ILLINOIS POLLUTION CONTROL BOARD
September 22, 2011

IN THE MATTER OF:	)	
	)	
AMENDMENTS UNDER P.A. 96-908 TO	)	R11-22
REGULATIONS OF UNDERGROUND	)	(Rulemaking - Land)
STORAGE TANKS (UST) and PETROLEUM	)	
LEAKING UST: 35 ILL. ADM. CODE 731,	)	
732 and 734)	)	

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

For first-notice publication in the *Illinois Register*, the Board today proposes amendments to its underground storage tank (UST) regulations. The Illinois Environmental Protection Agency (Agency or Illinois EPA or IEPA) initiated this proceeding by filing a rulemaking proposal on February 18, 2011. The Agency's proposed amendments intended to update the Board's regulations to reflect Public Act 96-908 (P.A. 96-908), which was signed into law and became effective on June 8, 2010. P.A. 96-908 enacted a number of amendments to Title XVI of the Environmental Protection Act (Act), which addresses USTs.

After conducting two public hearings in this matter and considering the entire record, the Board proposes for first notice the amendments to Parts 731, 732, and 734 of its UST regulations described below in this opinion and order. Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period. *See* 5 ILCS 100/5-40(b) (2010) (Illinois Administrative Procedure Act).

In the opinion below, the Board first provides the procedural background of this rulemaking before providing the legislative background. After discussing issues of technical feasibility and economic reasonableness, the Board makes its findings on them. The Board then provides a section-by-section summary of the record on its first-notice proposal before reaching its conclusion and issuing its order setting forth the proposed amendments for first-notice publication.

PROCEDURAL BACKGROUND

On February 18, 2011, the Agency filed a rulemaking proposal to amend Parts 731, 732, and 734 of the Board's UST regulations (Prop. 731, Prop. 732, and Prop. 734, respectively). Among the documents accompanying the proposal was a Statement of Reasons (SR). The Statement of Reasons included a "Statement Regarding Material Incorporated by Reference," which requested that that the Board waive the requirement to submit copies of material sought to be incorporated by reference. *See* 35 Ill. Adm. Code 102.202(d).

In an order dated March 17, 2011, the Board accepted the Agency's proposal for hearing and granted the Agency's request to waive the requirement to submit copies of material proposed for incorporation by reference. The order also noted that the Agency "has not clearly addressed the inapplicability of or provided the description of a 'published study or research report' as required under Sections 102.202(e) of the Board's procedural rules." *See* 35 Ill. Adm. Code 102.202(e), (k). The Board requested that the Agency address that requirement in writing before hearing, whether in pre-filed testimony or as otherwise directed by the hearing officer.

In an order filed March 18, 2011, the hearing officer scheduled two hearings: the first on Tuesday, May 10, 2011, in Springfield with pre-filed testimony due by Tuesday, April 26, 2011; and the second on Thursday, June 16, 2011, in Chicago with pre-filed testimony due by Thursday, June 2, 2011.

On April 25, 2011, the Board received from the Agency the pre-filed testimony of Mr. Hernando Albarracin (Albarracin Test.). With its pre-filed testimony, the Agency also filed a statement that it "did not use a published study or report in developing the proposed amendments, and therefore did not submit any information pursuant to 35 Ill. Adm. Code 102.202(e)." Also on April 25, 2011, the Board received from the CW^{3}M Company (CW^{3}M) the pre-filed testimony of Mr. Vince Smith (Smith Test.).

The first hearing took place as scheduled on Tuesday, May 10, 2011, and the Board received the transcript (Tr.1) on May 18, 2011. During the first hearing, the hearing officer admitted into the record four exhibits: the pre-filed testimony of Mr. Albarracin (Exh. 1) (*see* Tr.1 at 10-11); House Joint Resolution 39 of the 96th General Assembly (HJR 39) (Exh. 2) (*see* Tr.1. at 11-12); a list entitled "Underground Storage Tank Task Force - Members' Contact Information -- October 2009" (Exh. 3) (*see* Tr.1 at 12-13); and the pre-filed testimony of Mr. Smith (Exh. 4) (*see* Tr.1 at 77-78).

On June 1, 2011, the Board received from CW^{3}M testimony by Mr. Smith pre-filed for the second hearing (Smith Test. 2). On June 2, 2011, the Board received from the Agency its post-hearing comments (PC 1). In an order dated June 13, 2011, the hearing officer listed specific questions and requested that the Agency address them at the second hearing. On June 16, 2011, the Board received amended testimony from CW^{3}M seeking to respond to the Agency's post-hearing comments (CW^{3}M Resp.).

The second hearing took place as scheduled on June 16, 2011, and the Board received the transcript (Tr.2) on June 22, 2011. During the second hearing, the hearing officer admitted into the record a single exhibit, amended testimony from CW^{3}M (Exh. 5).

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2010)) the Board requested in a letter dated March 17, 2011, that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the Agency's rulemaking proposal. On May 23, 2011, the Board received a response from DCEO. In a letter dated May 5, 2011, DCEO Director Warren Ribley stated that, "[a]t this time, the Department is unable to undertake such an economic impact study. Therefore, I must respectfully decline your request." During the second hearing, the hearing officer noted the Board's request and DCEO's response to it. Tr.2 at 54-55.

Although the hearing officer afforded those present an opportunity to testify regarding the request and response, no participant offered testimony. *See id*. at 55.

In an order dated June 23, 2011, the hearing officer set a deadline of July 22, 2011, to file post-hearing comments. On July 21, 2011, the Board received comments by CW^3M (PC 2). On July 22, 2011, the Board received comments from Chase Environmental Group, Inc. (Chase) (PC 3) and the Agency (PC 4).

Filing Public Comments

First-notice publication of these proposed amendments in the *Illinois Register* will start a period of at least 45 days during which any person may file a public comment with the Board, regardless of whether the person has already filed a public comment. *See* 5 ILCS 100/5-40(b) (2010) (Illinois Administrative Procedure Act). The Board encourages comments on these proposed amendments. The docket number for this rulemaking, R11-22, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board at the following address:

Pollution Control Board
John T. Therriault, Assistant Clerk
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

Public comments may be filed electronically through the Board's Clerk's Office On-Line, or COOL, at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Please note that all comments filed with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List for this rulemaking. Before filing any document with the Clerk, please check with the hearing officer or the Clerk's Office to verify the most recent version of the Service List.

LEGISLATIVE BACKGROUND

The Illinois General Assembly enacted a UST program in 1993 in order to achieve a number of environmental, legal, oversight, and financial purposes. *See* HJR 39 at 1. Both motor fuel taxes and environmental impact fees finance the UST Fund established by the program. *Id*.

HJR 39

The legislative history of HJR 39 reflects that it was adopted by the Illinois House of Representatives on April 30, 2009. HJR 39, 96th Gen. Assembly (2009), *available at* http://www.ilga.gov/legislation/BillStatus.asp?DocNum=39&GAID=10&DocTypeID=HJR&LegId=47506&SessionID=76&GA=96 (vote of 114-0-0 on resolution as amended by Committee

Amendment No. 1). That history also reflects that it was adopted by the Illinois Senate on May 28, 2009. *Id*. (vote of 58-0-0).

HJR 39 reported that the Fund has experienced funding shortages and faced $62 million in unpaid claims. *Id*. at 2; *see* Tr.1 at 15. The joint resolution noted that the Agency had estimated "a future liability of $864 million to clean up projected 6500 leaking underground storage tank sites in Illinois over the next 20 years." HJR 39 at 2. HJR 39 found that "existing funding sources will not be sufficient to keep up with the costs" and that "[c]urrent law does not contain adequate methods for monitoring and controlling costs at leaking underground storage tank sites where costs are reimbursed from the Fund." *Id.*; *see* Tr.1 at 15. The General Assembly found that "it is necessary to form a Task Force to study the significant problems that the Fund currently faces." HJR 39 at 3.

The General Assembly first resolved to create a UST Task Force "to study the significant problems that the Underground Storage Tank Fund faces and to suggest a new approach to determine how moneys in the Fund will be used to pay for corrective action costs in addressing petroleum releases at sites and to study ways to monitor and control the costs of clean-up of leaking underground storage tank sites." HJR 39 at 3; *see* Albarracin Test. at 1. The General Assembly further resolved that the Task Force consist of 11 members appointed or designated by various authorities and organizations. HJR 39 at 3-4; *see* Albarracin Test. at 1; Tr.1 at 16-18; *see also* Exh. 3 (Task Force member information). HJR 39 also resolved

> [t]hat the approaches studied by the Task Force shall include, but shall not be limited to, the following:
>
> 1) In order to prevent the recurrence of a backlog of unpaid claims, requiring that the total costs approved for reimbursement from the Fund not exceed the monies in the Fund available to pay the costs;
>
> 2) Requiring that costs reimbursed from the Fund be minimized to the greatest extent practicable, including, but not limited to, utilization of the Illinois Pollution Control Board's risk-based corrective action rules to the greatest extent practicable;
>
> 3) Requiring that costs that will be reimbursed from the Fund be pre-approved by the State before they are incurred;
>
> 4) Prioritizing approvals of costs that will be reimbursed from the Fund so that (1) sites posing a greater threat to human health and the environment receive higher priority than sites posing a lesser threat to human health and the environment, and (2) sites with operating underground storage tanks at the time of the release receive higher priority than sites without operating underground storage tanks at the time of the release;

5) Competitive bidding of costs that will be reimbursed from the Fund, with such bidding including, but not being limited to, public notice of bid proposals." HJR 39 at 4-5; *see* Albarracin Test. at 2.

HJR 39 also resolved that the Task Force "shall submit a report of its findings to the Governor and the General Assembly by December 21, 2009." HJR 39 at 6; *see* Tr.1 at 14-15, 18.

Public Act 96-908

The recommendations of the UST Task Force resulted in "legislation that passed in the House and Senate unanimously in the spring of 2010." Albarracin Test. at 2; *see* Tr.1 at 15, 18. P.A. 96-908 was signed into law and took effect on June 8, 2010; *see* Albarracin Test. at 2. P.A. 96-908 amended a number of sections of Title XVI of the Act, which applies to petroleum underground storage tanks. In the following subsection of this opinion, the Board summarizes the provisions of P.A. 96-908 that are reflected in the Agency's rulemaking proposal.

Section 57.7

Section 57.7(c) addresses the Agency's review and approval of plans and budgets for the purpose of seeking payment of site investigation and corrective action costs from the Fund. *See* 415 ILCS 5/57.7(c) (2010). Subsection (c)(3) provides that, in approving plans, the Agency must determine "that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation of corrective action activities in excess of those required to meet the minimum requirements of this Title." *Id*.

P.A. 96-908 first added a new subsection (c)(3)(A) specifying the use of the Board's Tiered Approach to Corrective Action Objectives (TACO) rules for the purpose of payment of corrective action costs from the Fund. P.A. 96-908; *see* 35 Ill. Adm. Code 742 (TACO); *see also* Albarracin Test. at 2-3; Tr.1 at 16.

P.A. 96-908 also added a new subsection (c)(3)(B) establishing seven minimum requirements for Board rules adopting a publicly-noticed, competitive, and sealed bidding process to determine the reasonableness of corrective action costs. P.A. 96-908. Subsection (i) requires any bidding process adopted under Board rules to provide that

> [t]he owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of the bid, such as discounts, shall be objectively measurable. 415 ILCS 5/57.7(c)(3)(B)(i) (2010); *see* P.A. 96-908.

Subsection (ii) requires any bidding process adopted under Board rules to provide that, "[a]t least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitations for bids must be published in a local paper of general circulation for the area in which the site is located." 415 ILCS 5/57.7(c)(3)(B)(ii) (2010); *see* P.A. 96-908. Subsection (iii) requires that

> [b]ids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information as specified in Board rules must be recorded and submitted to the Agency in the applicable budget. After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection. 415 ILCS 5/57.7(c)(3)(B)(iii) (2010); *see* P.A. 96-908.

Subsection (iv) requires any bidding process adopted under Board rules to provide that

> [b]ids must be unconditionally accepted without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used. 415 ILCS 5/57.7(c)(3)(B)(iv) (2010); *see* P.A. 96-908.

Subsection (v) requires any bidding process adopted under Board rules to provide that

> [c]orrection or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with Board rules. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator. 415 ILCS 5/57.7(c)(3)(B)(v) (2010); *see* P.A. 96-908.

Subsection (vi) requires any bidding process adopted under Board rules to provide that

> [t]he owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information as specified in Board rules must be recorded and submitted to the Agency in the applicable budget. 415 ILCS 5/57.7(c)(3)(B)(vi) (2010); *see* P.A. 96-908.

Finally, subsection (vii) requires any bidding process adopted under Board rules to provide that

> [a]ll bidding documentation must be retained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency for inspection and copying during normal business hours. 415 ILCS 5/57.7(c)(3)(B)(vii) (2010); *see* P.A. 96-908.

New subsection (c)(3)(C) provides in its entirety that "[a]ny bidding process adopted under Board rules to determine the reasonableness of costs of corrective action shall (i) be optional and (ii) allow bidding only if the owner or operator demonstrates that corrective action cannot be performed for amounts less than or equal to maximum payment amounts adopted by the Board." 415 ILCS 5/57.7(c)(3)(C) (2010); *see* P.A. 96-908; *see also* Albarracin Test. at 3.

Section 57.13

Section 57.13 had provided for a transition from one version of Title XVI to another by distinguishing releases based on the date on which they were reported. 415 ILCS 5/57.13(a) (2008); *see* 35 Ill. Adm. Code 732 (releases reported September 23, 1994 through June 23, 2002), 35 Ill. Adm. Code 734 (releases reported on or after June 24, 2002). Section 57.13 also allowed an owner or operator of a UST from which a release was reported prior to June 24, 2002, to elect in writing to proceed under the requirements of Part 734. *See* 415 ILCS 5/57.13(b) (2008). P.A. 96-908 amended this section by requiring all releases for which a No Further Remediation (NFR) Letter is issued on or after June 8, 2010 to be remediated under Part 734. P.A. 96-908; *see* Albarracin Test. at 3.

Section 57.19

P.A. 96-908 added to Title XVI a new Section 57.19 addressing corrective action costs incurred after the issuance of an NFR Letter. P.A. 96-908. The new section allows specified corrective action activities performed after issuance of the NFR Letter to be eligible for repayment from the Fund. Subsection (1) lists as eligible "[c]orrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial objectives . . . is being developed into residential property." *Id*. Subsection (2) lists as eligible "[c]orrective action to address groundwater contamination if the owner or operator demonstrates that action is necessary because a groundwater ordinance used as an institutional control . . . can no longer be used as an institutional control." *Id*. Subsection (3) lists as eligible

> [c]orrective action to address groundwater contamination if the owner or operator demonstrates that action is necessary because an on-site groundwater use restriction used as an institutional control . . . must be lifted in order to allow the

installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner or operator. *Id*.

Subsection (4) allows an owner or operator to seek payment from the Fund after issuance of an NFR letter for the disposal of soil that does not exceed industrial/commercial remediation objectives but does exceed residential objectives. *Id*. Finally, subsection (5) allows an owner or operator to seek payment from the Fund after issuance of an NFR letter for costs associated with the disposal of water exceeding remediation objectives if a groundwater ordinance or use restriction is used as an institutional control and the excavation is within the measured or modeled extent of groundwater contamination. Both subsections (4) and (5) are limited to sites at which contamination results from an eligible release and at which disposal is necessitated by construction activities taking place after issuance of an NFR letter on the site where the release occurred, including, but not limited to, "tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement." P.A. 96-908.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

Board Request for DCEO Economic Impact Study

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2010)) the Board requested in a letter dated March 17, 2011, that DCEO conduct an economic impact study of the Agency's rulemaking proposal. On May 23, 2011, the Board received a response from DCEO. In a letter dated May 5, 2011, DCEO Director Warren Ribley stated that, "[a]t this time, the Department is unable to undertake such an economic impact study. Therefore, I must respectfully decline your request." During the second hearing, the hearing officer noted the Board's request and DCEO's response to it. Tr.2 at 54-55. Although the hearing officer afforded those present an opportunity to testify regarding the request and response, no participant offered testimony. *See id*. at 55.

Technical Feasibility

In its Statement of Reasons, the Agency states that "[a]ny new technical requirements are the result of changes to the LUST Program made by Public Act 96-908, and to a lesser extent changes to OSFM release reporting rules." SR at 7. The Agency argues that "any new technical requirements are consistent with the historical evolution of the LUST Program, and they do not raise issues of technical feasibility." *Id*.

The Board notes that the Agency's proposal stems in significant part from amendments to Title XVI enacted by Public Act 96-908. These amendments address issues including the application of TACO rules, transition of all UST releases to the requirements of Part 734 of the Board's regulations, reimbursement of costs incurred after issuance of an NFR Letter and determination of maximum payment amounts through bidding. Suggesting that these amendments do not alter the basic framework for remediation under the existing UST program, the Agency argues that its proposal does "not raise issues of technical feasibility." SR at 7. Having reviewed the entire record and finding no persuasive argument to the contrary, the Board

concludes that the Agency's proposal, amended as described below in this opinion, is technically feasible.

Economic Reasonableness

In addressing economic reasonableness, the Agency's Statement of Reasons first indicates that its "proposal updates the Board's LUST rules so they are consistent with Title XVI of the Act as amended by Public Act 96-908 and recent amendment to OSFM rules." SR at 7. The Agency argues that recent amendment to Title XVI intend "to reduce the economic burden on the UST Fund by reducing the costs of UST cleanups." *Id*. The Agency notes that, although it has proposed amendments other than those implementing Public Act 96-908, those additional amendments "have little, if any, economic impact." *Id*. The Agency cites as an exception, however, a proposed amendment to Section 734.810, allowing reimbursement of abandonment costs to be reimbursed on a time and materials basis. *Id*.; *see* Prop. 734 at 29. The Agency argues that this "change will have a positive impact on UST owners and operators due to their ability to seek recovery of UST abandonment costs in excess of the current lump sum payment amount." SR at 7.

The Board again notes that the Agency's proposal stems in significant part from amendments to Title XVI enacted by Public Act 96-908. The Agency has argued that the public act sought to control the costs of remediating releases from USTs and to reduce demand on the UST Fund. SR at 7; *see* HJR 39. The General Assembly has directed that, for purposes of payment from the UST Fund, corrective action activities must apply specified TACO rules. 415 ILCS 5/57.7(c)(3)(A) (2010). Public Act 96-908 also requires that any bidding process established by the Board to determine reasonableness of corrective action costs must be "publicly-noticed, competitive and sealed" and meet seven specified requirements. 415 ILCS 5/57.7(c)(3)(B) (2010).

However, the Board notes that the General Assembly has also authorized reimbursement from the UST Fund of specified additional costs incurred by an owner or operator after the issuance of an NFR Letter. 415 ILCS 5/57.19 (2010); *see* 35 Ill. Adm. Code 734.630(gg). In addition, although the proposal does not stem from statutory language, the Agency seeks to change the terms on which the UST Fund reimburses costs of tank abandonment. Specifically, the Agency proposes to replace maximum total payment amounts with reimbursement on a time and materials basis. The Agency has indicated that the current maximum payment amounts are insufficient to cover these costs. Tr.1 at 22-23, 27-28, 46.

Having viewed the entire record and finding no persuasive argument to the contrary, the Board concludes that the Agency's proposal, amended as described below in this opinion, implements the statutory language of Public Act 96-908 in a manner that is economically reasonable. Although the Agency's proposal to amend reimbursement of tank abandonment costs is not derived from the public act, the Board concludes that the proposal is well-supported in the record and is also economically reasonable.

SECTION-BY-SECTION SUMMARY OF BOARD'S FIRST-NOTICE PROPOSAL

Part 731

Authority Note

The Agency proposed to amend the Authority Note by updating references to the Act. SR at 2; *see* Prop. 731 at 3. The Agency also proposed to delete a reference to Section 22.13 of the Act, which was repealed by Public Act 88-496. SR at 2; *see* Public Act 88-496, eff. Sept. 13, 1993 (§95); Prop. 731 at 3.

Section 731.110: Applicability

Subsection (a). Subsection (a) currently provides in its entirety that "[t]his Part applies to owners and operators of an Underground Storage Tank (UST) system as defined in Section 731.112 except as otherwise provided in subsections (b) or (c)." 35 Ill. Adm. Code 731.110(a). Subsection (b) and (c) establish exclusions and deferrals from various requirements under Part 731. *See* 35 Ill. Adm. Code 731.110(b), (c). The Agency proposes to amend subsection (a) to include a cross-reference to a proposed new Section 731.110(d) addressing the applicability of Part 734. *See* Prop. 731 at 3.

Subsection (d). The Agency proposed to add a new subsection (d) clarifying "the applicability of Part 734 to the remediation of UST releases subject to Title XVI of the Act." SR at 2; *see* Prop. 731 at 4. The Agency noted that Title XVI addresses issues including "procedures for the remediation of underground storage tank sites due to the release of petroleum and other substances regulated under this Title [XVI] from certain underground storage tanks or related tank systems." SR at 2, citing 415 ILCS 5/57(1) (2010). The Agency further noted that "[t]he current regulations implementing Title XVI are found in Part 734." SR at 2; *see* 35 Ill. Adm. Code 734.

The Agency proposed that the new subsection (d) provide in its entirety that "[o]wners and operators subject to Title XVI of the Act are required to respond to releases in accordance with 35 Ill. Adm. Code 734 instead of Subpart F of this Part." Prop. 731 at 4; *see* 35 Ill. Adm. Code 731.160-731.167 (Subpart F: Release Response and Corrective Action).

Board Notes. The Agency stated that, because existing subsection (e) specifically refers to heating oil tanks, it proposed a new Board Note "to clarify the applicability of Part 734 to the remediation of heating oil UST releases." SR at 2; *see* Prop. 731 at 6. The Agency stated that "[h]eating oil is petroleum, and heating oil USTs are expressly addressed in subsection 57.1(b) and 57.5(g) of Title XVI." SR at 2, citing 415 ILCS 5/57.1(b), 57.5(g) (2010). Specifically, the Agency proposed a Board Note providing in its entirety that "[o]wners and operators of heating oil USTs are subject to Title XVI of the Act and are therefore required to respond to releases in accordance with 35 Ill. Adm. Code Part 734 instead of Subpart F of this Part." Prop 731 at 6; *see* 35 Ill. Adm. Code 731.160-731.167 (Subpart F); *see also* SR at 2-3.

An existing Board Note to subsection (e) provides in pertinent part that "[t]his subsection implements Section 22.4(d)(5) of the Act, which requires that this Part be applicable to "heating oil USTs", as that term is defined in Section 22.18(e) of the Act." Because Public Act 87-1088 re-numbered Section 22.4(d)(5) as Section 22.4(d)(4), the Agency proposed to amend that citation. SR at 3; *see* 415 ILCS 5/22.4(d)(4) (2010); P.A. 87-1088 (eff. Sept. 15, 1992) (Section 1); Prop. 731 at 6.

However, the General Assembly has repealed Section 22.18 of the Act. Public Act 88-496, eff. Sept. 13, 1993 (§95). Prior to repeal, Section 22.18(e) provided that "'[h]eating oil underground storage tank' means an underground storage tank serving other than farms or residential units that is used exclusively to store heating oil for consumptive use on the premises where stored." 415 ILCS 5/22.18(e) (1992). However, Public Act 88-496 enacted Title XVI of the Act, including a new Section 57.2. P.A 88-49, eff. Sept. 13, 1993 (§15). Section 57.2 provided that, as used in Title XVI and

> [w]hen used in connection with, or when otherwise relating to, underground storage tanks, the terms "facility", "owner", "operator", "underground storage tank", "(UST)", "petroleum" and "regulated substance" shall have the meanings ascribed to them in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580); provided however that the term "underground storage tank" shall also mean an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit. 415 ILCS 5/57.2 (1994) (definitions), citing 42 U.S.C.A. § 6901 *et seq*.

The Board invites the participants to comment on whether they wish to amend the citation to Section 22.18(e) of the Act in the existing Board Note to Section 731.110 and, if so, how they wish to amend it.

Board Discussion of Proposed Amendments to Part 731

Although the Board specifically invites comments from the participants on a statutory citation in a Board Note to Section 731.110, the Board has reviewed and concurs in the Agency's proposed amendments to Part 731 of its UST regulations. In its order below, the Board submits the amendments to first-notice publication in the *Illinois Register*.

Part 732

Based on the provisions of Public Act 96-908, the Agency has concluded that "Part 732 is no longer needed." SR at 3. Consequently, the Agency proposed to repeal it in its entierty. *Id*.

The Agency stated that applicability of Title XVI had been based upon the date on which a particular release was reported. SR at 3. The Board has adopted two sets of rules implementing Title XVI, the first of which is Part 732. SR at 3; *see* 35 Ill. Adm. Code 732. The Agency added that, as the General Assembly amended Title XVI, "releases reported under

previous versions of the Title remained subject to the requirements contained in those previous versions." SR at 3, citing 415 ILCS 5/57.13 (transition). The Agency indicated that, "[w]hen the Board adopted Part 734 in 2006, Part 732 remained applicable to UST releases reported on or after September 23, 1994, but prior to June 24, 2002." SR at 3; *see* 35 Ill. Adm. Code 732, 734.

The Agency reported that "Public Act 96-908 deleted the provisions specifying the applicability of different versions of Title XVI based on the date releases were reported." SR at 3; *see* 415 ILCS 5/57.13 (2010); P.A. 96-908. The Agency added that Public Act 96-908 "replaced these provisions with a requirement that makes all UST releases for which an NFR Letter is issued on or after June 8, 2010, subject to Title XVI of the Act." SR at 3; *see* P.A. 96-908. The Agency elaborated that "all UST releases subject to Title XVI that are closed on or after June 8, 2010, are subject to the current Title XVI [and] its implementing rules in Part 734." SR at 3. The Agency concluded that, as a result of this statutory amendment, "Part 732 is no longer needed." SR at 3. Consequently, the Agency proposed to repeal it. *Id*.

The Board has reviewed and concurs in the Agency's proposed amendments to Part 732 of its UST regulations. In its order below, the Board submits the amendments to first-notice publication in the *Illinois Register*.

Part 734

Authority Note

The Agency proposed to amend the Authority Note of Part 734 to reflect addition of Sections 57.18 and 57.19 to Title XVI of the Act. *See* 415 ILCS 5/57.18, 57.19 (2010); P.A. 96-908. Specifically, the Agency proposed to amend the listed sections of Title XVI implemented by Part 734 from "57 - 57.17" to "57 - 57.19." Prop. 734 at 3; *see* P.A. 96-908.

Subpart A: General

Section 734.100: Applicability.

Subsection (a). This subsection now provides in part that "[t]his Part [734] applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to Illinois Emergency Management Agency (IEMA) on or after March 1, 2006 in accordance with the Office of State Fire Marshal (OSFM) regulations." 35 Ill. Adm. Code 734.100(a). The Agency proposed to strike the reporting date restriction "to reflect the effectiveness of Part 734 to all UST releases that are closed on or after June 8, 2010." SR at 4; *see* P.A. 96-908; Prop. 734 at 4.

Subsection (a)(1) provides in pertinent part that,

> for releases reported on or after June 24, 2002, but prior to March 1, 2006, and for owners and operators electing prior to March 1, 2006 to proceed in accordance with Title XVI of the Act as amended by P.A. 92-0554, the Agency may deem that one or more requirements of this Part have been satisfied based upon

> activities conducted prior to March 1, 2006, even though the activities were not conducted in strict accordance with the requirements of this Part. 35 Ill. Adm. Code 734.100(a)(1).

The Agency proposed to amend this language "to provide that the Illinois EPA can take into account activities conducted prior to June 8, 2010, when determining whether response requirements have been met." SR at 4; *see* P.A. 96-908; Prop. 734 at 4.

Subsection (b). This subsection now provides that the owner or operator of a UST system from which a release was reported prior to June 24, 2002, may elect to proceed under this Part pursuant to Section 734.105. 35 Ill. Adm. Code 734.100(b), citing 35 Ill. Adm. Code 734.105 (election to proceed). The Agency proposed to strike this provision and replace it with statutory language providing that "costs incurred prior to June 8, 2010, and work conducted prior to June 8, 2010, must be reviewed under the law in effect at the time the costs were incurred or the work was conducted." SR at 4; *see* P.A. 96-908; Prop. 734 at 4. The Agency also sought to add language clarifying that "[c]osts incurred pursuant to a plan approved by the Agency prior to June 8, 2010, must be reviewed in accordance with the law in effect at the time the plan was approved. Any budget associated with such a plan must also be reviewed in accordance with the law in effect at the time the plan was approved." Prop. 734 at 4; *see* SR at 4.

In his testimony on behalf of CW^3M pre-filed April 25, 2011, for the first hearing, Mr. Smith stated that, with adoption of Public Act 96-908, "many questions were raised as to whether previously approved Plans & Budgets would still stand as approved, or whether a new Plan & Budget must be submitted. . . ." Smith Test at 3. Suggesting that the Agency's proposal answered these questions, he stated that CW^3M concurred with the proposed amendments to Section 734.100. *Id*.

During the first hearing, the hearing officer noted that the Agency's "proposed revisions indicate that the costs that are associated with a plan and budget approved prior to June 8, 2010, must be reviewed in accordance with the law that was in effect at the time that the costs were incurred." Tr.1 at 66. The hearing officer asked the Agency to clarify "whether a plan and budget that had been approved prior to June 8, 2010, would need to undergo new review by the Agency in order for the owner/operator to proceed?" *Id*. Mr. Albarracin responded that, although the Agency has examined this issue on a case-by-case basis, "we have allowed that approval to stand." *Id*. Also on behalf of the Agency, Mr. Gary King noted that the Board's UST rules allow the Agency to call in corrective action plans that have not resulted in completed corrective action after four years. *Id*. at 66-67; *see* 35 Ill. Adm. Code 734.355 (Status Report). Mr. King elaborated that, if the Agency called in an approved corrective action plan and required a new plan, then "we would expect that the work would be done in accordance with the new plan as opposed to the old plan that was out there." Tr.1 at 67.

In its post-hearing comments, CW^3M noted Mr. Albarracin's clarification "that plans and budgets that were approved prior to June 8, 2010, would stand as approved without re-review by the Agency." PC 2 at 6. CW^3M stated that it appreciated this clarification and concurred with the Agency's proposed amendment. Similarly, in its post-hearing comments, Chase indicated

that it agreed with the Agency's intent to allow corrective action to be completed according to previously approved plans. *See* PC 3 at 2.

Section 734.105: Election to Proceed under Part 734.

Subsection (a). This subsection now provides that the owner or operator of a UST system from which a release was reported prior to June 24, 2002, may elect to proceed under Part 734 by submitting to the Agency a written election to do so. 35 Ill. Adm. Code 734.105(a). The Agency proposed to strike this provision because "all open incidents are now subject to Part 734" and "elections into Part 734 are no longer applicable." SR at 4; *see* P.A. 96-908; Prop. 734 at 6.

Subsection (d). This subsection now addresses payment from the UST Fund of corrective action costs incurred prior to an election to proceed under this Part. 35 Ill. Adm. Code 734.105(d). The Agency proposed to strike this provision because "all open incidents are now subject to Part 734" and "elections into Part 734 are no longer applicable." SR at 4; *see* P.A. 96-908; Prop, 734 at 6.

Section 734.115: Definitions.

"Half-day." This Section now defines the term "half-day" as meaning "four hours, or a fraction thereof, of billable work time. Half-days must be based upon the total number of hours worked in one calendar day. The total number of half-days per calendar day may exceed two." 35 Ill. Adm. Code 734.115. The Agency proposed to strike this definition because "[t]his term is not used in Part 734." SR at 4; *see* Prop. 734 at 8.

In testimony pre-filed April 25, 2011, for the first hearing, Mr. Smith indicated that "CW^3M recognizes that the removal of 'half-days' is a clean-up from previous rulemakings." Smith Test. at 3.

"Residential Property." The Agency sought to add a definition of "residential property" because the term is employed in statutory language proposed for addition to Sections 734.360(b), 734.632(a), and 734.632(d) and is also used in new Section 734.360(ddd). SR at 4. The Agency proposed that the term means "residential property as defined in 35 Ill. Adm. Code 742.200." Prop. 734 at 12. The Agency stated that this definition "reiterates the definition of 'residential property' in the Board's Tiered Approach to Corrective Action Objectives ("TACO") rules." SR at 4, citing 35 Ill. Adm. Code 742.200. The TACO rules provide that "'[r]esidential 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." 35 Ill. Adm. Code 742.200, citing 415 ILCS 5/58.2 (2010) (Definitions).

Section 734.120: Incorporations by Reference.

Subsection (a) now incorporates by reference American Society for Testing and Materials (ASTM) method "D2487-93, Standard Test Method for Classification of Soils for Engineering

Purposes, approved September 15, 1993." 35 Ill. Adm. Code 734.120(a). The Agency proposed to replace incorporation of this material with incorporation of "ASTM D2487-10, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System) (January 1, 2010)." Prop. 734 at 14; *see* SR at 4.

In his testimony pre-filed April 25, 2011, for the first hearing, Mr. Smith stated that "CW^{3}M agrees with the change from the 1993 version of the D2487 Method to the 2010 version of the D2487 Method." Smith Test. at 4. He continued, however, that "CW^{3}M would like to propose that instead of changing the rules each time a new version of the D2487 Method, or other methods listed in the regulations, becomes available, the newest version should be accepted." *Id*.

In post-hearing comments filed June 2, 2011, the Agency stated that it "proposes to incorporate only the latest version of D2487-10 due to the limitations set forth in the Administrative Procedure Act (APA), which provides that incorporations by reference must state that no later amendments or editions are included." PC 1 at 3, citing 5 ILCS 100/5-75 (2010). The Agency notes that Section 734.120(b) provides in its entirety that "[t]his Section incorporates no later editions or amendments." 35 Ill. Adm. Code 734.120(b); *see* PC 1 at 3. The Agency states that the Board cannot allow an automatic amendment to its rules through a revision to material that is incorporated by reference. The Agency argues that "[n]ew or revised materials must be adopted as rules through a rulemaking that complies with the APA." PC 1 at 3.

Section 734.145: Notification of Field Activities.

This section allows the Agency to require owners and operators to provide notice of field activities prior to the date on which those activities occur. 35 Ill. Adm. Code 734.145. Among other provisions, this section also now provides that it "does not apply to activities conducted within 45 days plus 14 days after initial notification to IEMA of a release, or to free product removal activities conducted within 45 days plus 14 days after the confirmation of the presence of free product." *Id*. The Agency proposed to reflect recent amendments to the OSFM regulations by limiting this exception to 45 days plus 7 days after initial notification to IEMA and after confirmation of the presence of free product. SR at 5; *see* 41 ILCS 176.100-176.590; Prop. 734 at 15.

The Agency and other participants have offered extensive testimony and comment on early action deadlines stated in terms of "plus __ days." *E.g.*, Smith Test. at 4-6; PC 1 at 4; PC 3 at 2; CW^{3}M Resp. at 1; PC 4 at 3-4. The Agency has stated that it would not object if the Board chose to retain the "plus 14 days" deadline in subsections 734.210(c), (d), (e), and (g), and the Board in the following subsections of this opinion concludes to retain the existing "plus 14 days" deadline in those subsections. *See* PC 1 at 5; *infra* at 18-22. The Board notes that the Agency originally proposed to amend both Section 734.145 and Section 734.210 to reflect recent changes to the OSFM regulations. SR at 5, citing 41 Ill. Adm. Code 176. However, the record does not now clearly indicate whether any participant wishes to maintain or to amend the existing deadline in Section 734.145. For consistency, the Board retains the existing deadline and invites the participants to comment on whether to adopt the "plus 7 days" deadline instead.

Board Discussion of Proposed Amendments to Authority Note and Subpart A

Although the Board specifically invites comments from the participants on the issue of a deadline in Section 734.145, the Board has reviewed and concurs in the Agency's proposed amendments to the Authority Note and Subpart A of Part 734 of its UST regulations. In its order below, the Board submits the amendments to first-notice publication in the *Illinois Register*.

Subpart B: Early Action

Section 734.210: Early Action.

Subsection (a). Subsection (a)(1) now requires an owner or operator to report a confirmed release of petroleum from a UST system to the IEMA within 24 hours of the release. 35 Ill. Adm. Code 734.210(a)(1). Subsection (a)(3) requires an owner or operator to "[i]dentify and mitigate fire, explosion, and vapor hazards." 35 Ill. Adm. Code 734.210(a)(1).

Initially, the Agency proposed to amend subsection (a) to reflect OSFM rules requiring "immediate reporting of releases and immediate identification and mitigation of fire, explosion, and vapor hazards." SR at 5, citing 41 Ill. Adm. Code 176.320(a); *see* Prop. 734 at 16. Specifically, subsection (a)(1) would provide that an owner or operator must "[i]mmediately report the release in accordance with OSFM rules." Prop. 734 at 16. Subsection (a)(3) would require that an owner or operator "[i]mmediately identify and mitigate fire, explosion, and vapor hazards." *Id*. In addition, the Agency proposed to include a Board Note following subsection (a)(1) "to help direct persons to the OSFM rules pertaining to release reporting." SR at 5; *see* Prop. 734 at 16. The proposed Board Note provided in its entirety that "[t]he OSFM rules for the reporting of UST releases are found at 41 Ill. Adm. Code 176.320(a)." *Id*.

In his testimony on behalf of CW^3M pre-filed April 25, 2011, for the first hearing, Mr. Smith claimed that OSFM rules require releases of a specified nature or volume to be reported to four agencies: the 911 call center, IEMA, the Local Emergency Planning Committee, and the National Response Center. Smith Test. at 4, citing 41 Ill. Adm. Code 176.320(a). He further claimed that other releases must be reported to IEMA and "the local authority having jurisdiction." Smith Test. at 4; *see* 41 Ill. Adm. Code 176.320(a)(2). Mr. Smith argued that, in rural areas, this authority "may not exist or may not be known to exist." Smith Test. at 4; *see* Tr.1 at 97 (comparing rural and urban communities). He further argued that the Agency's proposal effectively doubles the current reporting requirements. Smith Test. at 4. In addition, he states that adopting the proposal would mean "much more time will be spent by consulting personnel explaining the situation to the 'local authority' in rural communities." *Id*. In his amended testimony filed on June 1, 2011, Mr. Smith acknowledged OSFM reporting requirements had increased but asked the Agency to recognize that costs will also increase. Smith Test. 2 at 3. Responding to a question at the first hearing, Mr. Smith indicated that it was difficult to project these additional costs because various jurisdictions may respond very differently to notification. Tr.1 at 97.

In comments filed after the first hearing, the Agency stated that it had proposed to amend reporting requirements to make them consistent with OSFM regulations. PC 1 at 3. However, the Agency noted Mr. Smith's testimony that OSFM requires reporting releases to entities other than IEMA. *Id*.; *see* Smith Test. at 4. The Agency agreed with Mr. Smith's testimony that "the Board's rules need to be clear." PC 1 at 3, citing Tr.1 at 84-85. The Agency suggested that the most significant aspect of the OSFM's current rules is that confirmed releases must be reported immediately rather than within 24 hours. PC 1 at 3, citing 41 Ill. Adm. Code 176.320(a). Consequently, the Agency proposed to amend Section 734.210(a)(1) in order "[t]o avoid confusion over who must be notified for purposes of complying with the Board's rules." PC 1 at 3. Specifically, the Agency offered the following revision:

> a) Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response action ~~within 24 hours after the release~~:
>
> 1) Immediately report ~~Report~~ the release to IEMA (e.g., by telephone or electronic mail). *Id*.

The Agency stated that "[t]his revised amendment makes it clear that a report to IEMA satisfies the reporting requirements of the Board's rules." PC 1 at 4. Responding to a question during the second hearing, Mr. Smith expressed the belief that owners and operators would be able to report releases on an immediate basis. *See* Tr.2 at 9-10.

In testimony during the second hearing, Ms. Carol Rowe of CW^3M suggested that owners and operators would still be required to notify entities other than IEMA in order to satisfy the OSFM rules. Tr.2 at 11; *see* 41 Ill. Adm. Code 176.320. In post-hearing comments, the Agency noted Ms. Rowe's testimony and acknowledged that OSFM rules "may require reporting to additional parties." PC 4 at 2, citing Tr.2 at 11. The Agency stressed, however, that its proposal changes only the timing of the required notification and not the entity that must be notified. PC 4 at 2; *see* PC 1 at 3. The Agency emphasizes that "there is no increase in the reporting requirements as a result of the proposed change to subsection 734.210(a)(1)." PC 4 at 2.

Subsection (b). Subsection (b) now provides in pertinent part that, "[w]ithin 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must perform" six initial abatement measures:

> 1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;
>
> 2) Visually inspect any aboveground release or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;
>
> 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST

excavation zone and entered into subsurface structures (such as sewers or basements);

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

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

6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part. 35 Ill. Adm. Code 734.210(b).

The Agency proposed to amend the deadline to perform these abatement measures to 20 "plus 7 days" after notification to IEMA. Prop. 734 at 16. The Agency stated that this proposal reflects "the reduction in time for confirming releases under the OSFM rules from 14 days to 7 days." SR at 5, citing 41 Ill. Adm. Code 176.310(b).

As noted above, the Agency and other participants have offered extensive testimony and comment on early action deadlines stated in terms of "plus __ days." The Agency has stated that it would not object if the Board chose to retain the "plus 14 days" deadline in subsections 734.210(c), (d), (e), and (g), and the Board in the following subsection of this opinion concludes to retain the existing deadline in those provisions. *See* PC1 at 5; *infra* at 18-22. The Board notes that, in addition to those four subsections, the Agency also originally proposed to amend subsection (b) to reflect recent changes to the OSFM regulations. SR at 5; citing 41 Ill. Adm. Code 176.310(b). However, the record does not now clearly indicate whether any participant wishes to maintain the existing deadline in Section 734.210(b). Accordingly, the Board retains the existing deadline and invites the participants to comment on whether to adopt the "plus 7 days" deadline instead.

Subsection (c). This subsection now provides that an owner or operator must report to the Agency a summary of initial abatement measures listed in subsection (b) "[w]ithin 20 days after initial notification to IEMA of a release plus 14 days." 35 Ill. Adm. Code 734.210(c). The Agency proposed to amend this deadline "to reflect the reduction in time for confirming releases under the OSFM rules from 14 to 7 days." SR at 5, citing 41 Ill. Adm. Code 176.310(b); *see* Prop. 734 at 17.

In his testimony on behalf of CW^{3}M pre-filed April 25, 2011, for the first hearing, Mr. Smith stated that the existing deadline "barely" allowed the completion of field requirements, even without delays attributable to weather and other causes beyond their control. Smith Test. at 4. He added that the current deadline has yet to provide sufficient time for CW^{3}M to receive analytical results. *Id*.; *see* 35 Ill. Adm. Code 734.210(b)(5) (providing for sampling and measurement). He argued that the deadline, if amended at all, "should be extended." *Id*. He characterized the Agency's proposal as "arbitrary" and requested that the Agency clarify it. *Id*.

In comments filed on June 2, 2011, the Agency restated that it proposed to amend subsection (c) in order to make it consistent "with the OSFM's recent reduction in time for confirming releases from 14 days to 7 days." PC 1 at 4, citing 41 Ill. Adm. Code 176.310(b); *see* SR at 5. The Agency notes that the Board first added a "plus __ days" deadline applicable to certain early action activities "in 2002 to recognize the time for confirming suspected releases under the OSFM's rules." PC 1 at 4, citing Regulation of Petroleum Leaking Underground Storage Tanks: Amendments to 35 Ill. Adm. Code 732, R01-26, slip op. at 7-8 (Feb. 21, 2002). The Agency states that the Board at that time added a deadline of "plus 7 days" because OSFM rules then "required suspected releases to be confirmed within 7 days." Regulation of Petroleum Leaking Underground Storage Tanks: Amendments to 35 Ill. Adm. Code 732, R01-26, slip op. at 7 (Feb. 21, 2002). The Agency states that the Board amended "7 days" to "14 days" because of a change in OSFM rules. PC 1 at 4, citing Proposed Amendments to Regulation of Petroleum Leaking Underground Storage Tanks: (35 Ill. Adm. Code 732, 734, R04-22, 23 (cons.), Exh. 5 at 4-5, Exh. 6 at 3 (Albarracin testimony). The Agency reports that, "[i]n 2010, the OSFM returned to the original 7 days for conforming releases." *Id*., citing 41 Ill. Adm. Code 176.310(b). The Agency adds that this seven-day period to confirm a suspected release is consistent with federal regulations. PC 1 at 4, citing 40 C.F.R. 280.52. (Release investigation and confirmation steps).

The Agency recognizes CW^{3}M's position that factors including weather and scheduling OSFM personnel may place time pressure on consultants. PC 1 at 4. The Agency indicates that it "understands the frustration that may be felt from another change to the 'plus __ days'" deadline. *Id*. at 5. The Agency states that it "would not object if the Board chose to retain the 'plus 14 days'" deadline in this subsection. *Id*. The Agency notes that, although federal rules establish a seven-day deadline to confirm suspected releases, "they also allow 'another reasonable time period specified by the implementing agency.'" *Id*., citing 40 C.F.R. 280.52. In its post-hearing comments, CW^{3}M indicated its support for maintaining the "plus 14 days" deadline. *See* PC 2 at 1, 7.

Subsections (d), (e), and (g). Subsection (d) now provides that an owner or operator must, "[w]ithin 45 days after initial notification to IEMA of a release plus 14 days, . . . assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures" under subsections (a) and (b). 35 Ill. Adm. Code 734.210(d). This information must include, but is not limited to, the following:

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

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

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

4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part. *See id*.

The Agency proposed to amend this deadline "to reflect the reduction in the time for confirming releases under the OSFM rules from 14 days to 7 days." SR at 5, citing 41 Ill. Adm. Code 176.310(b); *see* Prop. 734 at 17, Tr.1 at 25-26, 68-69 (Albarracin testimony).

Subsection (e) now provides in its entirety that, "[w]ithin 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy." 35 Ill. Adm. Code 734.210(e). The Agency originally proposed to replace "plus 14 days" with "plus 7 days" in order "to reflect the reduction in the time for confirming releases under the OSFM rules." SR at 5, citing 41 Ill. Adm. Code 176.310(b); *see* Prop. 734 at 17, Tr.1 at 25-26, 68-69.

Subsection (g) now provides that, "[f]or purposes of payment from the Fund," early action activities

> must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action. 35 Ill. Adm. Code 734.210(g).

The Agency proposed to amend this deadline "to reflect the reduction in the time for confirming releases under the OSFM rules from 14 days to 7 days." SR at 5, citing 41 Ill. Adm. Code 176.310(b); *see* Prop. 734 at 18; Tr.1 at 25-26, 68-69.

In his testimony on behalf of CW^3M pre-filed April 25, 2011, for the first hearing, Mr. Smith stated that the Agency "does not appear to understand that there are a number of factors that can delay the completion of all Early Action requirements." Smith Test. at 5. Among those factors, he listed windy or rainy weather, locating and mobilizing equipment, obtaining permits, and scheduling OSFM personnel. *Id*. He adds that CW^3M has not yet been able to obtain Early Action analytical reports in time to submit them with a 45-Day Report. *Id*. Mr. Smith argues that the Agency's proposed change "is completely arbitrary and adds undue pressure on the

contractors and consultants to complete the substantial amount of work required for a complete 45-Day Report." *Id.*; *see* Tr.2 at 9. In its post-hearing comments, Chase concurs that early action activities generally require at least 45 plus 14 days "to be completed and there are often times that some of the final paperwork cannot be completed in this timeframe." PC 3 at 2. Claiming that the Agency's proposal is not required by any legislation, Mr. Smith argued that the current deadline of "plus 14 days" is "vital to prevent errors and present the most accurate information available." Smith Test. at 5-6.

In comments filed after the first hearing, the Agency stresses that the 45-Day Report "is essentially a status report." PC 1 at 5, citing 35 Ill. Adm. Code 734.210(d), (e). The Agency states that the report "does not require the pulling of tanks, the mobilization of equipment, or the drilling of boreholes. It only requires the assembling and submission of certain information to provide a status of the activities conducted to date." PC 1 at 5. The Agency adds that "[a]ctivities that are not concluded within the first 45 days plus 7 days after release confirmation are not prohibited from occurring later" if approved in a plan and, as applicable, a budget. *Id*. The Agency also notes that it can approve an extension of the 45-day plus 7-day deadline for certain activities if one is warranted by special circumstances. *Id*., citing 35 Ill. Adm. Code 734.210(g); *see also* Tr.1 at 62-63 (Albarracin testimony).

However, the Agency recognizes CW^3M's position that various factors may place undue pressure on consultants and contractors "to complete the work needed for the submission of a 45 Day Report." PC 1 at 4. The Agency indicates that it "understands the frustration that may be felt from another change to the 'plus __ days'" deadline. *Id*. at 5. The Agency states that it "would not object if the Board chose to retain the 'plus 14 days'" deadline in subsections (c), (d), and (g). *Id*. The Agency notes that, although federal rules establish a seven-day deadline to confirm suspected releases, "they also allow 'another reasonable time period specified by the implementing agency.'" *Id*., citing 40 C.F.R. 280.52; *see* Tr.1 at 25-26 (Albarracin testimony). In its post-hearing comments, CW^3M indicated its general support for maintaining the "plus 14 days" deadline. *See* PC 2 at 1, 7. Chase's post-hearing comments also argues that the deadline "for completion of 'early action' activities should remain as it stands now at 45 plus 14 days." PC 3 at 2.

In its response filed on June 2, 2011, CW^3M noted the Agency's statement that the 45-Day Report is a status report that does not itself require any corrective action. CW^3M Resp. at 1. Mr. Smith argues that, because some response may be required during the early action period, the 45-Day Report may necessarily provide an update of early action activities that have taken place. *Id*. CW^3M notes the Agency's claim that "[a]ctivities that are not concluded within the first 45 days plus 7 days after release confirmation are not prohibited from occurring later." *Id*.; *see* PC 1 at 5. However, Mr. Smith notes that, "[i]f the site is defined as industrial/commercial and does not have gross levels of contamination defined during Site Investigation, no further action will be deemed necessary at the site." CW^3M Resp. at 1-2. He states that "there is no provision in the regulations to submit an 'Early Action activities conducted after Early Action expires, but before Stage 1 is started' plan and budget, and no provision for review and approval." *Id*. at 2. He suggests that cases of this nature would be particularly affected by a change from a "plus 14 days" to a "plus 7 days" deadline. *Id*. at 1.

In its post-hearing comments, the Agency acknowledges as correct CW^{3}M's statement that "there is no specific plan and budget for 'Early Action activities conducted after Early Action expires, but before Stage 1 is started.'" PC 4 at 3, citing CW^{3}M Resp. at 2. However, the Agency responds that these activities could appropriately be included in a plan and budget for either site investigation in the case of soil sampling or corrective action in the case of removal of contaminated soil. PC 4 at 3.

Although reiterating that it did not object to retaining a "plus 14 days" deadline, the Agency states that "it should be pointed out that CW^{3}M's reasons for retaining a 'plus 14 days' timeframe is not consistent with the purpose of that timeframe." PC 4 at 3. The Agency indicates that the Board added a "plus __ days" deadline "to recognize the time allowed under OSFM rules to investigate and confirm suspected releases." *Id*., citing Regulation of Petroleum Leaking Underground Storage Tanks: Amendments to 35 Ill. Adm. Code 732, R01-26, slip op. at 7-8 (Feb. 21, 2002).; *see* PC 4 at 5 n.2 (addressing "dual reporting" under OSFM rules of both suspected and confirmed releases). The Agency states that OSFM rules provide owners and operators seven days to investigate and confirm suspected releases according to specified procedures. PC 4 at 4, citing 41 Ill. Adm. Code 176.310, 176.330. The Agency argues that "CW^{3}M is not asking for a retention of the 'plus 14 days" timeframe' in order to maximize the time allowed for the investigation and confirmation of suspected releases." PC 4 at 4. The Agency further argues that CW^{3}M's testimony shows that it seeks "additional time to conduct activities in response to confirmed releases under the auspices of early action." *Id*., citing Smith Test. at 5, CW^{3}M Resp. at 1-2, Tr.2 at 9. The Agency claims that the Board's rules did not add a "plus __ days" deadline "to maximize the time during which activities conducted in response to confirmed releases could be conducted under the early action window." PC 4 at 5.

The Agency also proposed to amend the Board Note to subsection (g), which now provides in its entirety that

> [o]wners or operators seeking payment from the Fund are to first notify IEMA of a suspected release and then confirm the release within 14 days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and 170.580. The Board is setting the beginning of the payment period at subsection (g) to the notification and confirmation to IEMA. 35 Ill. Adm. Code 734.210(g).

Specifically, the Agency initially proposed "to reflect the reduction of the time for confirming releases under the OSFM rules from 14 days to 7 days." SR at 5, citing 41 Ill. Adm. Code 176.310(b); *see* Prop. 734 at 18. The Agency also sought to update citations to OSFM regulations. SR at 5; *see* Prop. 734 at 18.

In comments filed after the first hearing, the Agency stated that, "[i]f the 'plus 14 days' is retained, the Board may wish to consider deleting the Board note following subsection 734.210(g) because 'plus 14 days' no longer corresponds to the OSFM's rules." PC 1 at 5. In post-hearing comments, CW^{3}M agreed with the Agency that "the Board Note should be removed." PC 2 at 7.

Subsection (h). Existing subsection (h)(1) addresses the collection and analysis of soil samples to determine the extent of soil contamination revealed in the course of early action activities or surrounding USTs that remain in place. 35 Ill. Adm. Code 734.210(h)(1). The Agency proposed to amend this subsection (h)(1) of this language "to correct an incomplete cross reference." SR at 5; *see* Prop. 734 at 18. Specifically, the Agency proposes to amend the existing cross reference to "subsections (h)(1)(A)" to refer instead to "subsections (h)(1)(A) through (E)." Prop. 734 at 18.

Board Discussion of Proposed Amendments to Subpart B

Although the Board specifically invites comments from the participants on the issue of a deadline in Section 734.210(b), the Board has reviewed and concurs in the Agency's proposed amendments to Subpart B, which the Agency has modified as described above. In other words, the Board proposes to maintain the existing "plus 14 days" deadlines in this Subpart. In its order below, the Board submits the amendments to Subpart B to first-notice publication in the *Illinois Register*.

Subpart C: Site Investigation and Corrective Action

Section 734.360: Application of Certain TACO Provisions.

Existing Section 57.7(c)(3) of the Act addresses the Agency's review and approval of costs associated with site investigation and corrective action. 415 ILCS 5/57.7(c)(3) (2010). That section provides in pertinent part that the Agency's approval must determine "that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title [XVI]." *Id*.

Public Act 96-908 added to Section 57.7 language applying the Board's TACO rules to payment from the Fund for corrective action activities. P.A. 96-908 (adding Section 57.7(c)(3)(A)). Specifically, Section 57.7(c)(3)(A) provides in its entirety that

> A) For purposes of payment form the Fund, corrective action activities required to meet the minimum requirements of this Title shall include, but not be limited to, the following use of the Board's Tiered Approach to Corrective Action Objectives rules adopted under Title XVII of this Act:
>
> i) For the site where the release occurred, the use of Tier 2 remediation objectives that are no more stringent than Tier 1 remediation objectives.
>
> ii) The use of industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or being developed into residential property.

iii) The use of groundwater ordinances as institutional controls in accordance with Board rules.

iv) The use of on-site groundwater use restrictions as institutional controls in accordance with Board rules. 415 ILCS 5/57.7(c)(3)(A) (2010); *see* P.A. 96-908.

The Agency proposed to implement Public Act 96-908 by adding to the UST rules a new Section 734.360. SR at 5; *see* Prop. 734 at 22. The Agency proposed in the new Section 734.360 introductory language providing in its entirety that, "*[f]or purposes of payment from the Fund, corrective action activities required to meet the minimum requirements of this* Part *shall include, but not be limited to, the following use of the Board's Tiered Approach to Corrective Action Objectives rules adopted under Title XVII of the Act:* [415 ILCS 5/57.7(c)(3)(A)]". Prop. 734 at 22; *see* P.A. 96-908.

Subsection (a). Because the General Assembly adopted Section 57.7(c)(3)(A)(i) in Public Act 96-908, the Agency proposed to add statutory language as Section 734.360(a) providing that, "*[f]or the site where the release occurred*," corrective action required to meet the minimum requirements of these regulations shall include, but not be limited to "*the use of Tier 2 remediation objectives that are no more stringent than Tier 1 remediation objectives*. [415 ILCS 5/57.7(c)(3)(A)(i)]" Prop. 734 at 22; *see* P.A. 96-908; SR at 5.

Subsection (b). Because the General Assembly adopted Section 57.7(c)(3)(A)(ii) in Public Act 96-908, the Agency proposed to add statutory language a Section 734.360(b) providing that corrective action required to meet the minimum requirements of these regulations shall include "[*t]he use of industrial/commercial remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property*. [415 ILCS 5/57.7(c)(3)(A)(ii)]" Prop. 734 at 22; *see* P.A. 96-908; SR at 5.

In its post-hearing comments, CW^3M argued that the majority of UST sites classified as industrial/commercial would be required to leave in the ground contamination exceeding residential standards. PC 2 at 7-8. CW^3M inquired "[i]n the best interest for innocent off-site property owners, why should it devalue their property if a tank owner/operator (on-site property) chooses to leave their property registered as industrial/commercial rather than residential?" *Id*. at 7.

In its post-hearing comments, Chase stated that it "does not agree that site owner/operators should be forced to use industrial/commercial property objectives . . . nor does Chase agree that owner/operators should be forced to use some form of property restriction or institutional control to address groundwater beneath the site." PC 3 at 3. Chase suggests that, in southern Illinois, this may not sufficiently protect groundwater resources. *Id*. Acknowledging the General Assembly's direction to the Agency, however, Chase seeks "to ensure that at a minimum an owner/operator has the ability to either prevent offsite property contamination or to allow the owner operator to complete corrective action on an offsite property that has already been adversely affected." *Id*.

Subsections (c), (d). In Public Act 96-908, the General Assembly provided that corrective action required to meet the minimum requirements of these regulations must include "[t]he use of groundwater ordinances as institutional controls in accordance with Board rules" and "[t]he use of on-site groundwater use restrictions as institutional controls in accordance with Board rules." P.A. 96-908 (adding Sections 57.7(c)(3)(A)(iii), (iv)). To reflect adoption of this language, the Agency proposed to add Section 734.360(c) providing in its entirety that, "[i]f a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated, the groundwater ordinance must be used as an institutional control." Prop. 734 at 22; *see* Tr.1 at 70-71. Also to reflect adoption of Public Act 96-908, the Agency proposed to add Section 734 360(d) providing in its entirety that

> [i]f the use of a groundwater ordinance as an institutional control is not required pursuant to subsection (c) of this Section, another institutional control must be used in accordance with 35 Ill. Adm. Code 742 to address groundwater contamination at the site where the release occurred. Institutional controls used to comply with this subsection (d) include, but are not limited to, the following:
>
> 1) Groundwater ordinances that are not required to be used as institutional controls pursuant to subsection (c) of this Section.
>
> 2) No Further Remediation Letters that prohibit the use and installation of potable water supply wells at the site. Prop. 734 at 22; *see* P.A. 96-908, Tr.1 at 70.

In his testimony on behalf of CW^3M pre-filed April 25, 2011, for the first hearing, Mr. Smith indicated that institutional controls may not be sufficient to address off-site contamination and that "there are certain situations where soil must be remediated to below the CUO's [clean-up objectives] set by the Act." Smith Test. at 6; *see* Tr.1 at 99. Mr. Smith referred to a client who has been unable to remediate contaminated soil on-site, "which is causing the contamination off-site." Smith Test. at 7. He stated that modeling shows "the off-site property will never be fully remediated unless the contaminated soil is removed." *Id*.; *see* Tr.1 at 99. He proposed amending subsection (c) to provide that,

> [i]f a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated, the groundwater ordinance must be used as an institutional control, unless a demonstration is made that on-site soil remediation below these objectives is necessary to remediate or prevent contamination to an off-site property. *Id*. at 6.

He also proposed amending subsection (d) to provide that,

> [i]f the use of a groundwater ordinance as an institutional control is not required pursuant to subsection (c) of this Section, another institutional control must be

> used in accordance with 35 Ill. Adm. Code 742 to address groundwater contamination at the site where the release occurred, unless a demonstration is made that on-site remediation is needed to address off-site contamination which is not subject to an ordinance or the owner will not accept an institutional control. Institutional controls used to comply with this subsection (d) include, but are not limited to, the following:
>
> 1) Groundwater ordinances that are not required to be used as institutional controls pursuant to subsection (c) of this Section.
>
> 2) No Further Remediation Letters that prohibit the use and installation of potable water supply wells at the site. *Id*.

In testimony at the first hearing, Mr. Albarracin addressed instances in which "you need to do some remediation on-site in order to prevent the migration of this contamination off-site, for example, assuming that the off-site property owner does not want any institution of controls. . . ." Tr.1 at 24. He stated that "[e]ach project manager has the discretion to review that plan. . . ." *Id*.; *see id*. at 72-73.

In comments filed after the first hearing, the Agency agreed with CW^3M that "there may be situations where on-site soil remediation may be necessary to prevent off-site groundwater contamination." PC 1 at 5. However, the Agency characterized CW^3M's proposed amendments to subsections (c) and (d) as "too broad," suggesting that groundwater ordinances and other institutional controls may in some cases be sufficient to address off-site contamination. *Id*. at 5-6. The Agency proposed amendments to these subsections, stating that they "allow site-by-site review and approval of these situations, which is the Illinois EPA's current practice." Specifically, the Agency's proposed subsection (c) provides that,

> "[i]f a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated, the groundwater ordinance must be used as an institutional control, provided that the Agency may approve remediation to the extent necessary to remediate or prevent groundwater contamination at off-site property that is not subject to a groundwater ordinance already approved by the Agency for use as an institutional control. *Id*. at 6.

The Agency's proposed subsection (d) provides that,

> [i]f the use of a groundwater ordinance as an institutional control is not required pursuant to subsection (c) of this Section, another institutional control must be used in accordance with 35 Ill. Adm. Code 742 to address groundwater contamination at the site where the release occurred, provided that the Agency may approve remediation to the extent necessary to remediate or prevent groundwater contamination at off-site property that is not subject to a groundwater ordinance or other institutional control that is used to address

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

1) Groundwater ordinances that are not required to be used as institutional controls pursuant to subsection (c) of this Section.

2) No Further Remediation Letters that prohibit the use and installation of potable water supply wells at the site. *Id*. at 6-7.

In its response filed on June 2, 2011, CW^{3}M addressed the Agency's proposed language by stating that it "wholeheartedly disagrees with the decisions being made on a site-by-site basis." CW^{3}M Resp. at 2. CW^{3}M indicated that this would result in inconsistent decisions and may fail to protect off-site property owners. *Id*.; *see* Tr.2 at 50. CW^{3}M proposed to amend the Agency's language by changing the term "may approve" to "will approve" and by adding the term "if a demonstration is made that the off-site property owner is unwilling to accept an institutional control." *Id*.

In its post-hearing comments, CW^{3}M proposed to amend the Agency's language by changing the term "may approve" to "shall allow." PC 2 at 3, 8. CW^{3}M argues that this amendment "still does not require remediation" but "simply provides that the option is available." *Id*. at 8. CW^{3}M suggests that its own language will lead to more consistent Agency decisions and will avoid the expenditure of time and materials in preparing a remediation plan that is not approved. *Id*.

In its post-hearing comments, Chase stated that it "would like to ensure that at a minimum an owner/operator has the ability to either prevent offsite property contamination or to allow the owner operator to complete corrective action on an offsite property that has already been adversely affected." PC 3 at 3. Chase suggests, however, that the Agency's case-by-case review will not result in consistent decision-making. *See id.* Chase indicates that it seeks "a more solid rule." *Id*.

In its post-hearing comments, the Agency notes CW^{3}M's position but emphasizes its own proposed amendments to subsection (c) and (d). PC 4 at 5-6. The Agency states that its own proposal "clarifies that the Illinois EPA is authorized to approve on-site remediation when such remediation is necessary to remediate or prevent groundwater contamination at off-site property that is not subject to a groundwater ordinance or other institutional control." *Id*. at 6. The Agency argues that the rules should not require the Agency to approve "whatever remediation is conducted pursuant to this subsection." *Id*. The Agency claims that it should have the same authority to review and approve that it has for other remediation plans. The Agency states that "[i]t needs to determine that the on-site remediation is in fact necessary to remediate or prevent groundwater contamination at off-site property, and that the proposed remediation is appropriate for the site-specific circumstances and otherwise in compliance with LUST Program requirements." *Id*. The Agency notes that its decisions to modify or disapprove any proposed plan may be appealed to the Board. *Id*.

The Board recognizes the interest CW^3M and Chase have in consistent decision-making by the Agency on the issue of off-site contamination. However, the Board agrees with the Agency that the language proposed by CW^3M would arguably require approval of any on-site remediation proposed to it. The Board concludes that the Agency amendment adequately clarifies that the Agency may approve on-site remediation when it necessary under specified circumstances.

Board Discussion of Proposed Amendments to Subpart C

The Board has reviewed and concurs in the Agency's proposed amendments to Subpart C, which the Agency has modified as described above. In its order below, the Board submits the amendments to first-notice publication in the *Illinois Register*.

Subpart F: Payment from the Fund

Section 734.630: Ineligible Corrective Action Costs.

Existing Section 734.630 provides that "[c]osts ineligible for payment from the Fund include but are not limited to" a number of categories. 35 Ill. Adm. Code 734.630. The Agency has proposed a number of amendments to this Section, each of which the Board describes separately below.

Subsection (s). Existing subsection (s) provides in its entirety that costs ineligible for payment from the Fund include "[c]osts for any corrective activities, services, or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act." 35 Ill. Adm. Cod 734.630(s). The Agency proposed to amend this subsection "to include a missing word" so that it refers to "corrective action activities." SR at 5; *see* Prop. 734 at 24.

Subsection (gg). Existing subsection (gg) provides that costs ineligible for payment from the Fund include "[c]osts incurred after receipt of a No Further Remediation Letter for the occurrence for which a No Further Remediation Letter was received." 35 Ill. Adm. Code 734.630(gg). The subsection further provides that it does not apply to five categories of costs:

1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;

2) Monitoring well abandonment costs;

3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;

4) Costs associated with seeking payment from the Fund; and

5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and

> orders the owner or operator to achieve Tier 1 remediation objectives in response to the release. *Id*.

The Agency proposed to add a subsection stating that subsection (gg) does "not prevent payment from the UST Fund for costs considered corrective action costs payable from the UST Fund pursuant to new Section 57.19 of the Act." SR at 5 (referring to proposed new Section 734.632); *see* P.A. 96-908 (Section 57.19: Costs incurred after the issuance of an NFR Letter); Prop. 734 at 25 (proposing subsection (6)); *see also infra* at 33-40 (summarizing proposed Section 734.632).

In his testimony pre-filed April 25, 2011, for the first hearing, Mr. Smith stated that CW^3M concurs with this proposed amendment to subsection (gg). Smith Test. at 7.

Subsection (nn). Existing subsection (nn) provides that costs ineligible for payment from the Fund include "[c]osts submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part." 35 Ill. Adm. Code 734.630(nn). The Agency proposed to add language providing that "[t]his subsection (nn) does not apply to costs associated with activities conducted under Section 734.632 of this Part." Prop. 734 at 26. Proposed new Section 734.632 addresses corrective action costs incurred after issuance of an NFR letter that may be eligible for reimbursement from the UST Fund. *See* Prop. 734 at 28-29. The Agency states that its proposed amendment "does not prevent payment from the UST Fund for costs considered corrective action costs payable from the UST Fund pursuant to new Section 57.19 of the Act." SR at 5 (referring to proposed new Section 734.632); *see* P.A. 96-908 (Section 57.19: Costs incurred after the issuance of an NFR Letter); Prop. 734 at 26.

In his testimony pre-filed April 25, 2011, for the first hearing, Mr. Smith stated that CW^3M concurs with this proposed amendment to subsection (nn). Smith Test. at 7.

Subsection (xx). Existing subsection (xx) provides that costs ineligible for payment from the Fund include, "[f]or sites electing under Section 734.105 of this Part to proceed in accordance with this Part, costs incurred pursuant to Section 734.210 of this Part." 35 Ill. Adm. Code 734.630(xx). The Agency proposed to strike this entire subsection "because elections under Section 734.105 to proceed in accordance with Part 734 are no longer applicable." SR at 5; *see* Prop. 734 at 27. In addressing proposed amendments to Section 734.105, the Agency stated that "all open incidents are now subject to Part 734." SR at 4; *see* Prop. 734 at 6 (repealing Sections 734.105(a), (d)).

Subsection (ccc). The Agency proposed to add a new subsection (ccc) providing in its entirety that costs ineligible for payment from the Fund include "[c]osts associated with on-site corrective action to achieve Tier 2 remediation objectives that are more stringent than Tier 1 remediation objectives." Prop. 734 at 27. The Agency stated that it sought to add this language "to clarify costs that are not eligible for payment from the Fund pursuant to new subsection 57.7(c)(3)(A)(i) of the Act and the corresponding proposed subsection 734.360(a)." SR at 6; *see* 415 ILCS 5/57.7(c)(3)(A)(i) (2010); P.A. 96-908; Prop. 734 at 22 (proposed subsection 734.360(a)).

Subsection (ddd). The Agency proposed to add a new subsection providing in its entirety that costs ineligible for payment from the Fund include "[c]osts associated with corrective action to achieve remediation objectives other than industrial/commercial remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property." Prop. 734 at 27. The Agency stated that it sought to add this language "to clarify costs that are not eligible for payment from the Fund pursuant to new subsection 57.7(c)(3)(A)(ii) of the Act and the corresponding proposed subsection 734.360(b). SR at 6; *see* 415 ILCS 5/57.7(c)(3)(A)(ii) (2010); P.A. 96-908; Prop. 734 at 22 (proposed subsection 734.360(b)).

In comments filed after the first hearing, the Agency noted that its proposed subsection (ddd) lacked the single word "property" contained in both Section 57.7(c)(3)(A)(ii) of the Act and in the corresponding proposed Section 734.360(b). PC 1 at 8; *see* 415 ILCS 5/57.7(c)(3)(A)(ii) (2010), Prop. 734 at 22. The Agency proposed to amend the subsection so that it referred to "industrial/commercial property remediation objectives." PC 1 at 8; *see* PC 4 at 13 n.3.

In his testimony on behalf of CW^3M pre-filed April 25, 2011, for the first hearing, Mr. Smith stressed that some releases "*require* on-site remediation that is more stringent than the Tier 2 Industrial/Commercial objectives." Smith Test. at 8 (emphasis in original). CW^3M proposed to amend subsection (ddd) "to take into account facilities that will have recurring off-site issues unless on-site remediation is completed where off-site properties need remediation or are unwilling to accept an Environmental Land Use Control (ELUC)." *Id.* Although CW^3M acknowledges that the Agency has approved plans addressing this issue, it argues that the Board should clarify the rules and protect owners and operators. *Id.* Specifically, CW^3M sought to amend the subsection to provide that costs ineligible for payment include

> [c]osts associated with corrective action to achieve remediation objectives other than industrial/commercial remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property, unless a demonstration is made that on-site soil remediation below these objectives is necessary to remediate or prevent contamination to an off-site property. *Id.*

In comments filed after the first hearing, the Agency noted CW^3M's position and acknowledged that "in certain cases on site soil remediation may be necessary to address off-site contamination. . . ." PC 1 at 7. The Agency argues, however, that Section 57.7(c)(3)(A)(ii) of the Act "limits payment to the achievement of industrial/commercial objectives unless the property is demonstrated to be residential property or is being developed into residential property." *Id.* at 7, citing 415 ILCS 5/57.7(c)(3)(A)(ii) (2010). The Agency adds that "the issue of conducting on-site soil remediation to address off-site contamination involves the soil component of the groundwater ingestion exposure route, which is based upon whether a site has Class I or Class II groundwater rather than an industrial/commercial or residential property use." PC 1 at 7. However, the Agency offered a Board Note "[t]o clarify that proposed subsection 734.630(ddd) does not prevent the payment of costs for on-site soil remediation that is approved by the Illinois EPA pursuant to revised proposed subsections 734.360(c) and (d)." *Id.*

Specifically, the Agency proposes a Board Note providing that "[s]ubsection (ddd) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(c) or (d) to remediate or prevent groundwater contamination at off-site property." *Id.*; *see* Tr.1 at 73.

In its response filed on June 16, 2011, CW^{3}M stated that it "agrees that the addition of the proposed Board Note 734.630(ddd) will allow remediation to prevent off-site contamination." CW^{3}M Resp. at 2; *see* PC 2 at 3-4, 8. During the second hearing, the hearing officer noted that Board Notes generally contain a cross-reference or explanation instead of substantive language. Tr.2 at 44. The hearing officer asked the Agency whether the language of the proposed Board Note might be incorporated into subsection (ddd) "for reasons of enforceability and clarity." *Id.*

In its post-hearing comments, CW^{3}M thanked the Agency for proposing a Board Note addressing off-site contamination. PC 2 at 8. CW^{3}M stressed that subsection (ddd) is closely related to Section 734.360, because "both sections deal with possible on-site remediation in order to protect off-site properties stemming from high on-site concentrations below the Tier 2 CUOs [clean-up objectives]." *Id.* CW^{3}M states that, with its proposal to amend Section 734.360 from "may approve" to "shall allow," it concurs with adoption of the Board Note to this subsection. *Id.*

In its subsequent post-hearing comments, the Agency noted the Board's question and in response submitted an amendment to the proposed subsection (ddd). The Agency proposed to incorporate its proposed Board Note into the new subsection as follows:

> ddd) Costs associated with corrective action to achieve remediation objectives other than industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property. This subsection (ddd) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(c) of this Section to remediate or prevent groundwater contamination at off-site property. PC 4 at 13.

Subsection (eee). The Agency proposed to add a new subsection providing in its entirety that costs ineligible for payment from the Fund include "[c]osts associated with groundwater remediation if a groundwater ordinance must be used as an institutional control under subsection (c) of Section 734.360 of this Part." Prop. 734 at 27. The Agency stated that it sought to add this language "to clarify costs that are not eligible for payment from the Fund pursuant to proposed subsection 734.360(c), which implements new subsection 57.7(c)(3)(A)(iii) of the Act." SR at 6; *see* 415 ILCS 5/57.7(c)(3)(A)(iii) (2010); P.A. 96-908; Prop. 734 at 22 (proposed subsection 734.360(c)).

In comments filed after the first hearing, the Agency again acknowledged that "in certain cases on-site soil remediation may be necessary to address off-site contamination when groundwater use restrictions are used as institutional controls." PC 1 at 2, 8. The Agency also proposed to add a Board Note to subsection (eee) to clarify that it does "not prevent the payment

of costs of remediation approved by the Illinois EPA pursuant to proposed subsections 734.360(c) or (d)." *Id*. at 8. Specifically, the Agency proposed a Board Note providing that ""[s]ubsection (eee) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(c) to remediate or prevent groundwater contamination at off-site property." *Id*.

In its post-hearing comments, CW^{3}M thanked the Agency for proposing the Board Note addressing off-site contamination. PC 2 at 8. CW^{3}M stressed that subsection (eee) is closely related to Section 734.360 because "both sections deal with possible on-site remediation in order to protect off-site properties stemming from high on-site concentrations below the Tier 2 CUOs [clean-up objectives]." *Id*. CW^{3}M stated that, with its proposal to amend Section 734.360 from "may approve" to "shall allow," it concurs with adoption of the Board Note to this subsection. *Id*. at 4, 8.

In its post-hearing comments, the Agency proposed to incorporate its proposed Board Note into the new subsection as follows:

> eee) Costs associated with groundwater remediation if a groundwater ordinance must be used as an institutional control under subsection (c) of Section 734.360 of this Part. This subsection (eee) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(c) of this Section to remediate or prevent groundwater contamination at off-site property. PC 4 at 13; *see* Tr.2 at 44.

Subsection (fff). The Agency proposed to add a new subsection providing in its entirety that costs ineligible for payment from the Fund include "[c]osts associated with on-site groundwater remediation if an institutional control is required to address on-site groundwater remediation under subsection (d) of Section 734.360 of this Part." Prop. 734 at 28. The Agency stated that it sought to add this language "to clarify costs that are not eligible for payment from the Fund pursuant to proposed subsection 734.360(d), which implements new subsection 57.7(c)(3)(A)(iii) of the Act." SR at 6; *see* 415 ILCS 5/57.7(c)(3)(A)(iii) (2010); P.A. 96-908; Prop. 734 at 22 (proposed subsection 734.360(d)).

In his testimony on behalf of CW^{3}M pre-filed April 25, 2011, for the first hearing, Mr. Smith stressed that some releases "*require* on-site remediation that is more stringent than the Tier 2 Industrial/Commercial objectives." Smith Test. at 8 (emphasis in original). CW^{3}M proposed to amend subsection (fff) "to take into account facilities that will have recurring off-site issues unless on-site remediation is completed where off-site properties need remediation or are unwilling to accept an Environmental Land Use Control (ELUC)." *Id*. Although CW^{3}M acknowledges that the Agency has approved plans addressing this issue, it argues that the Board should clarify the rules and protect owners and operators. *Id*. Specifically, CW^{3}M sought to amend the subsection to provide that costs ineligible for payment include

> [c]osts associated with on-site groundwater remediation if an institutional control is required to address on-site groundwater remediation under subsection (d) of Section 734.360 of this Part, unless a demonstration is made that on-site

remediation is needed to address off-site contamination which is not subject to an ordinance or the owner will not accept an institutional control. *Id*.

In comments filed after the first hearing, the Agency noted CW^{3}M's position and acknowledged that "in certain cases on-site soil remediation may be necessary to address off-site contamination when groundwater use restrictions are used as institutional controls." PC 1 at 2, 8. The Agency proposed to add a Board Note to subsection (fff) to clarify that it does 'not prevent the payment of costs of remediation approved by the Illinois EPA pursuant to proposed subsections 734.360(c) or (d)." *Id*. at 8. Specifically, the Agency proposes a Board Note providing that "[s]ubsection (fff) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(d) to remediate or prevent groundwater contamination at off-site property." *Id*. at 8-9; *see* Tr.1 at 73.

In its post-hearing comments, CW^{3}M thanked the Agency for proposing the Board Note addressing off-site contamination. PC 2 at 8. CW^{3}M stressed that subsection (fff) is closely related to Section 734.360, because "both sections deal with possible on-site remediation in order to protect off-site properties stemming from high on-site concentrations below the Tier 2 CUOs [clean-up objectives]." *Id*. CW^{3}M stated that, with its proposal to amend Section 734.360 from "may approve" to "shall allow," it concurs with adoption of the Board Note to this subsection. *Id*. at 4, 8.

In its post-hearing comments, the Agency proposed to incorporate its proposed Board Note into the new subsection as follows:

fff) Costs associated with on-site groundwater remediation if an institutional control is required to address on-site groundwater remediation under subsection (d) of Section 734.360 of this Part. This subsection (fff) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(d) of this Part to remediate or prevent groundwater contamination at off-site property. PC 4 at 13-14; *see* Tr.2 at 44.

Section 734.632: Eligible Corrective Action Costs Incurred After NFR Letter.

Public Act 96-908 added to Title XVI a new Section 57.19 addressing costs incurred after issuance of an NFR Letter. 415 ILCS 5/57.19 (2010); P.A. 96-908. The Agency proposed to add Section 734.632 to implement this new section. SR at 6. Specifically, the Agency proposed in the new Section 734.632 introductory language providing in its entirety that,

[n]otwithstanding subsections (gg) and (nn) of Section 734.630 of this Part, *[t]he following shall be considered corrective action activities eligible for payment from the Fund even when an owner or operator conducts these activities after the issuance of a No Further Remediation Letter. Corrective action completed under this Section and costs incurred under this Section must comply with the requirements of* Title XVI of the Act and this Part, including, but not limited to, requirements for the submission and Agency approval of corrective action plans

and budgets, corrective action completion reports, and applications for payment. Prop. 734 at 28; *see* P.A. 96-908 (new Section 57.19); SR at 6.

In its comments filed after the first hearing, the Agency proposed to amend this introductory paragraph to "clarify that plans, budgets, and reports are not needed for disposal costs incurred pursuant to subsections 734.632(d) and (e)." PC 1 at 10; *see* Tr.2 at 45-46, PC 4 at 7. The Agency states that, in these cases, "it will be more cost-effective to just have the owner or operator submit documentation of the costs they incur to dispose of soil or excavation water." PC 1 at 10.

Subsection (a). The Agency proposed to add a subsection (a) providing in its entirety that corrective action activities eligible for payment from the Fund after issuance of an NFR Letter include "[*c*]*orrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial property remediation objectives pursuant to subdivision (c)(3)(A)(ii) of* Section 57.7 of the *Act* and subsection (b) of Section 734.360 of this Part *is being developed into residential property*." Prop. 734 at 28; *see* 415 ILCS 5/57.19(1) (2010); P.A. 96-908; SR at 6; Tr.2 at 45-46.

Subsection (b). The Agency proposed to add a subsection (b) providing in its entirety that corrective action activities eligible for payment from the Fund after issuance of an NFR Letter include "[*c*]*orrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because a groundwater ordinance used as an institutional control pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of* the *Act* and subsection (c) of section 734.360 of this Part *can no longer be used as an institutional control*." Prop. 734 at 28; *see* 415 ILCS 5/57.19(2) (2010); P.A. 96-908; SR at 6.

Subsection (c). The Agency proposed to add a subsection (c) providing in its entirety that corrective action activities eligible for payment from the Fund after issuance of an NFR Letter include

> [*c*]*orrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because an on-site groundwater use restriction used as an institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7 of* the *Act* and subsection (d) of Section 734.360 of this Part *must be lifted in order to allow the installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner of operator*. Prop. 734 at 28; *see* 415 ILCS 5/57.19(3) (2010); P.A. 96-908; SR at 6.

Subsection (d). The Agency proposed to add a subsection (d) providing in its entirety that corrective action activities eligible for payment from the Fund after issuance of a No Further Remediation Letter include

> [*t*]*he disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed residential property remediation objectives, if industrial/commercial property remediation objectives were used*

pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of the *Act* and subsection (b) of Section 734.360 of this Part *and the owner or operator demonstrates that (i) the contamination is the result of the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the soil is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement*. Prop. 734 at 28-29; *see* 415 ILCS 5/57.19(4) (2010); P.A. 96-908; SR at 6; Tr.1 at 30-33, 106.

In his testimony on behalf of CW^{3}M pre-filed April 25, 2011, for the first hearing, Mr. Smith proposed clarifications of this subsection. First, he stated that the phrase "exceed residential property objectives" should be amended to "exceed Tier 1 residential property objectives." Smith Test. at 9. Second, he states that the reference to those objectives should clarify that it includes "the groundwater pathway." *Id*. He added that "[i]t is necessary to clarify that any soil contamination above Tier 1 Residential CUO's [clean-up objectives] including the GW pathway should be reimbursable so long that the owner or operator is eligible to seek payment from the Fund." *Id*.

In comments filed after the first hearing, the Agency stated that it "does not object to amending subsection 734.632(d) to include 'Tier 1' as proposed by CW^{3}M." PC 1 at 9. The Agency indicated that "[t]he proposed addition of 'including the groundwater pathway' is not clear and appears unnecessary." *Id*. The Agency argued that the TACO regulations do not identify any exposure route as "the groundwater pathway." *Id*., citing 35 Ill. Adm. Code 742. The Agency further argues that "general references to remediation objectives in subsection 734.632(d) include the objectives for all exposure routes," and no references limit remediation objectives only to particular exposure routes. PC 1 at 9. The Agency states that "[a] reference to 'Tier 1 residential remediation objectives' is sufficient to include the objectives for all exposure routes under TACO." *Id*.

In responding to questions during the first hearing, Mr. Albarracin emphasized that the proposed subsection (d) addresses sites that have already received an NFR letter. Tr.1 at 32. He indicated that, because this subsection does not address a new release, the Agency would not require plans, budgets, or reports for soil disposal from these sites. *See id*. He further indicated that the owner or operator would be required to produce only a request for payment of these soil disposal costs in order to be reimbursed from the UST Fund. *Id*. at 33-34. Referring to the language of Public Act 96-908, Mr. Albarracin stated that other costs such as transporting the soil "would be the responsibility of the owner." *Id*. at 33.

Addressing the reimbursement of soil disposal during the first hearing, Mr. Smith stated that he didn't "necessarily agree that those costs need to be reimbursed because it's a decision I'm going to add a tank and when I add a tank, I know I have to dig a hole." Tr.1 at 107-08. However, he argued that issuance of an NFR letter on the basis of meeting Tier 2 objectives at a site "does not mean the entire site is contaminated. . . ." Tr.1 at 104. He suggested that, if owners and operators are not reimbursed for testing costs, they would be likely to dispose of soil

that is actually "clean or clean enough" and unnecessarily incur disposal costs. *Id*.; *see* Tr.2 at 101. He further suggested that, in the absence of testing results, landfills would assume that soil is contaminated and impose higher disposal costs. Tr.1 at 104-05. He also indicated that, if the UST Fund reimbursed soil investigation costs, an owner or operator might be able perform work in another area of the site and avoid soil disposal costs. *Id*. at 105. On behalf of the Agency, Mr. King indicated that the Agency had understood the issues presented and would consider revisiting its proposal. *Id.* at 107.

In comments filed after the first hearing, the Agency stated that it "does not oppose language to clarify soil disposal costs that are eligible for payment from the UST Fund pursuant to subsection 734.632(d)." PC 1 at 9. The Agency proposed to add to the end of this proposed subsection a sentence providing that "[c]osts eligible for payment under this subsection (d) are the costs to transport the soil to a properly permitted disposal site and disposal site fees." *Id*. at 11.

In its response filed on June 16, 2011, CW^3M continued to address the issue of costs eligible for payment from the UST Fund after issuance of an NFR letter. CW^3M argued that, in addition to transportation and disposal, those reimbursable costs should at a minimum include "waste characterization, sample analysis, landfill authorization, scheduling and arrangements, manifests, and reimbursement preparation." CW^3M Resp. at 2; *see* Tr.2 at 12.

During the second hearing, Mr. Albarracin stated that the Agency's amended proposal "included language to cover the costs of not only transporting the soil to the -- properly bringing it to the disposal site, but also what we deem disposal site fees." Tr.2 at 14. He indicated that the Agency intended reimbursable disposal site fees to include "sampling in order to dispose of the soil" and "waste characterization." *Id*. at 15. However, he indicated that consulting fees associated with corrective action "are not intended to be eligible" under this subsection for reimbursement from the UST Fund. *Id*. at 17-18. Mr. Albarracin stressed that the Agency does not view disposal of soil under proposed subsection (d) "as additional corrective action at the site." *Id*. at 17; *see* PC 1 at 9. He argued that the specific construction activities named in subsection (d) by their nature involve consulting work. Tr.2 at 22, 24. He cited pipe replacement as an activity that would require soil excavation but suggested that this excavation should not itself justify additional corrective action. *See id*. In this regard, he distinguished the actual fees and expenses of steps such as waste characterization from the consulting costs of having personnel perform those tasks. *Id*. at 21-23.

Mr. Albarracin emphasized that disposal of soil under proposed subsection (d) would not require approval of a plan or budget, would be reimbursed simply on submission of a request for payment, and would not generally result in the reissuance of an NFR letter. *Id.* at 20-21. He stressed that proposed subsection (d) intended to address a limited number of cases involving a limited amount of soil disposal and was not intended to re-open sites for additional corrective action that would justify consulting services. *See id*. at 23-24, 28; *see* PC 1 at 9.

On behalf of CW^3M, however, Ms. Rowe claimed that recent statutory amendments and reliance on industrial commercial cleanup objectives may result in leaving more contamination in soil. Tr.2 at 24, 27. She indicated that the activities addressed in subsection (d) may

necessitate consulting work that was not performed in the process of obtaining the site's NFR letter. *Id*. at 24, 27.

In its post-hearing comments, CW^{3}M argued that proper disposal of contaminated soil will require consulting or personnel costs associated with tasks including sample collection and landfill authorization. PC 2 at 9. CW^{3}M acknowledges that the activities addressed in subsection (d) by their nature involve consulting work. *See id*. at 10. However, CW^{3}M suggests that characterizing and disposing of contaminated soil require very different expertise than installation of water lines. *Id*. CW^{3}M argues that, if the Agency agrees to reimburse fees associated with various soil disposal tasks, it should also reimburse the consultants performing those tasks. *Id*. at 11. Consequently, CW^{3}M proposed to amend subsection (d) by adding to the end of the Agency's amended proposal the following sentence: "[d]isposal site fees include, but are not limited to, personnel and materials to complete the following: disposal site waste characterization sampling, disposal site authorization and coordination, scheduling, field oversight, disposal site charges, reimbursement preparation and certification." *Id*. at 5. In its post-hearing comments, Chase states that it "supports CW^{3}M's proposal as submitted." PC 3 at 3.

In its post-hearing comments, the Agency noted CW^{3}M's request to provide "examples of costs eligible for reimbursement pursuant to proposed subsection (d). . . ." PC 4 at 6. The Agency responded by proposing to add to the end of its amended proposal the following sentence: "[c]osts eligible for payment under this subsection (d) are the costs to transport the soil to a properly permitted disposal site and disposal site fees, and may include, but are not limited to, costs for: disposal site waste characterization sampling; disposal site authorization, scheduling and coordination; field oversight; disposal fees; and preparation of applications for payment." *Id*. at 7-8.

Subsection (e). The Agency proposed to add a subsection (e) providing in its entirety that corrective action activities eligible for payment from the Fund after issuance of an NFR Letter include

> [*t*]*he disposal of water exceeding groundwater remediation objectives that is removed from an excavation on the site where the release occurred if a groundwater ordinance is used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of* the *Act* and subsection (c) of Section 734.360 of this Part, *or if an on-site groundwater use restriction is used as an on-site institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7* of the Act and subsection (d) of Section 734.360 of this Part, *and the owner or operator demonstrates that (i) the excavation is located within the measured or modeled extent of groundwater contamination resulting from the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the groundwater is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water*

> *or sewer line replacement*. [415 ILCS 5/57.19]. Prop. 734 at 29; *see* 415 ILCS 5/57.19(5) (2010); P.A. 96-908; SR at 6.

In comments filed after the first hearing, the Agency stated that "[r]evisions to the first paragraph of proposed Section 734.632 clarify that plans, budget, and reports are not needed for disposal costs incurred" pursuant to this subsection. PC 1 at 10. The Agency expressed the belief that "it will be more cost-effective to just have the owner or operator submit documentation of the costs they incur" in disposing of water under this subsection. *Id*.

Subsection (f). In testimony pre-filed on April 25, 2011, for the first hearing, Mr. Smith on behalf of CW^3M proposed a new subsection (f) providing in its entirety that costs eligible for reimbursement from the UST Fund after issuance of an NFR Letter include

> [c]onsulting fees for additional Site Investigation and Corrective Action including, but not limited to, field activities, plans, budgets, payment, and all time and materials necessary that are dedicated to the final product of the aforementioned activities. Consulting fees for the Corrective Action Completion Report, subsequent to the additional remediation activities required after the issuance of a No Further Remediation Letter shall be subject to the rates of Subpart H. Smith Test. at 9.

In support of this proposed language, Mr. Smith argued that,

> [i]f a site has been closed for an extended period of time and additional site investigation is necessary to determine the current extent of the soil plume, it should be made clear that consulting fees will be reimbursed to the owner/operator, as well as consulting fees for Corrective Action activities and the Corrective Action Completion Report, in accordance with the maximum payment amounts established by Subpart H. *Id*. at 10.

In comments filed after the first hearing, the Agency states that, based on CW^3M's comment, "the intent of its proposed subsection 734.632(f) is too broad." PC 1 at 9. The Agency argues that proposed subsection (d) does not require additional corrective action and "applies only in cases where remediation has been completed and the Agency has issued a No Further Remediation Letter." *Id*. The Agency claims that this "re-opener" provision "merely makes the cost of disposing of soil that is removed during subsequent construction activities eligible for payment from the UST Fund if off-site disposal is necessary. *Id*. The Agency emphasizes that, while subsection (a), (b), and (c) refer to "corrective action," subsection (d) and (e) refer specifically to "disposal." *Id*.

Consequently, the Agency states the belief "that CW^3M's proposed subsection (f) should not be added." PC 1 at 10. First, the Agency stresses that its amendment to the first paragraph of Section 734.632 clarifies "that plans, budget, and reports are not needed for disposal costs incurred pursuant to subsections 734.632(d) and (e)." *Id*. Second, the Agency argues that, by "singling out consulting fees from all other corrective action costs it calls into question the eligibility of other corrective action costs that are not specifically mentioned." *Id*. However, in

the event that the Board opts to include language of this nature, the Agency proposed alternative language providing that reimbursable costs include "[c]onsulting fees for corrective action conducted pursuant to subsection (a), (b), and (c) of this Section. Consulting fees shall be subject to Subpart H of this Part." *Id*. at 11. The Agency claims that this amendment clarifies "the re-openers for which consulting fees would be appropriate." *Id*. at 10.

In its post-hearing comments, CW^{3}M proposed to amend this subsection to provide that reimbursable costs include "[c]onsulting fees for corrective action conducted pursuant to subsections (a), (b), and (c) of this Section. Consulting fees associated with 734.632(d) are limited to disposal site fees activities. Consulting fees shall be subject to Subpart H of this Part." PC 2 at 5. CW^{3}M states that its proposed amendment attempts "to limit the scope of consulting fees for soil disposal to a narrower range." *Id*. at 6.

In its post-hearing comments, the Agency notes that its amendment to subsection (d) responds to CW^{3}M's request that examples of soil disposal costs eligible for reimbursement be added to the proposal. PC 4 at 6, 7. The Agency again proposed to amend subsection (f) to provide that costs eligible for reimbursement include "[c]onsulting fees for corrective action conducted pursuant to subsections (a), (b), and (c) of this Section. Consulting fees shall be subject to Subpart H of this Part." *Id*. at 8.

Board Discussion of Proposed Amendments to Subpart F

The Board has received and reviewed extensive testimony and comment on reimbursement of costs under proposed subsection (d) and (e). The Board first agrees with CW^{3}M and the Agency that proposed subsection (d) should be revised to refer to "Tier 1" residential property objectives. However, the Board concurs with the Agency that adding a reference to "the groundwater pathway" is not necessary and would not clarify that provision.

The Board notes that the Agency has sought to identify disposal site fees eligible for reimbursement. CW^{3}M has persuasively argued that reimbursement of costs such as waste characterization may reduce disposal costs. The Board therefore concurs in the amendment to subsection (d) proposed by the Agency in its post-hearing comments. However, the Agency has persuasively distinguished re-opening sites for "corrective action" under subsection (a), (b), and (c) and for "disposal" of soil and groundwater under subsections (d) and (e). The Agency has emphasized that the Act itself makes this distinction. The Agency also stresses that disposal under subsection (d) and (e) will not require plans, budgets, or reports. Furthermore, participants have generally agreed that the construction activities under subsections (d) and (e) occur for business purposes such as pipe replacement and not for the performance of additional corrective action. Accordingly, the Board concurs in the amendments to Section 734.632 offered by the Agency, including the language it has proposed for a subsection (f).

Having reviewed the record, the Board concurs in the Agency's proposed amendments to Subpart F, which the Agency has modified as described above. In its order below, the Board submits the amendments to first-notice publication in the *Illinois Register*.

Subpart H: Maximum Payment Amounts

Section 734.810: UST Removal or Abandonment Costs.

Existing Section 734.810 provides that

> [p]ayment for costs associated with UST removal or abandonment of each UST must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the excavation, removal, disposal, and abandonment of UST systems.

UST Volume	Maximum Total Amount per UST
110 – 999 gallons	$2,100
1,000 – 14,999 gallons	$3,150
15,000 or more gallons	$4,100

35 Ill. Adm. Code 734.850. The Agency proposed "to remove UST abandonment costs from the maximum payment amounts provided under that Section. This results in UST abandonment costs being subject to Section 734.850." SR at 6; *see* 35 Ill. Adm. Code 734.850 (Payment on Time & Materials Basis). Section 734.850 "sets forth the maximum amounts that may be paid when payment is allowed on a time and materials basis." 35 Ill. Adm. Code 734.850.

In testimony pre-filed on behalf of CW^{3}M on April 25, 2011, for the first hearing, Mr. Smith argued that Public Act 96-908 provides no basis to remove owners' and operators' option to abandon tanks. Smith Test. at 10. He claims that abandonment "as approved by the OSFM is typically for sites with restrictions preventing UST removals and requires rendering them clean and posing no continuing threats." *Id*. He suggests that, because Public Act 96-908 will leave more contamination in place and will require reliance on measures such as engineered barriers, the Agency's proposal intends to place the burden of more costs on owners and operators. *Id*.

During the first hearing, Mr. Albarracin addressed this proposed amendment. He stated that, although it may appear that the proposal eliminates the option of tank abandonment, "it's in proposed rules that we are allowing that on a time and material basis." Tr.1 at 22; *see id.* at 61. He indicated that the Agency had determined that the maximum payment amounts in Section 734.810 "are not sufficient to cover those costs" of tank abandonment. *Id*. at 22-23, 27. Mr. Albarracin elaborated that owners and operators had submitted bids for tank abandonment "showing that our rates were not high enough." Tr.1 at 46. He cited the price of flowable fill material as one reason that the existing maximum payment rates were insufficient to cover the cost of abandonment. *Id*. at 28. He stated that, instead of establishing a maximum payment amount, the Agency concluded to reimburse those expenses on a time and materials basis. *Id*. at 22-23. Mr. Albarracin stated that requests for reimbursement of abandonment costs would be examined by the Agency on a case-by-case basis in light of invoices and time sheets typical of previous reimbursements. *Id*. at 27-28.

In testimony filed on behalf of CW^{3}M on June 1, 2011, for the second hearing, Mr. Smith acknowledged Mr. Albarracin's statement that the Agency proposed to reimburse abandonment

costs on a time and materials basis. Smith Test. 2 at 4. Although he indicated that this change is "appreciated," he requested that the Agency clarify the terms of repayment. *Id*.

During the second hearing, Mr. Russ Goodiel of Chase also expressed appreciation for the Agency's proposal to reimburse abandonment costs on a time and materials basis. Tr.1 at 51. He also asked whether costs associated with soil borings performed during abandonment would be reimbursable without a plan and budget. *Id*. at 51-52. Mr. Albarracin responded that, as long as a release was duly reported, those costs would be reimbursable provided that the owner or operator follows regulations for sampling when the tank is not removed. *Id*. at 52, citing 734.210(h).

In post-hearing comments, CW^3M stated that it had "no objection to moving tank abandonment costs to a time and materials basis, contingent upon the IEPA's ensured approval of these time and materials reimbursement costs." PC 2 at 11. CW^3M "proposed a Board Note that would clarify this rule." *Id*. The proposed Board Note provides in its entirety that "[p]ayment for the Costs associated with the abandonment of each UST must be paid on a time and materials basis." *Id*. at 6.

In its post-hearing comments, Chase stated that it "is in favor of changing the UST abandonment reimbursement to a time & materials basis." PC 3 at 4. Chase indicates that, because the current maximum rates are not sufficient, this amendment would "benefit the owners/operators which have had consultants turn down jobs." *Id*. However, Chase requests clarification "that the costs associated with completion of the OSFM required site assessment associated with UST abandonment would be reimbursed at the applicable subpart H rates." *Id*. Chase acknowledges that "[t]hese costs would need to be completed in accordance with [Part] 734 subsection (h)(2)(A) through (D)." *Id*.

Section 734.855: Bidding.

Existing Section 734.855 allows the determination of maximum payment amounts through bidding as an alternative to the maximum amounts established in Subpart H of the rules. 35 Ill. Adm. Code 734.855. The introductory paragraph of this section also states that "[e]ach bid must cover all costs included in the maximum payment amount that the bid is replacing." *Id*.

The Agency proposed to amend this section "to make bidding provisions consistent with the bidding requirements in new subsections 57.7(c)(3)(B) and (C) of the Act." SR at 6; *see* 415 ILCS 5/57(c)(3)(B), (C) (2010); P.A. 96-908. Specifically, the Agency proposed to add to the introductory paragraph the following language: "Bidding is optional. Bidding is allowed *only if the owner or operator demonstrates that corrective action cannot be performed for amounts less than or equal to maximum payment* set forth in this Part. [415 ILCS 5/57/7(c)(3)(C)]." Prop. 734 at 29; *see* 415 ILCS 5/57.7(c)(3)(C) (2010); P.A. 96-908; SR at 6.

In responding to questions during the first hearing, Mr. Albarracin indicated that, since Public Act 96-908 became effective on June 8, 2010, no owner or operator has successfully gone through the bidding process. Tr.1 at 22; *see* Smith Test. at 14. He added that, although the Agency had received "a couple" of incomplete or inadequate bids, no owner or operator had to

his knowledge gone through the entire new bidding process. Tr.1 at 22, 42-43. He also indicated that the Agency began after 2006 revisions to the Board's UST rules to see dramatically fewer bids. *Id*. at 44-45. He surmised that the inflation-adjusted maximum payment amounts adopted in those revisions may have obviated much of the bidding that had previously taken place. *Id*. at 45.

Responding to Mr. Albarracin, Mr. Russ Goodiel asked why the Agency considered it "necessary to tighten those bidding regulations even tighter and make it more cumbersome and more confusing . . . if they were working prior to this change?" Tr.1 at 46-47. Mr. Albarracin stated that the Agency experienced some abuse of the bidding process and concluded to tighten the requirements through legislation and regulations. *Id*. at 47, 54-57. Mr. Albarracin indicated that the Agency's proposed bidding requirements are either required by the Act or based upon current procurement rules of the Department of Central Management Services. *Id*. at 52-54. However, he acknowledged that the Agency had not performed a cost/benefit analysis of the proposed requirements in Section 734.855. *Id*. at 63-64.

Mr. Goodiel suggested that these tighter requirements and various associated expenses would deter consultants from accepting work requiring bids. Tr.1. at 47. He cited the following as costs that consultants may have to bear: drafting bid specifications, advertising for bids, travel to the site of the bid opening, determining whether bidders are qualified, and reviewing bids. *Id*. at 47-48, 64. Mr. Albarracin stated that "[a]ll costs associated with the bidding are eligible for reimbursement" on a time and materials basis. *Id*. at 48, 59. He indicated that this eligibility is reflected in the statute and regulations. *Id*.

During the first hearing, Mr. Smith expressed the fear that, if the bidding process resulted in a lowest responsible bid less than the Subpart H amounts, then "you've basically given away your time and effort to the whole bidding process because now, you're back under Subpart H." Tr.1 at 87. He also expressed the fear that, if a consultant disqualified a bidder, the Agency may not concur with that decision. *Id*. at 88-89. He suggested that uncertainties generated by the Agency's bidding proposal may cause CW^{3}M to avoid work that involved bidding. *See id.*at 88. During the second hearing, the Board asked whether the Agency would reimburse costs of bidding when the lowest responsible bid falls below the Subpart H maximum payment amounts. Tr.2 at 48. Mr. Albarracin responded that the Agency would reimburse those costs, although the owner or operator would be required to accept that bid. *Id*. He added that, "[i]f they don't use the winning bid, then we would not reimburse the bidding costs, if they want to go with the Subpart H, maximum payment amounts." *Id*.

In testimony pre-filed April 25, 2011 on behalf of CW^{3}M, Mr. Smith requested that the Agency clarify how an owner or operator would demonstrate that corrective action cannot be performed for amounts less than or equal to maximum payments in Subpart H. Smith Test. at 14. He argued that the proposal provided too much discretion to the Agency to reject bids and that consultants would be wasting time, effort, and money in preparing bids. *Id*. He claimed that "the language must be altered, or consultants will simply ignore the bidding process and the project will sit as no consultant or contractor would complete a project at a loss." *Id*.

During the first hearing, Ms. Rowe asked how an owner or operator would provide the required demonstration that corrective action could not be performed for amounts less than or equal to the Subpart H maximum payment amounts. Tr.1 at 49. Mr. Albarracin stated that "[y]ou would show that you went through the bidding process and the lowest bid is higher than the Subpart H amounts and that will indicate there was a need for the bidding." *Id.* at 50. He elaborated that the owner or operator would seek contractors' estimates, which would reveal that work could not be performed at Subpart H rates. *Id*. at 50, 52. The owner or operator would then submit a plan and budget including documentation of the bidding, which "will show that whatever the job was could not be done for the Subpart H rate. . . ." *Id*. at 49. He stated that this demonstration is "the same as it was before we made this change." *Id*. at 50, 52. He further stated that the rules have not included any pre-approval for bidding. *Id*. at 52.

Also during the first hearing, the Agency responded to questions about the possibility of extending the early action period in order to accommodate the bidding process. Mr. Albarracin indicted that most early action does not require either bidding or additional time. Tr.1 at 62. However, he acknowledged that the Agency does have authority to grant an extension of the early action period. *Id.* at 62-63.

During the first hearing, Mr. Goodiel asked whether the Agency's bidding language provided for change orders. Tr.1 at 92. In amended testimony pre-filed on June 1, 2011 for the second hearing, Mr. Smith claimed that the Agency's proposal provides "no opportunity for change orders." Smith Test. 2 at 9. He indicated that a period of several months or longer may pass between opening bids and beginning work. *Id*. He stated that, during that time, the quantity of work and costs such as fuel may change significantly. *Id*. He claimed that, "if the winning bidder walks away during the wait," then "the project would have to be re-bid, leading to further costs and delays." *Id*. He further argued that there is no way in the Agency's proposal for a consultant to recover the costs of re-bidding. *Id*.

During the second hearing, Mr. Albarracin stated that the Agency's existing procedure to amend plans and budgets can address a change order once bidding establishes a maximum payment amount. Tr.2 at 32, 33-34. He elaborated that,

> if the original plan had 400 cubic yards needed to be excavated and something unforeseen happens and they need to excavate another 200 yards, we would need to see a plan amendment and a budget and if the maximum payment amount for this work was approved at a higher rate via bidding, we will still honor the same rate for the amendment. We wouldn't have to go through the bidding process again. *Id*. at 32-33; *see id*. at 34.

He clarified that the Agency would honor those rates "for that particular additional work assuming that those rates are still good in the marketplace." *Id*. at 33. If, after the passage of time, however, a consultant could not find a contractor to perform work at the maximum rate previously established through bidding, then the Agency would expect it to be re-bid. *Id*. He added that these had been the Agency's practices in the past. *Id*.

In its post-hearing comments, the Agency noted that it had committed to propose language clarifying that, "if a change order is necessary an amended plan and budget would be required, but a rate that was determined through bidding would continue to be honored in the amended budget." PC 4 at 8. The Agency proposed to amend this introductory paragraph by adding at the end of it the following sentence: "[o]nce a maximum payment amount is determined via bidding in accordance with this Section, the Agency may approve the maximum payment amount in amended budgets and other subsequent budgets submitted for the same incident." *Id*. at 9.

In its post-hearing comments, CW^3M re-stated its belief "that the bidding process, as proposed, will not work. A new system must be proposed and set in place to encourage bidding, and provide a way for consultants to move through the process seamlessly and without worry of wasting valuable time and resources." PC 2 at 11-12. CW^3M argues that, while bidding was added in order to provide owners and operators a means of justifying costs that exceed Subpart H maximums, "[t]his change effectively takes that option away." *Id*. at 12. In its post-hearing comments, Chase concurs that the proposed bidding regulations are "far too cumbersome to use successfully." PC 3 at 4. Chase indicates that it wishes to develop regulations that are simpler for consultants to use and allow "the Agency a quick and easy review." *Id*.

Subsection (a). Existing subsection (a) consists of a single paragraph addressing submission of bids. 35 Ill. Adm. Code 734.855(a). The Agency proposed to strike the entire subsection and replace it with new provisions. The Agency first proposed introductory language providing that "[b]idding must be *publicly-noticed, competitive, and sealed bidding that includes, at a minimum*," elements listed in seven subsections. Prop. 734 at 30; *see* P.A. 96-908; SR at 6. As the first of those elements, the Agency in subsection (a)(1) proposed statutory language providing that

> [*t*]*he owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable.* Prop. 734 at 30; *see* 415 ILCS 5/57.7(c)(3)(B)(i) (2010); P.A. 96-908; SR at 6.

Also in subsection (a)(1), the Agency proposed language "modeled after Department of Central Management Services rules for competitive sealed bidding." SR at 6; *see* 44 Ill. Adm. Code 1.2010. Specifically, the Agency sought to establish that

> [t]he invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. The time during which bids may be submitted must begin on the date the invitation for bids is issued and must end at the time

> and date for opening of the bids. In no case shall the time for bid submission be less than 14 days. Prop. 734 at 30; *see* 44 Ill. Adm. Code 1.2010(b), (c); SR at 6.

In subsection (a)(1), the Agency also proposed language providing that "[e]ach bid must be stamped with the date and time of receipt, and stored unopened in a secure place until the time and date set for opening the bids. Bids must not be accepted from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest." Prop. 734 at 30; *see* 35 Ill. Adm. Code 734.855(a); 44 Ill. Adm. Code 1.2020(i)(1); SR at 6.

During the first hearing, Mr. Goodiel noted that CMS requires prospective bidders to undergo a process of certification or pre-qualification. Tr.1 at 91-92. He voiced concern that, in the absence of such a process, there may be uncertainty in seeking bids from unfamiliar contractors. *Id*. at 92-93. He cited as examples the potential contractor's work and performance history, their licensing, and the dependability of their equipment. *Id*. at 93. In addition, Mr. Goodiel suggested that, even if a consultant supports a conclusion that a bidder is not qualified, the Agency may disagree. *Id*. at 94. In response, Mr. Albarracin noted that the proposed subsection (d) names a number of factors to be considered in determining whether a bidder is responsible. *Id*. at 94; *see* Prop. 734 at 33; *see also* Tr.2 at 30. Responding to a question, Mr. Albarracin indicated that these factors are to be applied by owners and operators and by their consultants in reviewing bids. Tr.1 at 95-96.

During the second hearing, Mr. Albarracin indicated that the Agency was prepared to offer additional language regarding invitations for bids and addressing issues such as warranties, bonding, and other security requirements as well as qualifications. Tr.2 at 35. Responding to a question, Mr. Albarracin agreed that the Agency's proposal allowed the request for bids "to include requirements for bonding or requirements for qualifications of the people they're seeking that it's from." *Id*. at 35-36. Mr. Goodiel indicated that, although he preferred some process of prequalification, it would generate additional expenses such as bonding and background checks. *Id*. at 38, 42-43. In its post-hearing comments, the Agency proposed to add to subsection (a)(1) the following sentence:

> [i]nvitations for bids may include, but shall not be limited to, (i) contract terms and conditions, including but not limited to warranty and bonding or other security requirements, and (ii) qualification requirements, which may include, but shall not be limited to, factors to be considered in determining whether a bidder is responsible pursuant to subsection (d) of this Section. PC 4 at 9; *see* Tr.2 at 42

During the second hearing, Mr. Albarracin stressed that the Agency itself "is not going to get involved in prequalifying consultants or contractors. We have never done that and we don't envision doing that." Tr.2 at 39.

In subsection (a)(2), the Agency first proposed statutory language providing that, "[*a*]*t least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published* by the owner or operator *in a local paper of general circulation for the area in which the site is located*." Prop. 734 at 30; *see* 415 ILCS 5/57.7(c)(3)(B)(ii) (2010); P.A. 96-908; SR at 6. The Agency also proposed in subsection (a)(2)

the following non-statutory language: "[t]he owner or operator must also provide a copy of the public notice to the Agency. The notice must be received by the Agency at least 14 days prior to the date set in the invitation for the opening of bids." Prop. 734 at 30.

In subsection (a)(3), the Agency first proposed statutory language providing that

> [*b*]*ids must be opened publicly* by the owner or operator *in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information must be recorded and submitted to the Agency in the applicable budget* in accordance with subsection (b) of this Section. *After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection*. Prop. 734 at 30; *see* 415 ILCS 5/57.7(c)(3)(B)(iii) (2010); P.A. 96-908; SR at 6.

The Agency also proposed in subsection (a)(3) the following non-statutory language: "[t]he person opening the bids may not serve as a witness. The names of the person opening the bids and the names of all witnesses must be recorded and submitted to the Agency on the bid summary form required under subsection (b) of this Section." Prop. 734 at 30; *see* 44 Ill. Adm. Code 1.2010(i)(2)(A) (Opening and Recording).

In subsection (a)(4), the Agency proposed the following statutory language:

> [*b*]*ids must be unconditionally accepted* by the owner or operator *without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measureable. The invitation for bids shall set forth the evaluation criteria to be used*. Prop. 734 at 31; *see* 415 ILCS 5/57.7(c)(3)(B)(iv) (2010); P.A. 96-908; SR at 6.

In subsection (a)(5), the Agency proposed the following statutory language:

> [*c*]*orrection or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with* subsection (c) of this Section. *After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator*. Prop. 734 at 31; *see* 415 ILCS 5/57.7(c)(3)(B)(v) (2010); P.A. 96-908; SR at 6.

The Agency proposed the following statutory language in subsection (a)(6):

> [*t*]*he owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information must be recorded and submitted to the Agency in the applicable budget* in accordance with subsection (b) of this Section. Prop. 734 at 31; *see* 415 ILCS 5/57.7(c)(3)(B)(vi) (2010); P.A. 96-908; SR at 6.

Finally, in subsection (a)(7), the Agency proposed the following statutory language:

> [*a*]*ll bidding documentation must be maintained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency for inspection and copying during normal business hours.* Prop. 734 at 31; *see* 415 ILCS 5/57.7(c)(3)(B)(vii) (2010); P.A. 96-908; SR at 6.

Subsection (b). Existing subsection (b) requires that the bids be summarized on Agency forms and that the summary form "must be submitted to the Agency in the associated budget." 35 Ill. Adm. Code 734.855(b). The Agency first proposed to clarify that that "all" bids must be summarized on Agency forms. Prop. 734 at 31. The Agency further proposes to require that, in addition to the bid summary forms, "copies of the invitation for bids, the public notice required under subsection (a)(2) of this Section, proof of publication of the notice, and each bid received must be submitted to the Agency in the associated budget." *Id*. at 31-32. The Agency also proposed to strike language providing that, "[i]f more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency." *Id*. at 32.

Subsection (c). Existing subsection (c) addresses the maximum payment amount for work subject to bidding. 35 Ill. Adm. Code 734.855(c). The Agency proposed to strike the entire existing subsection and replace it with new provisions. *See* Prop. 734 at 32-33. The Agency first proposed introductory language providing that

> [c]orrections to bids are allowed only to the extent the corrections are not contrary to the best interest of the owner or operator and the fair treatment of other bidders. If a bid is corrected, copies of both the original bid and the revised bid must be submitted in accordance with subsection (b) of this Section along with an explanation of the corrections made. *Id*. at 32; *see* 44 Ill. Adm. Code 1.2038(a) (Mistakes); SR at 6.

The Agency proposed to add a subsection (c)(1) with the heading "Mistakes discovered before opening." Prop. 734 at 32. The proposed subsection provided that "[a] bidder may correct mistakes discovered before the time and date set for opening of bids by withdrawing his or her bid and submitting a revised bid prior to the time and date set for opening of bids." *Id*.; *see* 44 Ill. Adm. Code 1.2038(b) (Mistakes Discovered Before Opening); SR at 6.

The Agency proposed to add subsection (c)(2) consisting of the heading "Mistakes discovered after opening of a bid but before award of the winning bid." Prop. 734 at 32; *see* 44 Ill. Adm. Code 1.2038(d). The Agency proposed to add subsection (c)(2)(A) providing in its entirety that, "[i]f the owner or operator knows or has reason to conclude that a mistake has been made, the owner or operator must request the bidder to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted." Prop. 734 at 32; *see* 44 Ill. Adm. Code 1.2038(c) (Confirmation of Mistake); SR at 6.

The Agency proposed to add subsection (c)(2)(B) providing in its entirety that, "[i]f the mistake and the intended correct information are clearly evident on the face of the bid, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid are typographical errors, errors extending unit prices, transportation errors, and mathematical errors." Prop. 734 at 32; *see* 44 Ill. Adm. Code 1.2038(d)(2); SR at 6. During the first hearing, the hearing officer noted that proposed Section 734.855(c)(2)(B) addressing the correction of clearly evident mistakes refers to "transportation errors" while corresponding CMS rules refer to "transposition errors." Tr.1 at 74. In post-hearing comments filed on June 2, 2011, the Agency confirmed that this subsection should include the term "transposition errors." PC 1 at 2

The Agency also proposed to add a subsection (c)(2)(C) providing in its entirety that

> [i]f the mistake and the intended correct information are not clearly evident on the face of the bid, the low bid may be withdrawn if:
>
> i) a mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident; or
>
> ii) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made. Prop. 734 at 32; *see* 44 Ill. Adm. Code 1.2038(d)(3); SR at 6.

The Agency also proposed to add a subsection (c)(3) providing in its entirety that "[m]istakes shall not be corrected after selection of the winning bid unless the Agency determines that it would be unconscionable not to allow the mistake to be corrected (*e.g.*, the mistake would result in a windfall to the owner or operator." Prop. 734 at 32; *see* 44 Ill. Adm. Code 1.2038(f); SR at 6.

The Agency also proposed to add a subsection (c)(4) with the heading "Minor informalities." Prop. 734 at 33. The proposed subsection provided in its entirety that

> [a] minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the invitation for bid, the correction or waiver of which would not be prejudicial to the owner or operator (*i.e.*, the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The owner or operator must

waive such informalities or allow correction depending on which is in the owner's or operator's best interest. Prop. 734 at 33; *see* 44 Ill. Adm. Code 1.2038(d)(1) (Minor informalities); SR at 6.

Subsection (d). In a new subsection (d), the Agency first proposed introductory language providing that, "[f]or purposes of this Section, factors to be considered in determining whether a bidder is responsible include, but are not limited to, the following:." Prop. 734 at 33 (listing four factors); *see* 44 Ill. Adm. Code 1.2046 (Responsibility); SR at 6. In subsection (d)(1), the Agency proposed as the first factor whether "[t]he bidder has available the appropriate financial, material, equipment, facility, and personnel (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements." Prop. 734 at 33; *see* 44 Ill. Adm. Code 1.2046(b)(1)(A); SR at 6.

In proposed subsection (d)(2), the Agency proposed as the second factor whether "[t]he bidder is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments." Prop. 734 at 33; *see* 44 Ill. Adm. Code 1.2046(b)(1)(B); SR at 6. In proposed subsection (d)(3), the Agency proposed as the third factor whether "[t]he bidder has a satisfactory record of performance. Bidders who are or have been deficient in current or recent contract performance in dealing with the owner or operator or other clients may be deemed 'not responsible' unless the deficiency is shown to have been beyond the reasonable control of the bidder." Prop. 734 at 33; *see* 44 Ill. Adm. Code 1.2046(b)(1)(C); SR at 6. Finally, in proposed subsection (d)(4), the Agency proposed as the fourth factor whether "[t]he bidder has a satisfactory record of integrity and business ethics. Bidders who are under investigation or indictment for criminal or civil action that bear on the subject of the bid, or that create a reasonable inference or appearance of a lack of integrity on the part of the bidder, may be declared not responsible for the particular subject of the bid." Prop. 734 at 33; *see* 44 Ill. Adm. Code 1.2046(b)(1)(D); SR at 6.

Mr. Smith attached to testimony filed on June 1, 2011, for the second hearing a document estimating costs to complete the bidding process proposed by the Agency. Smith. Test. 2, Appendix B. Mr. Smith based his estimate on an incident involving excavation and backfill. *Id.* at 8. He stated that, with such an incident, any contractor with access to appropriate equipment "could attempt to bid, and therefore issues that appear obvious to someone experienced in this field would need to be addressed during the bidding process." *Id.* He added that he chose such an incident "over something like drilling, where virtually all of the potential bidders would have experience or at least a working knowledge of environmental drilling work." *Id.* Mr. Smith's estimate listed the specific bidding procedures required by the proposed Section 734.855, the title of the personnel performing them, the rate at which they would be billed, the amount of time allocated to the various procedures, and costs including publication, copying, and postage. *Id.*, Appendix B. He estimated total costs of $8,853.27. *Id.* If these costs stem from an excavation of 500 cubic yards, he argues that the bidding costs alone would be $18.00 per cubic yard. Smith Test. 2 at 8. Noting that the current Subpart H rate is $64.67 per cubic yard and that a low bid might potentially be $70.00 per cubic yard, he suggests that these bidding costs are disproportionate to demonstrating that the total costs are reasonable. *Id.*

Mr. Smith further suggests that these bidding costs may make it more likely for the Agency to reject the entire bidding process, as the application of Subpart H rates would significantly reduce reimbursements. Smith Test. 2 at 8. He indicated that "CW^{3}M does not plan on gambling ours and our client's money on this process." *Id*. However, Mr. Smith acknowledged that "[t]he bidding process proposed in these regulations mirrors the statutory language in the Environmental Protection Act. Any significant changes to the bidding procedure would require a statutory change." *Id*. at 9.

Section 734.860: Unusual or Extraordinary Circumstances.

Existing Section 734.860 addresses the determination of payments in the event that unusual or extraordinary circumstances cause an owner or operator to incur eligible costs that exceed maximum payment amounts. 35 Ill. Adm. Code 734.860. The Agency proposed to strike the final sentence of the section, which provides that "[e]xamples of unusual or extraordinary circumstances include, but are not limited to, an inability to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited number of persons providing the service needed." *Id*. The Agency stated that, because it had proposed to strike the requirement to obtain a minimum of three bids from Section 734.855(a), it sought to delete this language based upon it from the section. SR at 6-7; *see* Prop. 734 at 31, 34.

Board Discussion of Proposed Amendments to Subpart H

The Board first notes that participants agree with the Agency's proposal to provide reimbursement of tank abandonment costs on a time and materials basis. The Board also notes the Agency's clarification that abandonment costs such as soil boring would be reimbursable if owners and operators follow existing regulatory requirements. Because existing Section 734.850 addresses payment on a time and materials basis, the Board concludes that a Board Note as proposed by CW^{3}M is not necessary and declines to add it.

Although the Board has received extensive testimony and comment on the bidding provisions proposed in Section 734.855, the Board generally concurs with Mr. Smith's testimony that the Agency's proposed language reflects the requirements of the Act. Section 57.7(c)(3)(B) establishes minimum requirements the Board must include in any "publicly-noticed, competitive, and sealed bidding process" it adopts. Although the Board recognizes various misgivings about this process expressed by participants, the Board notes that the Agency's testimony and comments have provided meaningful clarification of issues including reimbursement of bidding costs, invitations for bids and qualification requirements, and change orders. The Board concludes that the Agency's proposal, amended as described above, implements the statutory requirements enacted in Public Act 96-908.

Having reviewed the record, the Board concurs in the Agency's proposed amendments to Subpart H, which the Agency has modified as described above. In its order below, the Board submits the amendments to first-notice publication in the *Illinois Register*.

CONCLUSION

As described above in this opinion, the Board proposes to amend its UST regulations in Parts 731, 732, and 734. In its order below, the Board directs the Clerk to cause first-notice publication of the Board's proposal in the *Illinois Register*, which commences a 45-day public comment period under the Illinois Administrative Procedure Act.

ORDER

The Board directs the Clerk to cause first-notice publication of the following proposed amendments to the Board's UST regulations in the *Illinois Register*. Proposed additions are underlined, and proposed deletions appear stricken.

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

PART 731
UNDERGROUND STORAGE TANKS

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

Section
731.101 Definitions and exemptions (Repealed)
731.102 Interim prohibitions (Repealed)
731.103 Notification Requirements (Repealed)
731.110 Applicability
731.111 Interim Prohibition for Deferred Systems (Repealed)
731.112 Definitions
731.113 Incorporations by Reference
731.114 Implementing Agency (Repealed)

SUBPART B: UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION

Section
731.120 Performance Standards for New Systems (Repealed)
731.121 Upgrading of Existing Systems (Repealed)
731.122 Notification Requirements

SUBPART C: GENERAL OPERATING REQUIREMENTS

Section
731.130 Spill and Overfill Control (Repealed)
731.131 Operation and Maintenance of Corrosion Protection
731.132 Compatibility (Repealed)

731.133 Repairs Allowed (Repealed)
731.134 Reporting and Recordkeeping (Repealed)

SUBPART D: RELEASE DETECTION

Section
731.140 General Requirements for all Systems (Repealed)
731.141 Petroleum Systems (Repealed)
731.142 Hazardous Substance Systems (Repealed)
731.143 Tanks (Repealed)
731.144 Piping (Repealed)
731.145 Recordkeeping (Repealed)

SUBPART E: RELEASE REPORTING, INVESTIGATION AND CONFIRMATION

Section
731.150 Reporting of Suspected Releases (Repealed)
731.151 Investigation due to Off-site Impacts (Repealed)
731.152 Release Investigation and Confirmation (Repealed)
731.153 Reporting and Cleanup of Spills and Overfills (Repealed)

SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

Section
731.160 General
731.161 Initial Response
731.162 Initial Abatement Measures and Site Check
731.163 Initial Site Characterization
731.164 Free Product Removal
731.165 Investigations for Soil and Groundwater Cleanup
731.166 Corrective Action Plan
731.167 Public Participation

SUBPART G: OUT-OF-SERVICE SYSTEMS AND CLOSURE

Section
731.170 Temporary Closure (Repealed)
731.171 Permanent Closure and Changes-in-Service (Repealed)
731.172 Assessing Site at Closure or Change-in-Service (Repealed)
731.173 Previously Closed Systems (Repealed)
731.174 Closure Records (Repealed)

SUBPART H: FINANCIAL RESPONSIBILITY

Section
731.190 Applicability (Repealed)
731.191 Compliance Dates (Repealed)
731.192 Definitions (Repealed)
731.193 Amount and Scope of Required Financial Responsibility (Repealed)
731.194 Allowable Mechanisms and Combinations (Repealed)
731.195 Financial Test of Self-insurance (Repealed)

731.196 Guarantee (Repealed)
731.197 Insurance or Risk Retention Group Coverage (Repealed)
731.198 Surety Bond (Repealed)
731.199 Letter of Credit (Repealed)
731.200 UST State Fund (Repealed)
731.202 Trust Fund (Repealed)
731.203 Standby Trust Fund (Repealed)
731.204 Substitution of Mechanisms (Repealed)
731.205 Cancellation or Nonrenewal by Provider (Repealed)
731.206 Reporting (Repealed)
731.207 Recordkeeping (Repealed)
731.208 Drawing on Financial Assurance (Repealed)
731.209 Release from Financial Assurance Requirement (Repealed)
731.210 Bankruptcy or other Incapacity (Repealed)
731.211 Replenishment (Repealed)
731.900 Incorporation by reference (Repealed)
731.901 Compliance Date (Repealed)

Appendix A Notification Form
Appendix C Statement for Shipping Tickets and Invoices

AUTHORITY: Implementing and authorized by ~~Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1022.4, 1022.13 and 1027 (~~Sections 22.4(d)~~, 22.13(d)~~ and 27 of the Environmental Protection Act [415 ILCS 5/22.4(d) and 27]~~, as amended by P.A. 87-323)~~.

SOURCE: Adopted in R86-1 at 10 Ill. Reg. 14175, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6220, effective March 24, 1987; amended in R88-27 at 13 Ill. Reg. 9519, effective June 12, 1989; amended in R89-4 at 13 Ill. Reg. 15010, effective September 12, 1989; amended in R89-10 at 14 Ill. Reg. 5797, effective April 10, 1990; amended in R89-19 at 14 Ill. Reg. 9454, effective June 4, 1990; amended in R90-3 at 14 Ill. Reg. 11964, effective July 10, 1990; amended in R90-12 at 15 Ill. Reg. 6527, effective April 22, 1991; amended in R91-2 at 15 Ill. Reg. 13800, effective September 10, 1991; amended in R91-14 at 16 Ill. Reg. 7407, effective April 24, 1992; amended in R11-22 at 35 Ill. Reg. _____, effective _____.

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

Section 731.110 Applicability

a) This Part applies to owners and operators of an Underground Storage Tank (UST) system as defined in Section 731.112, except as otherwise provided in subsections (b) through (d) of this Section~~or (c)~~.

b) The following UST systems are excluded from the requirements of this Part:

1) Any UST system holding hazardous waste or a mixture of such hazardous waste and other regulated substances.

2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 12(f) of the Environmental Protection Act ~~(Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1012(f))~~.

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

4) Any UST system whose capacity is 110 gallons or less.

5) Any UST system that contains a de minimis concentration of regulated substances.

6) Any emergency spill or overflow containment UST system that is expeditiously emptied after used.

c) Deferrals. Section 731.122 does not apply to any of the following types of UST systems:

1) Wastewater treatment tank systems;

2) Any UST systems containing radioactive materials that are regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A, incorporated by reference in Section 731.113;

4) Airport hydrant fuel distribution systems; and

5) UST systems with field-constructed tanks.

d) Owners and operators subject to Title XVI of the Act are required to respond to releases in accordance with 35 Ill. Adm. Code Part 734 instead of Subpart F of this Part.

e) Heating oil USTs.

1) Definitions. The following definitions apply to this subsection only:

"Beneath the surface of the ground" is as defined in Section 731.112.

"Consumptive use" with respect to heating oil means consumed on the premises.

“HEATING OIL,” MEANS PETROLEUM THAT IS NO. 1, NO. 2, NO. 4 LIGHT, NO. 4 HEAVY, NO. 5 LIGHT, NO. 5 HEAVY, OR NO. 6 TECHNICAL GRADES OF FUEL OIL; OTHER RESIDUAL FUEL OILS INCLUDING NAVY SPECIAL FUEL OIL AND BUNKER C. (Section 22.18(e)(1)(H) of the Act)

"HEATING OIL UNDERGROUND STORAGE TANK" OR "HEATING OIL UST" MEANS AN UNDERGROUND STORAGE TANK SERVING OTHER THAN FARMS OR RESIDENTIAL UNITS THAT IS USED EXCLUSIVELY TO STORE HEATING OIL FOR CONSUMPTIVE USE ON THE PREMISES WHERE STORED. (Section 22.18(e)(1)(I) of the Act)

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Pipe" or "piping" is as defined in Section 731.112.

"Regulated substance" is as defined in Section 731.112.

"Tank" is as defined in Section 731.112.

"Underground storage tank" ("UST") is means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten per centum or more beneath the surface of the ground.

2) Subsection (a) through (c) notwithstanding, THIS PART APPLIES TO OWNERS AND OPERATORS OF ANY HEATING OIL UST. (Section 22.4(d)(5) of the Act)

3) The owner or operator of a heating oil UST shall comply with the same requirements as the owner or operator of a “petroleum UST”, as defined in Section 731.112, any other provisions of this Part notwithstanding.

BOARD NOTE: This subsection implements Section 22.4(d)(4)~~(5)~~ of the Act, which requires that this Part be applicable to “heating oil USTs”, as that term is defined in Section 22.18(e) of the Act. However, that and related terms are used in a manner which is inconsistent with the definitions and usage in this Part. The definitions used in this applicability statement are therefore limited to this subsection.

BOARD NOTE: Owners and operators of heating oil USTs are subject to Title XVI of the Act and therefore required to respond to releases in accordance with 35 Ill. Adm. Code Part 734 instead of Subpart F of this Part.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

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

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

SUBPART A: GENERAL (Repealed)

Section
732.100 Applicability (Repealed)
732.101 Election to Proceed under Part 732 (Repealed)
732.102 Severability (Repealed)
732.103 Definitions (Repealed)
732.104 Incorporations by Reference (Repealed)
732.105 Agency Authority to Initiate Investigative, Preventive or Corrective Action (Repealed)
732.106 Laboratory Certification (Repealed)
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732.407 Alternative Technologies (Repealed)
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Section
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732.502 Completeness Review (Repealed)
732.503 Review of Plans, Budget Plans, or Reports (Repealed)
732.504 Selection of Plans or Reports for Full Review (Repealed)
732.505 Standards for Review of Plans, Budget Plans, or Reports (Repealed)

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Section

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

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732.702 Contents of a No Further Remediation Letter (Repealed)
732.703 Duty to Record a No Further Remediation Letter (Repealed)
732.704 Voidance of a No Further Remediation Letter (Repealed)

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732.815 Free Product or Groundwater Removal and Disposal(Repealed)
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732.830 Drum Disposal (Repealed)
732.835 Sample Handling and Analysis (Repealed)
732.840 Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures (Repealed)
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732.870 Increase in Maximum Payment Amounts (Repealed)
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732.APPENDIX A Indicator Contaminants (Repealed)

732.APPENDIX B Additional Parameters (Repealed)
732.APPENDIX C Backfill Volumes (Repealed)
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732.TABLE A Groundwater and Soil Remediation Objectives (Repealed)
732.TABLE B Soil remediation Methodology: Model Parameter Values (Repealed)
732.TABLE C Soil remediation Methodology: Chemical Specific Parameters (Repealed)
732.TABLE D Soil remediation Methodology: Objectives (Repealed)
732.ILLUSTRATION A Equation for Groundwater Transport (Repealed)
732.ILLUSTRATION B Equation for Soil-Groundwater Relationship (Repealed)
732.ILLUSTRATION C Equation for Calculating Groundwater Objectives at the Source (Repealed)
732.ILLUSTRATION D Equation for Calculating Soil Objectives at the Source (Repealed)

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

SOURCE: Adopted in R94-2 at 18 Ill. Reg. 15008, effective September 23, 1994; amended in R97-10 at 21 Ill. Reg. 3617, effective July 1, 1997; amended in R01-26 at 26 Ill. Reg. 7119, effective April 29, 2002; amended in R04-22/23 at 30 Ill. Reg. 4928, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. 16132, effective November 21, 2007; repealed in R11-22 at 35 Ill. Reg. _____, effective _____..

SUBPART A: GENERAL (Repealed)

Section 732.100 Applicability (Repealed)

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

~~b)~~ ~~Upon the receipt of a corrective action order issued by the OSFM prior to June 24, 2002, and pursuant to Section 57.5(g) of the Act, where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on~~

~~the premises where stored and which serves other than a farm or residential unit shall conduct corrective action in accordance with this Part.~~

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

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

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

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

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

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

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

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

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.101 Election to Proceed under Part 732 <u>(Repealed)</u>

~~a)~~ ~~Prior to June 24, 2002, owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority on or before September 12, 1993 were able to elect to proceed in accordance with this Part by submitting to the Agency a written~~

~~statement of such election signed by the owner or operator. The election became effective upon receipt by the Agency and shall not be withdrawn. However, an owner or operator that elected to proceed in accordance with this Part may, pursuant to 35 Ill. Adm. Code 734.105, elect to proceed in accordance with 35 Ill. Adm. Code 734 instead of this Part.~~

~~b)~~ ~~Prior to June 24, 2002, except as provided in Section 732.100(b) of this Part, owners or operators of underground storage tanks (USTs) used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit were able to elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. The election became effective upon receipt by the Agency and shall not be withdrawn. However, an owner or operator that elected to proceed in accordance with this Part may, pursuant to 35 Ill. Adm. Code 734.105, elect to proceed in accordance with 35 Ill. Adm. Code 734 instead of this Part.~~

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.102 Severability <u>(Repealed)</u>

~~If any provision of this Part or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of this Part as a whole or of any portion not adjudged invalid.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.103 Definitions<u>(Repealed)</u>

~~Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].~~

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

~~"Agency" means the Illinois Environmental Protection Agency.~~

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

~~"Board" means the Illinois Pollution Control Board.~~

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

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

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

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

~~"Confirmed Exceedence" means laboratory verification of an exceedence of the applicable remediation objectives.~~

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

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

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

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

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

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

~~"Environmental Land Use Control" means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200.~~

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

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

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

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

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

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

~~"Fund" means the Underground Storage Tank Fund [415 ILCS 5/57.2].~~

~~"GIS" means Geographic Information System.~~

~~"GPS" means Global Positioning System.~~

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

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

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

~~"Heating Oil" means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy, No. 5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker C. [415 ILCS 5/57.2]~~

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

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

~~"IEMA" means the Illinois Emergency Management Agency.~~

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

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

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

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

~~"Licensed Professional Engineer" means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering [415 ILCS 5/57.2].~~

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

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

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

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

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

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

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

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

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

~~"Owner" means:~~

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

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

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

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

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

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

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

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

~~"Practical quantitation limit" or "PQL" means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 732.104 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039;~~

"Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 732.104 of this Part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Septic tank;~~

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

~~Surface impoundment, pit, pond, or lagoon;~~

~~Storm water or waste water collection system;~~

~~Flow-through process tank;~~

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

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

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

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

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.104 Incorporations by Reference (Repealed)

~~a)~~ ~~The Board incorporates the following material by reference:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.105 Agency Authority to Initiate Investigative, Preventive or Corrective Action (Repealed)

~~a) The Agency has the authority to do either of the following:~~

~~1) Provide notice to the owner or operator, or both, of an underground storage tank whenever there is a release or substantial threat of a release of petroleum from such tank. Such notice shall include the identified investigation or response action and an opportunity for the owner or operator, or both, to perform the response action.~~

~~2) Undertake investigative, preventive or corrective action whenever there is a release or a substantial threat of a release of petroleum from an underground storage tank. (Section 57.12© of the Act)~~

~~b) If notice has been provided under this Section, the Agency has the authority to require the owner or operator, or both, of an underground storage tank to undertake preventive or corrective action whenever there is a release or substantial threat of a release of petroleum from such tank. (Section 57.12(d) of the Act)~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.106 Laboratory Certification (Repealed)

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.108 Licensed Professional Engineer or Licensed Professional Geologist Supervision (Repealed)

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

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

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

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

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

~~3)~~ ~~The maps must show the following:~~

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

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

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

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

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

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

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

I certify under penalty of law that all activities that are the subject of this plan, budget plan, or report were conducted under my supervision or were conducted under the supervision of another Licensed Professional Engineer or Licensed Professional Geologist and reviewed by me; that this plan, budget plan, or report and all attachments were prepared under my supervision; that, to the best of my knowledge and belief, the work described in the plan, budget plan, or report has been completed in accordance with the Environmental Protection Act [415 ILCS 5], 35 Ill. Adm. Code 732, and generally accepted standards and practices of my profession; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or representations to the Agency, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

e) Except in the case of sites subject to Section 732.703(c) or (d) of this Part, reports documenting the completion of corrective action at a site must contain a form

~~addressing site ownership. At a minimum, the form must identify the land use limitations proposed for the site, if land use limitations are proposed; the site's common address, legal description, and real estate tax/parcel index number; and the names and addresses of all title holders of record of the site or any portion of the site. The form must also contain the following certification, by original signature, of all title holders of record of the site or any portion of the site, or the agent(s) of such person(s):~~

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.112 Notification of Field Activities <u>(Repealed)</u>

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.114 LUST Advisory Committee <u>(Repealed)</u>

~~Once each calendar quarter the Agency must meet with a LUST Advisory Committee to discuss the Agency's implementation of this Part, provided that the Agency or members of the Committee raise one or more issues for discussion. The LUST Advisory Committee must consist of the following individuals: one member designated by the Illinois Petroleum Marketers Association, one member designated by the Illinois Petroleum Council, one member designated by the American Consulting Engineers Council of Illinois, one member designated by the Illinois Society of Professional Engineers, one member designated by the Illinois Chapter of the American Institute of Professional Geologists, two members designated by the Professionals of Illinois for the Protection of the Environment, one member designated by the Illinois Association of Environmental Laboratories, one member designated by the Illinois Environmental Regulatory Group, one member designated by the Office of the State Fire Marshal, and one member designated by the Illinois Department of Transportation. Members of the LUST Advisory Committee must serve without compensation.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

SUBPART B: EARLY ACTION (Repealed)

Section 732.200 General (Repealed)

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.201 Agency Authority to Initiate (Repealed)

~~Pursuant to Sections 732.100 or 732.105 of this Part, the Agency shall have the authority to require or initiate early action activities in accordance with the remainder of this Subpart B.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.202 Early Action (Repealed)

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

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

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

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

~~b)~~ ~~Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator shall perform the following initial abatement measures:~~

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

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

~~3)~~ ~~Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST~~

excavation zone and entered into subsurface structures (such as sewers or basements);

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

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

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

c) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator shall submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.

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

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

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

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

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

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

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

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

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

h) The owner or operator shall determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

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

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

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

C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must be collected from a location representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a length of piping run excavation being sampled, the sample must be collected from the center of the length being sampled. For UST piping abandoned in place, the samples must be collected in accordance with subsection (h)(2)(B) of this Section.

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

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

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

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

B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close as practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.

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

D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample must be collected from the location

within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) are met, within 30 days after the completion of early action activities the owner or operator shall submit a report demonstrating compliance with those remediation objectives. The report must include, but is not limited to, the following:

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

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

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

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

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

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

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

A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives

~~of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);~~

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

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

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

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.203 Free Product Removal <u>(Repealed)</u>

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

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

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

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

~~4)~~ ~~Within 45 days after the confirmation of presence of free product from a UST, prepare and submit to the Agency a free product removal report. The report shall, at a minimum, provide the following:~~

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

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

C) The type of free product recovery system used;

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

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

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

G) The disposition of the recovered free product;

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

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

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

b) For purposes of payment from the Fund, owners or operators are not required to obtain Agency approval for free product removal activities conducted within 45 days after the confirmation of the presence of free product.

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

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

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

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

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

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

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.204 Application for Payment of Early Action Costs(Repealed)

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

SUBPART C: SITE EVALUATION AND CLASSIFICATION (Repealed)

Section 732.300 General (Repealed)

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

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

~~1)~~ ~~Upon completion of the remediation the owner or operator shall submit a corrective action completion report demonstrating compliance with the required levels. The corrective action completion report must include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the remediation and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site.~~

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

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

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

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

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

B) The corrective action completion report must be accompanied by a certification from a Licensed Professional Engineer stating that the information presented in the applicable report is accurate and complete, that corrective action has been completed in accordance with the requirements of the Act and subsection (b) of this Section, and that no further remediation is required at the site.

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

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

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

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

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

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

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

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

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

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

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

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

C) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but are not limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to subsections (b)(3)(A) or (b)(3)(b) of this Section. The additional investigation may include, but is not limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties

~~for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).~~

~~BOARD NOTE: Owners or operators proceeding under subsection (b) of this Section are advised that they are not entitled to payment from the Fund for costs incurred after completion of early action activities in accordance with Subpart B. See Subpart F of this Part.~~

~~c)~~ ~~For corrective action completion reports submitted pursuant to subsection (b) of this Section, the Agency shall issue a No Further Remediation Letter upon approval of the report by the Agency in accordance with Subpart E.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.302 No Further Action Sites <u>(Repealed)</u>

~~a)~~ ~~Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as No Further Action if all of the following criteria are satisfied:~~

~~1)~~ ~~The physical soil classification procedure completed in accordance with Section 732.307 confirms either of the following:~~

~~A)~~ ~~"Berg Circular"~~

~~i)~~ ~~The site is located in an area designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and~~

~~ii)~~ ~~The site's actual physical soil conditions are verified as consistent with those designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois"; or~~

~~B)~~ ~~The site soil characteristics satisfy the criteria of Section 732.307(d)(3) of this Part;~~

~~2)~~ ~~The UST system is not within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;~~

3) After completion of early action measures in accordance with Subpart B of this Part, there is no evidence that, through natural pathways or man-made pathways, migration of petroleum or vapors threatens human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

4) There is no designated Class III special resource groundwater within 200 feet of the UST system; and

5) After completing early action measures in accordance with Subpart B of this Part, no surface bodies of water are adversely affected by the presence of a visible sheen or free product layer as a result of a release of petroleum.

b) Groundwater investigation shall be required to confirm that a site meets the criteria of a No Further Action site if the Agency has received information indicating that the groundwater is contaminated at levels in excess of the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants at the property boundary line or 200 feet from the UST system, whichever is less. In such cases, a groundwater investigation that meets the requirements of Section 732.307(j) shall be performed. If the investigation confirms there is an exceedence of the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, the Agency may reclassify the site as High Priority.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.303 Low Priority Sites <u>(Repealed)</u>

Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as Low Priority if all of the following criteria are met:

a) The physical soil classification and groundwater investigation procedures confirm the following:

1) The most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been exceeded at the property boundary line or 200 feet from the UST system, whichever is less; and

2) "Berg Circular"

A) The site is located in an area designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of

~~Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and~~

~~B)~~ ~~The site's actual physical soil conditions are verified as consistent with those designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois"; or~~

~~3)~~ ~~The site soil characteristics do not satisfy the criteria of Section 732.307(d)(3) of this Part;~~

~~b)~~ ~~The UST system is not within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;~~

~~c)~~ ~~After completing early action measures in accordance with Subpart B of this Part, there is no evidence that, through natural or man-made pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;~~

~~d)~~ ~~There is no designated Class III special resource groundwater within 200 feet of the UST system; and~~

~~e)~~ ~~After completing early action measures in accordance with Subpart B of this Part, there are no surface bodies of water adversely affected by the presence of a visible sheen or free product layer as a result of the release of petroleum.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.304 High Priority Sites <u>(Repealed)</u>

~~Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as High Priority if any of the following are met:~~

~~a)~~ ~~The physical soil classification and groundwater investigation procedures confirm the following:~~

~~1)~~ ~~The most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been exceeded at the property boundary line or 200 feet from the UST system, whichever is less; and~~

~~2)~~ ~~"Berg Circular"~~

A) The site is located in an area designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and

B) The site's actual physical soil conditions are verified as consistent with those designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois"; or

3) The site soil characteristics do not satisfy the criteria of Section 732.307(d)(3) of this Part;

b) The UST system is within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;

c) After completing early action measures in accordance with Subpart B of this Part, there is evidence that, through natural or man-made pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

d) There is designated Class III special resource groundwater within 200 feet of the UST system; or

e) After completing early action measures in accordance with Subpart B of this Part, a surface body of water is adversely affected by the presence of a visible sheen or free product layer as a result of a release of petroleum.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.305 Plan Submittal and Review (Repealed)

a) Unless an owner or operator elects to classify a site under Section 732.312, prior to conducting any site evaluation activities, the owner or operator shall submit to the Agency a site classification plan, including but not limited to a physical soil classification and groundwater investigation plan, satisfying the minimum requirements for site evaluation activities as set forth in Section 732.307. The plans shall be designed to collect data sufficient to determine the site classification in accordance with Section 732.302, 732.303 or 732.304 of this Part.

b) In addition to the plan required in subsection (a) of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek

~~payment from the Fund shall submit to the Agency a site classification budget plan with the corresponding site classification plan. The budget plan shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation and completion of the site evaluation activities required in Section 732.307, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part.~~

~~c)~~ ~~The Agency shall have the authority to review and approve, reject or require modification of any plan or budget plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.~~

~~d)~~ ~~Notwithstanding subsections (a), (b), and (c) of this Section, an owner or operator may proceed to conduct site evaluation activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required site classification plan or budget plan (including physical soil classification and groundwater investigation plans, costs associated with activities to date, and anticipated further costs). However, any such classification plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.~~

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

~~e)~~ ~~If, following the approval of any site classification plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended site classification plan or associated budget plan for review by the Agency. The Agency shall have the authority to review and approve, reject, or require modifications of the amended classification plan or budget plan in accordance with the procedures contained in Subpart E of this Part.~~

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.306 Deferred Site Classification; Priority List for Payment (Repealed)

~~a)~~ ~~An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the Fund may elect to defer site classification activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met.~~

~~1)~~ ~~Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.~~

~~2)~~ ~~The Agency shall monitor the availability of funds and shall provide notice of insufficient funds to owners or operators in accordance with Section 732.503(g) of this Part.~~

~~3)~~ ~~Owners and operators must submit elections to defer site classification activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The forms must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.~~

~~4)~~ ~~The Agency must review elections to defer site classification activities to determine whether the requirements of subsection (b) of this Section are met. The Agency must notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.~~

~~A)~~ ~~The Agency must mail notices of final action on an election by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.~~

~~B)~~ ~~Any action by the Agency to reject an election, or rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.~~

~~5)~~ ~~Upon approval of an election to defer site classification until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment based solely on the date the Agency receives a complete~~

written election of deferral, with the earliest dates having the highest priority.

6) As funds become available, the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the owner or operator's site. After such notification the owner or operator shall commence site classification activities.

7) Authorization of payment of encumbered funds for deferred site classification activities shall be approved in accordance with the requirements of Subpart F of this Part.

8) The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred corrective action pursuant to Section 732.406 with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.

b) An owner or operator who elects to defer site classification activities under subsection (a) of this Section shall submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:

1) The Agency has approved the owner’s or operator’s site classification budget plan;

2) The owner or operator has been determined eligible to seek payment from the Fund;

3) The early action requirements of Subpart B of this Part have been met;

4) Groundwater contamination does not exceed Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling in accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site’s property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well.

~~Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but is not limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.~~

~~c)~~ ~~An owner or operator may, at any time, withdraw the election to defer site classification activities. The owner or operator must notify the Agency in writing of the withdrawal. Upon such withdrawal, the owner or operator shall proceed with site classification in accordance with the requirements of this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.307 Site Evaluation <u>(Repealed)</u>

~~a)~~ ~~Except as provided in Section 732.300(b), or unless an owner or operator submits a report pursuant to Section 732.202(h)(3) of this Part demonstrating that the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met or elects to classify a site under Section 732.312, the owner or operator of any site for which a release of petroleum has been confirmed in accordance with regulations promulgated by the OSFM and reported to IEMA shall arrange for site evaluation and classification in accordance with the requirements of this Section. A Licensed Professional Engineer or Licensed Professional Geologist (or, where appropriate, persons working under the direction of a Licensed Professional Engineer or Licensed Professional Geologist) shall conduct the site evaluation. The results of the site evaluation shall provide the basis for determining the site classification. The site classification shall be certified by the supervising Licensed Professional Engineer or Licensed Professional Geologist.~~

~~b)~~ ~~As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct a physical soil classification in accordance with the procedures at subsection (c) or (d) of this Section. Except as provided in subsection (e) of this Section, all elements of the chosen method of physical soil classification must be completed for each site. In addition to the requirement for a physical soil classification, the Licensed Professional Engineer or Licensed Professional Geologist shall, at a minimum, complete the requirements at subsections (f) through (j) of this Section before classifying a site as High Priority or Low Priority and subsection (f) through (i) of this Section before classifying a site as No Further Action.~~

~~c)~~ ~~Method One for Physical Soil Classification:~~

~~1)~~ ~~Soil Borings~~

~~A)~~ ~~Prior to conducting field activities, a review of scientific publications and regional geologic maps shall be conducted to determine if the subsurface strata are as generally mapped in the~~

Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference in Section 732.104 of this Part. A list of the publications reviewed and any preliminary conclusions concerning the site geology shall be included in the site classification completion report.

B) A minimum of one soil boring to a depth that includes 50 feet of native soil or to bedrock shall be performed for each tank field with a release of petroleum.

C) If, during boring, bedrock is encountered or if auger refusal occurs because of the density of a geologic material, a sample of the bedrock or other material shall be collected to determine permeability or an in situ test shall be performed to determine hydraulic conductivity in accordance with subsections (c)(3)(A) and (c)(3)(B) of this Section. If bedrock is encountered or auger refusal occurs, the Licensed Professional Engineer or Licensed Professional Geologist shall verify that the conditions that prevented the full boring are expected to be continuous through the remaining required depth.

D) Borings shall be performed within 200 feet of the outer edge of the tank field or at the property boundary, whichever is less. If more than one boring is required per site, borings shall be spaced to provide reasonable representation of site characteristics. The actual spacing of the borings shall be based on the regional hydrogeologic information collected in accordance with subsection (c)(1)(A) of this Section. Location shall be chosen to limit to the greatest extent possible the vertical migration of contamination.

E) Soil borings shall be continuously sampled to ensure that no gaps appear in the sample column.

F) If anomalies are encountered, additional soil borings may be necessary to verify the consistency of the site geology.

G) Any water bearing units encountered shall be protected as necessary to prevent cross-contamination during drilling.

H) The owner or operator may utilize techniques other than those specified in this subsection (c)(1) for soil classification provided that:

i) The techniques provide equivalent, or superior, information as required by this Section;

ii) The techniques have been successfully utilized in applications similar to the proposed application;

iii) Methods for quality control can be implemented; and

iv) The owner or operator has received written approval from the Agency prior to the start of the investigation.

2) Soil Properties

The following tests shall be performed on a representative sample of each of the stratigraphic units encountered in the native soil boring that has been determined most conducive to transporting contaminants from the source based on site factors, including but not limited to visual and tactile observations, the classification of the soil, any prior evaluation of the site stratigraphy, the volume of the release, the thickness or extent of the stratigraphic unit, and the requirements of ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993:

A) A soil particle analysis using the test methods specified in ASTM (American Society for Testing and Materials) Standard D 422-63 or D 1140-92, "Standard Test Method for Particle-Size Analysis of Soils," or "Standard Test Method for Amount of Material in Soils Finer than the No. 200 (75 µm) Sieve," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

B) A soil moisture content analysis using the test methods specified in ASTM Standard D 2216-92 or D 4643-93, "Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock," or "Standard Test Method for Determination of Water (Moisture) Content of Soil by the Microwave Oven Method," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

C) A soil classification using the test methods specified in ASTM Standard D 2487-93 or D 2488-93, "Standard Test Method for Classification of Soils for Engineering Purposes" or "Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

D) Unconfined compression strength shall be determined in tons per square foot by using a hand penetrometer; and

E) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Standard Test Method D 1587-83, incorporated by reference in Section 732.104 of this Part, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of Section 732.308(a) of this Part.

3) Hydraulic Conductivity

A) If a water bearing unit is encountered while performing soil boring(s) for the physical soil classification, an in-situ hydraulic conductivity test shall be performed in the first fully saturated layer below the water table. If multiple water bearing units are encountered, an insitu hydraulic conductivity test shall be performed on each such unit.

i) Wells used for hydraulic conductivity testing shall be constructed in a manner that ensures the most accurate results.

ii) The screen must be contained within the saturated zone.

B) If no water bearing unit is encountered in the required soil boring(s), then the following laboratory analyses shall be conducted, as applicable, on a representative sample from each stratigraphic unit:

i) A hydraulic conductivity analysis of undisturbed or laboratory compacted granular soils (i.e., clay, silt, sand or gravel) using the test method specified in ASTM Standard D 5084-90, "Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter," incorporated by reference in Section 732.104 of this Part, or other Agency approved method.

ii) Granular soils that are estimated to have hydraulic conductivity greater than 1 x 10-3 cm/sec will fail the minimum geologic conditions for "No Further Action", i.e., rating of D, E, F, or G as described in the Berg Circular, and therefore, no physical tests need to be run on the soils.

iii) A hydraulic conductivity analysis of bedrock using the test method specified in ASTM Standard D 4525-90, "Standard Test Method for Permeability of Rocks by Flowing Air," incorporated by reference in Section 732.104 of this Part, or other Agency approved method.

iv) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Standard Test Method D 1587-83, incorporated by reference in Section 732.104 of this Part, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of Section 732.308(a) of this Part.

4) If the results of the physical soil classification or groundwater investigation reveal that the actual site geologic characteristics are different from those generally mapped by the Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part, the site classification shall be determined using the actual site geologic characteristics.

d) Method Two for Physical Soil Classification:

1) Soil Borings

A) A minimum of one soil boring to a depth that includes native material from the invert elevation of the most shallow UST to 15 feet below the invert elevation of the deepest UST for each tank field with a release of petroleum.

B) This boring shall meet the requirements of subsections (c)(1)(C) through (c)(1)(G) of this Section.

2) Soil Properties

The following tests must be performed on a representative sample of each of the stratigraphic units encountered in the native soil boring that has been determined most conducive to transporting contaminants from the source based on site factors including but not limited to visual and tactile observations, the classification of the soil, any prior evaluation of the site stratigraphy, the volume of the release, the size or extent of the unit, and

the requirements of ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993 and incorporated by reference in Section 732.104 of this Part:

A) A soil particle analysis satisfying the requirements of subsection (c)(2)(A) of this Section; and

B) Either:

i) A pump test or equivalent to determine the yield of the geologic material. Methodology, assumptions and any calculations performed shall be submitted as part of the site classification completion report. If the aquifer geometry and transmissivity have been obtained through a site-specific field investigation, an analytical solution may be used to estimate well yield. The Licensed Professional Engineer or Licensed Professional Geologist shall demonstrate the appropriateness of the analytical solution to estimate well yield versus an actual field test. Well yield should be determined for either confined or unconfined formations. Once the yield has been determined site-specifically, the hydraulic conductivity shall be calculated; or

ii) Hydraulic conductivity shall be determined in accordance with subsection (c)(3) of this Section. Once the hydraulic conductivity has been determined site-specifically, the yield shall be calculated.

C) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Standard Test Method D 1587-83, incorporated by reference in Section 732.104 of this Part, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of Section 732.308(a) of this Part.

3) The results of the boring(s) and tests described in subsections (d)(1) and (d)(2) of this Section shall be used to demonstrate whether the native material from the invert elevation of the most shallow UST to 15 feet below the invert elevation of the deepest UST meets all of the following criteria:

A) Does not contain unconsolidated sand, gravel or sand and gravel that is 5 feet or more in thickness with 12 percent or less fines (i.e., fines that pass through a No. 200 sieve tested according to ASTM Standard Test Method D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference at Section 732.104 of this Part, or other Agency approved method);

B) Does not contain sandstone that is 10 feet or more in thickness, or fractured carbonate that is 15 feet or more in thickness;

C) Is not capable of sustained groundwater yield, from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; and

D) Is not capable of hydraulic conductivity of 1 x 10-4 cm/sec or greater.

e) If, during the completion of the requirements of subsection (c) or (d) of this Section, a Licensed Professional Engineer or Licensed Professional Geologist determines that the site geology is not consistent with area D, E, F or G of the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference in Section 732.104 of this Part or that the criteria of subsection (d)(3) are not satisfied, any remaining steps required by subsection (c) or (d) may be suspended, provided that the soil investigation has been sufficient to satisfy the requirements of subsection (g) of this Section. If activities are suspended under this subsection (e), the Licensed Professional Engineer or Licensed Professional Geologist shall complete the requirements of subsections (f) through (j) of this Section in order to determine whether the site is High Priority or Low Priority. The site conditions upon which the suspension of the requirements of subsection (c) or (d) of this Section is based shall be documented in the site classification completion report.

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

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

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

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

g) Investigation of Migration Pathways

1) The Licensed Professional Engineer or Licensed Professional Geologist shall conduct an investigation either separately or in conjunction with the physical soil classification to identify all potential natural and man-made migration pathways that are on the site, in rights-of-way attached to the site, or in any area surrounding the site that may be adversely affected as a result of the release of petroleum from the UST system. Once the migration pathways have been identified, the areas along all such pathways shall be further investigated in a manner sufficient to determine whether there is evidence that migration of petroleum or vapors along such pathways:

A) May potentially threaten human health or human safety; or

B) May cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces.

2) Natural pathways shall be identified using data obtained from investigation at the site. This must include, but is not limited to, identification and location of groundwater if encountered during excavation activities or soil boring activities, identification of different soil strata during excavation activities or soil boring activities and inspection of surface water bodies. Investigation and evaluation of natural migration pathways shall include, for applicable indicator contaminants along potential natural migration pathways:

A) Soil sampling and laboratory analysis of samples; and

B) When groundwater is encountered or when there is potential for surface water contamination, groundwater and surface water sampling and laboratory analysis of samples.

3) Man-made pathways shall be identified from available sources, including but not limited to site plans; a review of underground utilities as identified by the Joint Utility Location Information for Excavators (J.U.L.I.E.), the

Chicago Utility Alert Network (Digger), another public locator, or a private locator; and interviews with site owners or personnel. The Licensed Professional Engineer or Licensed Professional Geologist must determine whether migration of indicator contaminants along any of these pathways has occurred, using laboratory analytical data for applicable indicator contaminants obtained as follows:

A) From prior sampling, provided that such laboratory analytical data demonstrates that no contaminant of concern has migrated to or along any man-made pathways;

B) From soil samples, and groundwater samples if groundwater is encountered, taken between man-made pathways and contaminated soil, provided that such laboratory analytical data demonstrates that no contaminant of concern has migrated to or along any man-made pathways; or

C) From soil samples, and groundwater samples if groundwater is encountered, taken along man-made pathways.

4) The Licensed Professional Engineer or Licensed Professional Geologist shall provide a map of the site and any surrounding areas that may be adversely affected by the release of petroleum from the UST system. At a minimum, the map shall be to scale, oriented with north at the top, and shall show the location of the leaking UST system(s) with any associated piping and all potential natural and man-made pathways that are on the site, that are in rights-of-way attached to the site, or that are in areas that may be adversely affected as a result of the release of petroleum.

5) Unless the Agency's review reveals objective evidence to the contrary, the Licensed Professional Engineer or Licensed Professional Geologist shall be presumed correct when certifying whether or not there is evidence that, through natural or man-made pathways, migration of petroleum or vapors:

A) May potentially threaten human health or human safety; or

B) May cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces.

h) The Licensed Professional Engineer or Licensed Professional Geologist shall verify whether Class III groundwater exists within 200 feet of the UST system.

i) The Licensed Professional Engineer or Licensed Professional Geologist shall locate all surface bodies of water on site and within 100 feet of the site and provide a map noting the locations. All such surface bodies of water shall be inspected to determine whether they have been adversely affected by the presence

of a sheen or free product layer resulting from the release of petroleum from the UST system.

j) Groundwater Investigation

1) For sites failing to meet NFA site classification or for sites where a groundwater investigation is necessary pursuant to Section 732.302(b) of this Part, the Licensed Professional Engineer or Licensed Professional Geologist shall perform a groundwater investigation as required under this Part in accordance with this subsection (j) to determine whether the most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been exceeded at the property boundary or 200 feet from the UST system, whichever is less, as a result of the UST release of petroleum.

2) Applicable indicator contaminants shall be those identified pursuant to Section 732.310 of this Part.

3) Except as provided in subsection (j)(6) of this Section, a minimum of four groundwater monitoring wells shall be installed at the property boundary or 200 feet from the UST system, whichever is less. In the event that a groundwater monitoring well cannot be physically installed at the property line or 200 feet from the UST system, whichever is closer, in accordance with this subsection (j), the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a monitoring well in a location that is closer to the UST system than this Part requires. However, once the election is made, the owner or operator may not withdraw the election at a later time. The Agency may require the installation of additional monitoring wells to ensure that at least one monitoring well is located hydraulically upgradient and three monitoring wells are located hydraulically downgradient of the UST system. The wells must be installed so that they provide the greatest likelihood of detecting migration of groundwater contamination. At a minimum, monitoring well construction shall satisfy the following requirements:

A) Construction shall be in a manner that will enable the collection of representative groundwater samples;

B) All monitoring wells shall be cased in a manner that maintains the integrity of the borehole. Casing material shall be inert so as not to affect the water sample. Casing requiring solvent-cement type couplings shall not be used;

C) Wells shall be screened to allow sampling only at the desired interval. Annular space between the borehole wall and well screen

section shall be packed with clean, well-rounded and uniform material sized to avoid clogging by the material in the zone being monitored. The slot size of the screen shall be designed to minimize clogging. Screens shall be fabricated from material that is inert with respect to the constituents of the groundwater to be sampled;

D) Annular space above the well screen section shall be sealed with a relatively impermeable, expandable material such as cement/bentonite grout that does not react with or in any way affect the sample, in order to prevent contamination of groundwater samples and groundwater and avoid interconnections. The seal shall extend to the highest known seasonal groundwater level;

E) The annular space shall be backfilled with expanding cement grout from an elevation below the frost line and mounded above the surface and sloped away from the casing so as to divert surface water away;

F) All monitoring wells shall be covered with vented caps and equipped with devices to protect against tampering and damage. Locations of wells shall be clearly marked and protected against damage from vehicular traffic or other activities associated with expected site use; and

G) All wells shall be developed to allow free entry of groundwater, minimize turbidity of the sample, and minimize clogging.

4) Monitoring well construction diagrams prescribed and provided by the Agency shall be completed for each monitoring well.

5) Static water elevations shall be measured for each monitoring well. Groundwater samples shall be taken from each well and analyzed for the applicable indicator contaminants. The data collected shall be used to determine the direction of groundwater flow and whether the applicable groundwater remediation objectives have been exceeded. Samples shall be collected and analyzed in accordance with the following procedures:

A) Samples shall be collected in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 732.104 of this Part, or other procedures approved by the Agency.

B) Groundwater elevation in a groundwater monitoring well shall be determined and recorded to establish the gradient of the groundwater table.

C) The analytical methodology used for the analysis of the indicator contaminants shall be consistent with both of the following:

i) The methodology must have a practical quantitation limit (PQL) at or below the most stringent objectives or detection levels set forth in 35 Ill. Adm. Code 742 or as set for mixtures or degradation products as provided in Section 732.310 of this Part; and

ii) The methodology must be consistent with the methodologies contained in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, as incorporated by reference at Section 732.104, or other Agency approved methods.

D) In addition to analytical results, sampling and analytical reports shall contain the following information:

i) Sample collection information including but not limited to the name of sample collector, time and date of sample collection, method of collection, and monitoring location;

ii) Sample preservation and shipment information including but not limited to field quality control;

iii) Analytical procedures including but not limited to the method detection limits and the practical quantitation limits (PQL);

iv) Chain of custody and control; and

v) Field and lab blanks.

6) As an alternative to the installation of monitoring wells under subsection (j)(3) of this Section, the Licensed Professional Engineer or Licensed Professional Geologist may demonstrate to the Agency through a site-specific evaluation that the groundwater monitoring should not be required.

A) The evaluation shall be based on a demonstration of the following factors:

~~i)~~ ~~Whether groundwater is present within the depth of the boring used to perform physical soil classification under the selected method (Method One under subsection (c) of this Section or Method Two under subsection (d) of this Section);~~

~~ii)~~ ~~Whether groundwater is withdrawn for potable use within 1000 feet of the UST system and at what depths; and~~

~~iii)~~ ~~Whether seasonal fluctuation in groundwater could result in groundwater contacting contaminated soil (e.g., historical records).~~

~~B)~~ ~~The presence or absence of a water bearing unit under subsection (j)(6)(A)(i) of this Section shall be determined on the basis of at least one soil boring to the depth necessary to perform physical soil classification under the selected method (Method One under subsection (c) of this Section or Method Two under subsection (d) of this Section), unless auger refusal occurs because of the density of a geologic material or because bedrock is encountered. If auger refusal occurs, then the Licensed Professional Engineer or Licensed Professional Geologist must demonstrate the depth to a water bearing unit from the available site specific or regional information.~~

~~C)~~ ~~If the evaluation fails to demonstrate to the Agency that a groundwater investigation should not be required as part of site classification activities, then the Licensed Professional Engineer or Licensed Professional Geologist shall perform a groundwater investigation in accordance with the remainder of this subsection (j).~~

~~D)~~ ~~If the evaluation demonstrates to the Agency that a groundwater investigation should not be required, then the site shall be classified as Low Priority, unless other High Priority criteria are present. Upon Agency approval of the evaluation to demonstrate that a groundwater investigation should not be required, then the site shall be classified as Low Priority and a No Further Remediation Letter shall be issued to the owner or operator of the site, unless other High Priority criteria are present.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.308 Boring Logs and Sealing of Soil Borings and Groundwater Monitoring Wells <u>(Repealed)</u>

a) Soil boring logs shall be kept for all soil borings. The logs shall be submitted along with the site classification completion report and shall be on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

1) Soil boring logs shall contain the following information at a minimum:

A) Sampling device, sample number and amount of recovery;

B) Total depth of boring to the nearest 6 inches;

C) Detailed field observations describing materials encountered in boring, including soil constituents, consistency, color, density, moisture, odors, and the nature and extent of sand or gravel lenses or seams equal to or greater than 1 inch in thickness;

D) Petroleum hydrocarbon vapor readings (as determined by continuous screening of borings with field instruments capable of detecting such vapors);

E) Locations of sample(s) used for physical or chemical analysis; and

F) Groundwater levels while boring and at completion.

2) Boring logs for soil boring(s) completed for physical soil classification also shall include the following information, as applicable for the classification method chosen, for each stratigraphic unit encountered at the site:

A) Moisture content;

B) Unconfined compression strength in tons per square foot (TSF) using a hand penetrometer;

C) Unified Soil Classification System (USCS) soil classification group symbol in accordance with ASTM Standard D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference in Section 732.104 of this Part, or other Agency approved method; and

D) The reasoning behind the Licensed Professional Engineer's or Licensed Professional Geologist's decision to perform or not perform soil testing pursuant to Section 732.307(c)(2) and (d)(2) of this Part as to each identified stratigraphic unit.

~~b)~~ ~~Boreholes and monitoring wells shall be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.309 Site Classification Completion Report (Repealed)

~~a)~~ ~~Within 30 days after the completion of a site evaluation in accordance with Section 732.307 of this Part, the owner or operator shall submit to the Agency a site classification completion report addressing all applicable elements of the site evaluation. The report shall contain all maps, diagrams, and any other information required by Section 732.307 of this Part, the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions, and the certification of a Licensed Professional Engineer or Licensed Professional Geologist of the site's classification as No Further Action, Low Priority or High Priority in accordance with this Subpart C. Documentation of the water supply well survey conducted pursuant to Section 732.307(f) of this Part must include, but is not limited to, the following:~~

~~1)~~ ~~One or more maps, to an appropriate scale, showing the following:~~

~~A)~~ ~~The location of the community water supply wells and other potable water supply wells identified pursuant to Section 732.307(f) of this Part, and the setback zone for each well;~~

~~B)~~ ~~The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to Section 732.307(f) of this Part;~~

~~C)~~ ~~The current extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and~~

~~D)~~ ~~The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The information required under this subsection (D) is not required to be shown in the site classification completion report if modeling is not performed as part of site investigation;~~

~~2)~~ ~~One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to Section 732.307(f) of this Part;~~

3) ~~A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to Section 732.307(f) of this Part, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and~~

4) ~~A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of Section 732.307(f) of this Part and that the documentation submitted pursuant to this Section includes the information obtained as a result of the survey.~~

b) ~~The Agency shall have the authority to review and approve, reject or require modification of any report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.310 Indicator Contaminants <u>(Repealed)</u>

a) ~~For purposes of this Part, the term "indicator contaminants" shall mean the parameters identified in subsections (b) through (i) of this Section.~~

b) ~~For gasoline, including but not limited to leaded, unleaded, premium and gasohol, the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes and methyl tertiary butyl ether (MTBE), except as provided in subsection (h) of this Section. For leaded gasoline, lead shall also be an indicator contaminant.~~

c) ~~For aviation turbine fuels, jet fuels, diesel fuels, gas turbine fuel oils, heating fuel oils, illuminating oils, kerosene, lubricants, liquid asphalt and dust laying oils, cable oils, crude oil, crude oil fractions, petroleum feedstocks, petroleum fractions and heavy oils, the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes and the polynuclear aromatics listed in Section 732.Appendix B of this Part. For leaded aviation turbine fuels, lead shall also be an indicator contaminant.~~

d) ~~For transformer oils the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics and the polychlorinated biphenyl parameters listed in Section 732.Appendix B of this Part.~~

e) ~~For hydraulic fluids the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, the polynuclear aromatics listed in Section 732.Appendix B of this Part and barium.~~

f) ~~For petroleum spirits, mineral spirits, Stoddard solvents, high-flash aromatic naphthas, moderately volatile hydrocarbon solvents and petroleum extender oils,~~

the indicator contaminants shall be the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B of this Part. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

g) For used oil the indicator contaminants shall be determined by the results of a used oil soil sample analysis. In accordance with Section 732.202(h) of this Part, soil samples must be collected from the walls and floor of the used oil UST excavation if the UST is removed, or from borings drilled along each side of the used oil UST if the UST remains in place. The sample that appears to be the most contaminated as a result of a release from the used oil UST must then be analyzed for the following parameters. If none of the samples appear to be contaminated a soil sample must be collected from the floor of the used oil UST excavation below the former location of the UST if the UST is removed, or from soil located at the same elevation as the bottom of the used oil UST if the UST remains in place, and analyzed for the following parameters:

1) All volatile, base/neutral, polynuclear aromatic, and metal parameters listed at Appendix B of this Part and any other parameters the Licensed Professional Engineer or Licensed Professional Geologist suspects may be present based on UST usage. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

2) The used oil indicator contaminants shall be those volatile, base/neutral, and metal parameters listed at Section 732.Appendix B of this Part or as otherwise identified at subsection (g)(1) of this Section that exceed their remediation objective at 35 Ill. Adm. Code 742 in addition to benzene, ethylbenzene, toluene, total xylenes, and polynuclear aromatics listed in Appendix B of this Part.

3) If none of the parameters exceed their remediation objective, the used oil indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Appendix B of this Part.

h) Unless an owner or operator elects otherwise pursuant to subsection (i) of this Section, the term "indicator contaminants" shall not include MTBE for any release reported to the Illinois Emergency Management Agency prior to June 1, 2002 (the effective date of amendments establishing MTBE as an indicator contaminant).

i) An owner or operator exempt from having to address MTBE as an indicator contaminant pursuant to subsection (h) of this Section may elect to include MTBE as an indicator contaminant under the circumstances listed in subsections (1) or (2) of this subsection (i). Elections to include MTBE as an indicator contaminant must be made by submitting to the Agency a written notification of such election

~~signed by the owner or operator. The election must be effective upon the Agency's receipt of the notification and cannot be withdrawn once made. Owners or operators electing to include MTBE as an indicator contaminant must remediate MTBE contamination in accordance with the requirements of this Part.~~

~~1)~~ ~~If the Agency has not issued a No Further Remediation Letter for the release; or~~

~~2)~~ ~~If the Agency has issued a No Further Remediation Letter for the release and the release has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 Ill. Adm. Code 742.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.311 Groundwater Remediation Objectives (Repealed)

~~For purposes of this Part, remediation objectives for groundwater shall be the groundwater remediation objectives specified in 35 Ill. Adm. Code 742 for the applicable indicator contaminants. For mixtures and degradation products that have been included as indicator contaminants in accordance with Section 732.310 of this Part, the Agency shall determine groundwater remediation objectives on a site-by-site basis.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.312 Classification by Exposure Pathway Exclusion (Repealed)

~~a)~~ ~~An owner or operator electing to classify a site by exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, shall meet the requirements of this Section, except as provided in subsections (a)(1) and (j) of this Section.~~

~~1)~~ ~~Such election shall be made in writing by the owner or operator as part of the submission of the site classification plan under subsection (b) of this Section. The election may be made at any time until the Agency issues a No Further Remediation Letter, provided, however, that the election must be received by the Agency prior to March 1, 2006. On or after March 1, 2006, owners and operators desiring to proceed with the exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, must elect pursuant to 35 Ill. Adm. Code 734.105 to proceed in accordance with 35 Ill. Adm. Code 734 and conduct site investigation and corrective action in accordance with that Part instead of meeting the requirements of this Section.~~

~~2)~~ ~~An owner or operator who chooses to revoke an election submitted under subsection (b) of this Section shall do so in writing.~~

b) The owner or operator, prior to conducting any site evaluation activities, shall submit to the Agency a site classification plan including, but not limited to, a contaminant identification and groundwater investigation plan (if one or more of the criteria set forth in Section 732.202(h)(4)(A) through (C) of this Part are met), satisfying the minimum requirements for site evaluation activities as set forth in this Section. The plans shall be designed to:

1) Determine the full extent of soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. Such activities may include soil borings with sampling and analysis, groundwater monitoring wells with sampling and analysis, groundwater modeling, or a combination of these activities.

2) Collect data sufficient to determine which, if any, of the applicable exposure routes under 35 Ill. Adm. Code 742 can be excluded pursuant to 35 Ill. Adm. Code 742, Subpart C. The data shall include, but is not limited to, site-specific data demonstrating the physical characteristics of soil and groundwater.

c) A Licensed Professional Engineer or Licensed Professional Geologist (or, where appropriate, persons working under the direction of a Licensed Professional Engineer or Licensed Professional Geologist) shall conduct the site evaluation. The results of the site evaluation shall provide the basis for determining the site classification. The site classification shall be certified by the supervising Licensed Professional Engineer or Licensed Professional Geologist.

d) As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct physical soil classification and contaminant identification in accordance with the procedures at subsection (b) of this Section.

e) In addition to the plan required in subsection (b) of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a site classification budget plan with the corresponding site classification plan. The budget plan shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation and completion of the site evaluation activities required under subsection (b) of this Section, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part.

f) Sites shall be classified as No Further Action if the Licensed Professional Engineer or Licensed Professional Geologist determines that all applicable

exposure routes can be excluded from further consideration pursuant to 35 Ill. Adm. Code 742, Subpart C.

g) Sites shall be classified as High Priority if the Licensed Professional Engineer or Licensed Professional Geologist determines that any of the applicable exposure routes cannot be excluded from further consideration pursuant to 35 Ill. Adm. Code 742, Subpart C.

h) Within 30 days after the completion of a site evaluation in accordance with this Section, the owner or operator shall submit to the Agency a site classification completion report addressing all applicable elements of the site evaluation. The report shall contain all maps, diagrams, and any other information required by this Section, the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions, and the certification of a Licensed Professional Engineer or Licensed Professional Geologist of the site's classification as No Further Action or High Priority in accordance with this Section. For any site classified as High Priority, the report shall also contain the certification of a Licensed Professional Engineer or Licensed Professional Geologist as to which exposure routes, if any, have been excluded from further consideration under 35 Ill. Adm. Code 742, Subpart C.

i) The Agency shall have the authority to review and approve, reject or require modification of any classification plan, budget plan, or report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.

j) Notwithstanding subsections (b) and (c) of this Section, prior to March 1, 2006 an owner or operator may proceed to conduct site evaluation activities in accordance with this Section prior to the submittal or approval of any otherwise required site classification plan or budget plan. However, any such classification plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter. On or after March 1, 2006, owners and operators desiring to proceed with the exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, must elect pursuant to 35 Ill. Adm. Code 734.105 to proceed in accordance with 35 Ill. Adm. Code 734 and conduct site investigation and corrective action in accordance with that Part instead of meeting the requirements of this Section.

k) If, following the approval of any site classification plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended site classification plan or associated budget plan for review by the Agency. The Agency shall have the authority to

~~review and approve, reject, or require modification of the amended plan or budget plan in accordance with the procedures contained in Subpart E of this Part.~~

~~BOARD NOTE: Owners or operators proceeding under subsection (a)(2) or (j) of this Section are advised that they may not be entitled to full payment from the Fund and that applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. Furthermore, owners or operators may only be reimbursed for one method of site classification. See Subpart F of this Part.~~

~~Owners and operators are also advised that the total payment from the Fund for all corrective action plans and associated budget plans submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

SUBPART D: CORRECTIVE ACTION (Repealed)

Section 732.400 General (Repealed)

~~a)~~ ~~Following approval of the site evaluation and classification by the Agency pursuant to Subpart C of this Part and except as provided in subsection (b) or (c) of this Section, the owner or operator of a UST system subject to the requirements of this Part shall develop and submit a corrective action plan and perform corrective action activities in accordance with the procedures and requirements contained in this Subpart D.~~

~~b)~~ ~~Owners or operators of sites classified in accordance with the requirements of Subpart C as No Further Action may choose to conduct remediation sufficient to satisfy the remediation objectives referenced in Section 732.408 of this Part.~~

~~c)~~ ~~Owners or operators of sites classified in accordance with the requirements of Subpart C as Low Priority may choose to conduct remediation sufficient to satisfy the remediation objectives referenced in Section 732.408 of this Part. Any owner or operator choosing to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part shall so notify the Agency in writing prior to conducting such efforts. Upon completion of the remediation activities, owners or operators choosing to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part shall submit a corrective action completion report to the Agency demonstrating compliance with the required levels. Upon approval of the corrective action completion report by the Agency in accordance with Subpart E, a No Further Remediation Letter shall be issued by the Agency.~~

~~BOARD NOTE: Owners or operators proceeding under subsection (b) or (c) of this Section are advised that they may not be entitled to full payment from the Fund. See Subpart F of this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.401 Agency Authority to Initiate (Repealed)

~~Pursuant to Sections 732.100 or 732.105 of this Part, the Agency shall have the authority to require or initiate corrective action activities in accordance with the remainder of this Subpart D.~~

Section 732.402 No Further Action Site (Repealed)

~~The owner or operator of a site that has been certified as a No Further Action site by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall have no additional remediation responsibilities beyond those performed pursuant to Subpart B or C of this Part. If the Agency fails to approve, reject or modify the site classification completion report within 120 days after receipt of the completion report pursuant to Section 732.309 or Section 732.312, the site classification completion report is rejected by operation of law.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.403 Low Priority Site (Repealed)

~~a)~~ ~~The owner or operator of a site that has been certified as a Low Priority site by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall develop a groundwater monitoring plan and perform groundwater monitoring in accordance with the requirements of this Section.~~

~~b)~~ ~~The owner or operator shall develop a groundwater monitoring plan designed to satisfy the following requirements at a minimum:~~

~~1)~~ ~~Groundwater monitoring shall be conducted for a period of three years following the Agency's approval of the site classification, unless subsection (b)(6) or subsection (i) of this Section applies;~~

~~2)~~ ~~Groundwater monitoring wells shall be placed at the property line or 200 feet from the UST system, whichever is closer. The wells shall be placed in a configuration designed to provide the greatest likelihood of detecting migration of groundwater contamination. In the event that a groundwater monitoring well cannot physically be installed at the property line or 200 feet from the UST system, whichever is closer, in accordance with this subsection (b)(2), the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a~~

monitoring well in a location that is closer to the UST system than the rule requires. However, once the election is made the owner or operator may not withdraw the election at a later time;

3) Groundwater monitoring wells shall satisfy the requirements at Section 732.307(j)(3) and (4) of this Part;

4) During the first year of groundwater monitoring, samples from each well shall be collected and analyzed on a quarterly basis. During the second year of groundwater monitoring, samples from each well shall be collected and analyzed during the second and fourth quarters. During the third and final year of groundwater monitoring, at a minimum, samples from each well shall be collected and analyzed in the fourth quarter;

5) To determine whether groundwater remediation objectives have been exceeded, samples for groundwater monitoring shall be collected and analyzed in accordance with the procedures set forth in Section 732.307(j)(5) of this Part for the applicable indicator contaminants determined pursuant to Section 732.310 of this Part;

6) The owner or operator may use groundwater monitoring data that has been collected up to 3 years prior to the site being certified as Low Priority, if the data meets the requirements of subsections (b)(2) through (b)(5) of this Section. This data may be used to satisfy all or part of the three year period of groundwater monitoring required under this Section.

c) Prior to the implementation of groundwater monitoring, except as provided under subsection (b)(6) of this Section, the owner or operator shall submit the groundwater monitoring plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a groundwater monitoring budget plan also shall be submitted to the Agency for review.

d) Groundwater analysis results obtained pursuant to subsection (b) of this Section shall be submitted to the Agency within 30 days after the end of each annual sampling period, except as provided under subsection (b)(6) of this Section. Groundwater analysis data being used pursuant to subsection (b)(6) shall be submitted to the Agency as part of a Low Priority groundwater monitoring plan or the Low Priority groundwater monitoring completion report.

1) The information to be collected shall include, but not be limited to, the information set forth in Section 732.307(j)(5) of this Part.

2) If at any time the groundwater analysis results indicate a confirmed exceedence of the applicable indicator contaminant groundwater remediation objectives as a result of the underground storage tank release

of petroleum, the owner or operator shall notify the Agency of the exceedence within 30 days and provide supporting documentation of the nature and extent of the exceedence.

3) Indicator contaminant groundwater remediation objectives shall be determined in accordance with Section 732.311 of this Part.

e) Within 30 days after the completion of the Low Priority groundwater monitoring plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report in accordance with Section 732.409 of this Part. If there is no confirmed exceedence of applicable indicator contaminant objectives during the three year groundwater monitoring period, the report shall contain a certification to that effect by a Licensed Professional Engineer or Licensed Professional Geologist.

f) The Agency shall review the groundwater monitoring completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval of the report by the Agency. If the owner or operator elects to appeal an Agency action to disapprove, modify, or reject by operation of law a Low Priority groundwater monitoring completion report, the Agency shall indicate to the Board in conjunction with such appeal whether it intends to reclassify the site as High Priority.

g) If at any time groundwater analysis results indicate a confirmed exceedence of applicable indicator contaminant objectives, the Agency may reclassify the site as a High Priority site any time before the Agency's final approval of a Low Priority groundwater monitoring completion report. The Agency shall notify the owner or operator in writing if a site is reclassified. Notice of reclassification shall be by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. Any action by the Agency to reclassify the site as a High Priority site shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for in the review of permit decisions in Section 40 of the Act.

h) The owner or operator of a Low Priority site reclassified to High Priority pursuant to subsection (g) of this Section shall develop and submit for Agency approval a High Priority corrective action plan satisfying the requirements of Section 732.404 of this Part within 120 days after receiving the notice of reclassification. If the owner or operator intends to seek payment from the Fund, a corrective action budget plan also shall be submitted within 120 days after receiving the notice of reclassification.

i) As a result of the demonstration under Section 732.307(j)(6), the owner or operator of a site classified as Low Priority by a Licensed Professional Engineer

~~or Licensed Professional Geologist shall prepare a report in accordance with Section 732.409 of this Part, that supports the issuance of a No Further Remediation Letter or reclassification of the site as a High Priority site. In the event the site is reclassified as a High Priority site, the owner or operator shall develop and submit for Agency approval a High Priority corrective action plan in accordance with subsection (h) of this Section.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.404 High Priority Site (Repealed)

~~a)~~ ~~The owner or operator of a site classified as High Priority shall develop a corrective action plan and perform corrective action in accordance with the requirements of this Section. The purpose of the corrective action plan shall be to remediate or eliminate each of the criteria set forth in subsection (b) of this Section that caused the site to be classified as High Priority.~~

~~b)~~ ~~The owner or operator shall develop a corrective action plan based on site conditions and designed to achieve the following as applicable to the site:~~

~~1)~~ ~~For sites that have submitted a site classification report under Section 732.309, provide that:~~

~~A)~~ ~~After complete performance of the corrective action plan, applicable indicator contaminants identified in the groundwater investigation are not present in groundwater, as a result of the underground storage tank release, in concentrations exceeding the remediation objectives referenced in Section 732.408 of this Part at the property boundary line or 200 feet from the UST system, whichever is less;~~

~~B)~~ ~~After complete performance of the corrective action plan, Class III special resource groundwater quality standards for Class III special resource groundwater within 200 feet of the UST system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;~~

~~C)~~ ~~After complete performance of the corrective action plan, remediation of contamination in natural or man-made exposure pathways as a result of the underground storage tank release has been conducted in accordance with 35 Ill. Adm. Code 742;~~

~~D)~~ ~~Threats to potable water supplies are remediated; and~~

~~E)~~ ~~Threats to bodies of surface water are remediated.~~

2) For sites that have submitted a site classification completion report under Section 732.312 of this Part, provide that, after complete performance of the corrective action plan, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 for any applicable exposure route not excluded from consideration under Section 732.312.

c) The owner or operator is not required to perform corrective action on an adjoining or off-site property to meet the requirements of this Section, even where complete performance of the corrective action plan under subsection (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411 of this Part.

d) In developing the corrective action plan, if the Licensed Professional Engineer or Licensed Professional Geologist selects soil or groundwater remediation, or both, to satisfy any of the criteria set forth in subsection (b) of this Section, remediation objectives shall be determined in accordance with Section 732.408 of this Part. Groundwater monitoring wells shall satisfy the requirements of Section 732.307(j)(3) and (4) of this Part.

e) Except where provided otherwise pursuant to Section 732.312 of this Part, in developing the corrective action plan, additional investigation activities beyond those required for the site evaluation and classification may be necessary to determine the full extent of soil or groundwater contamination and of threats to human health or the environment. Such activities may include, but are not limited to, additional soil borings with sampling and analysis or additional groundwater monitoring wells with sampling and analysis. Such activities as are technically necessary and consistent with generally accepted engineering practices may be performed without submitting a work plan or receiving prior approval from the Agency, and associated costs may be included in a High Priority corrective action budget plan. A description of these activities and the results shall be included as a part of the corrective action plan.

1) In addition to the potable water supply wells identified pursuant to Section 732.307(f) of this Part, the owner or operator must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is

modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:

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

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

2) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but is not limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to Section 732.307(f)(1) of this Part or subsection (e)(1) of this Section. The additional investigation may include, but is not limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

f) The owner or operator shall submit the corrective action plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a corrective action budget plan also shall be submitted to the Agency for review.

g) Within 30 days after completing the performance of the High Priority corrective action plan, the owner or operator shall submit to the Agency a corrective action completion report in accordance with Section 732.409 of this Part.

h) Within 120 days, the Agency shall review the corrective action completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval by the Agency.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.405 Plan Submittal and Review (Repealed)

~~a)~~ ~~Prior to conducting any corrective action activities pursuant to this Subpart D, the owner or operator shall submit to the Agency a Low Priority groundwater monitoring plan or a High Priority corrective action plan satisfying the minimum requirements for such activities as set forth in Section 732.403 or 732.404 of this Part, as applicable.~~

~~b)~~ ~~In addition to the plans required in subsections (a), (e), and (f) of this Section and prior to conducting any groundwater monitoring or corrective action activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a groundwater monitoring or corrective action budget plan with the corresponding groundwater monitoring or corrective action plan. Such budget plans shall include, but is not limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation and completion of the applicable activities, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget plan the Agency may require a comparison between the costs of the proposed method of remediation and other methods of remediation.~~

~~c)~~ ~~The Agency shall have the authority to review and approve, reject or require modification of any plan or budget plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.~~

~~d)~~ ~~Notwithstanding subsections (a), (b), (e), and (f) of this Section and except as provided at Section 732.407 of this Part, an owner or operator may proceed to conduct Low Priority groundwater monitoring or High Priority corrective action activities in accordance with this Subpart D prior to the submittal or approval of an otherwise required groundwater monitoring plan or budget plan or corrective action plan or budget plan. However, any such plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.~~

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

~~e)~~ ~~If, following approval of any groundwater monitoring plan, corrective action plan or associated budget plan, an owner or operator determines that revised~~

~~procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended groundwater monitoring plan, corrective action plan or associated budget plan for review by the Agency. The Agency shall review and approve, reject, or require modifications of the amended plan or budget plan in accordance with the procedures contained in Subpart E of this Part.~~

~~f)~~ ~~If the Agency determines any approved corrective action plan has not achieved applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit a revised corrective action plan. If the owner or operator intends to seek payment from the Fund, the owner or operator must also submit a revised budget plan. Any action by the Agency to require a revised corrective action plan pursuant to this subsection (f) shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.~~

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

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.406 Deferred Corrective Action; Priority List for Payment (Repealed)

~~a)~~ ~~An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the underground storage tank fund may elect to defer site classification, low priority groundwater monitoring, or remediation activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met.~~

~~1)~~ ~~Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.~~

~~2)~~ ~~The Agency shall monitor the availability of funds and shall provide notice of insufficient funds to owners or operators in accordance with Section 732.503(g) of this Part.~~

~~3)~~ ~~Owners and operators must submit elections to defer low priority groundwater monitoring or high priority corrective action activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.~~

4) The Agency must review elections to defer low priority groundwater monitoring or high priority corrective action activities to determine whether the requirements of subsection (b) of this Section are met. The Agency must notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.

A) The Agency must mail notices of final action on an election to defer by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.

B) Any action by the Agency to reject an election, or the rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

5) Upon approval of an election to defer low priority groundwater monitoring or high priority corrective action activities until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment and move up based solely on the date the Agency receives a complete written election of deferral, with the earliest dates having the highest priority.

6) As funds become available the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the owner's or operator's site. After such notification the owner or operator shall commence corrective action.

7) Authorization of payment of encumbered funds for deferred low priority groundwater monitoring or high priority corrective action activities shall be approved in accordance with the requirements of Subpart F of this Part.

8) The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred site classification pursuant to Section 732.306 of this Part with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.

b) An owner or operator who elects to defer low priority groundwater monitoring or high priority corrective action activities under subsection (a) of this Section shall submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:

1) The Agency has approved the owner's or operator's low priority groundwater monitoring or high priority corrective action budget plan;

2) The owner or operator has been determined eligible to seek payment from the Fund;

3) The early action requirements of Subpart B of this Part have been met;

4) Groundwater contamination does not exceed the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling in accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but is not limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

c) An owner or operator may, at any time, withdraw the election to defer low priority groundwater monitoring or high priority corrective action activities. The owner or operator must notify the Agency in writing of the withdrawal. Upon such withdrawal, the owner or operator shall proceed with corrective action in accordance with the requirements of this Part.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.407 Alternative Technologies (Repealed)

a) An owner or operator may choose to use an alternative technology for corrective action in response to a release of petroleum at a High Priority site. Corrective action plans proposing the use of alternative technologies shall be submitted to the Agency in accordance with Section 732.405 of this Part. In addition to the requirements for corrective action plans contained in Section 732.404, the owner

~~or operator who seeks approval of an alternative technology shall submit documentation along with the corrective action plan demonstrating that:~~

~~1)~~ ~~The proposed alternative technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and all corrective action remediation objectives necessary to comply with the Act and regulations and to protect human health or the environment;~~

~~2)~~ ~~The proposed alternative technology will not adversely affect human health or the environment;~~

~~3)~~ ~~The owner or operator will obtain all Agency permits necessary to legally authorize use of the alternative technology;~~

~~4)~~ ~~The owner or operator will implement a program to monitor whether the requirements of subsection (a)(1) of this Section have been met; and~~

~~5)~~ ~~Within one year from the date of Agency approval the owner or operator will provide to the Agency monitoring program results establishing whether the proposed alternative technology will successfully achieve compliance with the requirements of subsection (a)(1) of this Section and any other applicable regulations. The Agency may require interim reports as necessary to track the progress of the alternative technology. The Agency will specify in the approval when those interim reports shall be submitted to the Agency.~~

~~b)~~ ~~An owner or operator intending to seek payment for costs associated with the use of an alternative technology shall submit a corresponding budget plan in accordance with Section 732.405 of this Part. In addition to the requirements for corrective action budget plans at Section 732.404 of this Part, the budget plan must demonstrate that the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies. The budget plan must compare the costs of at least two other alternative technologies to the costs of the proposed alternative technology, if other alternative technologies are available and are technically feasible.~~

~~c)~~ ~~If an owner or operator has received approval of a corrective action plan and associated budget plan from the Agency prior to implementing the plan and the alternative technology fails to satisfy the requirements of subsection (a)(1) or (a)(2) of this Section, such failure shall not make the owner or operator ineligible to seek payment for the activities associated with the subsequent performance of a corrective action using conventional technology. However, in no case shall the total payment for the site exceed the statutory maximums. Owners or operators implementing alternative technologies without obtaining pre-approval shall be~~

~~ineligible to seek payment for the subsequent performance of a corrective action using conventional technology.~~

~~d)~~ ~~The Agency may require remote monitoring of an alternative technology. The monitoring may include, but is not limited to, monitoring the alternative technology's operation and progress in achieving the applicable remediation objectives.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.408 Remediation Objectives (Repealed)

~~For sites requiring High Priority corrective action or for which the owner or operator has elected to conduct corrective action pursuant to Section 732.300(b), 732.400(b) or 732.400(c) of this Part, the owner or operator shall propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 must determine the following parameters on a site-specific basis:~~

~~Hydraulic conductivity (K)~~
~~Soil bulk density (ρb)~~
~~Soil particle density (ρs)~~
~~Moisture content (w)~~
~~Organic carbon content (foc)~~

~~Board Note: Failure to use site-specific remediation objectives on-site and to utilize available groundwater ordinances as institutional controls may result in certain corrective action costs being ineligible for payment from the Fund. See Section 732.606(ddd) and (eee) of this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.409 Groundwater Monitoring and Corrective Action Completion Reports (Repealed)

~~a)~~ ~~Within 30 days after completing the performance of a Low Priority groundwater monitoring plan or High Priority corrective action plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report or a corrective action completion report.~~

~~1)~~ ~~The Low Priority groundwater monitoring completion report shall include, but is not limited to, a narrative describing the implementation and completion of all elements of the groundwater monitoring plan and the procedures used for collection and analysis of samples, analytical results in tabular form, actual analytical results, laboratory certification and any other information or documentation relied upon by the Licensed~~

Professional Engineer or Licensed Professional Geologist in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site.

2) The High Priority corrective action completion report shall include, but is not limited to, a narrative and timetable describing the implementation and completion of all elements of the corrective action plan and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. Documentation of any water supply well survey conducted pursuant to Section 732.404(e) of this Part must include, but is not limited to, the following:

A) One or more maps, to an appropriate scale, showing the following:

i) The location of the community water supply wells and other potable water supply wells identified pursuant to Section 732.404(e) of this Part, and the setback zone for each well;

ii) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to Section 732.404(e) of this Part;

iii) The current extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

iv) The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

B) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to Section 732.404(e) of this Part;

C) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to Section 732.404(e) of this Part, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

D) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of Section 732.404(e) of this Part and that the documentation submitted pursuant to this Section includes the information obtained as a result of the survey.

3) A High Priority corrective action completion report shall demonstrate the following:

A) For sites submitting a site classification report under Section 732.309 of this Part:

i) Applicable indicator contaminant groundwater objectives are not exceeded at the property boundary line or 200 feet from the UST system, whichever is less, as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

ii) Class III resource groundwater quality standards for Class III special use resource groundwater within 200 feet of the UST system are not exceeded as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

iii) The release of petroleum does not threaten human health or human safety due to the presence or migration, through natural or manmade pathways, of petroleum in concentration sufficient to harm human health or human safety or to cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

iv) The release of petroleum does not threaten any surface water body; and

v) The release of petroleum does not threaten any potable water supply.

B) For sites submitting a site classification completion report under Section 732.312 of this Part, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 of this Part for any applicable exposure route not excluded from further consideration under Section 732.312 of this Part.

b) ~~The applicable report shall be accompanied by a certification from a Licensed Professional Engineer, in accordance with subsection (a) of this Section, that the information presented in the applicable report is accurate and complete, that groundwater monitoring or corrective action have been completed in accordance with the requirements of the Act and this Subpart D, and that no further remediation is required at the site.~~

c) ~~The Agency shall have the authority to review and approve, reject or require modification of any report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.410 "No Further Remediation" letter (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997)

Section 732.411 Off-Site Access (Repealed)

a) ~~An owner or operator seeking to comply with the best efforts requirements of Section 732.404(c) of this Part must demonstrate compliance with the requirements of this Section.~~

b) ~~In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:~~

1) ~~Citation to Title XVI of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;~~

2) ~~That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c of the Act;~~

3) ~~That, in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by the investigation;~~

4) ~~If contamination results from a release by the owner or operator, the owner or operator will conduct all associated remediation at its own expense;~~

5) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release; and

6) A reasonable time to respond to the letter, not less than 30 days.

c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the corrective action completion report, the following documentation:

1) A sworn affidavit, signed by the owner or operator identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and

2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.

d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:

1) The physical and chemical characteristics, including toxicity, persistence and potential for migration, of applicable indicator contaminants at the property boundary line;

2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;

3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;

4) The potential effects of residual contamination on nearby surface water and groundwater;

5) The proximity, quality and current and future uses of nearby surface water and groundwater, including regulated recharge areas, wellhead protection areas, and setback zones of potable water supply wells;

6) Any known or suspected natural or man-made migration pathways existing in or near the suspected area of off-site contamination;

7) The nature and use of the part of the off-site property that is the suspected area of contamination;

8) ~~Any existing on-site engineered barriers or institutional controls that might have an impact on the area of suspected off-site contamination, and the nature and extent of such impact; and~~

9) ~~Any other applicable information assembled in compliance with this Part.~~

e) ~~The Agency shall issue a No Further Remediation Letter to an owner or operator subject to this Section and otherwise entitled to such issuance only if the owner or operator has, in accordance with this Section, either completed any requisite off-site corrective action or demonstrated to the Agency's satisfaction an inability to obtain off-site access despite best efforts.~~

f) ~~The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access is denied.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

SUBPART E: SELECTION AND REVIEW PROCEDURES FOR PLANS AND REPORTS
(Repealed)

Section 732.500 General (Repealed)

~~The Agency shall have the authority to review any plan, budget plan, or report, including any amended plan, budget plan, or report, submitted pursuant to this Part. All such reviews shall be subject to the procedures set forth in the Act and this Subpart E.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.501 Submittal of Plans or Reports (Repealed)

(Source: Repealed at 30 Ill. Reg. 4928, effective March 1, 2006)

Section 732.502 Completeness Review (Repealed)

(Source: Repealed at 30 Ill. Reg. 4928, effective March 1, 2006)

Section 732.503 Review of Plans, Budget Plans, or Reports

a) ~~The Agency may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget plan, or report selected for review. The Agency may also review any other plans, budget plans, or reports submitted in conjunction with the site.~~

b) ~~The Agency shall have the authority to approve, reject or require modification of any plan, budget plan, or report it reviews. The Agency shall notify the owner or~~

~~operator in writing of its final action on any such plan, budget plan, or report, except in the case of 20 day, 45 day or free product removal reports, in which case no notification is necessary. Except as provided in subsections (c) and (d) of this Section, if the Agency fails to notify the owner or operator of its final action on a plan, budget plan, or report within 120 days after the receipt of a plan, budget plan, or report, the owner or operator may deem the plan, budget plan, or report rejected by operation of law. If the Agency rejects a plan, budget plan, or report or requires modifications, the written notification shall contain the following information, as applicable:~~

~~1)~~ ~~An explanation of the specific type of information, if any, that the Agency needs to complete the review;~~

~~2)~~ ~~An explanation of the Sections of the Act or regulations that may be violated if the plan, budget plan, or report is approved; and~~

~~3)~~ ~~A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the plan, budget plan, or report is approved.~~

~~c)~~ ~~For High Priority corrective action plans submitted by owners or operators not seeking payment from the Fund, the Agency may delay final action on such plans until 120 days after it receives the corrective action completion report required pursuant to Section 732.409 of this Part.~~

~~d)~~ ~~An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete plan, budget plan, or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 60 days.~~

~~e)~~ ~~The Agency shall mail notices of final action on plans, budget plans, or reports by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.~~

~~f)~~ ~~Any action by the Agency to reject or require modification, or rejection by failure to act, of a plan, budget plan, or report shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.~~

~~g)~~ ~~In accordance with Sections 732.306 and 732.406 of this Part, upon the approval of any budget plan by the Agency, the Agency shall include as part of the final notice to the owner or operator a notice of insufficient funds if the Fund does not contain sufficient funds to provide payment of the total costs approved in the budget plan.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.504 Selection of Plans or Reports for Full Review (Repealed)

(Source: Repealed at 30 Ill. Reg. 4928, effective March 1, 2006)

Section 732.505 Standards for Review of Plans or Reports (Repealed)

~~a)~~ ~~A full technical review shall consist of a detailed review of the steps proposed or completed to accomplish the goals of the plan and to achieve compliance with the Act and regulations. Items to be reviewed, if applicable, shall include, but not be limited to, number and placement of wells and borings, number and types of samples and analysis, results of sample analysis, and protocols to be followed in making determinations. The overall goal of the technical review for plans shall be to determine if the plan is sufficient to satisfy the requirements of the Act and regulations and has been prepared in accordance with generally accepted engineering practices. The overall goal of the technical review for reports shall be to determine if the plan has been fully implemented in accordance with generally accepted engineering practices, if the conclusions are consistent with the information obtained while implementing the plan, and if the requirements of the Act and regulations have been satisfied.~~

~~b)~~ ~~If the Licensed Professional Engineer certifies that there is no evidence that, through natural or manmade pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces, the Licensed Professional Engineer's certification to that effect shall be presumed correct unless the Agency's review reveals objective evidence to the contrary.~~

~~c)~~ ~~A full financial review shall consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed shall include, but not be limited to, costs associated with any materials, activities or services that are included in the budget plan. The overall goal of the financial review shall be to assure that costs associated with materials, activities and services shall be reasonable, shall be consistent with the associated technical plan, shall be incurred in the performance of corrective action activities, and shall not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

SUBPART F: PAYMENT OR REIMBURSEMENT (Repealed)

Section 732. 600 General (Repealed)

~~The Agency shall have the authority to review any application for payment or reimbursement and to authorize payment or reimbursement from the Fund or such other funds as the legislature directs for corrective action activities conducted pursuant to the Act and this Part 732. For purposes of this Part and unless otherwise provided, the use of the word "payment" shall include reimbursement. The submittal and review of applications for payment and the authorization for payment shall be in accordance with the procedures set forth in the Act and this Subpart F.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.601 Applications for Payment (Repealed)

~~a)~~ ~~An owner or operator seeking payment from the Fund shall submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The owner or operator may submit an application for partial payment or final payment. Costs for which payment is sought must be approved in a budget plan, provided, however, that no budget plan shall be required for early action activities conducted pursuant to Subpart B of this Part other than free product removal activities conducted more than 45 days after confirmation of the presence of free product.~~

~~b)~~ ~~A complete application for payment shall consist of the following elements:~~

~~1)~~ ~~A certification from a Licensed Professional Engineer or a Licensed Professional Geologist acknowledged by the owner or operator that the work performed has been in accordance with a technical plan approved by the Agency or, for early action activities, in accordance with Subpart B of this Part;~~

~~2)~~ ~~A statement of the amounts approved in the corresponding budget plan and the amounts actually sought for payment along with a certified statement by the owner or operator that the amounts so sought have been expended in conformance with the elements of a budget plan approved by the Agency;~~

~~3)~~ ~~A copy of the OSFM or Agency eligibility and deductibility determination;~~

~~4)~~ ~~Proof that approval of the payment requested will not exceed the limitations set forth in the Act and Section 732.604 of this Part;~~

~~5)~~ ~~A federal taxpayer identification number and legal status disclosure certification;~~

~~6)~~ ~~A private insurance coverage form;~~

7) A minority/women's business form;

8) Designation of the address to which payment and notice of final action on the application for payment are to be sent;

9) An accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed; and

10) Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.

c) The address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change in address.

d) Applications for payment and change of address forms shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

e) Applications for partial or final payment may be submitted no more frequently than once every 90 days.

f) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part, other than costs associated with free product removal activities conducted more than 45 days after confirmation of the presence of free product, in no case shall the Agency review an application for payment unless there is an approved budget plan on file corresponding to the application for payment.

g) In no case shall the Agency authorize payment to an owner or operator in amounts greater than the amounts approved by the Agency in a corresponding budget plan. Revised cost estimates or increased costs resulting from revised procedures must be submitted to the Agency for review in accordance with Subpart E of this Part using amended budget plans as required under this Part.

h) Applications for payment of costs associated with site classification may not be submitted prior to approval or modification of the site classification completion report.

i) Applications for payment of costs associated with site classification, low priority groundwater monitoring, or high priority corrective action that was deferred pursuant to Section 732.306 or 732.406 of this Part may not be submitted prior to approval or modification of the corresponding site classification completion

~~report, low priority groundwater monitoring completion report, or high priority corrective action completion report.~~

~~j)~~ ~~All applications for payment of corrective action costs must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. For releases for which the Agency issued a No Further Remediation Letter prior to March 1, 2006, all applications for payment must be submitted no later than March 1, 2007.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.602 Review of Applications for Payment (Repealed)

~~a)~~ ~~At a minimum, the Agency must review each application for payment submitted pursuant to this Part to determine the following:~~

~~1)~~ ~~whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part;~~

~~2)~~ ~~for costs incurred pursuant to Subpart B of this Part, other than free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought are reasonable, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part;~~

~~3)~~ ~~for costs incurred pursuant to Subpart C of this Part and free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought exceed the amounts approved in the corresponding budget plan, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part and a plan approved by the Agency; and~~

~~4)~~ ~~Whether the amounts sought are eligible for payment.~~

~~b)~~ ~~When conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section.~~

~~c)~~ ~~The Agency's review may include review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budget plans, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.~~

d) Following a review, the Agency shall have the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency shall notify the owner or operator in writing of its final action on any such application for payment. Except as provided in subsection (e) of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law. If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification shall contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete the review;

2) An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and

3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.

e) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete application for payment by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 30 days.

f) The Agency shall mail notices of final action on applications for payment by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. The Agency shall mail notices of final action on applications for payment, and direct the Comptroller to mail payments to the owner or operator, at the address designated for receipt of payment in the application for payment or on a change of address form, provided by the Agency, submitted subsequent to submittal of the application for payment.

g) Any action by the Agency to deny payment for an application for payment or portion thereof or to require modification shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.603 Authorization for Payment; Priority List (Repealed)

a) Within 60 days after notification to an owner or operator that the application for payment or a portion thereof has been approved by the Agency or by operation of

law, the Agency shall forward to the Office of the State Comptroller in accordance with subsection (d) or (e) of this Section a voucher in the amount approved. If the owner or operator has filed an appeal with the Board of the Agency's final decision on an application for payment, the Agency shall have 60 days after the final resolution of the appeal to forward to the Office of the State Comptroller a voucher in the amount ordered as a result of the appeal. Notwithstanding the time limits imposed by this Section, the Agency shall not forward vouchers to the Office of the State Comptroller until sufficient funds are available to issue payment.

b) The following rules shall apply regarding deductibles:

1) Any deductible, as determined by the OSFM or the Agency, shall be subtracted from any amount approved for payment by the Agency or by operation of law or ordered by the Board or courts;

2) Only one deductible shall apply per occurrence;

3) If multiple incident numbers are issued for a single site in the same calendar year, only one deductible shall apply for those incidents, even if the incidents relate to more than one occurrence; and

4) Where more than one deductible determination is made, the higher deductible shall apply.

c) The Agency shall instruct the Office of the State Comptroller to issue payment to the owner or operator at the address designated in accordance with Section 732.601(b)(8) or (c) of this Part. In no case shall the Agency authorize the Office of the State Comptroller to issue payment to an agent, designee, or entity that has conducted corrective action activities for the owner or operator.

d) For owners or operators who have deferred site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, payment shall be authorized from funds encumbered pursuant to Section 732.306(a)(6) or 732.406(a)(6) of this Part upon approval of the application for payment by the Agency or by operation of law.

e) For owners or operators not electing to defer site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, the Agency shall form a priority list for payment for the issuance of vouchers pursuant to subsection (a) of this Section.

1) All such applications for payment shall be assigned a date that is the date upon which the complete application for partial or final payment was received by the Agency. This date shall determine the owner’s or

operator's priority for payment in accordance with subsection (e)(2) of this Section, with the earliest dates receiving the highest priority.

2) Once payment is approved by the Agency or by operation of law or ordered by the Board or courts, the application for payment shall be assigned priority in accordance with subsection (e)(1) of this Section. The assigned date shall be the only factor determining the priority for payment for those applications approved for payment.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.604 Limitations on Total Payments (Repealed)

a) Limitations per occurrence:

1) The Agency must not approve any payment from the Fund to pay an owner or operator for costs of corrective action incurred by the owner or operator in an amount in excess of $1,000,000 per occurrence.

2) The Agency must not approve any payment from the Fund to pay an owner or operator for costs of indemnification of the owner or operator in an amount in excess of $1,000,000 per occurrence.

b) Aggregate limitations:

1) Notwithstanding any other provision of this Part, the Agency must not approve payment to an owner or operator from the Fund for costs of corrective action or indemnification incurred during a calendar year in excess of the following amounts based on the number of petroleum underground storage tanks owned or operated by the owner or operator in Illinois:

Amount	Number of Tanks
$1,000,000	fewer than 101
$2,000,000	101 or more

2) Costs incurred in excess of the aggregate amounts set forth in subsection (b)(1) of this Section will not be eligible for payment in subsequent years.

c) For purposes of subsection (b) of this Section, requests submitted by any of the agencies, departments, boards, committees or commissions of the State of Illinois shall be acted upon as claims from a single owner or operator [415 ILCS 5/57.8(d)(2)].

d) For purposes of subsection (b) of this Section, owner or operator includes;

1) any subsidiary, parent, or joint stock company of the owner or operator; and

2) any company owned by any parent, subsidiary, or joint stock company of the owner or operator [415 ILCS 5/57.8(d)(3)].

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.605 Eligible Corrective Action Costs (Repealed)

a) Types of costs that may be eligible for payment from the Fund include those for corrective action activities and for materials or services provided or performed in conjunction with corrective action activities. Such activities and services may include but are not limited to reasonable costs for:

1) Early action activities conducted pursuant to Subpart B of this Part;

2) Engineer or geologist oversight services;

3) Remedial investigation and design;

4) Laboratory services necessary to determine site classification and whether the established remediation objectives have been met;

5) The installation and operation of groundwater investigation and groundwater monitoring wells;

6) The removal, treatment, transportation, and disposal of soil contaminated by petroleum at levels in excess of the established remediation objectives;

7) The removal, treatment, transportation, and disposal of water contaminated by petroleum at levels in excess of the established remediation objectives;

8) The placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established remediation objectives;

9) Groundwater corrective action systems;

10) Alternative technology, including but not limited to feasibility studies approved by the Agency;

~~11)~~ ~~Recovery of free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water;~~

~~12)~~ ~~The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the OSFM;~~

~~13)~~ ~~Costs incurred as a result of a release of petroleum because of vandalism, theft or fraudulent activity by a party other than an owner, operator or agent of an owner or operator;~~

~~14)~~ ~~Engineer or geologist costs associated with seeking payment from the Fund including, but not limited to, completion of an application for partial or final payment;~~

~~15)~~ ~~Costs associated with obtaining an Eligibility and Deductibility Determination from the OSFM or the Agency;~~

~~16)~~ ~~Costs for destruction and replacement of concrete, asphalt, or paving to the extent necessary to conduct corrective action if the concrete, asphalt, or paving was installed prior to the initiation of corrective action activities, the destruction and replacement has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer, and the destruction and replacement and its costs are approved by the Agency in writing prior to the destruction and replacement. The costs for destruction and replacement of concrete, asphalt, and paving must not be paid more than once. Costs associated with the replacement of concrete, asphalt, or paving must not be paid in excess of the cost to install, in the same area and to the same depth, the same material that was destroyed (e.g., replacing four inches of concrete with four inches of concrete);~~

~~17)~~ ~~The destruction or dismantling and reassembly of above grade structures in response to a release of petroleum if such activity has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer and such activity and its costs are approved by the Agency in writing prior to the destruction or dismantling and re-assembly. Such costs must not be paid in excess of a total $10,000 per occurrence. For purposes of this subsection (a)(17), destruction, dismantling or reassembly of above grade structures does not include costs associated with replacement of pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies;~~

~~18)~~ ~~Preparation of reports submitted pursuant to Section 732.202(h)(3) of this Part, free product removal plans and associated budget plans, free product removal reports, site classification plans (including physical soil~~

~~classification and groundwater investigation plans) and associated budget plans, site classification reports, groundwater monitoring plans and associated budget plans, groundwater monitoring completion reports, High Priority corrective action plans and associated budget plans, and High Priority corrective action completion reports;~~

~~19)~~ ~~Costs associated with the removal or abandonment of a potable water supply well, and replacement of the well or connection to a public water supply, whichever is less, if a Licensed Professional Engineer or Licensed Professional Geologist certifies that such activity is necessary to the performance of corrective action and that the property served by the well cannot receive an adequate supply of potable water from an existing source other than the removed or abandoned well, and the Agency approves such activity in writing. If the well being removed or abandoned is a public water supply well, the Licensed Professional Engineer or Licensed Professional Geologist is required to certify only that the removal or abandonment of the well is necessary to the performance of corrective action; and~~

~~20)~~ ~~Costs associated with the repair or replacement of potable water supply lines damaged to the point of requiring repair or replacement as a direct result of the release, if such activity is certified by a Licensed Professional Engineer or Licensed Professional Geologist as necessary for the protection of the potable water supply and approved by the Agency in writing.~~

~~b)~~ ~~An owner or operator may submit a budget plan or application for partial or final payment that includes an itemized accounting of costs associated with activities, materials or services not identified in subsection (a) of this Section if the owner or operator submits detailed information demonstrating that the activities, materials or services not identified in subsection (a) of this Section are essential to the completion of the minimum corrective action requirements of the Act and this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.606 Ineligible Corrective Action Costs (Repealed)

~~Costs ineligible for payment from the Fund include but are not limited to:~~

~~a)~~ ~~Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Appendix C of this Part, during early action activities conducted pursuant to Section 732.202(f), and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Appendix C of this~~

Part during early action activities conducted pursuant to Section 732.202(f) of this Part;

b) Costs or losses resulting from business interruption;

c) Costs incurred as a result of vandalism, theft or fraudulent activity by the owner or operator or agent of an owner or operator including the creation of spills, leaks or releases;

d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies, including but not limited to those structures destroyed or damaged during corrective action activities;

e) Costs of corrective action incurred by an owner or operator prior to July 28, 1989 [415 ILCS 5/57.8(j)];

f) Costs associated with the procurement of a generator identification number;

g) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;

h) Purchase costs of non-expendable materials, supplies, equipment or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment or tools;

i) Costs associated with activities that violate any provision of the Act or Board, OSFM or Agency regulations;

j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 732.105 of this Part and Section 57.12 of the Act;

k) Costs for removal, disposal or abandonment of a UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;

l) Costs associated with the installation of new USTs, the repair of existing USTs and removal and disposal of USTs determined to be ineligible by the Office of the State Fire Marshal;

m) Costs exceeding those contained in a budget plan or amended budget plan approved by the Agency;

n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;

o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

p) Costs associated with improperly installed sampling or monitoring wells;

q) Costs associated with improperly collected, transported, or analyzed laboratory samples;

r) Costs associated with the analysis of laboratory samples not approved by the Agency;

s) Costs for any corrective activities, services or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;

t) Interest or finance costs charged as direct costs;

u) Insurance costs charged as direct costs;

v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;

w) Costs associated with the compaction and density testing of backfill material;

x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;

y) Costs related to activities, materials or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act [415 ILCS 5] and regulations;

z) Costs incurred after completion of early action activities in accordance with Subpart B by owners or operators choosing, pursuant to Section 732.300(b) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;

aa) Costs incurred after completion of site classification activities in accordance with Subpart C by owners or operators choosing, pursuant to Section 732.400(b) or (c) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;

bb) Costs of alternative technology that exceed the costs of conventional technology;

cc) Costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;

dd) Costs to prepare site classification plans and associated budget plans under Section 732.305 of this Part, to perform site classification under Section 732.307 of this Part, or to prepare site classification completion reports under Section 732.309 of this Part, for sites where owners or operators have elected to classify under Section 732.312 of this Part;

ee) Costs to prepare site classification plans and associated budget plans under Section 732.312 of this Part, to perform site classification under Section 732.312 of this Part, or to prepare site classification completion reports under Section 732.312 of this Part, for sites where owners or operators have performed classification activities under Sections 732.305, 732.307, or 732.309 of this Part;

ff) Costs requested that are based on mathematical errors;

gg) Costs that lack supporting documentation;

hh) Costs proposed as part of a budget plan that are unreasonable;

ii) Costs incurred during early action that are unreasonable;

jj) Costs incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release;

kk) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (kk) does not apply to the following:

1) Costs incurred for MTBE remediation pursuant to Section 732.310(i)(2) of this Part;

2) Monitoring well abandonment costs;

3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;

4) Costs associated with seeking payment from the Fund; and

5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and

orders the owner or operator to achieve Tier 1 remediation objectives in response to the release;

ll) Handling charges for subcontractor costs that have been billed directly to the owner or operator;

mm) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;

nn) Costs associated with standby and demurrage;

oo) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 732.405(f) of this Part, that a revised corrective action plan is required, provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment if they meet the requirements of this Part;

pp) Costs incurred after the effective date of an owner's or operator's election to proceed in accordance with 35 Ill. Adm. Code 734;

qq) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 732.203(a)(5) of this Part;

rr) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;

ss) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 732.605(a)(16) of this Part;

tt) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Section 732.605(a)(16) or (17) of this Part;

uu) Costs associated with oversight by an owner or operator;

vv) Handling charges charged by persons other than the owner's or operator's primary contractor;

ww) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 732.605(a)(16) of this Part;

~~xx)~~ ~~The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;~~

~~yy)~~ ~~Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 732.605(a)(19) of this Part;~~

~~zz)~~ ~~Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 732.605(a)(20) of this Part;~~

~~aaa)~~ ~~Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 732.605(a)(19) or (20) of this Part;~~

~~bbb)~~ ~~Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget plan;~~

~~ccc)~~ ~~Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;~~

~~ddd)~~ ~~Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (ddd) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release;~~

~~eee)~~ ~~Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.607 Payment for Handling Charges (Repealed)

~~Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table:~~

~~Subcontract or Field Purchase Cost:~~	~~Eligible Handling Charges as a Percentage of Cost:~~

~~$0 - $5,000.....12%~~
~~$5,001 - $15,000.....$600 + 10% of amt. over $5,000~~
~~$15,001 - $50,000.....$1,600 + 8% of amt. over $15,000~~
~~$50,001 - $100,000.....$4,400 + 5% of amt. over $50,000~~
~~$100,001 - $1,000,000.....$6,900 + 2% of amt. over $100,000~~

~~(Source: Repealed at 35 Ill. Reg. _____, effective _____)~~

Section 732.608 Apportionment of Costs (Repealed)

~~a)~~ ~~The Agency may apportion payment of costs if:~~

~~1)~~ ~~The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and~~

~~2)~~ ~~The owner or operator failed to justify all costs attributable to each underground storage tank at the site. [415 ILCS 5/57.8(m)]~~

~~b)~~ ~~The Agency will determine, based on volume or number of tanks, which method of apportionment will be most favorable to the owner or operator. The Agency will notify the owner or operator of such determination in writing.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.609 Subrogation of Rights (Repealed)

~~Payment of any amount from the fund for corrective action or indemnification shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or indemnification for which the fund has compensated such owner, operator, or person from the person responsible or liable for the release [415 ILCS 5/57.8(h)].~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.610 Indemnification (Repealed)

~~a)~~ ~~An owner or operator seeking indemnification from the Fund for payment of costs incurred as a result of a release of petroleum from an underground storage tank must submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

~~1)~~ ~~A complete application for payment must contain the following:~~

~~A)~~ ~~A certified statement by the owner or operator of the amount sought for payment;~~

B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof must include, but is not limited to, the following:

i) A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement certified by the owner or operator as a true and correct copy; and

ii) Documentation demonstrating that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator;

C) A copy of the OSFM or Agency eligibility and deductibility determination;

D) Proof that approval of the indemnification requested will not exceed the limitations set forth in the Act and Section 732.604 of this Part;

E) A federal taxpayer identification number and legal status disclosure certification;

F) A private insurance coverage form; and

G) Designation of the address to which payment and notice of final action on the request for indemnification are to be sent to the owner or operator.

2) The owner's or operator's address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change of address.

3) Applications for payment must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

b) The Agency shall review applications for payment in accordance with this Subpart F. In addition, the Agency must review each application for payment to determine the following:

1) Whether the application contains all of the information and supporting documentation required by subsection (a) of this Section;

2) Whether there is sufficient documentation of a legally enforceable judgment entered against the owner or operator in a court of law, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator;

3) Whether there is sufficient documentation that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; and

4) Whether the amounts sought for indemnification are eligible for payment.

c) If the application for payment of the costs of indemnification is deemed complete and otherwise satisfies all applicable requirements of this Subpart F, the Agency shall forward the request for indemnification to the Office of the Attorney General for review and approval in accordance with Section 57.8(c) of the Act. The owner or operator's request for indemnification shall not be placed on the priority list for payment until the Agency has received the written approval of the Attorney General. The approved application for payment shall then enter the priority list established at Section 732.603(e)(1) of this Part based on the date the complete application was received by the Agency in accordance with Section 57.8(c) of the Act.

d) Costs ineligible for indemnification from the Fund include, but are not limited to:

1) Amounts an owner or operator is not legally obligated to pay pursuant to a judgment entered against the owner or operator in a court of law, a final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or any settlement entered into by the owner or operator;

2) Amounts of a judgment, final order, determination, or settlement that do not arise out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator;

3) Amounts incurred prior to July 28, 1989;

4) Amounts incurred prior to notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;

5) Amounts arising out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank for which the owner or operator is not eligible to access the Fund;

6) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;

7) Amounts associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;

8) Amounts associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 732.105 of this Part and Section 57.12 of the Act;

9) Amounts associated with a release that has not been reported to IEMA or is not required to be reported to IEMA;

10) Amounts incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release; and

11) Amounts incurred after the effective date of the owner's or operator's election to proceed in accordance with 35 Ill. Adm. Code 734.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.611 Costs Covered by Insurance, Agreement or Court Order (Repealed)

Costs of corrective action or indemnification incurred by an owner or operator which have been paid to an owner or operator under a policy of insurance, another written agreement, or a court order are not eligible for payment from the Fund. An owner or operator who receives payment under a policy of insurance, another written agreement, or a court order shall reimburse the State to the extent such payment covers costs for which payment was received from the Fund. (Section 57.8(e) of the Act)

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.612 Determination and Collection of Excess Payments (Repealed)

a) If, for any reason, the Agency determines that an excess payment has been paid from the Fund, the Agency may take steps to collect the excess amount pursuant to subsection (c) of this Section.

1) Upon identifying an excess payment, the Agency shall notify the owner or operator receiving the excess payment by certified or registered mail, return receipt requested.

2) The notification letter shall state the amount of the excess payment and the basis for the Agency's determination that the payment is in error.

3) The Agency's determination of an excess payment shall be subject to appeal to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.

b) An excess payment from the Fund includes, but is not limited to:

1) Payment for a non-corrective action cost;

2) Payment in excess of the limitations on payments set forth in Sections 732.604 and 732.607 and Subpart H of this Part;

3) Payment received through fraudulent means;

4) Payment calculated on the basis of an arithmetic error;

5) Payment calculated by the Agency in reliance on incorrect information; or

6) Payment of costs that are not eligible for payment.

c) Excess payments may be collected using any of the following procedures:

1) Upon notification of the determination of an excess payment in accordance with subsection (a) of this Section or pursuant to a Board order affirming such determination upon appeal, the Agency may attempt to negotiate a payment schedule with the owner or operator. Nothing in this subsection (c)(1) of this Section shall prohibit the Agency from exercising at any time its options at subsection (c)(2) or (c)(3) of this Section or any other collection methods available to the Agency by law.

2) If an owner or operator submits a subsequent claim for payment after previously receiving an excess payment from the Fund, the Agency may deduct the excess payment amount from any subsequently approved payment amount. If the amount subsequently approved is insufficient to recover the entire amount of the excess payment, the Agency may use the procedures in this Section or any other collection methods available to the Agency by law to collect the remainder.

3) The Agency may deem an excess payment amount to be a claim or debt owed the Agency, and the Agency may use the Comptroller's Setoff System for collection of the claim or debt in accordance with Section 10.5 of the "State Comptroller Act." [15 ILCS 405/10.05].

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.614 Audits and Access to Records; Records Retention (Repealed)

a) Owners or operators that submit a report, plan, budget, application for payment, or any other data or document under this Part must maintain all books, records, documents, and other evidence directly pertinent to the report, plan, budget, application for payment, data, or document, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.

b) The Agency or any of its duly authorized representatives must have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners or operators must provide proper facilities for such access and inspection.

c) Owners, or operators must maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:

1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;

2) For books, records, documents, or other evidence relating to an appeal, litigation, or other dispute or claim, the expiration of 3 years after the date of the final disposition of the appeal, litigation, or other dispute or claim; or

3) The expiration of any other applicable record retention period.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS (Repealed)

Section 732.700 General (Repealed)

~~Subpart G provides the procedures for issuance of No Further Remediation Letters under Title XVI and this Part. Subpart G also sets forth the recording requirements and the circumstances under which the letter may be voidable.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.701 Issuance of a No Further Remediation Letter (Repealed)

~~a)~~ ~~Upon approval by the Agency of a report submitted pursuant to Section 732.202(h)(3) of this Part, a No Further Action site classification report, a Low Priority groundwater monitoring completion report, or a High Priority corrective action completion report, the Agency shall issue to the owner or operator a No Further Remediation Letter. The No Further Remediation Letter shall have the legal effect prescribed in Section 57.10 of the Act. The No Further Remediation Letter shall be denied if the Agency rejects or requires modification of the applicable report.~~

~~b)~~ ~~The Agency shall have 120 days after the date of receipt of a complete report to issue a No Further Remediation Letter and may include the No Further Remediation Letter as part of the notification of approval of the applicable report in accordance with Subpart E of this Part. If the Agency fails to send the No Further Remediation Letter within 120 days, it shall be deemed denied by operation of law.~~

~~c)~~ ~~The notice of denial of a No Further Remediation Letter by the Agency may be included with the notification of rejection or modification of the applicable report. The reasons for the denial shall be stated in the notification. The denial shall be considered a final determination appealable to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for a No Further Remediation Letter is denied by operation of law, in lieu of an immediate repeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.~~

~~d)~~ ~~The Agency shall mail the No Further Remediation Letter by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the postmarked date that the letter is mailed.~~

~~e)~~ ~~The Agency at any time may correct errors in No Further Remediation Letters that arise from oversight, omission or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency shall mail the corrected letter to the owner or operator as set forth in subsection (d) of this Section. The corrected letter shall be perfected by recording in accordance with the requirements of Section 732.703 of this Part~~.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.702 Contents of a No Further Remediation Letter (Repealed)

~~A No Further Remediation Letter issued pursuant to this Part shall include all of the following:~~

~~a)~~ ~~An acknowledgment that the requirements of the applicable report were satisfied;~~

~~b)~~ ~~A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries, or, for purposes of Section 732.703(d) of this Part, other means sufficient to identify site location with particularity;~~

~~c)~~ ~~A statement that the remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;~~

~~d)~~ ~~A statement that the Agency's issuance of the No Further Remediation Letter signifies that, except for off-site contamination related to the occurrence that has not been remediated due to denial of access to the off-site property:~~

~~1)~~ ~~All corrective action requirements under Title XVI of the Act and this Part applicable to the occurrence have been complied with;~~

~~2)~~ ~~All corrective action concerning the remediation of the occurrence has been completed; and~~

~~3)~~ ~~No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment [415 ILCS 5/57.10(c)];~~

~~e)~~ ~~The prohibition under Section 732.703(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;~~

~~f)~~ ~~A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;~~

~~g)~~ ~~The recording obligations pursuant to Section 732.703 of this Part;~~

~~h)~~ ~~The opportunity to request a change in the recorded land use pursuant to Section 732.703(e) of this Part;~~

~~i)~~ ~~Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140];~~ ~~and~~

~~j)~~ ~~Any other provisions agreed to by the Agency and the owner or operator.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.703 Duty to Record a No Further Remediation Letter (Repealed)

~~a)~~ ~~Except as provided in subsections (c) and (d) of this Section, an owner or operator receiving a No Further Remediation Letter from the Agency pursuant to this Subpart G shall submit the letter, with a copy of any applicable institutional controls (as set forth in 35 Ill. Adm. Code 742, Subpart J) proposed as part of a corrective action completion report, to the office of the recorder or the registrar of titles of the county in which the site is located within 45 days after receipt of the letter. The letter and any attachments shall be filed in accordance with Illinois law so that they form a permanent part of the chain of title for the site. Upon the lapse of the 45-day period for recording, pursuant to Section 732.704(a)(5) of this Part, the Agency may void an unrecorded No Further Remediation Letter for failure to record it in a timely manner.~~

~~b)~~ ~~Except as provided in subsections (c) and (d) of this Section, a No Further Remediation Letter shall be perfected upon the date of the official recording of such letter. The owner or operator shall obtain and submit to the Agency, within 30 days after the official recording date, a certified or otherwise accurate and official copy of the letter and any attachments as recorded. An unperfected No Further Remediation Letter is effective only as between the Agency and the owner or operator.~~

~~c)~~ ~~For sites located in a highway authority right-of-way, the following requirements shall apply:~~

~~1)~~ ~~In order for the No Further Remediation Letter to be perfected, the highway authority with jurisdiction over the right-of-way must enter into a Memorandum of Agreement (MOA) with the Agency. The MOA must include, but is not limited to:~~

~~A)~~ ~~The name of the site, if any, and any highway authority or Agency identifiers (e.g., incident number, Illinois inventory identification number);~~

~~B)~~ ~~The address of the site (or other description sufficient to identify the location of the site with certainty);~~

C) A copy of the No Further Remediation Letter for each site subject to the MOA;

D) Procedures for tracking sites subject to the MOA so that all highway authority offices and personnel whose responsibilities (e.g., land acquisition, maintenance, construction, utility permits) may affect land use limitations will have notice of any environmental concerns and land use limitations applicable to a site;

E) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the site to any other agency, private person or entity and the steps that will be taken to ensure the long-term integrity of any land use limitations including, but not limited to, the following:

i) Upon creation of a deed, the recording of the No Further Remediation Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742, with copies of the recorded instruments sent to the Agency within 30 days after recording;

ii) Any other arrangements necessary to ensure that property that is conveyed or transferred remains subject to any land use limitations approved and implemented as part of the corrective action plan and the No Further Remediation Letter; and

iii) Notice to the Agency at least 60 days prior to any such intended conveyance or transfer indicating the mechanism(s) to be used to ensure that any land use limitations will be operated or maintained as required in the corrective action plan and No Further Remediation Letter; and

F) Provisions for notifying the Agency if any actions taken by the highway authority or its permittees at the site result in the failure or inability to restore the site to meet the requirements of the corrective action plan and the No Further Remediation Letter.

2) Failure to comply with the requirements of this subsection (c) may result in voidance of the No Further Remediation Letter pursuant to Section 732.704 of this Part as well as any other penalties that may be available.

d) For sites located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title, the following requirements shall apply:

1) To perfect a No Further Remediation Letter containing any restriction on future land use(s), the Federal Landholding Entity or Entities responsible for the site must enter into a Land Use Control Memorandum of Agreement (LUC MOA) with the Agency that requires the Federal Landholding Entity to do, at a minimum, the following:

A) Identify the location on the Federally Owned Property of the site subject to the No Further Remediation Letter. Such identification shall be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identify the site in question with particularity;

B) Implement periodic site inspection procedures that ensure oversight by the Federal Landholding Entities of any land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

C) Implement procedures for the Federal Landholding Entities to periodically advise the Agency of continued compliance with all maintenance and inspection requirements set forth in the LUC MOA;

D) Implement procedures for the Federal Landholding Entities to notify the Agency of any planned or emergency changes in land use that may adversely impact land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

E) Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of the site or sites subject to the No Further Remediation Letter, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure the No Further Remediation Letter is recorded on the chain of title upon transfer of the property; and

F) Attach to the LUC MOA a copy of the No Further Remediation Letter for each site subject to the LUC MOA.

2) To perfect a No Further Remediation letter containing no restriction(s) on future land use, the Federal Landholding Entity shall submit the letter to

~~the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter shall be filed in accordance with Illinois law so it forms a permanent part of the chain of title. The Federal Landholding Entity shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter demonstrating that the recording requirements have been satisfied.~~

~~3)~~ ~~Failure to comply with the requirements of this subsection (d) and the LUC MOA may result in voidance of the No Further Remediation Letter as well as any other penalties that may be available.~~

~~e)~~ ~~At no time shall any site for which a land use limitation has been imposed as a result of corrective action under this Part be used in a manner inconsistent with the land use limitation set forth in the No Further Remediation Letter. The land use limitation specified in the No Further Remediation Letter may be revised only by the perfecting of a subsequent No Further Remediation Letter, issued pursuant to Title XVII of the Act and regulations thereunder, following further investigation or remediation that demonstrates the attainment of objectives appropriate for the new land use.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.704 Voidance of a No Further Remediation Letter (Repealed)

~~a)~~ ~~The No Further Remediation Letter shall be voidable if site activities are not carried out in full compliance with the provisions of this Part, and 35 Ill. Adm. Code 742 where applicable, or the remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter include, but shall not be limited to:~~

~~1)~~ ~~Any violations of institutional controls or land use restrictions, if applicable;~~

~~2)~~ ~~The failure of the owner or operator or any subsequent transferee to operate and maintain preventive, engineering and institutional controls;~~

~~3)~~ ~~Obtaining the No Further Remediation Letter by fraud or misrepresentation;~~

~~4)~~ ~~Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based which:~~

~~A)~~ ~~were not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based;~~

B) results in the following:

i) the site no longer satisfying the criteria of a No Further Action site classification;

ii) the site no longer satisfying the criteria of a Low Priority site classification;

iii) failing to meet the remediation objectives established for a High Priority site; and

C) pose a threat to human health or the environment;

5) Upon the lapse of the 45 day period for recording the No Further Remediation Letter, the failure to record and thereby perfect the No Further Remediation Letter in a timely manner;

6) The disturbance or removal of contamination left in place under an approved plan;

7) The failure to comply with the requirements of Section 732.703(c) and the Memorandum of Agreement entered in accordance with Section 732.703(c) for a site that is located in a highway authority right-of-way;

8) The failure to comply with the requirements of Section 732.703(d) and the LUC MOA entered in accordance with Section 732.703(d) for a site located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title;

9) The failure to comply with the requirements of Section 732.703(d) of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 732.703(d) within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation Letter to any entity that will not remain or become a Federal Landholding Entity; or

10) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1015(b)(5) and (c).

b) If the Agency seeks to void a No Further Remediation Letter, it shall provide Notice of Voidance to the current title holder of the site and the owner or operator at his or her last known address.

1) The Notice of Voidance shall specify the cause for the voidance and describe the facts in support of the cause.

2) The Agency shall mail Notices of Voidance by registered or certified mail, date stamped with return receipt requested.

c) Within 35 days after receipt of the Notice of Voidance, the current title holder and owner or operator of the site at the time the No Further Remediation Letter was issued may appeal the Agency's decision to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.

d) If the Board fails to take final action within 120 days, unless such time period is waived by the petitioner, the petition shall be deemed denied and the petitioner shall be entitled to an appellate court order pursuant to subsection (d) of Section 41 of the Act. The Agency shall have the burden of proof in such action.

1) If the Agency's action is appealed, the action shall not become effective until the appeal process has been exhausted and a final decision is reached by the Board or courts.

A) Upon receiving a notice of appeal, the Agency shall file a Notice of lis pendens with the office of the recorder or the registrar of titles for the county in which the site is located. The notice shall be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site.

B) If the Agency's action is not upheld on appeal, the Notice of lis pendens shall be removed in accordance with Illinois law within 45 days after receipt of the final decision of the Board or the courts.

2) If the Agency's action is not appealed or is upheld on appeal, the Agency shall submit the Notice of Voidance to the office of the recorder or the registrar of titles for the county in which the site is located. The Notice shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

SUBPART H: MAXIMUM PAYMENT AMOUNTS (Repealed)

Section 732.800 Applicability (Repealed)

a) Methods for Determining Maximum Amounts. This Subpart H provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. All costs associated with conducting

corrective action are grouped into the tasks set forth in Sections 732.810 through 732.850 of this Part.

1) The first method for determining the maximum amount that can be paid for each task is to use the maximum amounts for each task set forth in those Sections, and in Section 732.870. In some cases the maximum amounts are specific dollar amounts, and in other cases the maximum amounts are determined on a site-specific basis.

2) As an alternative to using the amounts set forth in Sections 732.810 through 732.850 of this Part, the second method for determining the maximum amounts that can be paid for one or more tasks is bidding in accordance with Section 732.855 of this Part. As stated in that Section, when bidding is used, if the lowest bid for a particular task is less than the amount set forth in Sections 732.810 through 732.850, the amount in Sections 732.810 through 732.850 of this Part may be used instead of the lowest bid.

3) The third method for determining maximum amounts that can be paid from the Fund applies to unusual or extraordinary circumstances. The maximum amounts for such circumstances can be determined in accordance with Section 732.860 of this Part.

b) The costs listed under each task set forth in Sections 732.810 through 732.850 of this Part identify only some of the costs associated with each task. They are not intended as an exclusive list of all costs associated with each task for the purposes of payment from the Fund.

c) This Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. Whether a particular cost is eligible for payment must be determined in accordance with Subpart F of this Part.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.810 UST Removal or Abandonment Costs (Repealed)

Payment for costs associated with UST removal or abandonment of each UST must not exceed the amounts set forth in this Section. Such costs must include, but are not limited to, those associated with the excavation, removal, disposal, and abandonment of UST systems.

UST Volume	Maximum Total Amount per UST
110 – 999 gallons	$2,100
1,000 – 14,999 gallons	$3,150
15,000 or more gallons	$4,100

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.815 Free Product or Groundwater Removal and Disposal (Repealed)

~~Payment for costs associated with the removal and disposal of free product or groundwater must not exceed the amounts set forth in this Section. Such costs must include, but are not limited to, those associated with the removal, transportation, and disposal of free product or groundwater, and the design, construction, installation, operation, maintenance, and closure of free product or groundwater removal systems.~~

~~a)~~ ~~Payment for costs associated with each round of free product or groundwater removal via hand bailing or a vacuum truck must not exceed a total of $0.68 per gallon or $200, whichever is greater.~~

~~b)~~ ~~Payment for costs associated with the removal of free product or groundwater via a method other than hand bailing or vacuum truck must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part. Such costs must include, but are not limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product and groundwater removal systems.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.820 Drilling, Well Installation, and Well Abandonment (Repealed)

~~Payment for costs associated with drilling, well installation, and well abandonment must not exceed the amounts set forth in this Section.~~

~~a)~~ ~~Payment for costs associated with each round of drilling must not exceed the following amounts. Such costs must include, but not be limited to, those associated with mobilization, drilling labor, decontamination, and drilling for the purposes of soil sampling or well installation.~~

~~Type of Drilling~~	~~Maximum Total Amount~~
~~Hollow-stem auger~~	~~greater of $23 per foot or $1,500~~
~~Direct-push platform~~	
~~for sampling or other non-injection purposes~~	~~greater of $18 per foot or $1,200~~
~~for injection purposes~~	~~greater of $15 per foot or $1,200~~

~~b)~~ ~~Payment for costs associated with the installation of monitoring wells, excluding drilling, must not exceed the following amounts. Such costs must include, but are not limited to, those associated with well construction and development.~~

~~Type of Borehole~~	~~Maximum Total Amount~~

~~Hollow-stem auger~~	~~$16.50/foot (well length)~~
~~Direct-push platform~~	~~$12.50/foot (well length)~~

~~c)~~ ~~Payment for costs associated with the installation of recovery wells, excluding drilling, must not exceed the following amounts. Such costs must include, but are not limited to, those associated with well construction and development.~~

~~Well Diameter~~	~~Maximum Total Amount~~
~~4 or 6 inches~~	~~$25/foot (well length)~~
~~8 inches or greater~~	~~$41/foot (well length)~~

~~d)~~ ~~Payment for costs associated with the abandonment of monitoring wells must not exceed $10 per foot of well length~~.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.825 Soil Removal and Disposal (Repealed)

~~Payment for costs associated with soil removal, transportation, and disposal must not exceed the amounts set forth in this Section. Such costs must include, but are not limited to, those associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives or visibly contaminated fill removed pursuant to Section 732.202(f) of this Part, and the purchase, transportation, and placement of material used to backfill the resulting excavation.~~

~~a)~~ ~~Payment for costs associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives, visibly contaminated fill removed pursuant to Section 732.202(f) of this Part, and concrete, asphalt, or paving overlying such contaminated soil or fill must not exceed a total of $57 per cubic yard.~~

~~1)~~ ~~Except as provided in subsection (a)(2) of this Section, the volume of soil removed and disposed of must be determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.~~

~~2)~~ ~~The volume of soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 732.202(f) of this Part must be determined in accordance with Section Appendix C of this Part.~~

b) Payment for costs associated with the purchase, transportation, and placement of material used to backfill the excavation resulting from the removal and disposal of soil must not exceed a total of $20 per cubic yard.

1) Except as provided in subsection (b)(2) of this Section, the volume of backfill material must be determined by the following equation using the dimensions of the backfilled excavation:

(Excavation Length x Excavation Width x Excavation Depth) x 1.05.

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of backfill material used to replace soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 732.202(f) of this Part must be determined in accordance with Section Appendix C of this Part.

c) Payment for costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action must not exceed a total of $6.50 per cubic yard. The volume of soil removed and returned must be determined by the following equation using the dimensions of the excavation resulting from the removal of the soil:

(Excavation Length x Excavation Width x Excavation Depth).

A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.830 Drum Disposal (Repealed)

Payment for costs associated with the purchase, transportation, and disposal of 55-gallon drums containing waste generated as a result of corrective action (e.g., boring cuttings, water bailed for well development or sampling, hand-bailed free product) must not exceed the following amounts or a total of $500, whichever is greater.

Drum Contents	Maximum Total Amount per Drum
Solid waste	$250
Liquid waste	$150

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.835 Sample Handling and Analysis (Repealed)

~~Payment for costs associated with sample handling and analysis must not exceed the amounts set forth in Section Appendix D of this Part. Such costs must include, but are not limited to, those associated with the transportation, delivery, preparation, and analysis of samples, and the reporting of sample results. For laboratory analyses not included in this Section, the Agency may determine reasonable maximum payment amounts on a site-specific basis.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.840 Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures (Repealed)

~~a)~~ ~~Payment for costs associated with concrete, asphalt, and paving installed as an engineered barrier, other than replacement concrete, asphalt, and paving, must not exceed the following amounts. Costs associated with the replacement of concrete, asphalt, and paving used as an engineered barrier are subject to the maximum amounts set forth in subsection (b) of this Section instead of this subsection (a).~~

~~Depth of Material per Square Foot~~		~~Maximum Total Amount~~
~~Asphalt and paving~~	~~2 inches~~	~~$1.65~~
	~~3 inches~~	~~$1.86~~
	~~4 inches~~	~~$2.38~~
~~Concrete~~	~~any depth~~	~~$2.38~~

~~b)~~ ~~Payment for costs associated with the replacement of concrete, asphalt, and paving must not exceed the following amounts:~~

	~~Depth of Material~~	~~Maximum Total Amount per Square Foot~~
~~Asphalt and paving~~	~~2 inches~~	~~$1.65~~
	~~3 inches~~	~~$1.86~~
	~~4 inches~~	~~$2.38~~
	~~6 inches~~	~~$3.08~~
~~Concrete~~	~~2 inches~~	~~$2.45~~
	~~3 inches~~	~~$2.93~~
	~~4 inches~~	~~$3.41~~
	~~5 inches~~	~~$3.89~~
	~~6 inches~~	~~$4.36~~
	~~8 inches~~	~~$5.31~~

~~For depths other than those listed in this subsection, the Agency must determine reasonable maximum payment amounts on a site-specific basis.~~

~~c)~~ ~~Payment for costs associated with the destruction or the dismantling and reassembly of above-grade structures must not exceed the time and material amounts set forth in Section 732.850 of this Part. The total cost for the destruction or the dismantling and reassembly of above grade structures must not exceed $10,000 per site.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.845 Professional Consulting Services (Repealed)

~~Payment for costs associated with professional consulting will be reimbursed on a time and materials basis pursuant to Section 732.850. Such costs must include, but are not limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; vehicle charges; lodging; meals; and the preparation, review, certification, and submission of all plans, budget plans, reports, applications for payment, and other documentation.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.850 Payment on Time and Materials Basis (Repealed)

~~This Section sets forth the maximum amounts that may be paid when payment is allowed on a time and materials basis.~~

~~a)~~ ~~Payment for costs associated with activities that have a maximum payment amount set forth in other Sections of this Subpart H (e.g, sample handling and analysis, drilling, well installation and abandonment, or drum disposal must not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 732.860 of this Part.~~

~~b)~~ ~~Maximum payment amounts for costs associated with activities that do not have a maximum payment amount set forth in other Sections of this Subpart H must be determined by the Agency on a site-specific basis, provided, however, that personnel costs must not exceed the amounts set forth in Section Appendix E of this Part. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work. Owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.~~

~~BOARD NOTE: Alternative technology costs in excess of the costs of conventional technology are ineligible for payment from the Fund. See Sections 732.407(b) and 732.606(bb) of this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.855 Bidding (Repealed)

~~As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing.~~

~~a)~~ ~~A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.~~

~~b)~~ ~~The bids must be summarized on forms prescribed and provided by the Agency. The bid summary form, along with copies of the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.~~

~~c)~~ ~~The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.860 Unusual or Extraordinary Circumstances (Repealed)

~~If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payment amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. Examples of unusual or extraordinary circumstances may include, but are not limited to, an~~

~~inability to obtain a minimum of three bids pursuant to Section 732.855 of this Part due to a limited number of persons providing the service needed.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.865 Handling Charges (Repealed)

~~Payment of handling charges must not exceed the amounts set forth in Section 732.607 of this Part.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.870 Increase in Maximum Payment Amounts(Repealed)

~~The maximum payment amounts set forth in this Subpart H must be adjusted annually by an inflation factor determined by the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business.~~

~~a)~~ ~~The inflation factor must be calculated each year by dividing the latest published annual Implicit Price Deflator for Gross National Product by the annual Implicit Price Deflator for Gross National Product for the previous year. The inflation factor must be rounded to the nearest 1/100th. In no case must the inflation factor be more than five percent in a single year.~~

~~b)~~ ~~Adjusted maximum payment amounts must become effective on July 1 of each year and must remain in effect through June 30 of the following year. The first adjustment must be made on July 1, 2006 by multiplying the maximum payment amounts set forth in this Subpart H by the applicable inflation factor. Subsequent adjustments must be made by multiplying the latest adjusted maximum payment amounts by the latest inflation factor.~~

~~c)~~ ~~The Agency must post the inflation factors on its website no later than the date they become effective. The inflation factors must remain posted on the website in subsequent years to aid in the calculation of adjusted maximum payment amounts.~~

~~d)~~ ~~Adjusted maximum payment amounts must be applied as follows:~~

~~1)~~ ~~For costs approved by the Agency in writing prior to the date the costs are incurred, the applicable maximum payment amounts must be the amounts in effect on the date the Agency received the budget in which the costs were proposed. Once the Agency approves a cost, the applicable maximum payment amount for the cost must not be increased (e.g, by proposing the cost in a subsequent budget).~~

~~2)~~ ~~For costs not approved by the Agency in writing prior to the date the costs are incurred, including but not limited to early action costs, the applicable~~

~~maximum payments amounts must be the amounts in effect on the date the costs were incurred.~~

~~3)~~ ~~Owners and operators must have the burden of requesting the appropriate adjusted maximum payment amounts in budgets and applications for payment.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.875 Agency Review of Payment Amounts (Repealed)

~~At least every three years, the Agency must review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report must identify amounts that are not consistent with the prevailing market rates and suggest changes needed to make the amounts consistent with the prevailing market rates. The Board must publish notice of receipt of the report in the Environmental Register and on the Board's web page.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.APPENDIX A Indicator Contaminants (Repealed)

~~TANK CONTENTS~~	~~INDICATOR CONTAMINANTS~~
~~GASOLINE~~	~~Benzene~~
~~leaded(1), unleaded, premium, and gasohol~~	~~Ethylbenzene~~
	~~Toluene~~
	~~Xylene~~
	~~Methyl tertiary butyl ether (MTBE)~~
~~MIDDLE DISTILLATE AND HEAVY ENDS~~	
~~aviation turbine fuels(1)~~	~~Benzene~~
~~jet fuels~~	~~Ethylbenzene~~
	~~Toluene~~
	~~Xylene~~
~~diesel fuels~~	~~Acenaphthene~~
~~gas turbine fuel oils~~	~~Anthracene~~
~~heating fuel oils~~	~~Benzo (a)anthracene~~
~~illuminating oils~~	~~Benzo (a)pyrene~~
~~kerosene~~	~~Benzo (b)fluoranthene~~
~~lubricants~~	~~Benzo (k)fluoranthene~~
~~liquid asphalt and dust laying oils~~	~~Chrysene~~
~~cable oils~~	~~dibenzo(a,h)anthracene~~
~~crude oil, crude oil fractions~~	~~Fluoranthene~~
~~petroleum feedstocks~~	~~Fluorene~~

petroleum fractions
heavy oils
transformer oils(2)
hydraulic fluids(3)
petroleum spirits(4)
mineral spirits(4), Stoddard solvents(4)
high-flash aromatic naphthas(4)
VM&P naphthas(4)
moderately volatile hydrocarbon solvents(4)
petroleum extender oils(4)

Indeno (1,2,3-c,d)pyrene
Naphthalene
Pyrene
Acenaphthylene
Benzo(g,h,i)perylene
Phenanthrene

USED OIL

Screening sample(5)

(1) lead is also an indicator contaminant
(2) the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants
(3) barium is also an indicator contaminant
(4) the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B are also indicator contaminants
(5) used oil indicator contaminants shall be based on the results of a used oil soil sample analysis - refer to Section 732.310(g)

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.APPENDIX B Additional Parameters (Repealed)

Volatiles

1. Benzene
2. Bromoform
3. Carbon tetrachloride
4. Chlorobenzene
5. Chloroform
6. Dichlorobromomethane
7. 1,2-Dichloroethane
8. 1,1-Dichloroethene
9. cis-1,2-Dichloroethylene
10. trans-1,2-Dichloroethylene
11. Dichloromethane (Methylene chloride)
12. 1,2-Dichloropropane
13. 1,3-Dichloropropylene (cis + trans)
14. Ethylbenzene
15. Styrene
16. Tetrachloroethylene
17. Toluene
18. 1,1,1-Trichloroethane
19. 1,1,2-Trichloroethane

~~20. Trichloroethylene~~
~~21. Vinyl chloride~~
~~22. Xylenes (total)~~

~~Base/Neutrals~~
~~1. Bis(2-chloroethyl)ether~~
~~2. Bis(2-ethylhexyl)phthalate~~
~~3. 1,2-Dichlorobenzene~~
~~4. 1,4-Dichlorobenzene~~
~~5. Hexachlorobenzene~~
~~6. Hexachlorocyclopentadiene~~
~~7. n-Nitrosodi-n-propylamine~~
~~8. n-Nitrosodiphenylamine~~
~~9. 1,2,4-Trichlorobenzene~~

~~Polynuclear Aromatics~~
~~1. Acenaphthene~~
~~2. Anthracene~~
~~3. Benzo(a)anthracene~~
~~4. Benzo(a)pyrene~~
~~5. Benzo(b)fluoranthene~~
~~6. Benzo(k)fluoranthene~~
~~7. Chrysene~~
~~8. Dibenzo(a,h)anthracene~~
~~9. Fluoranthene~~
~~10. Fluorene~~
~~11. Indeno(1,2,3-c,d)pyrene~~
~~12. Naphthalene~~
~~13. Pyrene~~
~~14. Acenaphthylene~~
~~15. Benzo(g,h,i)perylene~~
~~16. Phenanthrene~~

~~Metals (total inorganic and organic forms)~~
~~1. Arsenic~~
~~2. Barium~~
~~3. Cadmium~~
~~4. Chromium (total)~~
~~5. Lead~~
~~6. Mercury~~
~~7. Selenium~~

~~Polychlorinated Biphenyls~~
~~1. Polychlorinated Biphenyls (as Decachlorobiphenyl)~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732. Table A Groundwater and Soil Remediation Objectives (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732.Table B Soil Remediation Methodology: Model Parameter Values (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732.Table C Soil Remediation Methodology: Chemical Specific Parameters(Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732.Table D Soil Remediation Methodology: Objectives (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732. Illustration A Equation For Groundwater Transport (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732.Illustration B Equation For Soil-Groundwater Relationship (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732.Illustration C Equation For Calculating Groundwater Objectives at the Source (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732.Illustration D Equation For Calculating Soil Objectives at the Source (Repealed)

(Source: Repealed at 21 Ill. Reg. 3617, effective July 1, 1997.)

Section 732.APPENDIX C Backfill Volumes

~~Volume of Tank in Gallons~~	~~Maximum amount of backfill material to be removed:~~	~~Maximum amount of backfill material to be replaced:~~
	~~Cubic yards~~	~~Cubic yards~~
~~<285~~	~~54~~	~~56~~
~~285 to 299~~	~~55~~	~~57~~

~~300 to 559~~	~~56~~	~~58~~
~~560 to 999~~	~~67~~	~~70~~
~~1000 to 1049~~	~~81~~	~~87~~
~~1050 to 1149~~	~~89~~	~~96~~
~~1150 to 1999~~	~~94~~	~~101~~
~~2000 to 2499~~	~~112~~	~~124~~
~~2500 to 2999~~	~~128~~	~~143~~
~~3000 to 3999~~	~~143~~	~~161~~
~~4000 to 4999~~	~~175~~	~~198~~
~~5000 to 5999~~	~~189~~	~~219~~
~~6000 to 7499~~	~~198~~	~~235~~
~~7500 to 8299~~	~~206~~	~~250~~
~~8300 to 9999~~	~~219~~	~~268~~
~~10,000 to 11,999~~	~~252~~	~~312~~
~~12,000 to 14,999~~	~~286~~	~~357~~
~~>15,000~~	~~345~~	~~420~~

~~A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.APPENDIX D Sample Handling and Analysis (Repealed)

	~~Max. Total Amount per Sample~~
~~Chemical~~	
~~BETX Soil with MTBE~~	~~$85~~
~~BETX Water with MTBE~~	~~$81~~
~~COD (Chemical Oxygen Demand)~~	~~$30~~
~~Corrosivity~~	~~$15~~
~~Flash Point or Ignitability Analysis EPA 1010~~	~~$33~~
~~FOC (Fraction Organic Carbon)~~	~~$38~~
~~Fat, Oil, & Grease (FOG)~~	~~$60~~
~~LUST Pollutants Soil – analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 732.AppendixB of this Part~~	~~$693~~
~~Organic Carbon (ASTM-D 2974-87)~~	~~$33~~
~~Dissolved Oxygen (DO)~~	~~$24~~
~~Paint Filter (Free Liquids)~~	~~$14~~
~~PCB / Pesticides (combination)~~	~~$222~~
~~PCBs~~	~~$111~~
~~Pesticides~~	~~$140~~
~~PH~~	~~$14~~
~~Phenol~~	~~$34~~

~~Polynuclear Aromatics PNA, or PAH SOIL~~	~~$152~~
~~Polynuclear Aromatics PNA, or PAH WATER~~	~~$152~~
~~Reactivity~~	~~$68~~
~~SVOC - Soil (Semi-volatile Organic Compounds)~~	~~$313~~
~~SVOC - Water (Semi-volatile Organic Compounds)~~	~~$313~~
~~TKN (Total Kjeldahl) "nitrogen"~~	~~$44~~
~~TOC (Total Organic Carbon) EPA 9060A~~	~~$31~~
~~TPH (Total Petroleum Hydrocarbons)~~	~~$122~~
~~VOC (Volatile Organic Compound) - Soil (Non-Aqueous)~~	~~$175~~
~~VOC (Volatile Organic Compound) - Water~~	~~$169~~
~~Geo-Technical~~	
~~Bulk Density ASTM D4292 / D2937~~	~~$22~~
~~Ex-Situ Hydraulic Conductivity / Permeability~~	~~$255~~
~~Moisture Content ASTM D2216-90 / D4643-87~~	~~$12~~
~~Porosity~~	~~$30~~
~~Rock Hydraulic Conductivity Ex-Situ~~	~~$350~~
~~Sieve / Particle Size Analysis ASTM D422-63 / D1140-54~~	~~$145~~
~~Soil Classification ASTM D2488-90 / D2487-90~~	~~$68~~
~~Metals~~	
~~Arsenic TCLP Soil~~	~~$16~~
~~Arsenic Total Soil~~	~~$16~~
~~Arsenic Water~~	~~$18~~
~~Barium TCLP Soil~~	~~$10~~
~~Barium Total Soil~~	~~$10~~
~~Barium Water~~	~~$12~~
~~Cadmium TCLP Soil~~	~~$16~~
~~Cadmium Total Soil~~	~~$16~~
~~Cadmium Water~~	~~$18~~
~~Chromium TCLP Soil~~	~~$10~~
~~Chromium Total Soil~~	~~$10~~
~~Chromium Water~~	~~$12~~
~~Cyanide TCLP Soil~~	~~$28~~
~~Cyanide Total Soil~~	~~$34~~
~~Cyanide Water~~	~~$34~~
~~Iron TCLP Soil~~	~~$10~~
~~Iron Total Soil~~	~~$10~~
~~Iron Water~~	~~$12~~
~~Lead TCLP Soil~~	~~$16~~
~~Lead Total Soil~~	~~$16~~
~~Lead Water~~	~~$18~~
~~Mercury TCLP Soil~~	~~$19~~
~~Mercury Total Soil~~	~~$10~~

~~Mercury Water~~	~~$26~~
~~Selenium TCLP Soil~~	~~$16~~
~~Selenium Total Soil~~	~~$16~~
~~Selenium Water~~	~~$15~~
~~Silver TCLP Soil~~	~~$10~~
~~Silver Total Soil~~	~~$10~~
~~Silver Water~~	~~$12~~
~~Metals TCLP Soil (a combination of all RCRA metals)~~	~~$103~~
~~Metals Total Soil (a combination of all RCRA metals)~~	~~$94~~
~~Metals Water (a combination of all RCRA metals)~~	~~$119~~
~~Soil preparation for Metals TCLP Soil (one fee per sample)~~	~~$79~~
~~Soil preparation for Metals Total Soil (one fee per sample)~~	~~$16~~
~~Water preparation for Metals Water (one fee per sample)~~	~~$11~~
~~Other~~	
~~En Core® Sampler, purge-and-trap sampler, or equivalent sampling device~~	~~$10~~
~~Sample Shipping (*maximum total amount for shipping all samples collected in a calendar day)~~	~~$50*~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

Section 732.APPENDIX E Personnel Titles and Rates (Repealed)

~~Title~~	~~Degree Required~~	~~Ill. License Req'd.~~	~~Min. Yrs. Experience~~	~~Max. Hourly Rate~~
~~Engineer I~~	~~Bachelor's in Engineering~~	~~None~~	~~0~~	~~$75~~
~~Engineer II~~	~~Bachelor's in Engineering~~	~~None~~	~~2~~	~~$85~~
~~Engineer III~~	~~Bachelor's in Engineering~~	~~None~~	~~4~~	~~$100~~
~~Professional Engineer~~	~~Bachelor's in Engineering~~	~~P.E.~~	~~4~~	~~$110~~
~~Senior Prof. Engineer~~	~~Bachelor's in Engineering~~	~~P.E.~~	~~8~~	~~$130~~
~~Geologist I~~	~~Bachelor's in Geology or Hydrogeology~~	~~None~~	~~0~~	~~$70~~
~~Geologist II~~	~~Bachelor's in Geology or Hydrogeology~~	~~None~~	~~2~~	~~$75~~
~~Geologist III~~	~~Bachelor's in Geology or Hydrogeology~~	~~None~~	~~4~~	~~$88~~
~~Professional Geologist~~	~~Bachelor's in Geology or Hydrogeology~~	~~P.G.~~	~~4~~	~~$92~~
~~Senior Prof. Geologist~~	~~Bachelor's in Geology or Hydrogeology~~	~~P.G.~~	~~8~~	~~$110~~
~~Scientist I~~	~~Bachelor's in a Natural or Physical~~	~~None~~	~~0~~	~~$60~~
~~Scientist II~~	~~Science~~	~~None~~	~~2~~	~~$65~~
~~Scientist III~~	~~Bachelor's in a Natural or Physical~~	~~None~~	~~4~~	~~$70~~
~~Scientist IV~~	~~Science~~	~~None~~	~~6~~	~~$75~~
~~Senior Scientist~~	~~Bachelor's in a Natural or Physical Science~~	~~None~~	~~8~~	~~$85~~
	~~Bachelor's in a Natural or Physical~~			

	~~Science~~ ~~Bachelor's in a Natural or Physical Science~~			
~~Project Manager~~ ~~Senior Project Manager~~	~~None~~ ~~None~~	~~None~~ ~~None~~	~~81~~ ~~121~~	~~$90~~ ~~$100~~
~~Technician I~~ ~~Technician II~~ ~~Technician III~~ ~~Technician IV~~ ~~Senior Technician~~	~~None~~ ~~None~~ ~~None~~ ~~None~~ ~~None~~	~~None~~ ~~None~~ ~~None~~ ~~None~~ ~~None~~	~~0~~ ~~21~~ ~~41~~ ~~61~~ ~~81~~	~~$45~~ ~~$50~~ ~~$55~~ ~~$60~~ ~~$65~~
~~Account Technician I~~ ~~Account Technician II~~ ~~Account Technician III~~ ~~Account Technician IV~~ ~~Senior Acct. Technician~~	~~None~~ ~~None~~ ~~None~~ ~~None~~ ~~None~~	~~None~~ ~~None~~ ~~None~~ ~~None~~ ~~None~~	~~0~~ ~~22~~ ~~42~~ ~~62~~ ~~82~~	~~$35~~ ~~$40~~ ~~$45~~ ~~$50~~ ~~$55~~
~~Administrative Assistant I~~ ~~Administrative Assistant II~~ ~~Administrative Assistant III~~ ~~Administrative Assistant IV~~ ~~Senior Admin. Assistant~~	~~None~~ ~~None~~ ~~None~~ ~~None~~ ~~None~~	~~None~~ ~~None~~ ~~None~~ ~~None~~ ~~None~~	~~0~~ ~~23~~ ~~43~~ ~~63~~ ~~83~~	~~$25~~ ~~$30~~ ~~$35~~ ~~$40~~ ~~$45~~
~~Draftperson/CAD I~~ ~~Draftperson/CAD II~~ ~~Draftperson/CAD III~~ ~~Draftperson/CAD IV~~ ~~Senior Draftperson/CAD~~	~~None~~ ~~None~~ ~~None~~ ~~None~~ ~~None~~	~~None~~ ~~None~~ ~~None~~ ~~None~~ ~~None~~	~~0~~ ~~24~~ ~~44~~ ~~64~~ ~~84~~	~~$40~~ ~~$45~~ ~~$50~~ ~~$55~~ ~~$60~~

~~[1] Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.~~

~~[2] Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.~~

~~[3] Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.~~

~~[4] Equivalent work-related or college level education with significant coursework in drafting or computer aided design ("CAD") can be substituted for all or part of the specified experience requirements.~~

(Source: Repealed at 35 Ill. Reg. _____, effective _____)

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

PART 734
PETROLEUM UNDERGROUND STORAGE TANKS
~~(RELEASES REPORTED ON OR AFTER JUNE 24, 2002)~~

SUBPART A: GENERAL

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734.100 Applicability
734.105 Election to Proceed under Part 734
734.110 Severability
734.115 Definitions
734.120 Incorporations by Reference
734.125 Agency Authority to Initiate Investigative, Preventive, or Corrective Action
734.130 Licensed Professional Engineer or Licensed Professional Geologist Supervision
734.135 Form and Delivery of Plans, Budgets, and Reports; Signatures and Certifications
734.140 Development of Remediation Objectives
734.145 Notification of Field Activities
734.150 LUST Advisory Committee

SUBPART B: EARLY ACTION

Section
734.200 General
734.205 Agency Authority to Initiate
734.210 Early Action
734.215 Free Product Removal
734.220 Application for Payment of Early Action Costs

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

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734.305 Agency Authority to Initiate
734.310 Site Investigation – General
734.315 Stage 1 Site Investigation
734.320 Stage 2 Site Investigation
734.325 Stage 3 Site Investigation
734.330 Site Investigation Completion Report
734.335 Corrective Action Plan
734.340 Alternative Technologies

734.345 Corrective Action Completion Report
734.350 Off-site Access
734.355 Status Report
734.360 Use of TACO

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734.405 Indicator Contaminants
734.410 Remediation Objectives
734.415 Data Quality
734.420 Laboratory Certification
734.425 Soil Borings
734.430 Monitoring Well Construction and Sampling
734.435 Sealing of Soil Borings and Groundwater Monitoring Wells
734.440 Site Map Requirements
734.445 Water Supply Well Survey
734.450 Deferred Site Investigation or Corrective Action; Priority List for Payment

SUBPART E: REVIEW OF PLANS, BUDGETS, AND REPORTS

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734.505 Review of Plans, Budgets, or Reports
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SUBPART F: PAYMENT FROM THE FUND

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734.605 Applications for Payment
734.610 Review of Applications for Payment
734.615 Authorization for Payment; Priority List
734.620 Limitations on Total Payments
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AUTHORITY: Implementing Sections 22.12 and 57 - 57.19~~57.17~~ and authorized by Sections 5, 22, 27, and 57.14A of the Environmental Protection Act [415 ILCS 5/5, 22, 22.12, 27, and 57 – 57.19~~57.17~~]

SOURCE: Adopted in R04-22/23 at 30 Ill. Reg.5090, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. 16151, effective November 21, 2007; amended in R11-22 at 35 Ill. Reg. _____ effective _____.

NOTE: Italics denotes statutory language.

SUBPART A: GENERAL

Section 734.100 Applicability

a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to Illinois Emergency Management Agency (IEMA) ~~on or after March 1, 2006~~ in accordance with the Office of State Fire Marshal (OSFM) regulations. This Part does not apply to owners or operators of sites for which the OSFM does not require a report to IEMA or for which the OSFM has issued or intends to issue a certificate of removal or abandonment pursuant to Section 57.5 of the Act [415 ILCS 5/57.5].

1) For releases reported prior to June 8, 2010, ~~on or after June 24, 2002, but prior to March 1, 2006, and for owners and operators electing prior to March 1, 2006 to proceed in accordance with Title XVI of the Act as amended by P.A. 92-0554,~~ the Agency may deem that one or more requirements of this Part have been satisfied, based upon activities conducted prior to June 8, 2010**,** ~~March 1, 2006,~~ even though the activities were not conducted in strict accordance with the requirements of this Part. For example, an owner or operator that adequately defined the extent of on-site contamination prior to June 8, 2010 ~~March 1, 2006~~ may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

2) Costs incurred pursuant to a budget approved prior to March 1, 2006 must be reimbursed in accordance with the amounts approved in the budget and must not be subject to the maximum payment amounts set forth in Subpart H of this Part.

b) This Part, as amended by Public Act 96-908, *applies to all* releases subject to Title XVI of the Act *for which a No Further Remediation Letter is issued on or after* June 8, 2010, *provided that (i) costs incurred prior to* June 8, 2010, *shall be payable from the UST Fund in the same manner as allowed under the law in effect at the time the costs were incurred and (ii) releases for which corrective action was completed prior to* June 8, 2010, *shall be eligible for a No Further Remediation Letter in the same manner as allowed under the law in effect at the time the corrective action was completed.* [415 ILCS 5/57.13] Costs incurred pursuant to a plan approved by the Agency prior to June 8, 2010, must be reviewed in accordance with the law in effect at the time the plan was approved. Any budget associated with such a plan must also be reviewed in accordance with the law in effect at the time the plan was approved. ~~Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part pursuant to Section 734.105 of this Part.~~

c) Upon the receipt of a corrective action order issued by the OSFM on or after June 24, 2002, and pursuant to Section 57.5(g) of the Act [415 ILCS 5/57.5(g)], where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit, must conduct corrective action in accordance with this Part.

d) Owners or operators subject to this Part by law or by election must proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 734.125 of this Part to expedite investigative, preventive, or corrective action by an owner or operator or to initiate such action.

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

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

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

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

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

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

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

(Source: Amended at 35 Ill. Reg. _____, effective _____).

Section 734.105 Election to Proceed under Part 734

a) (Repealed) ~~Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State~~

~~authority prior to June 24, 2002, may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.~~

b) Except as provided in Section 734.100(c) of this Part, owners or operators of underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.

c) Owners and operators electing pursuant to this Section to proceed in accordance with this Part must submit with their election a summary of the activities conducted to date and a proposed starting point for compliance with this Part. The Agency must review and approve, reject, or modify the submission in accordance with the procedures contained in Subpart E of this Part. The Agency may deem a requirement of this Part to have been met, based upon activities conducted prior to an owner's or operator's election, even though the activities were not conducted in strict accordance with the requirement. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the election may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

d) (Repealed) ~~If the owner or operator elects to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election must be payable from the Underground Storage Tank Fund in the same manner as was allowable under the law applicable to the owner or operator prior to the notification of election. Corrective action costs incurred after the notification of election must be payable from the Fund in accordance with this Part.~~

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

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 734.115 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part must be the same as those applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].

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

"Agency" means the Illinois Environmental Protection Agency.

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

"Board" means the Illinois Pollution Control Board.

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

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

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

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

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

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

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

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

"Environmental Land Use Control" means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200.

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

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

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

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

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

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

"Fund" *means the Underground Storage Tank Fund* [415 ILCS 5/57.2].

"GIS" means Geographic Information System.

"GPS" means Global Positioning System.

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

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

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

"Heating oil" *means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy, No.*

5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker c [415 ILCS 5/57.2].

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

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

"IEMA" means the Illinois Emergency Management Agency.

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

“Indicator contaminants” means the indicator contaminants set forth in Section 734.405 of this Part.

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

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

“Licensed Professional Engineer” *means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering* [415 ILCS 5/57.2].

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

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

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

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

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

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

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

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

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

"Owner" means:

> In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;
>
> In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use; (Derived from 42 USC 6991)
>
> *Any person who has submitted to the Agency a written election to proceed under* the underground storage tank program *and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a “No Further Remediation Letter” by the Agency pursuant to* the underground storage tank program [415 ILCS 5/57.2].

“Perfect” or “Perfected” means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 734.715(c) and (d) of this Part.

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

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

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

"Practical quantitation limit" ~~(~~ or “PQL”~~)~~ means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 734.120 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 734.120 of this Part.

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

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

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

"Regulated Recharge Area" *means a compact geographic area, as determined by the Board,* ~~[~~(35 Ill. Adm. Code Subtitle F)~~]~~, *the geology of which renders a potable resource groundwater particularly susceptible to contamination* [415 ILCS 5/3.390].

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

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

<u>"Residential Property" means residential property as defined in 35 Ill. Adm. Code 742.200.</u>

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

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

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

"Setback Zone" *means a geographic area, designated pursuant to the Act* [415 ILCS 5/14.1, 5/14.2, 5/14.3] *or regulations* [35 Ill. Adm. Code Subtitle F], *containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or*

regulations are applicable in order to protect groundwater [415 ILCS 5/3.450].

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

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

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

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

“Toll highway” means a toll highway as defined in the Toll Highway Act~~,~~ [605 ILCS 10].

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

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

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

Septic tank;

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

Surface impoundment, pit, pond, or lagoon;

Storm water or waste water collection system;

Flow-through process tank;

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

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

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

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

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

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 734.120 Incorporations by Reference

a) The Board incorporates the following material by reference:

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

<u>ASTM D2487-10, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System) (January 1, 2010)</u>
~~ASTM D 2487-93, Standard Test Method for Classification of Soils for Engineering Purposes, approved September 15, 1993.~~

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

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

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

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

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

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

"Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition (September 1986), as amended by Updates I, IIA, III, and IIIA (Final Update IIIA dated April 1998), Doc. No. 955-001-00000-1.

b) This Section incorporates no later editions or amendments.

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 734.145 Notification <u>to the Agency</u> of Field Activities

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

(Source: Amended at 35 Ill. Reg. _____, effective _____)

SUBPART B: EARLY ACTION

Section 734.210 Early Action

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

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

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

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

3) Immediately identify ~~Identify~~ and mitigate fire, explosion and vapor hazards.

b) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must perform the following initial abatement measures:

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

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

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

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

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

6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.

c) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.

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

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

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

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

4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part.

e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.

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

g) For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The

owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.

h) The owner or operator must determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

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

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

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

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

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

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

E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.

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

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

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

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

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

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

3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) of this Section are met, within 30 days after the completion of early action activities the owner or operator must submit a report demonstrating compliance with those remediation objectives. The report must include, but not be limited to, the following:

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

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

i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);

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

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

C) A site map containing only the information required under Section 734.440 of this Part.

4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, the owner or operator must continue in accordance with Subpart C of this Part:

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

B) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or

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

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

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

(Source: Amended at 35 Ill. Reg. _____, effective _____)

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

Section 734.360 Application of Certain TACO Provisions

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

a) *For the site where the release occurred, the use of Tier 2 remediation objectives that are no more stringent than Tier 1 remediation objectives.* [415 ILCS 5/57.7(c)(3)(A)(i)]

b) *The use of industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property.* [415 ILCS 5/57.7(c)(3)(A)(ii)]

c) If a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated, the groundwater ordinance must be used as an institutional control, provided that the Agency may approve remediation to the extent necessary to remediate or prevent groundwater contamination of off-site property that is not subject to a groundwater ordinance already approved by the Agency for use as an institutional control.

d) If the use of a groundwater ordinance as an institutional control is not required pursuant to subsection (c) of this Section, another institutional control must be used in accordance with 35 Ill. Adm. Code 742 to address groundwater contamination at the site where the release occurred, provided that the Agency may approve remediation to the extent necessary to remediate or prevent groundwater contamination at off-site property that is not subject to a groundwater ordinance or other institutional control that it used to address groundwater contamination. Institutional controls used to comply with this subsection (d) include, but are not limited to, the following:

1) Groundwater ordinances that are not required to be used as institutional controls pursuant to subsection (c) of this Section.

2) No Further Remediation Letters that prohibit the use and installation of potable water supply wells at the site.

(Source: Added at 35 Ill. Reg. _____, effective _____)

SUBPART F: PAYMENT FROM THE FUND

Section 734.630 Ineligible Corrective Action Costs

Costs ineligible for payment from the Fund include but are not limited to:

a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Appendix C of this Part, during early action activities conducted pursuant to Section 734.210(f) of this Part, and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Appendix

C of this Part during early action activities conducted pursuant to Section 734.210(f) of this Part;

b) Costs or losses resulting from business interruption;

c) Costs incurred as a result of vandalism, theft, or fraudulent activity by the owner or operator or agent of an owner or operator, including the creation of spills, leaks, or releases;

d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies, including but not limited, to those structures destroyed or damaged during corrective action activities;

e) *Costs of corrective action incurred by an owner or operator prior to July 28, 1989* [415 ILCS 5/57.8(j)];

f) Costs associated with the procurement of a generator identification number;

g) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;

h) Purchase costs of non-expendable materials, supplies, equipment, or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools;

i) Costs associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;

j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 734.125 of this Part and Section 57.12 of the Act;

k) Costs for removal, disposal, or abandonment of a UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;

l) Costs associated with the installation of new USTs, the repair of existing USTs, and removal and disposal of USTs determined to be ineligible by the OSFM;

m) Costs exceeding those contained in a budget or amended budget approved by the Agency;

n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;

o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

p) Costs associated with improperly installed sampling or monitoring wells;

q) Costs associated with improperly collected, transported, or analyzed laboratory samples;

r) Costs associated with the analysis of laboratory samples not approved by the Agency;

s) Costs for any corrective action activities, services, or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;

t) Interest or finance costs charged as direct costs;

u) Insurance costs charged as direct costs;

v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;

w) Costs associated with the compaction and density testing of backfill material;

x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;

y) Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations;

z) Costs of alternative technology that exceed the costs of conventional technology;

aa) Costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;

bb) Costs requested that are based on mathematical errors;

cc) Costs that lack supporting documentation;

dd) Costs proposed as part of a budget that are unreasonable;

ee) Costs incurred during early action that are unreasonable;

ff) Costs incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release;

gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (gg) does not apply to the following:

1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;

2) Monitoring well abandonment costs;

3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;

4) Costs associated with seeking payment from the Fund; ~~and~~

5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release; and

6) Costs associated with activities conducted under Section 734.632 of this Part;

hh) Handling charges for subcontractor costs that have been billed directly to the owner or operator;

ii) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;

jj) Costs associated with standby and demurrage;

kk) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 734.355(b) of this Part, that a revised corrective action plan is required, provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment if they meet the requirements of this Part;

ll) Costs incurred prior to the effective date of an owner's or operator's election to proceed in accordance with this Part, unless such costs were incurred for activities approved as corrective action under this Part;

mm) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 734.215(a)(5) of this Part;

nn) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. This subsection (nn) does not apply to costs associated with activities conducted under Section 734.632 of this Part;

oo) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 734.625(a)(16) of this Part;

pp) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Sections 734.625(a)(16) or (17) of this Part;

qq) Costs associated with oversight by an owner or operator;

rr) Handling charges charged by persons other than the owner's or operator's primary contractor;

ss) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 734.625(a)(16) of this Part;

tt) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;

uu) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 734.625(a)(19) of this Part;

vv) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 734.625(a)(20) of this Part;

ww) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 734.625(a)(19) or (20) of this Part;

xx) (Reserved) ~~For sites electing under Section 734.105 of this Part to proceed in accordance with this Part, costs incurred pursuant to Section 734.210 of this Part;~~

yy) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget;

zz) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;

aaa) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (aaa) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.

bbb) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

ccc) Costs associated with on-site corrective action to achieve Tier 2 remediation objectives that are more stringent than Tier 1 remediation objectives.

ddd) Costs associated with corrective action to achieve remediation objectives other than industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property. This subsection (ddd) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to subsection 734.360(c) or (d) of this Part to remediate or prevent groundwater contamination at off-site property.

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

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

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 734.632 Eligible Corrective Action Costs Incurred After NFR Letter

Notwithstanding subsections (gg) and (nn) of Section 734.630 of this Part, *[t]he following shall be considered corrective action activities eligible for payment from the Fund even when an owner or operator conducts these activities after the issuance of a No Further Remediation Letter. Corrective action conducted under this Section and costs incurred under this Section must comply with the requirements of* Title XVI of the Act and this Part, including, but not limited to, requirements for the submission and Agency approval of corrective action plans and budgets, corrective action completion reports, and applications for payment, provided that no plan, budget, or report is required for activities conducted pursuant to subsections (d) or (e) of this Section.

a) *Corrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial property remediation objectives pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of* the *Act* and subsection (b) of Section 734.360 of this Part *is being developed into residential property.*

b) *Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because a groundwater ordinance used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of* the *Act* and subsection (c) of Section 734.360 of this Part *can no longer be used as an institutional control.*

c) *Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because an on-site groundwater use restriction used as an institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7 of* the *Act* and subsection (d) of Section 734.360 of this Part *must be lifted in order to allow the installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner or operator.*

d) *The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed Tier 1 residential property remediation objectives, if industrial/commercial property remediation objectives were used pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of* the *Act* and subsection (b) of Section 734.360 of this Part *and the owner or operator demonstrates that (i) the contamination is the result of the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the soil is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement.* Costs eligible for payment under this subsection (d) are the costs to transport the soil to a properly permitted disposal site and disposal site

fees, and may include, but are not limited to, costs for: disposal site waste characterization sampling; disposal site authorization, scheduling, and coordination; field oversight; disposal fees; and preparation of applications for payment.

e) *The disposal of water exceeding groundwater remediation objectives that is removed from an excavation on the site where the release occurred if a groundwater ordinance is used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of* the *Act* and subsection (c) of Section 734.360 of this Part, *or if an on-site groundwater use restriction is used as an institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7* of the Act and subsection (d) of Section 734.360 of this Part, *and the owner or operator demonstrates that (i) the excavation is located within the measured or modeled extent of groundwater contamination resulting from the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the groundwater is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement.* [415 ILCS 5/57.19].

f) Consulting fees for corrective action conducted pursuant to subsections (a), (b), and (c) of this Section. Consulting fees shall be subject to Subpart H of this Part.

(Source: Added at 35 Ill. Reg. _____, effective _____)

SUBPART H: MAXIMUM PAYMENT AMOUNTS

Section 734.810 UST Removal ~~or Abandonment Costs~~

Payment for costs associated with ~~UST~~ removal ~~or abandonment~~ of each UST must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the excavation, removal, and disposal~~, and abandonment~~ of UST systems.

UST Volume	Maximum Total Amount per UST
110 – 999 gallons	$2,100
1,000 – 14,999 gallons	$3,150
15,000 or more gallons	$4,100

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 734.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is

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

a) Bidding must be *publicly-noticed, competitive, and sealed bidding that includes, at a minimum, the following:*

1) *The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measureable.*

The invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. Invitations for bids may include, but shall not be limited to, (i) contract terms and conditions, including but not limited to warranty and bonding or other security requirements, and (ii) qualification requirements, which may include, but shall not be limited to, factors to be considered in determining whether a bidder is responsible pursuant to subsection (d) of this Section. The time during which bids may be submitted must begin on the date the invitation for bids is issued and must end at the time and date set for opening of the bids. In no case shall the time for bid submission be less than 14 days.

Each bid must be stamped with the date and time of receipt, and stored unopened in a secure place until the time and date set for opening the bids. Bids must not be accepted from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.

2) *At least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published* by the owner or operator *in a local paper of general circulation for the area in which the site is located.* The owner or operator must also provide a copy of the public notice to the Agency. The notice must be received by the Agency at least 14 days prior to the date set in the invitation for the opening of bids.

3) *Bids must be opened publicly* by the owner or operator *in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information must be recorded and submitted to the Agency in the applicable budget* in accordance with subsection (b) of this Section. *After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection.*

The person opening the bids may not serve as a witness. The names of the person opening the bids and the names of all witnesses must be recorded and submitted to the Agency on the bid summary form required under subsection (b) of this Section.

4) *Bids must be unconditionally accepted* by the owner or operator *without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measureable. The invitation for bids shall set forth the evaluation criteria to be used.*

5) *Correction or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with* subsection (c) of this Section. *After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator.*

6) *The owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information must be recorded and submitted to the Agency in the applicable budget* in accordance with subsection (b) of this Section.

7) *All bidding documentation must be retained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency*

for inspection and copying during normal business hours. [415 ILCS 5/57.7(c)(3)(B)]

~~a) A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.~~

b) All ~~The~~ bids must be summarized on forms prescribed and provided by the Agency. The bid summary forms~~form~~, along with copies of the invitation for bids, the public notice required under subsection (a)(2) of this Section, proof of publication of the notice, and each bid received,~~the bid requests and the bids obtained,~~ must be submitted to the Agency in the associated budget. ~~If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.~~

c) Corrections to bids are allowed only to the extent the corrections are not contrary to the best interest of the owner or operator and the fair treatment of other bidders. If a bid is corrected, copies of both the original bid and the revised bid must be submitted in accordance with subsection (b) of this Section along with an explanation of the corrections made.

1) Mistakes discovered before opening. A bidder may correct mistakes discovered before the time and date set for opening of bids by withdrawing his or her bid and submitting a revised bid prior to the time and date set for opening of bids.

2) Mistakes discovered after opening of a bid but before award of the winning bid.

A) If the owner or operator knows or has reason to conclude that a mistake has been made, the owner or operator must request the bidder to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted.

B) If the mistake and the intended correct information are clearly evident on the face of the bid, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid are typographical errors, errors extending unit prices, transportation errors, and mathematical errors.

C) If the mistake and the intended correct information are not clearly evident on the face of the bid, the low bid may be withdrawn if:

i) a mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident; or

ii) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

3) Mistakes shall not be corrected after selection of the winning bid unless the Agency determines that it would be unconscionable not to allow the mistake to be corrected (e.g., the mistake would result in a windfall to the owner or operator).

4) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the invitation for bid, the correction or waiver of which would not be prejudicial to the owner or operator (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The owner or operator must waive such informalities or allow correction depending on which is in the owner's or operator's best interest.

d) For purposes of this Section, factors to be considered in determining whether a bidder is responsible include, but are not limited to, the following:

1) The bidder has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;

2) The bidder is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;

3) The bidder has a satisfactory record of performance. Bidders who are or have been deficient in current or recent contact performance in dealing with the owner or operator or other clients may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the bidder; and

4) The bidder has a satisfactory record of integrity and business ethics. Bidders who are under investigation or indictment for criminal or civil actions that bear on the subject of the bid, or that create a reasonable

inference or appearance of a lack of integrity on the part of the bidder, may be declared not responsible for the particular subject of the bid.

~~c) The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H, in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.~~

(Source: Amended at 35 Ill. Reg. _____, effective _____)

Section 734.860 Unusual or Extraordinary Circumstances

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payment amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. ~~Examples of unusual or extraordinary circumstances include, but are not limited to, an inability to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited number of persons providing the service needed.~~

(Source: Amended at 35 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 22, 2011, by a vote of 5-0.

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John T. Therriault, Assistant Clerk
Illinois Pollution Control Board