or geophysical characteristics shall be conducted in accordance with ASTM standards or other procedures as approved by the Agency.
- 5) All laboratory quantitative analyses of samples to determine concentrations of any regulated substances or pesticides that require more exacting detection limits or cannot be analyzed by standard methods identified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), incorporated by

reference at Section 740.125 of this Part, shall be conducted in accordance with analytical protocols developed in consultation with and approved by the Agency.

- 6) Effective January 1, 2003, all quantitative analyses of samples collected on or after that date and utilizing any of the approved test methods identified in 35 Ill. Adm. Code 186.180 shall be completed by an accredited laboratory in accordance with the requirements of 35 Ill. Adm. Code 186. Quantitative analyses not utilizing an accredited laboratory in accordance with Part 186 shall be deemed invalid.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### **Section 740.420      Comprehensive Site Investigation**

The comprehensive site investigation is designed to identify all recognized environmental conditions and all related contaminants of concern that may be expected to exist at a remediation site. The comprehensive site investigation shall be performed in two phases as set forth in subsections 740.420(a) and (b).

- a) Unless an alternative is approved by the Agency, the phase I environmental site assessment shall be designed and implemented in accordance with the procedures for such assessments set forth in "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-00), incorporated by reference at Section 740.125 of this Part.
- b) The phase II environmental site assessment shall determine the nature, concentration, direction and rate of movement, and extent of the contaminants of concern at the remediation site and the significant physical features of the remediation site and vicinity that may affect contaminant fate and transport and risk to human health, safety and the environment. At a minimum, the phase II environmental site assessment shall include:
  - 1) Sampling, analyses, and field screening measurements indicating the concentrations of contaminants, if any, from the Target Compound List at Appendix A of this Part and any other contaminants whose presence has been indicated by the phase I environmental site assessment. Based on the phase I environmental site assessment, the Agency may add or delete contaminants from the Target Compound List for sampling, analyses, and field screening measurements;

- 2) Characterization of sources and potential sources of recognized environmental conditions and the related contaminants of concern, identifying:
  - A) The sources or potential sources of contamination;
  - B) The contaminants of concern;
  - C) Statutory or regulatory classification of the contaminants of concern and contaminated materials (e.g., hazardous waste, hazardous substance, special waste);
  
- 3) Characterization of the extent of contaminants of concern, identifying:
  - A) The actual contaminated medium or media;
  
  - B) The three-dimensional configuration of contaminants of concern with concentrations delineated; and
  - C) The nature, direction, and rate of movement of the contaminants of concern;
  
- 4) Characterization of present and post-remediation exposure routes, identifying:
  - A) All natural and man-made pathways that are on the remediation site, in rights-of-way attached to the remediation site, or in any areas surrounding the remediation site that may be adversely affected as a result of a release (from the recognized environmental conditions) and whether there is evidence of migration of contaminants of concern, in either solution or vapors, along such pathways that may potentially threaten human or environmental receptors or that may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other spaces;
  - B) The locations of any human and environmental receptors and receptor exposure routes; and
  - C) Current and post-remediation uses of affected or potentially affected land, groundwater, surface water, and sensitive habitats; and
  
- 5) Characterization of significant physical features of the remediation site and vicinity that may affect contaminant fate and transport and risk to human health, safety and the environment.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

**Section 740.425      Site Investigation Report -- Comprehensive Site Investigation**

- a) Site investigation results for both phase I and phase II of the comprehensive site investigation shall be combined into one Site Investigation Report.
- b) A Site Investigation Report for a comprehensive site investigation shall include, but not be limited to, the following chapters:
  - 1) Executive summary. This chapter shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state whether recognized environmental conditions were identified and the data limitations in the assessment;
  - 2) Site characterization. This chapter shall include the compilation of all sources reviewed and information obtained as a result of the site investigation under Section 740.420 of this Part, including but not limited to:
    - A) Sources consulted or reviewed. This subchapter shall contain a list of reference documents used in completing the site investigation;
    - B) Site history. This subchapter shall present a chronological summary of the historic uses of the remediation site as prescribed by "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (ASTM E 1527-00), incorporated by reference at Section 740.125 of this Part;
    - C) Site description. This subchapter shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, existing and potential migration pathways and exposure routes, and current and post-remediation uses of the remediation site and surrounding areas that are immediately adjacent to the remediation site;
    - D) Site base map(s) meeting the requirements of Section 740.210(a)(7) and including the following:
      - i) The sources or potential sources of the contaminants of concern, spill areas, and other suspected areas for any or all contaminants of concern;
      - ii) On-site and off-site injection and withdrawal wells; and
      - iii) All buildings, tanks, piles, utilities, paved areas, easements, rights-of-way and other features,

including all known past and current product and waste underground tanks or piping; and

- E) A legal description or reference to a plat showing the boundaries of the remediation site, or, for a Federal Landholding Entity, a common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identifies the site in question with particularity;
- 3) Site-specific sampling plan. This chapter shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment investigations, hydrogeological investigations, surface water investigations, and potential receptor investigations;
- 4) Documentation of field activities. This chapter shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
- A) Narrative description of the field activities conducted during the investigation;
  - B) The quality assurance project plan utilized to document all monitoring procedures (e.g., sampling, field measurements and sample analyses) performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
  - C) Presentation of the data in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 5) Endangerment assessment. This chapter shall analyze the results of the field activities and characterize the extent of contamination (qualitative and quantitative) for contaminants of concern and compare the remediation site information with the applicable provisions of 35 Ill. Adm. Code 742. This chapter shall:
- A) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Adm. Code 742;
  - B) Describe all conditions the LPE has determined to be de minimis along with the rationale for each such de minimis determination;
  - C) Describe the nature, concentration and extent of contaminants of concern within all environmental media at

- the remediation site and assess the observed and potential contaminant fate and transport;
- D) Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport and risk to human health, safety and the environment; and
  - E) Compare the concentrations of the contaminants of concern with the corresponding Tier 1 remediation objectives under 35 Ill. Adm. Code 742;
- 6) Conclusion. This chapter shall assess the sufficiency of the data in the report and recommend future steps;
  - 7) Appendices. References and data sources, including but not limited to field logs, well logs, and reports of laboratory analyses, shall be incorporated into the appendices with reports containing laboratory analyses of samples collected on or after January 1, 2003, including the following:
    - A) Accreditation status of the laboratory performing the quantitative analyses;
    - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of accreditation; and
  - 8) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### **Section 740.430 Focused Site Investigation**

The focused site investigation shall be performed where the RA has specified limitations on the recognized environmental conditions or contaminants of concern to be covered by the No Further Remediation Letter. At a minimum the focused site investigation shall include:

- a) A remediation site evaluation to identify the following features as relevant to the focus of the investigation:
  - 1) Current and post-remediation use(s) of the remediation site and surrounding areas that are immediately adjacent to the remediation site;
  - 2) Physical setting including features relevant to geologic, hydrogeologic, hydrologic, and topographic conditions; structures or other improvements on the remediation site; public thoroughfares adjoining the remediation site, as well any roads, streets, and parking facilities on the remediation site; utilities located on or adjacent to the remediation site; source of potable water supply; and sewage disposal system;
  - 3) The presence of containers and storage tanks containing the selected contaminants of concern, including contents, and assessment of leakage or potential for leakage; and

- 4) Any other environmental, geologic, geographic, hydrologic or physical conditions of concern at the remediation site and surrounding areas immediately adjacent to the remediation site;
- b) Review of reasonably obtainable records relevant to the recognized environmental conditions and the related contaminants of concern for the remediation site and areas immediately adjacent to the remediation site, records of environmental enforcement actions and their subsequent responses, any previous response actions conducted by either local, State, federal or private parties, and a list of documents and studies prepared for the remediation site;
- c) Characterization of sources and potential sources of recognized environmental conditions and the related contaminants of concern, identifying:
  - 1) The sources or potential sources of the contaminants of concern;
  - 2) The sampling, analyses, and field screening measurements indicating the concentrations of the contaminants of concern; and
  - 3) The statutory or regulatory classification of the contaminants of concern and contaminated materials (e.g., hazardous waste, hazardous substance, special waste);
- d) Characterization of the extent of the contaminants of concern, identifying:
  - 1) The actual contaminated medium or media of concern;
  - 2) The three-dimensional configuration of the contaminants of concern with concentrations delineated; and
  - 3) The nature, direction, and rate of movement of the contaminants of concern and degradation products;
- e) Characterization of current and post-remediation exposure routes, identifying:
  - 1) All natural and man-made pathways that are on the remediation site, in rights-of-way attached to the remediation site, or in any areas surrounding the remediation site that may be adversely affected as a result of a release from the recognized environmental conditions and whether there is evidence of migration of contaminants of concern, in either solution or vapors, along such pathways that may potentially threaten human or environmental receptors or that may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other spaces;
  - 2) The locations of any human and environmental receptors and receptor exposure routes; and
  - 3) Current and post-remediation uses of affected or potentially affected land, groundwater, surface water, and sensitive habitats; and
- f) Characterization of significant physical features of the site and vicinity that may affect contaminant transport and risk to human health, safety and the environment.

**Section 740.435 Site Investigation Report -- Focused Site Investigation**

- a) Data and results from the focused site investigation shall be combined into one Site Investigation Report.
- b) A Site Investigation Report for the focused site investigation shall include the results and methodologies of the investigation performed pursuant to Section 740.430 of this Part and the following chapters:

- 1) Executive summary. This chapter shall identify the objectives of the site investigation and the technical approach utilized to meet such objectives. It shall state the recognized environmental conditions and related contaminants of concern specified by the RA and the data limitations in the assessment;
- 2) Site description.
  - A) If a phase I environmental site assessment has been completed in accordance with Section 740.420(a) of this Part, then the results may be submitted in accordance with Section 740.425 of this Part;
  - B) This subchapter shall state the method used for the evaluation of the remediation site and areas immediately adjacent to the remediation site and document the observations obtained (e.g., grid patterns or other systematic approaches used for large properties). It shall describe the regional location, pertinent boundary features, general facility physiography, geology, hydrogeology, and current and post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
  - C) Site base map(s) meeting the requirements of Section 740.210(a)(7) and including the following:
    - i) The sources or potential sources of the contaminants of concern, spill areas, and other suspected areas for the specified contaminants of concern;
    - ii) On-site and off-site injection and withdrawal wells; and
    - iii) All buildings, tanks, piles, utilities, paved areas, easements, rights-of-way and other features, including all known past and current product and waste underground tanks or piping;
  - D) A legal description or reference to a plat showing the boundaries of the remediation site, or, for a Federal Landholding Entity, a common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identifies the site in question with particularity;
- 3) Enforcement or response actions. This chapter shall include the following information as relevant to the recognized environmental conditions:
  - A) A summary of environmental enforcement actions for the remediation site and areas immediately adjacent to the remediation site and their subsequent responses;
  - B) Any previous response actions conducted by either local, State, federal or private parties at those sites; and
  - C) A list of documents and studies prepared for those sites;
- 4) Site-specific sampling plan. This chapter shall indicate those applicable physical and chemical methods utilized for contaminant source investigations, soil and sediment investigations, hydrogeological investigations, surface water investigations, and potential receptor investigations;

- 5) Documentation of field activities. This chapter shall include the results of the field activities to determine physical characteristics. At a minimum, this chapter shall include the following elements:
  - A) Narrative description of the field activities conducted during the investigation;
  - B) The quality assurance project plan utilized to document all monitoring procedures (e.g., sampling, field measurements and sample analysis) performed during the investigation, so as to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented; and
  - C) Presentation of the data in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 6) Endangerment assessment. This chapter shall analyze the results of the field activities and characterize the extent of contamination (qualitative and quantitative) for contaminants of concern related to the recognized environmental conditions and compare the site information with the applicable provisions of 35 Ill. Adm. Code 742. This chapter shall:
  - A) Describe any recognized environmental conditions, evaluate exposure routes, including threatened releases, and evaluate exposure routes excluded under 35 Ill. Adm. Code 742;
  - B) Describe the nature, concentration and extent of contaminants of concern within all environmental media at the remediation site and assess the observed and potential contaminant fate and transport;
  - C) Describe the significant physical features of the remediation site and vicinity that may affect contaminant transport and risk to human health, safety and the environment; and
  - D) Compare the concentrations of the contaminants of concern with the corresponding Tier 1 remediation objectives under 35 Ill. Adm. Code 742;
- 7) Conclusion. This chapter shall assess the sufficiency of the data in the report and recommend future steps;
- 8) Appendices. Supporting documentation, references and data sources, including, but not limited to, field logs, well logs, and reports of laboratory analyses, shall be incorporated into the appendices with reports containing laboratory analyses of samples collected on or after January 1, 2003, including the following:
  - A) Accreditation status of the laboratory performing the quantitative analyses;
  - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of accreditation; and
- 9) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### **Section 740.440 Determination of Remediation Objectives**

- a) If the site investigation reveals evidence of the existence of one or more contaminants of concern, the RA shall develop remediation objectives in accordance with 35 Ill. Adm. Code 742 or other remediation measures as appropriate (e.g., removal of drums threatening a release).
- b) Where there will be no reliance on an institutional control to achieve compliance, or where an institutional control will be relied upon to limit site use to industrial/commercial use, compliance with remediation objectives shall be demonstrated as follows:
  - 1) For groundwater remediation objectives:
    - A) Sampling points shall be located on the remediation site in areas where, following site investigation under Subpart D of this Part, concentrations of contaminants of concern exceeded remediation objectives.
    - B) Compliance with the groundwater remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.
  - 2) For soil remediation objectives:
    - A) Sampling points shall be located on the remediation site in areas where, following site investigation under Subpart D of this Part, concentrations of concern exceeded remediation objectives.
    - B) Compliance with soil remediation objectives at applicable sampling points shall be determined in accordance with 35 Ill. Adm. Code 742.225.
- c) Where an institutional control or remediation measure will be relied upon to achieve compliance, compliance shall be determined based on approval by the Agency of the institutional control or remediation measure and the timely implementation of the institutional control or remediation measure (e.g., if an institutional control prohibiting the use of groundwater within the boundaries of the remediation site as a potable water supply is obtained under 35 Ill. Adm. Code 742.Subpart J, sampling points shall be located at the boundary of the remediation site).
- d) Upon completing the determination of remediation objectives, the RA shall compile the information into a Remediation Objectives Report meeting the requirements of Section 740.445 of this Part for submittal to the Agency.

### **Section 740.445 Remediation Objectives Report**

The Remediation Objectives Report shall address the recognized environmental condition(s) and related contaminants of concern that were identified in the site investigation conducted pursuant to this Part.

- a) If an exposure route is to be excluded, the RA shall prepare a Remediation Objectives Report demonstrating that the requirements for excluding an exposure route under 35 Ill. Adm. Code 742 have been satisfied.

- b) If the RA elects to use the Tier 1 remediation objectives under 35 Ill. Adm. Code 742, the RA shall prepare a Remediation Objectives Report stating the applicable remediation objectives for the contaminants of concern.
- c) If the RA elects to develop remediation objectives appropriate for the remediation site using Tier 2 or Tier 3 procedures under 35 Ill. Adm. Code 742, the RA shall prepare a Remediation Objectives Report demonstrating compliance with those procedures.
- d) If the RA elects to develop remediation objectives appropriate for the remediation site using the area background procedures under 35 Ill. Adm. Code 742, the RA shall prepare a Remediation Objectives Report demonstrating compliance with those procedures.
- e) If the recognized environmental condition requires remediation measures other than, or in addition to, remediation objectives determined under 35 Ill. Adm. Code 742 (e.g., removal of drums threatening a release), the Remediation Objectives Report shall describe those measures and demonstrate that the measures selected:
  - 1) Will prevent or eliminate the identified threat to human health and the environment;
  - 2) Are technically feasible and can be implemented without creating additional threats to human health and the environment; and
  - 3) Are not inconsistent with the Act and applicable regulations.
- f) IN THE EVENT THAT THE AGENCY HAS DETERMINED IN WRITING THAT THE BACKGROUND LEVEL FOR A REGULATED SUBSTANCE or pesticide POSES AN ACUTE THREAT TO HUMAN HEALTH OR THE ENVIRONMENT AT THE SITE WHEN CONSIDERING THE POST-REMEDIATION LAND USE, THE RA SHALL DEVELOP APPROPRIATE RISK-BASED REMEDIATION OBJECTIVES IN ACCORDANCE WITH subsections (a), (b) and/or (c) above. (Section 58.5(b)(3) of the Act)
- g) The Remediation Objectives Report shall contain the affirmation of a Licensed Professional Engineer(s) in accordance with Section 740.410 of this Part.

#### **Section 740.450 Remedial Action Plan**

*If the approved remediation objectives for any regulated substance of concern established under Sections 740.440 and 740.445 of this Part are less than the levels at the remediation site prior to any remedial action, the RA shall prepare a Remedial Action Plan. The plan shall describe the proposed remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the remediation site [415 ILCS 5/58.6(d)], including but not limited to:*

- a) Executive summary. This chapter shall identify the objectives of the Remedial Action Plan and the technical approach utilized to meet such objectives. At a minimum, this chapter shall include the following elements:
  - 1) The major components (e.g., treatment, containment, removal actions) of the Remedial Action Plan;
  - 2) The scope of the problems to be addressed by the proposed remedial action(s) including the specific contaminants of concern and the physical area to be addressed by the Remedial Action Plan; and
  - 3) Schedule of activities with estimated dates of completion through the recording of the No Further Remediation Letter or execution of an IDOT

Memorandum of Agreement (MOA) under Section 740.621 of this Part or a LUC MOA under Section 740.622 of this Part;

- b) Statement of remediation objectives or reference to Remediation Objectives Report;
- c) Remedial technologies selected. This chapter shall describe how each major remedial technology identified in the Remedial Action Plan fits into the overall strategy for addressing the recognized environmental conditions at the remediation site, including but not limited to:
  - 1) Feasibility of implementation;
  - 2) Whether the technologies will perform satisfactorily and reliably until the remediation objectives are achieved;
  - 3) Whether remediation objectives will be achieved within a reasonable period of time; and
  - 4) If applicable, a request for a soil management zone under Section 740.535 of this Part describing the steps that will be taken to ensure compliance with the requirements for soil management zones;
- d) Confirmation sampling plan. This chapter shall describe how the effectiveness of the remedial action will be measured. At a minimum, a site-specific sampling plan and quality assurance project plan must be prepared in accordance with the provisions set forth in Section 740.415(d) of this Part;
- e) Current and post-remediation use of the property;
- f) Applicable engineered barriers, institutional controls, and groundwater monitoring. This chapter shall describe any such controls selected or relied upon in determining or achieving remediation objectives, including long-term reliability, operating and maintenance plans, and monitoring procedures;
- g) Appendices. References and other informational sources should be incorporated into the appendices; and
- h) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### **Section 740.455 Remedial Action Completion Report**

- a) Except as provided in subsection (b) below, *upon completion of the Remedial Action Plan, the RA shall prepare a Remedial Action Completion Report. The report shall demonstrate whether the remedial action was completed in accordance with the approved Remedial Action Plan and whether the remediation objectives, as well as any other requirements of the plan, have been attained.* [415 ILCS 5/58.6(e)(1)] The report shall include, but not be limited to:
  - 1) Executive summary. This chapter shall identify the overall objectives of the remedial action and the technical approach utilized to meet those objectives, including:
    - A) A brief description of the remediation site, including the recognized environmental conditions, the contaminants of concern, the contaminated media, and the extent of contamination;

- B) The major components of the Remedial Action Completion Report;
  - C) The scope of the problems corrected or mitigated by the proposed remedial action(s); and
  - D) The anticipated post-remediation uses of the remediation site and areas immediately adjacent to the remediation site;
- 2) Field activities. This chapter shall provide a narrative description of the:
- A) Field activities conducted during the investigation;
  - B) Remedial actions implemented at the remediation site and the performance of each remedial technology utilized; and
  - C) Measures that were taken to ensure compliance with the requirements for soil management zones under Section 740.535 of this Part, if a soil management zone was used;
- 3) Special conditions. This chapter shall provide a description of any:
- A) Engineered barriers utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives;
  - B) Institutional controls accompanying engineered barriers or industrial/commercial property uses in accordance with Section 740.450 of this Part and 35 Ill. Adm. Code 742, including a legible copy of any such controls, as appropriate;
  - C) Post-remedial monitoring, including:
    - i) Conditions to be monitored;
    - ii) Purpose;
    - iii) Locations;
    - iv) Frequency; and
    - v) Contingencies in the event of an exceedence; and
  - D) Other conditions, if any, necessary for protection of human health and the environment that are related to the issuance of a No Further Remediation Letter;
- 4) Results. This chapter shall analyze the effectiveness of the remedial actions by comparing the results of the confirmation sampling with the remediation objectives prescribed in the Agency-approved Remedial Action Plan. The data shall state the remediation objectives or reference the Remediation Objectives Report and be presented in an appropriate format (e.g., tabular and graphical displays) such that all information is organized and presented logically and that relationships between the different investigations for each medium are apparent;
- 5) Conclusion. This chapter shall identify the success of the remedial action in meeting objectives. This chapter shall assess the accuracy and completeness of the data in the report and, if applicable, future work;
- 6) Appendices. References, data sources, and a completed environmental notice form as provided by the Agency shall be incorporated into the appendices. Field logs, well logs and reports of laboratory analyses shall be organized and presented logically with reports of laboratory analyses of samples collected on or after January 1, 2003, including the following:

- A) Accreditation status of the laboratory performing the quantitative analyses;
  - B) Certification by an authorized agent of the laboratory that all analyses have been performed in accordance with the requirements of 35 Ill. Adm. Code 186 and the scope of the accreditation; and
  - 7) Licensed Professional Engineer affirmation in accordance with Section 740.410 of this Part.
- b) *If the approved remediation objectives for the regulated substances of concern established under Sections 740.440 and 740.445 of this Part are equal to or above the levels existing at the site prior to any remedial action, notification and documentation of such, including a description of any engineered barriers, institutional controls, and post-remedial monitoring, shall constitute the entire Remedial Action Completion Report for purposes of this Part. [415 ILCS 5/58.6(e)(2)]*

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

## **SUBPART E: SUBMITTAL AND REVIEW OF PLANS AND REPORTS**

### **Section 740.500 General**

This Subpart sets forth the requirements for the review of plans and reports submitted under this Part. All plans and reports shall satisfy the requirements for form and delivery set forth in Section 740.410 of this Part.

### **Section 740.505 Reviews of Plans and Reports**

- a) ALL REVIEWS carried out under this Part SHALL BE CARRIED OUT BY THE AGENCY OR A RELPE, BOTH UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER. (Section 58.7(d) of the Act)
- b) PLANS, REPORTS AND related ACTIVITIES WHICH THE AGENCY OR A RELPE MAY REVIEW INCLUDE, but are not limited to:
  - 1) SITE INVESTIGATION REPORTS AND RELATED ACTIVITIES;
  - 2) REMEDIATION OBJECTIVES REPORTS;
  - 3) REMEDIAL ACTION PLANS AND RELATED ACTIVITIES; AND
  - 4) REMEDIAL ACTION COMPLETION REPORTS AND RELATED ACTIVITIES. (Section 58.7(d)(2) of the Act)

- c) ONLY THE AGENCY SHALL HAVE THE AUTHORITY TO APPROVE, DISAPPROVE, OR APPROVE WITH CONDITIONS A PLAN OR REPORT AS A RESULT OF THE REVIEW PROCESS, INCLUDING THOSE PLANS OR REPORTS REVIEWED BY A RELPE. (Section 58.7(d)(3) of the Act)
  
- d) Except as provided in subsection (d)(5) below and Section 740.705(c) of this Part, the Agency shall have 60 days from the receipt of any plan or report to conduct a review and make a final determination to approve or disapprove the plan or report, or approve the plan or report with conditions. All reviews shall be based on the standards set forth in this Subpart E.
  - 1) The Agency's record of the date of receipt of a plan or report shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from the Agency or certified or registered mail.
  - 2) Submittal of an amended plan or report restarts the time for review.
  - 3) The RA may waive the time line for review upon a request from the Agency or at the RA's discretion.
  - 4) The Agency shall not be required to review any plan or report submitted out of the sequence for plans and reports set forth in this Part.
  - 5) If any plans or reports are submitted concurrently, the Agency's timeline for review shall increase to a total of 90 days for all plans or reports so submitted.
  
- e) Upon completion of the review, the Agency shall notify the RA in writing of its final determination on the plan or report. The Agency's notification shall be made in accordance with Section 740.215(b) of this Part. If the Agency disapproves a plan or report or approves a plan or report with conditions, the written notification shall contain the following information, as applicable:
  - 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
  - 2) A listing of the Sections of Title XVII of the Act or this Part that may be violated if the plan or report is approved as submitted;
  - 3) A statement of the specific reasons why Title XVII of the Act or this Part may be violated if the plan or report is approved as submitted;
  - 4) A statement of the reasons for conditions if conditions are required.

- f) The Agency may, to the extent consistent with review deadlines, provide the RA with a reasonable opportunity to correct deficiencies prior to sending a disapproval. However, the correction of such deficiencies by the submittal of additional information may, in the sole discretion of the Agency, restart the time for review.
  
- g) If the RA has entered into a contract with a RELPE under Subpart B of this Part, the Agency shall assign plans and reports submitted by the RA to the RELPE for initial review.
  - 1) The RELPE's review shall be conducted in accordance with this Subpart E.
  - 2) Upon completion of the review, the RELPE shall recommend to the Agency approval or disapproval of the plan or report or approval of the plan or report with conditions.
  - 3) Unless otherwise approved by the Agency in writing, the RELPE shall have 30 days to complete the review of a plan or report and forward the recommendation to the Agency. If any plans or reports have been submitted concurrently to the Agency, the RELPE shall have a total of 45 days to complete the review of all plans or reports so submitted, unless otherwise approved by the Agency in writing.
  - 4) The recommendation of the RELPE shall be in writing, shall include reasons supporting the RELPE's recommendation, and shall be accompanied by all documents submitted by the RA and any other information relied upon by the RELPE in reaching a decision.
  
- h) IF THE AGENCY DISAPPROVES OR APPROVES WITH CONDITIONS A PLAN OR REPORT OR FAILS TO ISSUE A FINAL determination WITHIN THE applicable review PERIOD AND THE RA HAS NOT AGREED TO A WAIVER OF THE DEADLINE, THE RA MAY, WITHIN 35 DAYS after receipt of the final determination or expiration of the deadline, FILE AN APPEAL with THE BOARD. APPEALS TO THE BOARD SHALL BE IN THE MANNER PROVIDED FOR THE REVIEW OF PERMIT DECISIONS IN SECTION 40 OF THE ACT. (Section 58.7(d)(5) of the Act)

(Source: Amended at 22 Ill. Reg. 19580, effective October 26, 1998)

### **Section 740.510 Standards for Review of Site Investigation Reports and Related Activities**

When reviewing Site Investigation Reports and related activities, the Agency or the RELPE shall consider:

- a) Whether the report is complete and has been accompanied by the information and supporting documentation necessary to evaluate the site investigation activities;
- b) Whether the site investigation has been conducted in accordance with the procedures set forth in Title XVII of the Act and Subpart D of this Part, including but not limited to:
  - 1) Whether a comprehensive site investigation has been designed and implemented in accordance with Section 740.420 of this Part;
  - 2) Whether a focused site investigation has been designed and implemented in accordance with Section 740.430 of this Part; and
  - 3) Whether all sampling and analysis activities have been conducted in accordance with Section 740.415 of this Part; and
- c) **WHETHER THE INTERPRETATIONS AND CONCLUSIONS REACHED ARE SUPPORTED BY THE INFORMATION GATHERED.** (Section 58.7(e)(1) of the Act)

### **Section 740.515 Standards for Review of Remediation Objectives Reports**

When reviewing Remediation Objectives Reports, the Agency or the RELPE shall consider:

- a) Whether the report is complete and has been accompanied by the information and supporting documentation necessary to determine whether the remediation objectives have been determined in accordance with 35 Ill. Adm. Code 742 and whether any other remediation objectives or remediation measures are necessary to minimize or eliminate any remaining risk presented by contaminants of concern;
- b) **WHETHER THE REMEDIATION OBJECTIVES ARE CONSISTENT WITH THE REQUIREMENTS OF THE APPLICABLE METHOD FOR SELECTING OR DETERMINING REMEDIATION OBJECTIVES** (Section 58.7(e)(2) of the Act), including but not limited to:
  - 1) If exposure routes have been excluded under 35 Ill. Adm. Code 742.Subpart C:
    - A) Whether the requirements for the exclusion of exposure routes under 35 Ill. Adm. Code 742 have been satisfied; and
    - B) Whether engineered barriers and institutional controls, if relied on for the exclusion of exposure routes, satisfy the requirements of 35 Ill. Adm. Code 742.
  - 2) **IF THE remediation OBJECTIVES WERE BASED ON THE DETERMINATION OF AREA BACKGROUND LEVELS UNDER 35 Ill. Adm. Code 742.Subpart D:**
    - A) **WHETHER THE REVIEW OF CURRENT AND HISTORIC CONDITIONS AT THE remediation SITE OR IN THE IMMEDIATE VICINITY OF THE SITE** has been thorough (Section 58.7(e)(2)(A) of the Act);
    - B) **WHETHER THE remediation SITE SAMPLING AND ANALYSIS HAVE BEEN PERFORMED IN A MANNER RESULTING IN ACCURATE DETERMINATIONS** as provided in 35 Ill. Adm. Code 742 and Section 740.415(d) of this Part (Section 58.7(e)(2)(A) of the Act);

- C) Whether the requirements for determining area background concentrations under 35 Ill. Adm. Code 742.Subpart D have been satisfied; and
  - D) Whether an area background level for a regulated substance of concern poses an acute threat to human health or the environment at the remediation site when considering the post-remediation property uses.
- 3) If the remediation objectives were determined under 35 Ill. Adm. Code 742.Subpart E:
- A) Whether the requirements for the use of Tier 1 under 35 Ill. Adm. Code 742 have been satisfied;
  - B) Whether the comparison of the concentrations of regulated substances of concern and the Tier 1 remediation objectives has been performed and the remediation objectives determined for the remediation site in accordance with 35 Ill. Adm. Code 742; and
  - C) Whether engineered barriers and institutional controls, if relied on in the determination of remediation objectives or for industrial/commercial property uses, satisfy the requirements of 35 Ill. Adm. Code 742.
- 4) If the remediation objectives were determined under 35 Ill. Adm. Code 742.Subparts F, G, and H:
- A) Whether the requirements for the use of Tier 2 under 35 Ill. Adm. Code 742 have been satisfied;
  - B) WHETHER THE CALCULATIONS performed under 35 Ill. Adm. Code 742 WERE ACCURATELY PERFORMED (Section 58.7(e)(2)(B) of the Act);
  - C) WHETHER THE SITE SPECIFIC DATA REFLECT ACTUAL remediation SITE CONDITIONS (Section 58.7(e)(2)(B) of the Act);
  - D) Whether engineered barriers and institutional controls, if relied on in the determination of remediation objectives or for industrial/commercial property uses, satisfy the requirements of 35 Ill. Adm. Code 742.
- 5) If the remediation objectives were determined under 35 Ill. Adm. Code 742.Subpart I:
- A) Whether the requirements for the use of Tier 3 under 35 Ill. Adm. Code 742 have been satisfied;
  - B) WHETHER THE CALCULATIONS performed under 35 Ill. Adm. Code 742 WERE ACCURATELY PERFORMED (Section 58.7(e)(2)(C) of the Act);
  - C) WHETHER THE SITE SPECIFIC DATA REFLECT ACTUAL remediation SITE CONDITIONS (Section 58.7(e)(2)(C) of the Act);
  - D) Whether engineered barriers and institutional controls, if relied on in the determination of remediation objectives or for industrial/commercial property uses, satisfy the requirements of 35 Ill. Adm. Code 742.
- 6) If a recognized environmental condition requires remediation measures other than, or in addition to, remediation objectives determined under 35 Ill. Adm. Code 742 (e.g., removal of drums threatening a release), whether the remediation measures selected:

- A) Will prevent or eliminate the identified threat to human health and the environment;
  - B) Are technically feasible and can be implemented without creating additional threats to human health and the environment; and
  - C) Are not inconsistent with the Act and applicable regulations.
- 1) If there are any remaining recognized environmental conditions not addressed in the determination of remediation objectives, whether those conditions have the potential to pose a significant threat to human health or the environment.

**Section 740.520 Standards for Review of Remedial Action Plans and Related Activities**

When reviewing Remedial Action Plans and related activities, the Agency or the RELPE shall consider:

- a) Whether the plan is complete and has been accompanied by the information and supporting documentation necessary to evaluate the effectiveness of the plan; and
- b) WHETHER THE PLAN WILL RESULT IN COMPLIANCE WITH Title XVII of the Act and this Part, including but not limited to:
  - 1) THE LIKELIHOOD THAT THE PLAN WILL RESULT IN THE ATTAINMENT OF THE APPLICABLE REMEDIATION OBJECTIVES (Section 58.7(e)(3)(A) of the Act);
  - 2) WHETHER THE ACTIVITIES PROPOSED ARE CONSISTENT WITH GENERALLY ACCEPTED ENGINEERING PRACTICES (Section 58.7(e)(3)(B) of the Act); and
  - 3) THE MANAGEMENT OF RISK RELATIVE TO ANY REMAINING CONTAMINATION, INCLUDING, BUT NOT LIMITED TO, PROVISIONS FOR THE LONG-TERM ENFORCEMENT, OPERATION, AND MAINTENANCE OF INSTITUTIONAL AND ENGINEERING CONTROLS, IF RELIED ON. (Section 58.7(e)(3)(C) of the Act)

**Section 740.525 Standards for Review of Remedial Action Completion Reports and Related Activities**

When reviewing Remedial Action Completion Reports and related activities, the Agency or the RELPE shall consider:

- a) Whether the report is complete and has been accompanied by the information and supporting documentation necessary to evaluate the implementation of the Remedial Action Plan and the attainment of the applicable remediation objectives;
- b) *Whether the remedial activities have been completed in accordance with the approved Remedial Action Plan and whether the applicable remediation objectives have been attained [415 ILCS 5/58.7(e)(4)];*
- c) If engineered barriers and institutional controls have been relied on, or if monitoring is required, whether the long-term maintenance, operation and enforcement provisions have been established; and

- d) If a soil management zone was used, whether the requirements for the use of soil management zones have been satisfied.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### **Section 740.530 Establishment of Groundwater Management Zones**

- a) Except as provided in subsection (b) below, upon approval by the Agency of a Remedial Action Plan under Subpart E of this Part, groundwater that is the subject of the Remedial Action Plan shall automatically be classified as a groundwater management zone for the specified contaminants of concern.
- b) The three dimensional area of the groundwater management zone shall be deemed to be coextensive with the groundwater that is the subject of the Remedial Action Plan. The size of the groundwater management zone may be modified where new information and an amended and approved Remedial Action Plan warrant. Where the groundwater management zone extends across property boundaries, the written permission of the owners of the affected properties shall be obtained before the groundwater management zone becomes effective unless the affected properties already are included within the remediation site.
- c) Groundwater management zones designated under this Section shall remain in effect until a No Further Remediation Letter becomes effective under this Part or an Agreement is terminated.
- d) While a groundwater management zone is in effect, the otherwise applicable standards from 35 Ill. Adm. Code 620 shall not be applicable to the contaminants of concern for which groundwater remediation objectives have been approved in the Remediation Objectives Report.
- e) If implementation of an approved Remedial Action Plan fails to achieve the remediation objectives developed under Section 740.440 of this Part, alternative groundwater objectives may be developed under Section 740.440 of this Part.
  - 1) Upon the development of alternative groundwater objectives, the Remediation Objectives Report shall be amended accordingly and submitted for review and approval.
  - 2) Upon approval of the amended Remediation Objectives Report, the Remedial Action Plan shall be amended and submitted for review and approval unless the RA can demonstrate that the alternative groundwater objectives already have been achieved. In that case, the RA shall submit a Remedial Action Completion Report documenting the achievement of the alternative groundwater objectives.
- f) While the No Further Remediation Letter is in effect, the otherwise applicable groundwater quality standards from 35 Ill. Adm. Code 620.Subpart D are superseded. The applicable groundwater quality standards for the specified contaminants of concern within the area formerly encompassed by the GMZ are the groundwater objectives achieved as documented in the approved Remedial Action Completion Report.
- g) While the No Further Remediation Letter is in effect, requirements for review, reporting and listing relative to groundwater remediation that may otherwise be applicable under 35 Ill. Adm. Code 620.250 and 620.450(a) shall not apply to the area formerly encompassed

by the groundwater management zone and any contaminants of concern for which the groundwater management zone was formerly in effect under this Section.

**Section 740.535      Establishment of Soil Management Zones**

- a)      Soil Management Zone
  - 1)      The purpose of a soil management zone (SMZ) is to allow consideration and approval of on-site solutions to on-site soil contamination without violating the solid waste disposal regulations at 35 Ill. Adm. Code 807 or 811 - 815.
  - 2)      The uses of soil management zones include, but are not limited to, the following:
    - A)      Placement of contaminated soils for structural fill or land reclamation;
    - B)      Consolidation of contaminated soils within a remediation site; and
    - C)      Removal and re-deposit of contaminated soils following on-site treatment that has reduced contaminant concentrations.
- b)      Upon approval by the Agency of a Remedial Action Plan under Subpart E of this Part, soil that is the subject of a request for a soil management zone shall be classified as a soil management zone if the Remedial Action Plan provides the following information and demonstrates that the following requirements will be satisfied:
  - 1)      All contaminants of concern within the remediation site shall be identified by a comprehensive site investigation under Section 740.420 of this Part;
  - 2)      The horizontal and vertical dimensions of the soil management zone shall be defined;
  - 3)      The uses of the soil management zone shall be defined;
  - 4)      All contaminants of concern within the soil management zone shall satisfy the requirements of 35 Ill. Adm. Code 742.305(a) through (f);
  - 5)      All applicable requirements of 35 Ill. Adm. Code 742 shall be satisfied within the soil management zone (e.g., all exposure routes must be addressed; institutional controls and engineered barriers shall be in full compliance with 35 Ill. Adm. Code 742.Subparts J and K);
  - 6)      The soil management zone shall be constructed, operated and maintained in a manner that:

- A) Prevents odor from occurring;
  - B) Minimizes fugitive emissions of particulate matter in accordance with 35 Ill. Adm. Code 212.Subpart K and dust generation;
  - C) Prevents the generation of potentially contaminated runoff; and
  - D) Does not provide a breeding place or food source for vectors;
- 7) Within the soil management zone, management of soil containing hazardous wastes shall comply with the applicable requirements of the Resource Conservation and Recovery Act (42 USCA 6901 - 6992k) and 35 Ill. Adm. Code 700 - 730; and
- 8) Soil containing contaminants of concern above the concentrations in 35 Ill. Adm. Code 742.Appendix B, Table A (Tier 1 objectives for residential properties) or approved by the Agency pursuant to 35 Ill. Adm. Code 742.510(c) may not be treated or placed in any area where all contaminants of concern within the remediation site are at or below the concentrations in 35 Ill. Adm. Code 742.Appendix B, Table A (Tier 1 objectives for residential properties) or approved by the Agency pursuant to 35 Ill. Adm. Code 742.510(c).
- c) The three-dimensional boundaries of the soil management zone shall be as defined in the approved Remedial Action Plan. The size of the soil management zone may be modified in an amended Remedial Action Plan. The soil management zone may not extend beyond the boundaries of the remediation site.
- d) Soil management zones designated under this Section shall remain in effect for the shortest of the following:
- 1) A period of time as set forth by the Agency in the Remedial Action Plan approval letter based on the schedule of activities provided under Section 740.425(a)(3). The time may be revised in an amended Remedial Action Plan as approved by the Agency;
  - 2) Until an Agreement is terminated under Sections 740.225 or 740.230 of this Part; or
  - 3) Until the No Further Remediation (NFR) Letter is perfected in accordance with Sections 740.620, 740.621, or 740.622 of this Part.
- e) In addition to any other legal remedies available under the Act and implementing regulations, the Agency may terminate a soil management zone and require alternative remediation plans to be submitted in an amended Remedial Action Plan upon a failure to comply with any requirements of subsection (b) of this Section.

- 1) Notice of the termination shall be in accordance with Section 740.215(b) of this Part and shall state the reasons for the termination.
  - 2) The RA may file an appeal to the Board within 35 days after receipt of the notice. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.
- f) If implementation of an approved Remedial Action Plan with a soil management zone fails to achieve the remediation objectives developed under Section 740.440 of this Part, alternative soil remediation objectives, and, if necessary, an amended Remedial Action Plan, shall be developed under Subpart D of this Part.
- 1) Upon the development of alternative soil remediation objectives, the Remediation Objectives Report shall be amended accordingly and submitted to the Agency for review and approval.
  - 2) Upon approval of the Remediation Objectives Report, the Remedial Action Plan shall be amended and submitted to the Agency for review and approval unless the RA can demonstrate that the alternative soil remediation objectives have been achieved. In that case, the RA shall submit a Remedial Action Completion Report documenting the achievement of the alternative soil remediation objectives.
- g) Any otherwise applicable standards or requirements under 35 Ill. Adm. Code 807 or 811-815 shall not be applicable to the management of contaminated soil that is the subject of the soil management zone if:
- 1) The SMZ is in effect and management of the contaminated soil within the SMZ is in compliance with the requirements of this Section and the approved Remedial Action Plan; or
  - 2) A No Further Remediation Letter addressing the contaminants that were the subject of the SMZ has been perfected under Sections 740.620, 740.621, or 740.622 of this Part and remains in effect and management of the contaminated soil within the area formerly encompassed by the SMZ is in compliance with the terms of that No Further Remediation Letter.

(Source: Added at 26 Ill. Reg. 7197, effective April 25, 2002)

## **SUBPART F: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS**

### **Section 740.600 General**

Subpart F provides for the issuance of No Further Remediation Letters following the satisfactory completion of investigative and remedial activities in accordance with Title XVII of the Act and

this Part. Subpart F also sets forth the fee for the No Further Remediation Letter, the recording requirements, and the circumstances under which the letter may be voidable.

**Section 740.605      Issuance of No Further Remediation Letter**

- a) Except as provided in Section 740.615 below, *within 30 days after the Agency's approval of a Remedial Action Completion Report, the Agency shall issue a No Further Remediation Letter applicable to the remediation site. In the event that the Agency fails to issue the No Further Remediation Letter within 30 days after approval of the Remedial Action Completion Report, the No Further Remediation Letter shall issue by operation of law.* [415 ILCS 5/58.10(b)] The No Further Remediation Letter shall have the legal effect prescribed in Section 58.10 of the Act.
- b) The No Further Remediation Letter shall be issued only to Remediation Applicants who have completed all requirements and received final approval of the Remedial Action Completion Report by the Agency or on appeal.
- c) The Agency shall mail the No Further Remediation Letter by registered or certified mail, postmarked with a date stamp and with return receipt requested. If the RA is not the sole owner of the Remediation Site, the Agency shall send a copy of the No Further Remediation Letter simultaneously to the owner(s) by first class mail. Final action shall be deemed to have taken place on the postmarked date that the letter is mailed.
- d) The Agency at any time may correct errors in No Further Remediation Letters arising from oversight, omission or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency shall mail the corrected letter to the RA, the property owner(s), or both as set forth in subsection (c) of this Section. The corrected letter shall become effective and shall be perfected as provided in Sections 740.620, 740.621, or 740.622 of this Part.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

**Section 740.610      Contents of No Further Remediation Letter**

- a) Except as provided in subsection (b) below, a No Further Remediation Letter issued pursuant to Section 58.10 of the Act shall be limited to and include all of the following:
  - 1) *An acknowledgement that the requirements of the remedial action plan and the remedial action completion report were satisfied;*
  - 2) *A description of the remediation site by adequate legal description or by reference to a plat showing the boundaries, or by other means sufficient to identify site location with particularity;*

- 3) *The level of the remediation objectives, specifying, as appropriate, any land use limitation imposed as a result of such remediation efforts;*
  - 4) *A statement that the agency's issuance of the No Further Remediation Letter signifies a release from further responsibilities under the Act in performing the approved remedial action and shall be considered prima facie evidence that the site does not constitute a threat to human health and the environment and does not require further remediation under the Act if utilized in accordance with the terms of the No Further Remediation Letter. If the remediation site includes a portion of a larger parcel of property or if the RA has elected to limit the recognized environmental conditions and related contaminants of concern to be remediated, or both, the No Further Remediation Letter shall be limited accordingly by its terms;*
  - 5) *The prohibition against the use of any remediation site in a manner inconsistent with any land use limitation imposed as a result of such remediation efforts without additional appropriate remedial activities;*
  - 6) *A description of any preventive, engineering, and institutional controls or monitoring required in the approved remedial action plan and notification that failure to manage the controls or monitoring in full compliance with the terms of the remedial action plan may result in avoidance of the No Further Remediation Letter;*
  - 7) *The recording obligations pursuant to Title XVII of the Act and Sections 740.620, 740.621, or 740.622 of this Part;*
  - 8) *The opportunity to request a change in the recorded land use pursuant to Title XVII of the Act and Section 740.620(c) of this Part; and*
  - 9) *Notification that further information regarding the remediation site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]. [415 ILCS 5/58.10(b)(1)-(9)]*
- b) *If only a portion of the site or only selected regulated substances or pesticides at a site were the subject of corrective action, the No Further Remediation Letter may contain any other provisions agreed to by the Agency and the RA. [415 ILCS 5/58.10(b)(10)]*

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

**Section 740.615      Payment of Fees**

- a) *The Agency may deny or void a No Further Remediation Letter if fees applicable under the Review and Evaluation Services Agreement have not been paid in full.* [415 ILCS 5/58.10(c)] The manner of payment shall be in accordance with Section 740.320 of this Part.
- b) In addition to the fees applicable under the Review and Evaluation Services Agreement, *the recipient of the No Further Remediation Letter shall forward to the Agency a No Further Remediation Assessment in the amount of the lesser of \$2500 or an amount equal to the costs incurred for the site by the Agency under the Agreement.* [415 ILCS 5/58.10(g)]
  - 1) The No Further Remediation Assessment shall be mailed or delivered to the Agency at the address designated by the Agency on the request for payment service forms no later than 45 days following the receipt of the request for payment. Payments that are hand-delivered shall be delivered during the Agency's normal business hours.
  - 2) The No Further Remediation Assessment shall be made by check or money order 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 as assigned and the Federal Employer Identification Number or Social Security Number of the RA.
  - 3) The No Further Remediation Letter shall be voidable in accordance with Section 740.625 if the No Further Remediation Assessment is not paid within 45 days after the receipt of the request for payment.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

**Section 740.620      Duty to Record No Further Remediation Letter**

- a) Except as provided in Sections 740.621 and 740.622 of this Part, *the RA receiving a No Further Remediation Letter from the Agency pursuant to Title XVII of the Act and this Subpart F shall submit the letter, and, where the RA is not the sole owner of the remediation site, an owner certification in accordance with subsection (d) below, to the Office of the Recorder or the Registrar of Titles of the county in which the remediation site is located within 45 days after receipt of the letter.* [415 ILCS 5/58.8(a)]
  - 1) *The Office of the Recorder or the Registrar of Titles shall accept and record that letter and, where applicable, the owner certification under subsection (d) below in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.* [415 ILCS 5/58.8(a)]
  - 2) *In the event that a No Further Remediation Letter issues by operation of law pursuant to Title XVII of the Act and this Subpart F, the RA may record an affidavit stating that the letter issued by operation of law.* [415 ILCS 5/58.8(d)] Attached to the affidavit shall be the following information:
    - A) An acknowledgment that the requirements of the Remedial Action Plan and the Remedial Action Completion Report were satisfied;

- B) A description of the location of the remediation site by adequate legal description or by reference to a plat showing its boundaries;
  - C) The level of the remediation objectives, specifying, as appropriate, any land use limitation imposed as a result of such remediation efforts;
  - D) A statement that the No Further Remediation Letter signifies a release from further responsibilities under the Act in performing the approved remedial action and shall be considered prima facie evidence that the following, as identified in the scope of work and the approved Remedial Action Plan, does not constitute a threat to human health and the environment and does not require further remediation under the Act if utilized in accordance with the terms of the No Further Remediation Letter:
    - i) The remediation site;
    - ii) Selected recognized environmental conditions and related contaminants of concern at the remediation site; and
    - iii) A combination of (a)(2)(D)(i) or (a)(2)(D)(ii) above;
  - E) The prohibition against the use of any remediation site in a manner inconsistent with any property use limitation imposed as a result of such remediation efforts without additional appropriate remedial activities;
  - F) A description of any preventive, engineering, and institutional controls or monitoring required in the approved Remedial Action Plan and notification that failure to manage the controls or monitoring in full compliance with the terms of the Remedial Action Plan may result in avoidance of the No Further Remediation Letter;
  - G) The opportunity to request a change in the recorded land use pursuant to Title XVII of the Act and subsection c of this Section;
  - H) Notification that further information regarding the remediation site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140] ; and
  - I) An owner certification in accordance with subsection (d) below, where applicable.
- b) Except as provided in Sections 740.621 and 740.622 of this Part, *a No Further Remediation Letter* or the affidavit filed under subsection (a)(2) above shall be perfected upon the date of the official recording of the letter or affidavit. An unperfected No Further Remediation Letter is effective only as between the Agency and the Remediation Applicant. The Agency may, pursuant to Section 740.625 of this Part, void a No Further Remediation Letter for failure to perfect in a timely manner in accordance with subsection (a) of this Section. The RA shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter or affidavit and the owner certification under subsection (d) below, where applicable, demonstrating that the recording requirements have been satisfied.

- c) *At no time shall any remediation site for which a land use limitation has been imposed as a result of remediation activities under Title XVII of the Act be used in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use and a new No Further Remediation Letter obtained and recorded in accordance with Title XVII of the Act and this Part. [415 ILCS 5/58.8(c)]*
- d) Where the RA is not the sole owner of the remediation site, the RA shall obtain the certification by original signature of each owner, or the authorized agent of the owner(s), of the remediation site or any portion thereof who is not an RA. The certification shall be recorded in accordance with this Section, Sections 740.621 and 740.622, as applicable, along with the No Further Remediation Letter or an affidavit under subsection (a)(2) above. The certification shall read as follows:  
"I hereby certify that I have reviewed the attached No Further Remediation Letter [or "affidavit" if filed under subsection (a)(2) above], and that I accept the terms and conditions and any land use limitations set forth in the letter [or "affidavit"]."

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

**Section 740.621 Requirements for No Further Remediation Letters Issued to Illinois Department of Transportation Remediation Sites Located in Rights-of-Way**

- a) To perfect a No Further Remediation Letter for a remediation site of the Illinois Department of Transportation (IDOT) located in whole or in part in an IDOT right-of-way, IDOT shall enter into a Memorandum of Agreement (MOA) with the Agency. If IDOT and the Agency have entered into a master MOA, the parties' addition of the site to the master agreement shall satisfy the requirements of this Section. The MOA shall include, but is not limited to:
  - 1) The name of the remediation site, if any, and any IDOT and Agency identifiers (e.g., incident number, Illinois inventory identification number);
  - 2) The address of the remediation site (or other description sufficient to identify the location of the site with certainty);
  - 3) A copy of the NFR Letter for each site subject to the MOA;
  - 4) Procedures for tracking remediation sites subject to the MOA so that all IDOT bureaus whose responsibilities (e.g., land acquisition, maintenance, construction, utility permits) may affect land use limitations will have notice of any environmental concerns and land use limitations applicable to a remediation site;
  - 5) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the remediation site to any other agency, private person or entity and the steps that will be taken to ensure the long-term integrity of any land use limitations including, but not limited to, the following:
    - A) Upon creation of a deed, the recording of the NFR Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742 with copies of the recorded instruments sent to the Agency within 30 days after recording;

- B) Any other arrangements necessary to ensure that property that is conveyed or transferred remains subject to any land use limitations approved and implemented as part of the Remedial Action Plan and the NFR Letter;
  - C) Notice to the Agency at least 60 days prior to any such intended conveyance or transfer indicating the mechanism(s) to be used to ensure that any land use limitations will be operated or maintained as required in the Remedial Action Plan and NFR Letter; and
- 6) Provisions for notifying the Agency if any actions taken by IDOT or its permittees at the remediation site result in the failure or inability to restore the remediation site to meet the requirements of the Remedial Action Plan and the NFR Letter.
- b) An NFR Letter issued to an IDOT remediation site in an IDOT right-of-way shall be incorporated into a MOA within 45 days after its receipt.
  - c) At no time shall any remediation site for which a land use limitation has been imposed as a result of remediation activities under Title XVII of the Act be used in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use and a new No Further Remediation Letter obtained. If title to the remediation site remains with IDOT, the new No Further Remediation Letter shall be incorporated into the MOA and the MOA amended accordingly.
  - d) In addition to any other legal remedies that may be available, failure to comply with the requirements of this Section may result in avoidance of the No Further Remediation Letter in accordance with Section 740.625 of this Part.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

**Section 740.622 Requirements for Perfection of No Further Remediation Letters Issued to Federal Landholding Entities Without Authority to Record Institutional Controls**

- a) For sites on Federally Owned Property subject to this Part for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title, the following requirements shall apply:
  - 1) To perfect a No Further Remediation Letter containing any restriction on future land use(s) the Landholding Entity or Entities responsible for the site must enter into a Land Use Control Memorandum of Agreement (LUC MOA) with the Agency that requires the Federal Landholding Entity to do, at a minimum, the following:
    - A) Identify the location of the Federally Owned Property of the site subject to the No Further Remediation Letter. Such identification shall be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identifies the site in question with particularity;
    - B) Implement periodic site inspection procedures that ensure oversight by the Federal Landholding Entities of any land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

- C) Implement procedures for the Federal Landholding Entities to periodically advise the Agency of continued compliance with all maintenance and inspection requirements set forth in the LUC MOA;
  - D) Implement procedures for the Federal Landholding Entities to notify the Agency of any planned or emergency changes in land use that may adversely impact land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;
  - E) Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of the site or sites subject to the No Further Remediation Letter, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure the No Further Remediation Letter is recorded on the chain of title upon transfer of the property with confirmation of recording provided to the Agency; and
  - F) Attach to the LUC MOA a copy of the No Further Remediation Letter for each site subject to the LUC MOA.
- 2) To perfect a No Further Remediation Letter containing no restrictions on future land use(s), the Federal Landholding Entity shall submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter shall be filed in accordance with Illinois law so it forms a permanent part of the chain of title. The Federal Landholding Entity shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter demonstrating that the recording requirements have been satisfied.
- b) Failure to comply with the requirements of this Section and the LUC MOA may result in voidance of the No Further Remediation Letter as well as any other penalties that may be available.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

#### **Section 740.625      Voidance of No Further Remediation Letter**

- a) *The No Further Remediation Letter shall be voidable if the remediation site activities are not managed in full compliance with the provisions of Title XVII of the Act, this Part, or the approved Remedial Action Plan or remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter include, but shall not be limited to:*
- 1) *Any violation of institutional controls or land use restrictions, if applicable;*

- 2) *The failure of the owner, operator, RA, or any subsequent transferee to operate and maintain preventive or engineering controls or to comply with a groundwater monitoring plan, if applicable;*
  - 3) *The disturbance or removal of contamination that has been left in place in accordance with the Remedial Action Plan. Access to soil contamination may be allowed if, during and after any access, public health and the environment are protected consistent with the Remedial Action Plan;*
  - 4) *The failure to comply with the recording requirements of Section 740.620 of this Part;*
  - 5) *Obtaining the No Further Remediation Letter by fraud or misrepresentation;*
  - 6) *Subsequent discovery of contaminants not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based, that pose a threat to human health or the environment;*
  - 7) *The failure to pay the No Further Remediation Assessment required under Section 740.615(b) of this Part; [415 ILCS 5/58.10(e)]*
  - 8) *The failure to pay in full the applicable fees under the Review and Evaluation Services Agreement within 45 days after receiving a request for final payment under Section 740.310 of this Part;*
  - 9) *The failure to comply with the requirements of Section 740.621 of this Part for No Further Remediation Letters issued to IDOT remediation sites located in IDOT rights-of-way;*
  - 10) *The failure to comply with the requirements of Section 740.622 of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 740.622 within 45 days following transfer of the Federally Owned Property subject to the No Further Remediation Letter to any entity that will not remain or become a Federal Landholding Entity; or*
  - 11) *The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1010(b)(3), 742.1015(b)(5) or 742.1015(c).*
- b) *If the Agency seeks to void a No Further Remediation Letter, it shall provide notice to the current title holder of the remediation site and to the RA at his or her last known address. [415 ILCS 5/58.10(f)]*
- 1) *The notice shall specify the cause for the voidance and describe facts in support of that cause. [415 ILCS 5/58.10(f)]*
  - 2) *The Agency shall mail notices of voidance by registered or certified mail, date stamped with return receipt requested.*
- c) *Within 35 days after the receipt of the Notice of Voidance, the RA or current title holder of the remediation site may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act. If the Board fails to take final action within 120 days, unless such time period is waived by the petitioner, the petition shall be deemed denied and the petitioner shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of the Act. The Agency shall have the burden of proof in any such action. [415 ILCS 5/58.10(f)(1)]*
- 1) *If the Agency's action is appealed, the action shall not become effective until the appeal process has been exhausted and a final decision reached by the Board or courts. [415 ILCS 5/58.10(f)(3)]*

- A) *Upon receiving a notice of appeal, the Agency shall file a notice of lis pendens with the Office of the Recorder or the Registrar of Titles for the county in which the remediation site is located. The notice shall be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site. [415 ILCS 5/58.10(f)(4)]*
- B) *If the Agency's action is not upheld on appeal, the notice of lis pendens shall be removed in accordance with Illinois law within 45 days after receipt of the final decision of the Board or the courts. [415 ILCS 5/58.10(f)(4)]*
- 2) *If the Agency's action is not appealed, the Agency shall submit the notice of avoidance to the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The notice shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site. [415 ILCS 5/58.10(f)(2)]*

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

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

### **Section 740.700 General**

This Subpart sets forth the procedures to be followed by an RA to obtain Agency review and approval of remediation costs before applying for the environmental remediation tax credit under Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]. It contains procedures for preliminary reviews of estimated remediation costs and final reviews of remediation costs actually incurred, establishes fees for the Agency's reviews, provides for appeals of Agency determinations, and includes examples of remediation costs and ineligible costs.

(Source: Added at 22 Ill. Reg. 19580, effective October 26, 1998)

### **Section 740.705 Preliminary Review of Estimated Remediation Costs**

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

- A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
  - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site for which the environmental remediation tax credit is being sought and the date of acceptance of the site into the Site Remediation Program;
  - C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA.
- 2) Line item estimates of the costs that the RA anticipates will be incurred for the development and implementation of the Remedial Action Plan, including but not limited to:
- A) Site investigation activities:
    - i) Drilling costs;
    - ii) Physical soil analysis;
    - iii) Monitoring well installation;
    - iv) Disposal costs.
  - B) Sampling and analysis activities:
    - i) Soil analysis costs;
    - ii) Groundwater analysis costs;
    - iii) Well purging costs;
    - iv) Water disposal costs.
  - C) Remedial activities:
    - i) Groundwater remediation costs;
    - ii) Excavation and disposal costs;
    - iii) Land farming costs;

- iv) Above-ground bio-remediation costs;
- v) Land application costs;
- vi) Low temperature thermal treatment costs;
- vii) Backfill costs;
- viii) In-situ soil remediation costs.

D) Report preparation costs.

- 3) A certification, signed by the RA or authorized agent and notarized, as follows:

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

- 4) The original signature of the RA or authorized agent acting on behalf of the RA.

- b) The budget plan shall be accompanied by the applicable fee for review as provided in Section 740.720 of this Subpart. Budget plans shall be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered shall be delivered during the Agency’s normal business hours.
- c) The time for the Agency to review the budget plan begins on the date that the Agency receives the budget plan. The Agency’s record of the date of receipt of the budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from registered or certified mail. The RA may waive the time for review. The time frames for the Agency review are:
- 1) If the budget plan is submitted with the Remedial Action Plan, the submission of the budget plan shall be deemed an automatic 60-day waiver of the applicable review period for the Remedial Action Plan, as set forth in Section 740.505(d) of this Part. In this instance, the Agency shall have

120 days from its receipt of the two documents to make a final determination on the two documents.

- 2) If the budget plan is not submitted with the Remedial Action Plan, the budget plan may not be submitted until after the Agency has made a final determination on the Remedial Action Plan. If the budget plan is submitted after the Agency has approved, or approved with conditions, the Remedial Action Plan, the Agency shall have 60 days from its receipt of the budget plan to make a final determination on the budget plan.
  - 3) If an amended Remedial Action Plan or amended budget plan is submitted before an Agency final determination on the Remedial Action Plan and budget plan, the Agency shall have 120 days from its receipt of the amended document to make a final determination on the two documents.
  - 4) If an amended budget plan is submitted without an amended Remedial Action Plan and after the Agency's final determination on the Remedial Action Plan, the Agency shall have 60 days from its receipt of the amended budget plan to make a final determination on the amended budget plan.
- d) The Agency shall review the budget plan and the Remedial Action Plan to determine, in accordance with Sections 740.725 and 740.730 of this Part, whether the estimated costs are remediation costs. Upon completion of the preliminary review, the Agency shall notify the RA in writing of its final determination to approve, disapprove or modify the estimated remediation costs submitted in the budget plan.
- 1) If a budget plan is disapproved or approved with modification of estimated remediation costs, the written notification shall contain the following information as applicable:
    - A) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
    - B) The reasons for the disapproval or modification of estimated remediation costs;
    - C) Citations to statutory or regulatory provisions upon which the determination is based.
  - 2) The Agency may combine the notification of its final determination on a budget plan with the notification of its final determination on the corresponding Remedial Action Plan.

- 3) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have taken place on the postmarked date that the notice is mailed.
- e) Revision and Resubmission
- 1) If the Agency disapproves a Remedial Action Plan or approves a Remedial Action Plan with conditions in accordance with Subpart E of this Part, the Agency may return the corresponding budget plan to the RA without review. If the Remedial Action Plan is amended as a result of the Agency action, the RA may submit a revised budget plan for review. No additional fee shall be required for this review.
  - 2) If the Remedial Action Plan is amended by the RA and the RA intends to submit the Agency's final determination on the budget plan in accordance with Section 740.715(c) of this Subpart, the budget plan shall be revised accordingly and resubmitted for Agency review. No additional fee shall be required for this review.
- f) If the Agency disapproves or modifies the budget plan or fails to issue a final determination within the applicable review period, the RA may, within 35 days after receipt of the final determination or expiration of the deadline, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.

(Source: Added at 22 Ill. Reg. 19580, effective October 26, 1998)

**Section 740.710 Application for Final Review of Remediation Costs**

- a) The RA for any remediation site enrolled in the Site Remediation Program may submit an application for final review of remediation costs. No application shall be submitted until a No Further Remediation Letter has been issued and the No Further Remediation Letter (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law) has been recorded in the chain of title for the site, all in accordance with Title XVII of the Act and Subpart F of this Part. The application shall be submitted on forms prescribed and provided by the Agency and shall include, but not be limited to, the following information:
- 1) Identification of applicant and remediation site:

- A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
  - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site for which the environmental remediation tax credit is being sought and the date of acceptance of the site into the Site Remediation Program;
  - C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA;
- 2) A true and correct copy of the No Further Remediation Letter(s) (or affidavit(s) under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter(s) has issued by operation of law) for the remediation site as recorded in the chain of title for the site and certified by the appropriate County Recorder or Registrar of Titles;
  - 3) Itemization and documentation of remediation activities at the remediation site for which the environmental remediation tax credit is sought and for the costs of remediation incurred by the RA at the site, including invoices, billings and dated, legible receipts along with canceled checks or other Agency-approved methods of proof of payment;
  - 4) A certification, signed by the RA or authorized agent and notarized, as follows:

I, \_\_\_\_\_ [name of RA, if individual, or authorized agent of RA], hereby certify that:

The site for which this application for an environmental remediation tax credit is submitted is the same site as the site for which the No Further Remediation Letter was issued;

All the costs included in this application were incurred at the site and for the regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued;

The costs submitted were paid by \_\_\_\_\_ [“me” if RA is certifying or name of RA if authorized agent is certifying] and are accurate to the best of my knowledge and belief;

None of the costs included in this application were incurred before January 1, 1998, or more than 12 months before the enrollment of the site in the

Site Remediation Program, or after the date of issuance of the No Further Remediation Letter;

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

- 5) The original signature of the RA or of the authorized agent acting on behalf of the RA.
- b) The application for final review shall be accompanied by the applicable fee for review as provided in Section 740.720 of this Subpart. Applications shall be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered shall be delivered during the Agency’s normal business hours.
- c) The Agency’s acceptance of a certification that neither the RA, nor any related party (as described in Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]), nor any person whose tax attributes the RA has succeeded to under Section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release for which the environmental remediation tax credit is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

(Source: Added at 22 Ill. Reg. 19580, effective October 26, 1998)

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

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

c) Further Review by the Agency

- 1) If a preliminary review of a budget plan has been obtained under Section 740.705 of this Subpart, the RA may submit, along with the application, supporting documentation, and the applicable fee under Section 740.720 of this Subpart, a copy of the Agency's final determination on the budget plan accompanied by a certification, signed by the RA or authorized agent and notarized, as follows:

I, \_\_\_\_\_ [name of RA, if individual, or name of authorized agent of RA], hereby certify that the actual remediation costs incurred at the site for line items \_\_\_\_\_ [list line items to which certification applies] and identified in the application for final review of remediation costs are equal to or less than the costs approved for the corresponding line items in the attached budget plan determination.

- 2) If the budget plan determination and certification are submitted pursuant to subsection (c)(1) of this Section, the Agency may, but is not required to, conduct further review of the certified line item costs incurred for development and implementation of the Remedial Action Plan and may approve such costs as submitted. The Agency's further review shall be limited to confirming that costs approved in the Agency's budget plan determination were actually incurred by the RA for development and implementation of the Remedial Action Plan.
- 3) If the certification in subsection (c)(1) of this Section does not apply to all line items as approved in the budget plan, the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved. In that review, the Agency shall not reconsider the appropriateness of any activities, materials, labor, equipment, structures or services already approved by the Agency for the development and implementation of the Remedial Action Plan.

- d) Upon completion of the final review, the Agency shall notify the RA in writing of its final determination to approve, disapprove or modify the remediation costs submitted in the application. If an application is disapproved or approved with modification of remediation costs, the written notification shall contain the following information as applicable:

- 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
- 2) The reasons for the disapproval or modification of remediation costs;

- 3) Citations to statutory or regulatory provisions upon which the determination is based.
- e) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have taken place on the postmarked date that the notice is mailed.
- f) If the Agency disapproves or modifies the application for final review or fails to issue a final determination within the applicable review period, the RA may, within 35 days after receipt of the final determination or expiration of the deadline, file an appeal with the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of the Act.

(Source: Added at 22 Ill. Reg. 19580, effective October 26, 1998)

#### **Section 740.720 Fees and Manner of Payment**

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

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

- d) The fee for a review under this Subpart G shall be in addition to any other fees, payments or assessments under Title XVII of the Act and this Part. The fee shall be paid by check or money order made payable to “Treasurer - State of Illinois, for Deposit in the Hazardous Waste Fund.” The check or money order shall include the Illinois inventory identification number and the Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA.

(Source: Added at 22 Ill. Reg. 19580, effective October 26, 1998)

### **Section 740.725 Remediation Costs**

- a) Activities, materials, labor, equipment, structure and service costs that may be approved by the Agency as remediation costs for the environmental remediation tax credit under Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)] include, but are not limited to, the following:
- 1) Preparation of bid documents and contracts for procurement of contractors, subcontractors, analytical and testing laboratories, labor, services and suppliers of equipment and materials;
  - 2) Engineering services performed in accordance with Section 58.6 of the Act and implementing regulations at Sections 740.235 and 740.405 of this Part;
  - 3) Site assessment and remedial investigation activities conducted in accordance with Sections 740.410, 740.415, 740.420 and 740.430 of this Part;
  - 4) Report or plan preparation conducted in accordance with Sections 740.425, 740.435, 740.445, 740.450 and 740.455 of this Part;

- 5) Collection, analysis or measurement of site samples in accordance with Section 740.415(d) of this Part;
- 6) Groundwater monitoring well installation, operation, maintenance and construction materials;
- 7) Removal, excavation, consolidation, preparation, containerization, packaging, transportation, treatment or off-site disposal of wastes, environmental media (e.g., soils, sediments, groundwater, surface water, debris), containers or equipment contaminated with regulated substances or pesticides at concentrations exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part. Activities must be in compliance with all applicable state or federal statutes and regulations;
- 8) Clean backfill materials in quantities necessary to replace soils excavated and disposed off-site that were contaminated with regulated substances or pesticides at levels exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part;
- 9) Transportation, preparation and placement of clean backfill materials pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 10) Design, testing, permitting, construction, monitoring and maintenance of on-site treatment systems pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 11) Engineering costs associated with preparation of a budget plan in accordance with Section 740.705 of this Subpart or an application for final review of remediation costs in accordance with Section 740.710 of this Subpart if prepared before the issuance of the No Further Remediation Letter (by the Agency or by operation of law);
- 12) Removal or replacement of concrete, asphalt or paving to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 13) Clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;

- 14) Placement of clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
  - 15) Destruction or dismantling and reassembly of above-grade structures to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
  - 16) Costs associated with obtaining a special waste generator identification number not to exceed \$100.
- b) An RA may submit a request for review of remediation costs that includes an itemized accounting and documentation of costs associated with activities, materials, labor, equipment, structures or services not identified in subsection (a) of this Section if the RA submits detailed information demonstrating that those items are necessary for compliance with this Part 740, 35 Ill. Adm. Code 742 and the approved Remedial Action Plan.

(Source: Added at 22 Ill. Reg. 19580, effective October 26, 1998)

### **Section 740.730 Ineligible Costs**

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

- a) Costs not incurred by the RA;
- b) Costs incurred for activities, materials, labor or services relative to remediation at a site other than the site for which the No Further Remediation Letter was issued;
- c) Costs for remediating a release or substantial threat of a release of regulated substances or pesticides that was caused or contributed to in any material respect by the RA, any related party (as described in Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)]) or any person whose tax attributes the RA has succeeded to under Section 381 of the Internal Revenue Code;
- d) Costs incurred before January 1, 1998, or more than 12 months before enrollment of the site in the Site Remediation Program, or after the date of issuance of a No Further Remediation Letter issued pursuant to Section 58.10 of the Act and Subpart F of this Part;

- e) Costs associated with material improvements to the extent that such improvements are not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- f) Costs or losses resulting from business interruption;
- g) Costs incurred as a result of vandalism, theft, negligence or fraudulent activity by the RA or the agent of the RA;
- 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 such destruction or damage and such replacement is not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- k) Attorney fees;
- 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 this Part 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.

(Source: Added at 22 Ill. Reg. 19530, effective October 26, 1998)

## **SUBPART H: REQUIREMENTS RELATED TO SCHOOLS**

### **Section 740.800      General**

- a) The purpose of Subpart H is to ensure that children and the general public are not exposed to harmful pollutants at a remediation site intended for future use as a school that has been enrolled in the Site Remediation Program, thereby protecting human health and the environment.
- b) For the purposes of this Subpart, the term “school” means any public educational facility in Illinois, including grounds and/or campus, consisting of students, comprising one or more grade groups or other identifiable groups, organized as one unit with one or more teachers to give instruction of a defined type. Public educational facility includes, but is not limited to, primary and secondary (kindergarten 12th grade), charter, vocational, alternative, and special education schools. Public educational facility does not include junior colleges, colleges, or universities.

(Source: Added at 26 Ill. Reg. 7197, effective April 25, 2002)

### **Section 740.805      Requirements Prior to Public Use**

A remediation site, or any building or structures contained within the boundary lines of the site, that is enrolled in the Site Remediation Program and is intended for future use as a school shall not be made available for use by children and the general public without first completing all work pursuant to the Remedial Action Plan. Work pursuant to the Remedial Action Plan is deemed completed on the date the Agency issues its written final determination unconditionally approving the Remedial Action Completion Report. This Section shall not be construed to exempt a RA from any additional requirements set forth in Section 58.16 of the Environmental Protection Act [415 ILCS 5/58.16].

(Source: Added at 26 Ill. Reg. 7197, effective April 25, 2002)

### **Section 740.810      Engineered Barriers and Institutional Controls**

- a) The RA or any subsequent transferee of a remediation site subject to this Subpart H shall arrange with an LPE for an inspection of the remediation site within 120 days before every fifth anniversary of the date of issuance of the NFR Letter. The purpose of the inspection shall be to determine whether the effectiveness of all engineered barriers and institutional controls required by the Remedial Action Plan and the NFR Letter has been maintained.
- 1) The LPE shall prepare a report on the results of the inspection, itemizing each engineered barrier and institutional control and whether or not the effectiveness of each engineered barrier and institutional control has been maintained. If the effectiveness of any engineered barrier or institutional control has been compromised, the LPE shall describe the nature of the defects.
  - 2) The LPE responsible for the site inspection and preparation of the report shall affirm by original signature as follows:

“I attest that the inspection of the remediation site to confirm the effectiveness of the engineered barriers and institutional controls required by the Remedial Action Plan and the NFR Letter was performed under my direction and that:

This document and all attachments were prepared under my direction or reviewed by me;

To the best of my knowledge and belief, the work and conclusions described in this report are in accordance with the requirements of 35 Ill. Adm. Code 740 and 742, the site’s Remedial Action Plan and NFR Letter, and generally accepted engineering practices; and

The information presented is accurate and complete.”

- 2) The LPE's report shall be submitted to the Agency no later than every fifth anniversary of the date of issuance of the NFR Letter.
- b) In addition to any other remedies that may be available, the Agency may void the NFR Letter in accordance with Section 740.625 if:
- 1) An LPE's report is not submitted to the Agency by every fifth anniversary of the date of issuance of the NFR Letter; or
  - 2) The LPE's report indicates that the effectiveness of any engineered barrier or institutional control has not been maintained.
- c) The requirements of this Section shall not apply to a remediation site if no engineered barriers or institutional controls were required under the Remedial Action Plan and the NFR Letter, or if the remediation site is no longer used as a school site.
- d) If the site is transferred to a third-party, the transferor of the site shall notify the Agency of such changes within 30 days of the completion of the transfer.

(Source: Added at 26 Ill. Reg. 7197, effective April 25, 2002)

#### **Section 740.815      Public Notice of Site Remedial Action Plan**

- a) No later than 10 days after receipt of the Agency's notice of acceptance into the Site Remediation Program of a remediation site intended for future use as a school, the RA shall mail written notice to interested and affected persons, public officials and organizations of the site's enrollment into the program. For assistance in determining who an interested and affected person may be, an RA may look to the Agency guidance document on community relations, "Community Relations in the Site Remediation Program".
- b) The notice shall, at a minimum, contain the following information:
- 1) Name and address of the RA;
  - 2) The location and boundary lines of the remediation site;
  - 3) A description of the intended use of the site (e.g., building, playgrounds, athletic fields);
  - 4) A description of the surrounding land uses;
  - 5) A description of the site history, including past uses;

- 6) To the extent known, the nature and extent of the recognized environmental conditions and related contaminants of concern identified at the remediation site;
- 7) A statement that the site has been enrolled in the Site Remediation Program, will be undergoing environmental site investigations, and may require environmental remediation prior to use as a school site;
- 8) The name of a contact person and telephone number where that person may be reached; and
- 9) The location and hours of the repository established pursuant to Section 740.820 of this Part.

(Source: Added at 26 Ill. Reg. 7197, effective April 25, 2002)

#### **Section 740.820      Establishment of Document Repository**

No later than 10 days after receipt of the Agency's notice of acceptance into the Site Remediation Program of a remediation site intended for future use as a school, the RA shall establish a repository where all documents prepared by the RA for the Agency and by the Agency for the RA may be viewed and/or copies obtained. The repository shall be located and open to the public at a place and at times convenient to interested and affected persons. The RA shall update the repository promptly and continuously as documents are generated throughout the remediation process.

(Source: Added at 26 Ill. Reg. 7197, effective April 25, 2002)

#### **Section 740.825      Fact Sheet**

No later than 10 days after submission to the Agency of the initial Remedial Action Plan for a remediation site intended for future use as a school, the RA shall mail to interested and affected persons, public officials, and organizations a Fact Sheet. For assistance in determining who an interested and affected person may be, an RA may look to the Agency guidance document on community relations, "Community Relations in the Site Remediation Program". The Fact Sheet shall contain the following information:

- a) The location and boundary lines of the remediation site;
- b) A site history;
- c) A description of the intended use of the site (e.g., buildings, playgrounds, athletic fields);

- d) A description of the surrounding land uses;
- e) The nature and extent of the recognized environmental conditions and related contaminants of concern identified at the remediation site;
- f) A description of the steps that are proposed in the Remedial Action Plan to address the recognized environmental conditions and related contaminants of concern;
- g) The nature of the NFR Letter requested (e.g., focused or comprehensive, or reliance on engineered barriers or institutional controls);
- h) The name of a contact person and telephone number where that person may be reached to answer questions and to arrange for meetings with concerned members of the community; and
- i) The location and hours of the repository established pursuant to Section 740.820 of this Part.

(Source: Added at 26 Ill. Reg. 7197, effective April 25, 2002)

## **SUBPART I: REVIEW OF REMEDIATION COSTS FOR BROWNFIELDS SITE RESTORATION PROGRAM**

### **Section 740.900      General**

- a) This Subpart sets forth the procedures an RA must follow to obtain Agency review, a final determination and payment of remediation costs under the Brownfields Site Restoration Program. It contains procedures for preliminary reviews of estimated remediation costs and final reviews of remediation costs actually incurred, establishes fees for the Agency's reviews, provides for appeals of Agency determinations, and includes listings of eligible and ineligible costs.
- b) *For each State fiscal year in which funds are made available to the Agency for payment under this Subpart, the Agency must, subject to the availability of funds, allocate 20% of the funds to be available to Remediation Applicants within counties with populations over 2,000,000. The remaining funds must be made available to all other Remediation Applicants in the State. [415 ILCS 5/58.15(B)(a)(2)]* Brownfields Site Restoration Program funds shall be subject to availability of funding and distributed based on the order of receipt of applications satisfying all the requirements of this Subpart.
- c) *The total payment to be made to an applicant must not exceed an amount equal to 20% of the capital investment at the site. [415 ILCS 5/58.15(B)(a)(3)]*

- d) *Only those remediation projects for which a No Further Remediation Letter is issued after December 31, 2001 are eligible to participate in the Brownfields Site Restoration Program. The program does not apply to any sites for which a No Further Remediation Letter is issued on or prior to December 31, 2001 or to costs incurred prior to DCEO approving a site eligible for the Brownfields Site Restoration Program. [415 ILCS 5/58.15(B)(a)(4)]*
- e) *Except as provided in Section 740.911, an application for review of remediation costs must not be submitted until:*
  - 1) *A No Further Remediation Letter has been issued by the Agency or has issued by operation of law; and*
  - 2) *The No Further Remediation Letter, or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law, has been recorded in the chain of title for the site in accordance with Subpart F of this Part. [415 ILCS 5/58.15(B)(e)]*
- f) *The Agency must not approve payment in excess of \$750,000 to a Remediation Applicant for remediation costs incurred at a remediation site. [415 ILCS 5/58.15(B)(a)(3)]*
- g) *Brownfields Site Restoration Program funds shall be subject to availability of funding and distributed based on the order of receipt of applications satisfying all applicable requirements as set forth in the Act and this Part. [415 ILCS 5/58.15(B)(a)(5)]*

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

## **Section 740.901      Pre-application Assessment and Eligibility Determination**

- a) *Prior to submitting an application to determine eligibility to DCEO, a Remediation Applicant shall first submit to the Agency its proposed remediation costs. The Agency shall make a pre-application assessment, which is not to be binding upon DCEO or upon future review of the project, relating only to whether the Agency has adequate funding to reimburse the applicant for the remediation costs if the applicant is found to be eligible for reimbursement of remediation costs. [415 ILCS 5/58.15(B)(b)]*
- b) *If the Agency determines that it is likely to have adequate funding to reimburse the applicant for remediation costs, the Remediation Applicant may then submit to DCEO an application for review of eligibility. [415 ILCS 5/58.15(B)(b)] To be eligible for payment, an RA must have a minimum capital investment in the*

redevelopment of the site. Procedures for applying for eligibility and for obtaining a determination from DCEO must be obtained from DCEO.

- c) Once DCEO has determined that an RA is eligible, the RA may submit an application to the Agency in accordance with Section 740.910 or Section 740.911 of this Part.
- d) The Agency must rely on DCEO's decision as to eligibility. The maximum amount of the payment to be made to the RA for remediation costs may not exceed the "net economic benefit" to the State of the remediation project, as determined by DCEO, *based on factors including, but not limited to, the capital investment, the number of jobs created, the number of jobs retained if it is demonstrated the jobs would otherwise be lost, capital improvements, the number of construction-related jobs, increased sales, material purchases, other increases in service and operational expenditures.* [415 ILCS 5/58.15(B)(b)(3)]

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

#### **Section 740.905 Preliminary Review of Estimated Remediation Costs**

- a) *A Remediation Applicant may obtain a preliminary review of estimated remediation costs for the development and implementation of a Remedial Action Plan, required under Section 740.450 of this Part, by submitting a budget plan along with the Remedial Action Plan.* [415 ILCS 5/58.15(B)(i)(1)] The Agency shall not accept a budget plan unless a Remedial Action Plan satisfying the requirements of Section 740.450 of this Part also has been submitted.
- b) The budget plan must be set forth on forms prescribed and provided by the Agency and must include, but is not limited to, the following information:
  - 1) Identification of applicant and remediation site, including:
    - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
    - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site and the date of acceptance of the site into the Site Remediation Program; and
    - C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA.

2) Line item estimates of the costs that the RA anticipates will be incurred for the development and implementation of the Remedial Action Plan, including but not limited to:

- A) Site investigation activities:
  - i) Drilling costs;
  - ii) Physical soil analysis;
  - iii) Monitoring well installation; and
  - iv) Disposal costs.
  
- B) Sampling and analysis activities:
  - i) Soil analysis costs;
  - ii) Groundwater analysis costs;
  - iii) Well purging costs; and
  - 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; and
  - viii) In-situ soil remediation costs.
  
- D) Report preparation costs.

- 3) A certification, signed by the RA or authorized agent and notarized, as follows:

I, [name of RA, if individual, or authorized agent of RA], hereby certify that neither ["I" if RA is certifying or name of RA if authorized agent is certifying], nor any related party (as described in Section 201(1) of the Illinois Income Tax Act [35 ILCS 5/201(1)]), nor any person whose tax attributes ["I" if RA is certifying or name of RA if authorized agent is certifying] have [has] succeeded to under Section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) that are identified and addressed in the Remedial Action Plan submitted for the site identified above.

- 4) The original signature of the RA or authorized agent acting on behalf of the RA.
- c) The RA must submit the applicable fee, as provided in Section 740.920 of this Subpart, with the budget plan, except as provided in subsections (f) and (i)(4) of this Section.
  - d) Budget plans must be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered must be delivered during the Agency's normal business hours.
  - e) *Submittal of a budget plan must be deemed an automatic 60-day waiver of the Remedial Action Plan deadlines set forth in the Act and Section 740.505 of this Part. [415 ILCS 5/58.15(B)(i)(4)]*
  - f) *If the Remedial Action Plan is amended by the Remediation Applicant or as a result of Agency action, the corresponding budget plan must be revised accordingly and resubmitted. [415 ILCS 5/58.15(B)(i)(2)]* No additional fee shall be required for this review.
  - g) The following rules apply to the Agency's review period for budget plans:
    - 1) The Agency's review period begins on the date of receipt of the budget plan by the Agency. The Agency's record of the date of receipt of a budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
    - 2) In reviewing budget plans and the Remedial Action Plans they accompany, the Agency is subject to the deadlines set forth in Section 740.505 of this Part with an additional 60 days, due to the automatic waiver, in accordance with subsection (e) of this Section.

- 3) Submittal of an amended plan restarts the time for review.
  - 4) The RA may waive the time line for review upon a request from the Agency or at the RA's discretion.
- h) *The Agency must review the budget plan along with the Remedial Action Plan to determine whether the estimated costs submitted are remediation costs and whether the costs estimated for the activities are reasonable.* [415 ILCS 5/58.15(B)(i)(1)]
- i) Upon completion of the review, *the Agency must issue a letter to the Remediation Applicant approving, disapproving or modifying the estimated remediation costs submitted in the budget plan.* [415 ILCS 5/58.15(B)(i)(5)] The following rules apply regarding Agency determinations:
- 1) 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 been made on the postmarked date that the notice is mailed.
  - 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) 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 finds the RA did not provide;
    - B) The reasons for the disapproval or modification of estimated remediation costs; and
    - C) Citations to statutory or regulatory provisions upon which the determination is based.
  - 4) If the Agency disapproves a Remedial Action Plan or approves a Remedial Action Plan with conditions, in accordance with Subpart E of this Part, the Agency may return the corresponding budget plan to the RA without review. If the Remedial Action Plan is amended in response to Agency action, the RA may submit a revised budget plan for review. No additional fee shall be required for this review.

- 5) *Within 35 days after receipt of an Agency letter disapproving or modifying a budget plan or expiration of the Agency deadline, the Remediation Applicant may appeal the Agency's decision or the Agency's failure to issue a final determination to the Board in the manner provided for the review of permits in Section 40 of the Act. [415 ILCS 5/58.15(B)(i)(6)]*

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

**Section 740.910      Application for Final Review and Payment of Remediation Costs Following Perfection of No Further Remediation Letter**

- a) The RA for any site enrolled in the Site Remediation Program may submit an application for final review and payment of remediation costs following perfection of a No Further Remediation Letter.
- b) The application must be submitted on forms prescribed and provided by the Agency and must include, at a minimum, the following information:
  - 1) Identification of RA and remediation site, including:
    - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
    - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site;
    - C) The date of acceptance of the remediation site into the Site Remediation Program; and
    - D) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA;
  - 2) A true and correct copy of the No Further Remediation Letter, or affidavit(s) under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law, for the remediation site, as recorded in the chain of title for the site and certified by the appropriate County Recorder or Registrar of Titles;
  - 3) A true and correct copy of DCEO's letter approving eligibility, including the net economic benefit of the remediation project [415 ILCS 5/58.15(B)(e)(4)];

- 4) Itemization and documentation of remediation activities for which payment is sought and of remediation costs incurred, including invoices, billings and dated, legible receipts with canceled checks or other Agency-approved methods of proof of payment;
- 5) A certification, signed by the RA or authorized agent and notarized, as follows:

I, \_\_\_\_\_ [name of RA, if individual, or authorized agent of RA], hereby certify that:

The site for which this application for payment is submitted is the site for which the No Further Remediation Letter was issued;

All the costs included in this application were incurred at the site and for the regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued;

The costs incurred are remediation costs as defined in the Act and rules adopted thereunder;

The costs submitted were paid by \_\_\_\_\_ [“me” if RA is certifying or name of RA if authorized agent is certifying] and are accurate to the best of my knowledge and belief;

None of the costs were incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program; and

\_\_\_\_\_ [“I” if RA is certifying or name of RA if authorized agent is certifying] did not cause or contribute in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) for which the No Further Remediation Letter was issued.

- 6) The original signature of the RA or of the authorized agent acting on behalf of the RA.
- c) The application for final review must be accompanied by the applicable fee for review as provided in Section 740.920 of this Subpart. Applications must be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered must be delivered during the Agency’s normal business hours.
  - d) The Agency’s acceptance of a certification that the RA did not cause or contribute in any material respect to the release or substantial threat of a release for which

the payment is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

**Section 740.911      Application for Review and Payment of Remediation Costs Prior to Perfection of No Further Remediation Letter**

- a) *An application for review of remediation costs may be submitted to the Agency prior to the issuance of a No Further Remediation Letter (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law) if the Remediation Applicant has a Remedial Action Plan approved by the Agency under Section 740.450 of this Part under the terms of which the Remediation Applicant will remediate groundwater for more than one year. [415 ILCS 5/58.15(B)(f)]*
- b) The application must be on forms prescribed and provided by the Agency, shall be accompanied by the applicable fee for review as provided in Section 740.920(b) of this Subpart, and must include, at a minimum, the following information:
  - 1) Identification of RA and remediation site, including:
    - A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;
    - B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site;
    - C) The date of acceptance of the remediation site into the Site Remediation Program; and
    - D) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA;
  - 2) *A true and correct copy of the Agency letter approving the Remedial Action Plan [415 ILCS 5/58.15(B)(f)(2)];*
  - 3) *A true and correct copy of DCEO's letter approving eligibility, including the net economic benefit of the remediation project [415 ILCS 5/58.15(B)(f)(4)];*

- 4) Itemization and documentation of remediation activities for which payment is sought and of remediation costs incurred, including invoices, billings and dated, legible receipts with canceled checks or other Agency-approved methods of proof of payment;
- 5) A certification, signed by the RA or authorized agent and notarized, as follows:

I, \_\_\_\_\_ [name of RA, if individual, or authorized agent of RA], hereby certify that:

The site for which this application for payment is submitted is the site for which the Remedial Action Plan referenced in subsection (a) of this Section was approved;

All the costs included in this application were incurred at the site for which the Remedial Action Plan referenced in subsection (a) of this Section was approved;

The costs incurred are remediation costs as defined in the Act and rules adopted thereunder;

The costs submitted were paid by \_\_\_\_\_ [“me” if RA is certifying or name of RA if authorized agent is certifying] and are accurate to the best of my knowledge and belief;

None of the costs were incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program; and

\_\_\_\_\_ [“I” if RA is certifying or name of RA if authorized agent is certifying] did not cause or contribute in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) for which the Remedial Action Plan was approved.

- 6) The original signature of the RA or of the authorized agent acting on behalf of the RA.
- c) *Until the Agency issues a No Further Remediation Letter for the site (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law), no more than 75% of the allowed payment may be claimed by the Remediation Applicant. The remaining 25% may be claimed following the issuance by the Agency of a No Further Remediation Letter (or an affidavit under Section 740.620(a)(2) of this Part stating*

that the No Further Remediation Letter has issued by operation of law) *for the site* [415 ILCS 5/58.15(B)(g)].

- d) The Agency's acceptance of a certification that the RA did not cause or contribute in any material respect to the release or substantial threat of a release for which the payment is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

### **Section 740.915 Agency Review of Application for Payment of Remediation Costs**

- a) *The Agency must review each application submitted pursuant to Section 740.910 or Section 740.911 to determine, in accordance with Sections 740.925 and 740.930 of this Part, whether the costs submitted are remediation costs and whether the costs incurred are reasonable.* [415 ILCS 5/58.15(B)(e), (f)]
- b) *Within 60 days after receipt by the Agency of an application meeting the requirements of Section 740.910 or Section 740.911, the Agency must issue a letter to the RA approving, disapproving, or modifying the remediation costs submitted in the application.* [415 ILCS 5/58.15(B)(h)(1)]
- c) The Agency's review period begins on the date of receipt of the budget plan by the Agency. The Agency's record of the date of receipt of a budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- d) The RA may waive the time for review.
- e) Submittal of an amended application restarts the time for review.
- f) 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 been made on the postmarked date that the notice is mailed.
- g) If a preliminary review of a budget plan has been obtained under Section 740.905 of this Part, the Remediation Applicant may submit, with the application, applicable fee under Section 740.920 of this Part, and supporting documentation under Section 740.910 or Section 740.911 of this Part, a copy of the Agency's final determination on the budget plan accompanied by a certification, signed by the RA or authorized agent and notarized, stating as follows:

I, \_\_\_\_\_ [name of RA, if individual, or name of authorized agent of RA], hereby certify that the actual remediation costs incurred at the site for line items [list line items to which certification applies] and identified in the application for final review of remediation costs are equal to or less than the costs approved for the corresponding line items in the attached budget plan determination.

- h) If the budget plan determination and certification are submitted pursuant to subsection (g) of this Section, the Agency may conduct further review of the certified line item costs and may approve such costs as submitted. The Agency's further review shall be limited to confirmation that costs approved in the Agency's budget plan determination were actually incurred by the RA in the development and implementation of the Remedial Action Plan.
- i) If the certification in subsection (g) 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 its 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 or implementation of the Remedial Action Plan.
- j) If an application is disapproved or approved with modification of remediation costs, the written notification to the RA must contain the following information as applicable:
  - 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
  - 2) The reasons for the disapproval or modification of remediation costs; and
  - 3) Citations to statutory or regulatory provisions upon which the determination is based.
- k) *Within 35 days after receipt of an Agency letter disapproving or modifying an application for approval of remediation costs, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act. [415 ILCS 5/58.15(B)(h)(3)]*

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

#### **Section 740.920 Fees and Manner of Payment**

- a) The fee for the preliminary review of estimated remediation costs conducted under Section 740.905 of this Part shall be \$500 for each remediation site reviewed. (Derived from 415 ILCS 5/58.15(B)(j)(2))

- b) The fee for the final review of remediation costs under Section 740.910 or Section 740.911 of this Part shall be \$1000 for each remediation site reviewed. (Derived from 415 ILCS 5/58.15(B)(j)(1))
- c) The fee for a review under this Subpart shall be in addition to any other fees, payments or assessments under Title XVII of the Act and this Part.
- d) All fees shall be paid by check or money order made payable to “Treasurer – State of Illinois, for deposit in the Brownfields Redevelopment Fund”. The check or money order shall include the Illinois inventory identification number and the Federal Employer Identification Number (FEIN) or social security number (SSN) of the RA.

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

**Section 740.925 Remediation Costs**

- a) Activities, materials, labor, equipment, structure and service costs that may be approved by the Agency as remediation costs for payment under this Subpart include, but are not limited to, the following:
  - 1) Preparation of bid documents and contracts for procurement of contractors, subcontractors, analytical and testing laboratories, labor, services and suppliers of equipment and materials;
  - 2) Engineering services performed in accordance with Section 58.6 of the Act and implementing regulations at Sections 740.235 and 740.405 of this Part;
  - 3) Site assessment and remedial investigation activities conducted in accordance with Sections 740.410, 740.415, 740.420 and 740.430 of this Part;
  - 4) Report or plan preparation conducted in accordance with Sections 740.425, 740.435, 740.445, 740.450 and 740.455 of this Part;
  - 5) Collection, analysis or measurement of site samples in accordance with Section 740.415(d) of this Part;
  - 6) Groundwater monitoring well installation, operation, maintenance and construction materials;
  - 7) Removal, excavation, consolidation, preparation, containerization, packaging, transportation, treatment or off-site disposal of wastes, environmental media (e.g., soils, sediments, groundwater, surface water, debris), containers or equipment contaminated with regulated substances

or pesticides at concentrations exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part. Activities must be in compliance with all applicable State or federal statutes and regulations;

- 8) Clean backfill materials in quantities necessary to replace soils excavated and disposed 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 Section 740.445 of this Part;
- 9) Transportation, preparation and placement of clean backfill materials pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 10) Design, testing, permitting, construction, monitoring and maintenance of on-site treatment systems pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 11) Engineering costs associated with preparation of a budget plan in accordance with Section 740.905 of this Subpart or an application for review and payment of remediation costs in accordance with Section 740.910 or Section 740.911 of this Subpart if prepared before the issuance of the No Further Remediation Letter (by the Agency or by operation of law);
- 12) Removal or replacement of concrete, asphalt or paving to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 13) Clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 14) Placement of clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 15) Destruction or dismantling and reassembly of above-grade structures to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;

- 16) Costs associated with obtaining a special waste generator identification number not to exceed \$100.
- b) An RA may submit a request for review of remediation costs that includes an itemized accounting and documentation of costs associated with activities, materials, labor, equipment, structures or services not identified in subsection (a) of this Section if the RA submits detailed information demonstrating that those items are necessary for compliance with this Part 740, 35 Ill. Adm. Code 742 and the approved Remedial Action Plan.

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

### **Section 740.930      Ineligible Costs**

Costs ineligible for payment include, but are not limited to, the following:

- a) Costs not incurred by the RA, including:
  - 1) 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;
  - 2) Costs for remediating a release or substantial threat of a release of regulated substances or pesticides that was caused or contributed to in any material respect by the RA;
- b) Costs incurred before approval of the site by DCEO as eligible for the Brownfields Site Restoration Program;
- c) Costs associated with material improvements to the extent that such improvements are not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- d) Costs or losses resulting from business interruption;
- e) Costs incurred as a result of vandalism, theft, negligence or fraudulent activity by the RA or the agent of the RA;
- f) 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];
- g) Costs incurred as a result of negligence by any contractor, subcontractor, or other person providing remediation services at the site;

- h) Costs associated with replacement of above-grade structures destroyed or damaged during remediation activities to the extent such destruction or damage and such replacement is not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- i) Attorney fees;
- j) 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;
- k) Costs for repairs or replacement of equipment or tools due to neglect, improper or inadequate maintenance, improper use, loss or theft;
- l) Costs associated with activities that violate any provision of the Act or Board, Agency or Illinois Department of Transportation regulations;
- m) Costs associated with improperly installed or maintained groundwater monitoring wells;
- n) 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;
- o) Stand-by or demurrage costs;
- p) Interest or finance costs charged as direct costs;
- q) Insurance costs charged as direct costs;
- r) Indirect costs for personnel, labor, materials, services or equipment charged as direct costs;
- s) Costs associated with landscaping, vegetative cover, trees, shrubs and aesthetic considerations;
- t) Costs associated with activities, materials, labor, equipment, structures or services to the extent they are not necessary for compliance with this Part 740, 35 Ill. Adm. Code 742 and the approved Remedial Action Plan;
- u) Costs determined to be incorrect as a result of a mathematical, billing or accounting error;

- v) Costs that are not adequately documented;
- w) Costs that are determined to be unreasonable;
- x) Handling charges for subcontractor costs when the contractor has not paid the subcontractor.

(Source: Added at 28 Ill. Reg. 3870, effective February 17, 2004)

## Section 740.APPENDIX A Target Compound List

### Section 740.Table A Volatile Organics Analytical Parameters

<u>CAS No.</u>	<u>Compound</u>	<u>Method</u>
74-87-3	Chloromethane	8260B
74-83-9	Bromomethane	8260B
75-01-4	Vinyl Chloride	8260B
75-00-3	Chloroethane	8260B
75-09-2	Methylene Chloride	8260B
67-64-1	Acetone	8260B
75-15-0	Carbon Disulfide	8260B
75-35-4	1,1-Dichloroethene	8260B
75-34-3	1,1-Dichloroethane	8260B
156-59-2	cis-1,2-Dichloroethene	8260B
156-60-5	trans-1,2-Dichloroethene	8260B
67-66-3	Chloroform	8260B
107-06-2	1,2-Dichloroethane	8260B
78-93-3	2-Butanone	8260B
71-55-6	1,1,1-Trichloroethane	8260B
56-23-5	Carbon Tetrachloride	8260B
75-27-4	Bromodichloromethane	8260B
78-87-5	1,2-Dichloropropane	8260B
10061-01-5	cis-1,3-Dichloropropene	8260B
79-01-6	Trichloroethene	8260B
124-48-1	Dibromochloromethane	8260B
79-00-5	1,1,2-Trichloroethane	8260B
71-43-2	Benzene	8260B
10061-02-6	trans-1,3-Dichloropropene	8260B
75-25-2	Bromoform	8260B
1634-04-4	Methyl Tertiary-Butyl Ether	8260B
108-10-1	4-Methyl-2-pentanone	8260B
591-78-6	2-Hexanone	8260B
127-18-4	Tetrachloroethene	8260B
108-88-3	Toluene	8260B
79-34-5	1,1,2,2-Teterechloroethane	8260B
108-90-7	Chlorobenzene	8260B
100-41-4	Ethylbenzene	8260B
100-42-5	Styrene	8260B

1330-20-7	Xylenes (total)	8260B
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The laboratory shall report nonsurrogate components, tentatively identified by library search conducted per the guidelines contained in the analytical method.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### Section 740. Table B Semivolatile Organic Analytical Parameters

<u>CAS No.</u>	<u>Compound</u>	<u>Method</u>
108-95-2	Phenol	8270C
111-44-4	bis(2-Chloroethyl) ether	8270C
95-57-8	2-Chlorophenol	8270C
95-50-1	1,2-Dichlorobenzene	8270C
541-73-1	1,3-Dichlorobenzene	8270C
106-46-7	1,4-Dichlorobenzene	8270C
95-48-7	2-Methylphenol	8270C
108-60-1	2,2'-oxybis (1-chloropropane)	8270C
106-44-5	4-Methylphenol	8270C
621-64-7	N-Nitroso-di-n-propylamine	8270C
67-72-1	Hexachloroethane	8270C
98-95-3	Nitrobenzene	8270C
78-59-1	Isophorone	8270C
88-75-5	2-Nitrophenol	8270C
105-67-9	2,4-Dimethylphenol	8270C
111-91-1	bis(2-Chloroethoxy) methane	8270C
120-83-2	2,4-Dichlorophenol	8270C
120-82-1	1,2,4-Trichlorobenzene	8270C
91-20-3	Naphthalene	8270C 8310
106-47-8	4-Chloroaniline	8270C
87-68-3	Hexachlorobutadiene	8270C
59-50-7	4-Chloro-3-methylphenol	8270C
91-57-6	2-Methylnaphthalene	8270C
77-47-4	Hexachlorocyclopentadiene	8270C
88-06-2	2,4,6-Trichlorophenol	8270C
95-96-4	2,4,5-Trichlorophenol	8270C
91-58-7	2-Chloronaphthalene	8270C
88-74-4	2-Nitroaniline	8270C
131-11-3	Dimethylphthalate	8270C
208-96-8	Acenaphthylene	8270C 8310
606-20-2	2,6-dinitrotoluene	8270C
99-09-2	3-Nitroaniline	8270C
83-32-9	Acenaphthene	8270C 8310
51-28-5	2,4-Dinitrophenol	8270C
100-02-7	4-Nitrophenol	8270C
132-64-9	Dibenzofuran	8270C
121-14-2	2,4-Dinitrotoluene	8270C
84-66-2	Diethylphthalate	8270C
7005-72-3	4-Chlorophenyl-phenyl ether	8270C
86-73-7	Fluorene	8270C 8310
100-01-6	4-Nitroaniline	8270C
534-52-1	4,6-Dinitro-2-methylphenol	8270C
86-30-6	N-nitrosodiphenylamine	8270C
101-55-3	4-Bromophenyl-phenyl ether	8270C

118-74-1	Hexachlorobenzene	8270C
87-86-5	Pentachlorophenol	8270C
85-01-8	Phenanthrene	8270C 8310
120-12-7	Anthracene	8270C 8310
86-74-8	Carbazole	8270C
84-74-2	Di-n-butylphthalate	8270C
206-44-0	Fluoranthene	8270C 8310
129-00-0	Pyrene	8270C 8310
85-68-7	Butylbenzylphthalate	8270C
91-94-1	3,3'-Dichlorobenzidine	8270C
56-55-3	Benzo(a)anthracene	8270C 8310
218-01-9	Chrysene	8270C 8310
117-81-7	bis(2-Ethylhexyl)phthalate	8270C
117-84-0	Di-n-octylphthalate	8270C
205-99-2	Benzo(b)fluoranthene	8270C 8310
207-08-9	Benzo(k)fluoranthene	8270C 8310
50-32-8	Benzo(a)pyrene	8310
193-39-5	Indeno(1,2,3-c,d)pyrene	8270C 8310
53-70-3	Dibenz(a,h)anthracene	8310
191-24-2	Benzo(g,h,i)perylene	8270C 8310

The laboratory shall report nonsurrogate components, tentatively identified by library search conducted per the guidelines contained in the analytical method.

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### Section 740. Table C Pesticide and Aroclors Organic Analytical Parameters

<u>CAS No.</u>	<u>Compound</u>	<u>Method</u>
319-84-6	alpha-BHC	8081A
319-85-7	beta-BHC	8081A
319-86-8	delta-BHC	8081A
58-89-9	gamma-BHC	8081A
76-44-8	Heptachlor	8081A
309-00-2	Aldrin	8081A
1024-57-3	Heptachlor epoxide	8081A
959-98-8	Endosulfan I	8081A
60-57-1	Dieldrin	8081A
72-55-9	4,4'-DDE	8081A
72-20-8	Endrin	8081A
33213-65-9	Endosulfan II	8081A
72-54-8	4,4'-DDD	8081A
1031-07-8	Endosulfan sulfate	8081A
50-29-3	4,4'-DDT	8081A
72-43-5	Methoxychlor	8081A
53494-70-5	Endrin ketone	8081A
7421-93-4	Endrin aldehyde	8081A
5103-71-9	alpha-Chlordane	8081A
5566-34-7	gamma-Chlordane	8081A

8001-35-2	Toxaphene	8081A
12674-11-2	Aroclor - 1016	8082
11104-28-2	Aroclor - 1221	8082
11141-16-5	Aroclor - 1232	8082
53469-21-9	Aroclor - 1242	8082
12672-29-6	Aroclor - 1248	8082
11097-69-1	Aroclor - 1254	8082
111096-82-5	Aroclor - 1260	8082

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

### Section 740. Table D Inorganic Analytical Parameters

<u>CAS No.</u>	<u>Analyte</u>	<u>Method</u>
7429-90-5	Aluminum	6010B/6020
7440-36-0	Antimony	6010B/6020
7440-38-2	Arsenic	6020/7060A/ 7061A/7062
7440-39-3	Barium	6010B/6020
7440-41-7	Beryllium	6010B/6020
7440-43-9	Cadmium	6010B/6020
7440-70-2	Calcium	6010B
7440-47-3	Chromium	6010B/6020
7440-48-4	Cobalt	6010B/6020
7440-50-8	Copper	6010B/6020
7439-89-6	Iron	6010B
7439-92-1	Lead	6020/7421
7239-95-4	Magnesium	6010B
7439-96-5	Manganese	6010B/6020
7439-97-6	Mercury	7470A/7471A
7440-02-0	Nickel	6010B/6020
7440-09-7	Potassium	6010B
7782-49-2	Selenium	7740A/7741A/ 7742
7440-22-4	Silver	6010B/6020
7440-23-5	Sodium	6010B
7440-28-0	Thallium	6020/7841
7440-62-2	Vanadium	6010B
7440-66-6	Zinc	6010B/6020
57-12-5	Cyanide	9012A

(Source: Amended at 26 Ill. Reg. 7197, effective April 25, 2002)

**Section 740.APPENDIX B Review and Evaluation Licensed Professional Engineer Information**

- Firm name.
- Address.
- Telephone/fax.
- Principal officials and titles.
- Number of full-time employees.
- Business structure (corporation, partnership, LLP, LLC, PSC).
- Licensed by Secretary of State? # \_\_\_\_\_
- Licensed by Dept. of Professional Regulation? # \_\_\_\_\_
- Name of Illinois Registered Managing Agent.
- Names of insurance carriers and amount of coverage:
  - Worker's Compensation: \_\_\_\_\_
  - General Liability: \_\_\_\_\_
  - Professional Liability: \_\_\_\_\_
- Does the stated professional liability policy include coverage for "environmental" claims related to release of pollutants? If not covered, or covered by a different carrier or in a different amount, so state.
- Has the firm or owners ever filed bankruptcy? If "yes," state when and explain.
- Is the firm an outgrowth, result, continuation or reorganization of a former business? If "yes," explain background.
- List RELPEs and other key full-time employees that will participate on this project with the RELPE. Provide resumes for each, including Illinois P.E. License #, certifications, project role, years of experience in related work and education.
- List five projects similar in nature and identify the role of the RELPE.
- Are employees to be assigned to the project in compliance with 29 CFR 1910.120 (HAZWOPER training and medical surveillance) as applicable to their role on the project?