

## POLLUTION CONTROL BOARD

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Petroleum Underground Storage Tanks (Releases Reported On or After June 24, 2002)

2) Code Citation: 35 Ill. Adm. Code 734

3) Section Numbers: Proposed Action:

734.100	Amend
734.105	Amend
734.115	Amend
734.120	Amend
734.145	Amend
734.210	Amend
734.360	New
734.630	Amend
734.632	New
734.810	Amend
734.855	Amend
734.860	Amend

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4) Statutory Authority: Implementing Sections 22.12 and 57 - 57.19 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/22.12, 27, 28, and 57 - 57.19]

5) A Complete Description of the Subjects and Issues Involved: The Illinois Environmental Protection Agency (IEPA) initiated this rulemaking by filing a proposal intended to update the Board's underground storage tank (UST) regulations to reflect the adoption of Public Act 96-908. Public Act 96-908 enacted a number of amendments to Title XVI of the Environmental Protection Act (Act), which addresses USTs.

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: In the record of this rulemaking proceeding, IEPA stated that it "did not use a published study or research report in developing the proposed amendments" and therefore did not submit such material pursuant to the Board's procedural rules.

7) Will this rulemaking replace any emergency rulemaking currently in effect? No

8) Does this rulemaking contain an automatic repeal date? No

9) Does this rulemaking contain incorporations by reference? Yes

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American Society for Testing and Materials (ASTM) Standard D2487-10, Standard Practice for Classification of Soils for Engineering Purposes (United Soil Classification System) (January 1, 2010).

- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may download copies of the Board's opinion and order from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us) and may also request copies by calling the Clerk's office at 312-814-3620.

The Board will accept written public comment on this proposal for 45 days after the date of publication in the Illinois Register. Comments should refer to Docket R11-22 and be addressed to:

John Therriault  
Clerk's Office  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: this rulemaking may impact any small business, small municipality, or not-for-profit corporation that owns or operates a UST or performs activities associated with the remediation of leaking USTs.
- B) Reporting, bookkeeping or other procedures required for compliance: the proposed amendments to Part 734 require owners and operators subject to Title XVI of the Act to follow procedures similar in nature to those now in effect in that Part. To the extent that bidding procedures under Section 734.855 are more extensive than those now in effect, they are based upon statutory language adopted by the General Assembly in Public Act 96-908.

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- C) Types of Professional skills necessary for compliance: no professional skills beyond those currently required by the existing UST regulations applicable to affected sources will be required for compliance with proposed amendments to Part 734. To the extent that bidding procedures under Section 734.855 are more extensive than those now in effect, they are based upon statutory language adopted by the General Assembly in Public Act 96-908.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2011

The full text of the Proposed Amendments begins on the next page:

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

Section

734.100 Applicability  
734.105 Election to Proceed under Part ~~734.734.110~~ 734.110  
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 to the Agency 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

Section

734.300 General  
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 ~~734.360~~ Status Report  
Use 734.360 Application of Certain TACO Provisions

SUBPART D: MISCELLANEOUS PROVISIONS

Section

734.400 General  
734.405 Indicator Contaminants ~~734.110~~

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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

Section

734.500 General  
734.505 Review of Plans, Budgets, or Reports  
734.510 Standards for Review of Plans, Budgets, or Reports

SUBPART F: PAYMENT FROM THE FUND

Section

734.600 General  
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  
734.625 Eligible Corrective Action Costs  
734.630 ~~734.632~~ Ineligible Corrective Action Costs  
734.632 Eligible Corrective Action Costs Incurred ~~after~~After NFR Letter  
734.635 Payment for Handling Charges  
734.640 Apportionment of Costs  
734.645 Subrogation of Rights  
734.650 Indemnification  
734.655 Costs Covered by Insurance, Agreement, or Court Order  
734.660 Determination and Collection of Excess Payments  
734.665 Audits and Access to Records; Records Retention

SUBPART G: NO FURTHER REMEDIATION  
LETTERS AND RECORDING REQUIREMENTS

Section

734.700 General  
734.705 Issuance of a No Further Remediation Letter  
734.710 Contents of a No Further Remediation Letter  
734.715 Duty to Record a No Further Remediation Letter  
734.720 Voidance of a No Further Remediation Letter

SUBPART H: MAXIMUM PAYMENT AMOUNTS

Section

734.800 Applicability  
734.810 UST Removal or Abandonment Costs  
734.815 Free Product or Groundwater Removal and Disposal  
734.820 Drilling, Well Installation, and Well Abandonment  
734.825 Soil Removal and Disposal  
734.830 Drum Disposal  
734.835 Sample Handling and Analysis

734.840 Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures  
734.845 Professional Consulting Services  
734.850 Payment on Time and Materials Basis  
734.855 Bidding  
734.860 Unusual or Extraordinary Circumstances  
734.865 Handling Charges  
734.870 Increase in Maximum Payment Amounts  
734.875 Agency Review of Payment Amounts

734.APPENDIX ~~A~~Indicator Indicator Contaminants  
734.APPENDIX ~~B~~Additional Additional Parameters  
734.APPENDIX ~~C~~Backfill Backfill Volumes  
734.APPENDIX ~~D~~Sample Sample Handling and Analysis  
734.APPENDIX ~~E~~Personnel Personnel Titles and Rates

AUTHORITY: Implementing Sections 22.12 and ~~57—57.1957.17~~57.19 and authorized by Sections 5, 22, 27, and 57.14A of the Environmental Protection Act [415 ILCS 5/5, 22, 22.12, 27, 57.14A and ~~57—57.1957.17~~57.19].

SOURCE: Adopted in R04-22/23 at 30 Ill. Reg. ~~5090, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. 16151, 5090, effective November 21, 2007~~March 1, 2006; amended in R11-07-2217 at 3631 Ill. Reg. ———16150, effective ———.NOTE: Italics denotes statutory languageNovember 21, 2007; amended in R11-22 at 35 Ill. Reg. ———, effective ———.

#### 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,~~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~~, 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~~, 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 ~~3635~~ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_) ~~-~~

Section 734.105 Election to Proceed under Part 734

a) ~~Owners~~ Except as provided in Section 734.100(c) of this Part, 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, underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.

b) ~~Except as provided in Section 734.100(e) 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.~~e)

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) ~~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.~~

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

(Source: Amended at 3635 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].

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

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

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

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

"Setback Zone" means a geographic area, designated pursuant to the Act [415 ILCS 5/14.1, 5/14.2, 5/14.3] or regulations [35 Ill. Adm. Code Subtitle F], containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwater [415 ILCS 5/3.450].

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

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

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

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

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

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

"Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected 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; ~~exStorage~~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 3635 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

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

~~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 3635 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 734.145 Notification to the Agency of Field Activities

The Agency may require owners and operators to notify the Agency of field activities prior to the date the field activities take place. The notice must include information prescribed by the Agency, and may include, but is not ~~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 7 ~~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 3635 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~~Reportreport 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.

BOARD NOTE: Owners or operators seeking payment from the Fund are to first notify IEMA of a suspected release and then confirm the release within 14 days.

to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and 170.580. The Board is setting the beginning of the payment period at subsection (g) to correspond to the notification and confirmation to IEMA.

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

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

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

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

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

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

E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.

2) At a minimum, for each UST that remains in place, the owner or operator must collect and analyze soil samples as follows. The Agency must allow an

alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.

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

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

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

D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h) (2) (A) through (C) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

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

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

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

i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);

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

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

C) A site map containing only the information required under Section 734.440 of this Part.

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

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

B) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or

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

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

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

(Source: Amended at ~~36~~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 ~~3635~~ 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~~ Section 734.360(c) or (d) of this Part to remediate or prevent groundwater contamination at off-site property. ~~;~~

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

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

(Source: Amended at 3635 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 734.632 Eligible Corrective Action Costs Incurred After NFR Letter

Notwithstanding ~~subsections~~ Section 734.630(gg) and (nn) of ~~Section 734.630 of~~ this Part, ~~the~~ the following shall be considered corrective action activities

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

a) Corrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial property remediation objectives pursuant to ~~subdivision~~Section 57.7(c) (3) (A) (ii) of ~~Section 57.7 of~~ the Act and ~~subsection (b) of~~ Section 734.360(b) of this Part is being developed into residential property.

b) Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because a groundwater ordinance used as an institutional control pursuant to ~~subdivision~~Section 57.7(c) (3) (A) (iii) of ~~Section 57.7 of~~ the Act and ~~subsection (c) of~~ Section 734.360(c) of this Part can no longer be used as an institutional control.

c) Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because an on-site groundwater use restriction used as an institutional control pursuant to ~~subdivision~~Section 57.7(c) (3) (A) (iv) ~~of Section 57.7~~ of the Act and ~~subsection (d) of~~ Section 734.360(d) of this Part must be lifted in order to allow the installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner or operator.

d) The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed Tier 1 residential property remediation objectives, if industrial/commercial property remediation objectives were used pursuant to ~~subdivision~~Section 57.7(c) (3) (A) (ii) of ~~Section 57.7 of~~ the Act and ~~subsection (b) of~~ Section 734.360(b) 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~~Section 57.7(c) (3) (A) (iii) of ~~Section 57.7 of~~ the Act and ~~subsection (e) of~~ Section 734.360(c) of this Part, or if an on-site groundwater use restriction is used as an institutional control pursuant to ~~subdivision~~Section 57.7(c) (3) (A) (iv) of ~~Section 57.7 of~~ the Act and ~~subsection (d) of~~ Section 734.360(d) 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 3635 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 Volume	Maximum Total Amount per UST
- 999 gallons	\$2,1001,000	\$2,1001,000 - 14,999
gallons	\$3,15015,000	\$3,15015,000 or more gallons
\$4,100		

(Source: Amended at 3635 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)] set forth in this Part. Once a maximum payment amount is determined via bidding in accordance with this Section, the Agency may approve the maximum payment amount in amended budgets and other subsequent budgets submitted for the same incident.

a) Bidding must be publicly-noticed, competitive, and sealed bidding that includes, at a minimum, the following:

1) The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable.

A) The invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time

during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. Invitations for bids may include, but shall not be limited to, ~~(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.

B) Each bid must be stamped with the date and time of receipt, and stored unopened in a secure place until the time and date set for opening the bids. Bids must not be accepted from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.

2) At least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published by the owner or operator in a local paper of general circulation for the area in which the site is located. The owner or operator must also provide a copy of the public notice to the Agency. The notice must be received by the Agency at least 14 days prior to the date set in the invitation for the opening of bids.

3) Bids must be opened publicly by the owner or operator in the presence of one or more witnesses at the time and place designated in the invitation for bids.

A) The name of each bidder, the amount of each bid, and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section.

B) After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection.

C) The person opening the bids may not serve as a witness. The names of the ~~person~~ persons opening the bids and the names of all witnesses must be recorded and submitted to the Agency on the bid summary form required under subsection (b) of this Section.

4) Bids must be unconditionally accepted by the owner or operator without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively 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~~~~forms~~, along with copies of the invitation for bids, the public notice required under subsection (a)(2) of this Section, proof of publication of the notice, and each bid received, ~~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~~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~~Discovered After Opening of a ~~bid~~Bid but ~~before award~~Before Award of the ~~winning bid~~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~~the informalities or allow correction depending on which is in the owner's or operator's best interest.

d) For purposes of this Section, factors to be considered in determining whether a bidder is responsible include, but are not limited to, the following:

1) The bidder has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;

2) The bidder is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;

3) The bidder has a satisfactory record of performance. Bidders who are or have been deficient in current or recent contact performance in dealing with the owner or operator or other clients may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the bidder; and

4) The bidder has a satisfactory record of integrity and business ethics. Bidders who are under investigation or indictment for criminal or civil actions that bear on the subject of the bid, or that create a reasonable inference or appearance of a lack of integrity on the part of the bidder, may be declared not responsible for the particular subject of the bid.

~~e) 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 3635 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 3635 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

~~NOTICE OF PROPOSED AMENDMENTS~~

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Statistics:	
	Count
Insertions	98
Deletions	168
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	272



1 TITLE 35: ENVIRONMENTAL PROTECTION  
2 SUBTITLE G: WASTE DISPOSAL  
3 CHAPTER I: POLLUTION CONTROL BOARD  
4 SUBCHAPTER d: UNDERGROUND INJECTION CONTROL  
5 AND UNDERGROUND STORAGE TANK PROGRAMS  
6

7 PART 734  
8 PETROLEUM UNDERGROUND STORAGE TANKS  
9 (RELEASES REPORTED ON OR AFTER JUNE 24, 2002)  
10

11 SUBPART A: GENERAL

12	Section	
13	734.100	Applicability
14	734.105	Election to Proceed under Part 734
15	734.110	Severability
16	734.115	Definitions
17	734.120	Incorporations by Reference
18	734.125	Agency Authority to Initiate Investigative, Preventive, or Corrective Action
19	734.130	Licensed Professional Engineer or Licensed Professional Geologist Supervision
20	734.135	Form and Delivery of Plans, Budgets, and Reports; Signatures and Certifications
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24  
25 SUBPART B: EARLY ACTION

26	Section	
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40	734.320	Stage 2 Site Investigation
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42	734.330	Site Investigation Completion Report
43	734.335	Corrective Action Plan

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- 44 734.340 Alternative Technologies
- 45 734.345 Corrective Action Completion Report
- 46 734.350 Off-site Access
- 47 734.355 Status Report
- 48 734.360 Application of Certain TACO Provisions

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50 SUBPART D: MISCELLANEOUS PROVISIONS

51

52 Section

- 53 734.400 General
- 54 734.405 Indicator Contaminants
- 55 734.410 Remediation Objectives
- 56 734.415 Data Quality
- 57 734.420 Laboratory Certification
- 58 734.425 Soil Borings
- 59 734.430 Monitoring Well Construction and Sampling
- 60 734.435 Sealing of Soil Borings and Groundwater Monitoring Wells
- 61 734.440 Site Map Requirements
- 62 734.445 Water Supply Well Survey
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64

65 SUBPART E: REVIEW OF PLANS, BUDGETS, AND REPORTS

66

67 Section

- 68 734.500 General
- 69 734.505 Review of Plans, Budgets, or Reports
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71

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73

74 Section

- 75 734.600 General
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- 78 734.615 Authorization for Payment; Priority List
- 79 734.620 Limitations on Total Payments
- 80 734.625 Eligible Corrective Action Costs
- 81 734.630 Ineligible Corrective Action Costs
- 82 734.632 Eligible Corrective Action Costs Incurred After NFR Letter
- 83 734.635 Payment for Handling Charges
- 84 734.640 Apportionment of Costs
- 85 734.645 Subrogation of Rights
- 86 734.650 Indemnification

- 87 734.655 Costs Covered by Insurance, Agreement, or Court Order
- 88 734.660 Determination and Collection of Excess Payments
- 89 734.665 Audits and Access to Records; Records Retention

90

91                                   SUBPART G: NO FURTHER REMEDIATION  
92                                   LETTERS AND RECORDING REQUIREMENTS

93

94 Section

- 95 734.700 General
- 96 734.705 Issuance of a No Further Remediation Letter
- 97 734.710 Contents of a No Further Remediation Letter
- 98 734.715 Duty to Record a No Further Remediation Letter
- 99 734.720 Voidance of a No Further Remediation Letter

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101                                   SUBPART H: MAXIMUM PAYMENT AMOUNTS

102

103 Section

- 104 734.800 Applicability
- 105 734.810 UST Removal or Abandonment Costs
- 106 734.815 Free Product or Groundwater Removal and Disposal
- 107 734.820 Drilling, Well Installation, and Well Abandonment
- 108 734.825 Soil Removal and Disposal
- 109 734.830 Drum Disposal
- 110 734.835 Sample Handling and Analysis
- 111 734.840 Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of  
112 Above Grade Structures
- 113 734.845 Professional Consulting Services
- 114 734.850 Payment on Time and Materials Basis
- 115 734.855 Bidding
- 116 734.860 Unusual or Extraordinary Circumstances
- 117 734.865 Handling Charges
- 118 734.870 Increase in Maximum Payment Amounts
- 119 734.875 Agency Review of Payment Amounts

120

- 121 734.APPENDIX A Indicator Contaminants
- 122 734.APPENDIX B Additional Parameters
- 123 734.APPENDIX C Backfill Volumes
- 124 734.APPENDIX D Sample Handling and Analysis
- 125 734.APPENDIX E Personnel Titles and Rates

126

127 AUTHORITY: Implementing Sections 22.12 and 57.19 and authorized by Sections 5, 22, 27,  
128 and 57.14A of the Environmental Protection Act [415 ILCS 5/5, 22, 22.12, 27, 57.14A and  
129 57.19].

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SOURCE: Adopted in R04-22/23 at 30 Ill. Reg. 5090, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. 16150, effective November 21, 2007; amended in R11-22 at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

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 applies to all releases subject to Title XVI of the Act for which a No Further Remediation Letter is issued on or after June 8, 2010, provided that costs incurred prior to June 8, 2010 shall be payable from the UST Fund in the same manner as allowed under the law in effect at the time the costs were incurred and releases for which corrective action was completed prior to June 8, 2010 shall be eligible for a No Further Remediation Letter in the same manner as allowed under the law in effect at the time the corrective action was completed. [415 ILCS 5/57.13] Costs incurred pursuant to a plan approved by the Agency prior to

June 8, 2010 must be reviewed in accordance with the law in effect at the time the plan was approved. Any budget associated with such a plan must also be reviewed in accordance with the law in effect at the time the plan was approved. 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)}).

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- 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) ~~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.~~
- a)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.
- b)e) 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.

258 d) ~~If the owner or operator elects to proceed pursuant to this Part, corrective action~~  
259 ~~costs incurred in connection with the release and prior to the notification of~~  
260 ~~election must be payable from the Underground Storage Tank Fund in the same~~  
261 ~~manner as was allowable under the law applicable to the owner or operator prior~~  
262 ~~to the notification of election. Corrective action costs incurred after the~~  
263 ~~notification of election must be payable from the Fund in accordance with this~~  
264 ~~Part.~~

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266 c)e) This Section does not apply to any release for which the Agency has issued a No  
267 Further Remediation Letter.  
268

269 (Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
270

271 **Section 734.115 Definitions**

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273 Except as stated in this Section, or unless a different meaning of a word or term is clear from the  
274 context, the definitions of words or terms in this Part must be the same as those applied to the  
275 same words or terms in the Environmental Protection Act [415 ILCS 5].  
276

277 "Act" means the Environmental Protection Act [415 ILCS 5].  
278

279 "Agency" means the Illinois Environmental Protection Agency.  
280

281 "Alternative Technology" means a process or technique, other than conventional  
282 technology, used to perform a corrective action with respect to soils contaminated  
283 by releases of petroleum from an underground storage tank.  
284

285 "Board" means the Illinois Pollution Control Board.  
286

287 "Bodily Injury" *means bodily injury, sickness, or disease sustained by a person,*  
288 *including death at any time, resulting from a release of petroleum from an*  
289 *underground storage tank* [415 ILCS 5/57.2].  
290

291 "Community Water Supply" *means a public water supply which serves or is*  
292 *intended to serve at least 15 service connections used by residents or regularly*  
293 *serves at least 25 residents* [415 ILCS 5/3.145].  
294

295 "Confirmation of a release" means the confirmation of a release of petroleum in  
296 accordance with regulations promulgated by the Office of the State Fire Marshal  
297 at 41 Ill. Adm. Code 170.  
298

299 "Confirmed Release" means a release of petroleum that has been confirmed in  
300 accordance with regulations promulgated by the Office of the State Fire Marshal  
301 at 41 Ill. Adm. Code 170.  
302

303 "Conventional Technology" means a process or technique to perform a corrective  
304 action by removal, transportation, and disposal of soils contaminated by a release  
305 of petroleum from an underground storage tank in accordance with applicable  
306 laws and regulations, but without processing to remove petroleum from the soils.  
307

308 "Corrective Action" *means activities associated with compliance with the*  
309 *provisions of Sections 57.6 and 57.7 of the Act [415 ILCS 5/57.2].*  
310

311 "County highway" means county highway as defined in the Illinois Highway  
312 Code [605 ILCS 5].  
313

314 "District road" means district road as defined in the Illinois Highway Code [605  
315 ILCS 5].  
316

317 "Environmental Land Use Control" means Environmental Land Use Control as  
318 defined in 35 Ill. Adm. Code 742.200.  
319

320 "Federal Landholding Entity" means that federal department, agency, or  
321 instrumentality with the authority to occupy and control the day-to-day use,  
322 operation, and management of Federally Owned Property.  
323

324 "Federally Owned Property" means real property owned in fee simple by the  
325 United States on which an institutional control is or institutional controls are  
326 sought to be placed in accordance with this Part.  
327

328 "Fill Material" *means non-native or disturbed materials used to bed and backfill*  
329 *around an underground storage tank [415 ILCS 5/57.2].*  
330

331 "Financial interest" means any ownership interest, legal or beneficial, or being in  
332 the relationship of director, officer, employee, or other active participant in the  
333 affairs of a party. Financial interest does not include ownership of publicly traded  
334 stock.  
335

336 "Free Product" means a contaminant that is present as a non-aqueous phase liquid  
337 for chemicals whose melting point is less than 30° C (e.g., liquid not dissolved in  
338 water).  
339



340 "Full Accounting" means a compilation of documentation to establish,  
341 substantiate, and justify the nature and extent of the corrective action costs  
342 incurred by an owner or operator.  
343

344 "Fund" *means the Underground Storage Tank Fund* [415 ILCS 5/57.2].  
345

346 "GIS" means Geographic Information System.  
347

348 "GPS" means Global Positioning System.  
349

350 "Groundwater" *means underground water which occurs within the saturated zone*  
351 *and geologic materials where the fluid pressure in the pore space is equal to or*  
352 *greater than atmospheric pressure* [415 ILCS 5/3.210].  
353

354 ~~"Half day" means four hours, or a fraction thereof, of billable work time. Half~~  
355 ~~days must be based upon the total number of hours worked in one calendar day.~~  
356 ~~The total number of half days per calendar day may exceed two.~~  
357

358 "Handling Charges" means administrative, insurance, and interest costs and a  
359 reasonable profit for procurement, oversight, and payment of subcontracts and  
360 field purchases.  
361

362 "Heating oil" *means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No.*  
363 *5-light, No. 5-heavy or No. 6 technical grades of fuel oil; and other residual fuel*  
364 *oils including navy special fuel oil and bunker c* [415 ILCS 5/57.2].  
365

366 "Highway authority" means the Illinois Department of Transportation *with*  
367 *respect to a State highway; the Illinois State Toll Highway Authority with respect*  
368 *to a toll highway; the county board with respect to a county highway or a county*  
369 *unit district road if a discretionary function is involved and the county*  
370 *superintendent of highways if a ministerial function is involved; the highway*  
371 *commissioner with respect to a township or district road not in a county or unit*  
372 *road district; or the corporate authorities of a municipality with respect to a*  
373 *municipal street* [605 ILCS 5/2-213].  
374

375 "Highway Authority Agreement" means an agreement with a highway authority  
376 that meets the requirements of 35 Ill. Adm. Code 742.1020.  
377

378 "IEMA" means the Illinois Emergency Management Agency.  
379

380 "Indemnification" *means indemnification of an owner or operator for the amount*  
381 *of judgment entered against the owner or operator in a court of law, for the*  
382 *amount of any final order or determination made against the owner or operator*

383 *by any agency of State government or any subdivision thereof, or for the amount*  
384 *of any settlement entered into by the owner or operator, if the judgment, order,*  
385 *determination, or settlement arises out of bodily injury or property damage*  
386 *suffered as a result of a release of petroleum from an underground storage tank*  
387 *owned or operated by the owner or operator [415 ILCS 5/57.2].*  
388

389 "Indicator contaminants" means the indicator contaminants set forth in Section  
390 734.405 of this Part.

391  
392 "Institutional Control" means a legal mechanism for imposing a restriction on  
393 land use as described in 35 Ill. Adm. Code 742.Subpart J.  
394

395 "Land Use Control Memorandum of Agreement" means an agreement entered  
396 into between one or more agencies of the United States and the Illinois  
397 Environmental Protection Agency that limits or places requirements upon the use  
398 of Federally Owned Property for the purpose of protecting human health or the  
399 environment, or that is used to perfect a No Further Remediation Letter that  
400 contains land use restrictions.  
401

402 "Licensed Professional Engineer" *means a person, corporation or partnership*  
403 *licensed under the laws of the State of Illinois to practice professional*  
404 *engineering [415 ILCS 5/57.2].*  
405

406 "Licensed Professional Geologist" *means a person licensed under the laws of the*  
407 *State of Illinois to practice as a professional geologist [415 ILCS 5/57.2].*  
408

409 "Man-made Pathway" means a constructed route that may allow for the transport  
410 of mobile petroleum free-liquid or petroleum-based vapors including but not  
411 limited to sewers, utility lines, utility vaults, building foundations, basements,  
412 crawl spaces, drainage ditches, or previously excavated and filled areas.  
413

414 "Monitoring Well" means a water well intended for the purpose of determining  
415 groundwater quality or quantity.  
416

417 "Natural Pathway" means a natural route for the transport of mobile petroleum  
418 free-liquid or petroleum-based vapors including but not limited to soil,  
419 groundwater, sand seams and lenses, and gravel seams and lenses.  
420

421 "Non-community water supply" *means a public water supply that is not a*  
422 *community water supply [415 ILCS 5/3.145].*  
423

424 "Occurrence" means an accident, including continuous or repeated exposure to  
425 conditions, that results in a sudden or nonsudden release from an underground  
426 storage tank [415 ILCS 5/57.2].  
427

428 "OSFM" means the Office of the State Fire Marshal.  
429

430 "Operator" means any person in control of, or having responsibility for, the daily  
431 operation of the underground storage tank. (Derived from 42 USC 6991)  
432

433 BOARD NOTE: A person who voluntarily undertakes action to remove an  
434 underground storage tank system from the ground must not be deemed an  
435 "operator" merely by the undertaking of such action.  
436

437 "Owner" means:  
438

439 In the case of an underground storage tank in use on November 8, 1984, or  
440 brought into use after that date, any person who owns an underground  
441 storage tank used for the storage, use, or dispensing of regulated  
442 substances;  
443

444 In the case of any underground storage tank in use before November 8,  
445 1984, but no longer in use on that date, any person who owned such  
446 underground storage tank immediately before the discontinuation of its  
447 use; (Derived from 42 USC 6991)  
448

449 *Any person who has submitted to the Agency a written election to proceed*  
450 *under the underground storage tank program and has acquired an*  
451 *ownership interest in a site on which one or more registered tanks have*  
452 *been removed, but on which corrective action has not yet resulted in the*  
453 *issuance of a "No Further Remediation Letter" by the Agency pursuant to*  
454 *the underground storage tank program [415 ILCS 5/57.2].*  
455

456 "Perfect" or "Perfected" means recorded or filed for record so as to place the  
457 public on notice, or as otherwise provided in Sections 734.715(c) and (d) of this  
458 Part.  
459

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

467  
 468 "Petroleum" means petroleum, including crude oil or any fraction thereof which is  
 469 liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds  
 470 per square inch absolute). (Derived from 42 USC 6991)  
 471

472 "*Potable*" means generally fit for human consumption in accordance with  
 473 accepted water supply principles and practices [415 ILCS 5/3.340].  
 474

475 "Practical quantitation limit" or "PQL" means the lowest concentration that can be  
 476 reliably measured within specified limits of precision and accuracy for a specific  
 477 laboratory analytical method during routine laboratory operating conditions in  
 478 accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical  
 479 Methods," EPA Publication No. SW-846, incorporated by reference at Section  
 480 734.120 of this Part. For filtered water samples, PQL also means the Method  
 481 Detection Limit or Estimated Detection Limit in accordance with the applicable  
 482 method revision in: "Methods for the Determination of Metals in Environmental  
 483 Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the  
 484 Determination of Metals in Environmental Samples, Supplement I," EPA  
 485 Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic  
 486 Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039;  
 487 "Methods for the Determination of Organic Compounds in Drinking Water,  
 488 Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the  
 489 Determination of Organic Compounds in Drinking Water, Supplement III," EPA  
 490 Publication No. EPA/600/R-95/131, all of which are incorporated by reference at  
 491 Section 734.120 of this Part.  
 492

493 "*Property Damage*" means physical injury to, destruction of, or contamination of  
 494 tangible property owned by a person other than an owner or operator of the UST  
 495 from which a release of petroleum has occurred and which tangible property is  
 496 located off the site where the release occurred. Property damage includes all  
 497 resulting loss of use of that property; or loss of use of tangible property that is not  
 498 physically injured, destroyed or contaminated, but has been evacuated,  
 499 withdrawn from use, or rendered inaccessible because of a release of petroleum  
 500 from an underground storage tank [415 ILCS 5/57.2].  
 501

502 "*Public Water Supply*" means all mains, pipes and structures through which  
 503 water is obtained and distributed to the public, including wells and well  
 504 structures, intakes and cribs, pumping stations, treatment plants, reservoirs,  
 505 storage tanks and appurtenances, collectively or severally, actually used or  
 506 intended for use for the purpose of furnishing water for drinking or general  
 507 domestic use and which serve at least 15 service connections or which regularly  
 508 serve at least 25 persons at least 60 days per year. A public water supply is either

509 a "community water supply" or a "non-community water supply" [415 ILCS  
510 5/3.365].

511  
512 "Registration" means registration of an underground storage tank with the OSFM  
513 in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4].

514  
515 "Regulated Recharge Area" means a compact geographic area, as determined by  
516 the Board, (35 Ill. Adm. Code Subtitle F), the geology of which renders a potable  
517 resource groundwater particularly susceptible to contamination [415 ILCS  
518 5/3.390].

519  
520 "Regulated Substance" means any substance defined in Section 101(14) of the  
521 Comprehensive Environmental Response, Compensation, and Liability Act of  
522 1980 (42 USC 9601(14)) (but not including any substance regulated as a  
523 hazardous waste under subtitle C of the Resource Conservation and Recovery Act  
524 (42 USC 6921 et seq.)); and petroleum. (Derived from 42 USC 6991)

525  
526 "Release" means any spilling, leaking, emitting, discharging, escaping, leaching,  
527 or disposing of petroleum from an underground storage tank into groundwater,  
528 surface water or subsurface soils [415 ILCS 5/57.2].

529  
530 "Residential Property" means residential property as defined in 35 Ill. Adm. Code  
531 742.200.

532  
533 "Residential Tank" means an underground storage tank located on property used  
534 primarily for dwelling purposes.

535  
536 "Residential Unit" means a structure used primarily for dwelling purposes  
537 including multi-unit dwellings such as apartment buildings, condominiums,  
538 cooperatives, or dormitories.

539  
540 "Right-of-way" means the land, or interest therein, acquired for or devoted to a  
541 highway [605 ILCS 5/2-217].

542  
543 "Setback Zone" means a geographic area, designated pursuant to the Act [415  
544 ILCS 5/14.1, 5/14.2, 5/14.3] or regulations [35 Ill. Adm. Code Subtitle F],  
545 containing a potable water supply well or a potential source or potential route,  
546 having a continuous boundary, and within which certain prohibitions or  
547 regulations are applicable in order to protect groundwater [415 ILCS 5/3.450].

548  
549 "Site" means any single location, place, tract of land or parcel of property,  
550 including contiguous property not separated by a public right-of-way [415 ILCS  
551 5/57.2].

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"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;

595 Flow-through process tank;  
596  
597 Liquid trap or associated gathering lines directly related to oil or gas  
598 production and gathering operations; or  
599  
600 Storage tank situated in an underground area (such as a basement, cellar,  
601 mineworking, drift, shaft, or tunnel) if the storage tank is situated on or  
602 above the surface of the floor. (Derived from 42 USC §-6991)  
603

604 *The term "underground storage tank" shall also mean an underground storage*  
605 *tank used exclusively to store heating oil for consumptive use on the premises*  
606 *where stored and which serves other than a farm or residential unit [415 ILCS*  
607 *5/57.2].*  
608

609 "UST system" or "tank system" means an underground storage tank, connected  
610 underground piping, underground ancillary equipment, and containment system,  
611 if any.  
612

613 "Wellhead Protection Area" means the wellhead protection area of a community  
614 water supply well as determined under the Agency's wellhead protection program  
615 pursuant to 42 USC 300h-7.  
616

617 (Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
618

619 **Section 734.120 Incorporations by Reference**  
620

621 a) The Board incorporates the following material by reference:  
622

623 ASTM. American Society for Testing and Materials, 100 Barr Harbor Drive,  
624 P.O. Box C700, West Conshohocken, PA 19428-2959 (610) 832-9585  
625

626 ASTM D2487-10, Standard Practice for Classification of Soils for  
627 Engineering Purposes (Unified Soil Classification System) (January 1,  
628 2010)  
629

630 ASTM D 2487-93, Standard Test Method for Classification of Soils for  
631 Engineering Purposes, approved September 15, 1993.  
632

633 NTIS. National Technical Information Service, 5285 Port Royal Road,  
634 Springfield, VA 22161 (703) 605-6000 or (800) 553-6847  
635

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

638  
639 "Methods for the Determination of Metals in Environmental Samples,  
640 Supplement I," EPA Publication No. EPA/600/R-94/111 (May 1994);  
641  
642 "Methods for the Determination of Organic Compounds in Drinking  
643 Water," EPA Publication No. EPA/600/4-88/039 (December 1988)  
644 (revised July 1991);  
645  
646 "Methods for the Determination of Organic Compounds in Drinking  
647 Water, Supplement II," EPA Publication No. EPA/600/R-92/129 (August  
648 1992);  
649  
650 "Methods for the Determination of Organic Compounds in Drinking  
651 Water, Supplement III," EPA Publication No. EPA/600/R-95/131 (August  
652 1995);  
653  
654 "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,"  
655 EPA Publication No. SW-846, Third Edition (September 1986), as  
656 amended by Updates I, IIA, III, and IIIA (Final Update IIIA dated April  
657 1998), Doc. No. 955-001-00000-1.  
658

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

660 (Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
661  
662

663 **Section 734.145 Notification to the Agency of Field Activities**  
664

665 The Agency may require owners and operators to notify the Agency of field activities prior to the  
666 date the field activities take place. The notice must include information prescribed by the  
667 Agency, and may include, but is not ~~be~~-limited to, a description of the field activities to be  
668 conducted, the person conducting the activities, and the date, time, and place the activities will  
669 be conducted. The Agency may, but is not required to, allow notification by telephone,  
670 facsimile, or electronic mail. This Section does not apply to activities conducted within 45 days  
671 plus ~~7~~14 days after initial notification to IEMA of a release, or to free product removal activities  
672 conducted within 45 days plus 14 days after the confirmation of the presence of free product.  
673

674 (Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
675

676 **SUBPART B: EARLY ACTION**  
677

678 **Section 734.210 Early Action**  
679



- 680 a) Upon confirmation of a release of petroleum from ~~an~~ UST system in accordance  
 681 with regulations promulgated by the OSFM, the owner or operator, or both, must  
 682 perform the following initial response actions: ~~within 24 hours after the release:~~  
 683
- 684 1) Immediately report~~Report~~ the release to IEMA (e.g., by telephone or  
 685 electronic mail);
- 686  
 687 BOARD NOTE: The OSFM rules for the reporting of UST releases are  
 688 found at 41 Ill. Adm. Code 176.320(a).  
 689
- 690 2) Take immediate action to prevent any further release of the regulated  
 691 substance to the environment; and
  - 692 3) Immediately identify~~Identify~~ and mitigate fire, explosion and vapor  
 693 hazards.  
 694
- 695 b) Within 20 days after initial notification to IEMA of a release plus 14 days, the  
 696 owner or operator must perform the following initial abatement measures:  
 697
- 698 1) Remove as much of the petroleum from the UST system as is necessary to  
 699 prevent further release into the environment;  
 700
  - 701 2) Visually inspect any aboveground releases or exposed below ground  
 702 releases and prevent further migration of the released substance into  
 703 surrounding soils and groundwater;  
 704
  - 705 3) Continue to monitor and mitigate any additional fire and safety hazards  
 706 posed by vapors or free product that have migrated from the UST  
 707 excavation zone and entered into subsurface structures (such as sewers or  
 708 basements);  
 709
  - 710 4) Remedy hazards posed by contaminated soils that are excavated or  
 711 exposed as a result of release confirmation, site investigation, abatement  
 712 or corrective action activities. If these remedies include treatment or  
 713 disposal of soils, the owner or operator must comply with 35 Ill. Adm.  
 714 Code 722, 724, 725, and 807 through 815;  
 715
  - 716 5) Measure for the presence of a release where contamination is most likely  
 717 to be present at the UST site, unless the presence and source of the release  
 718 have been confirmed in accordance with regulations promulgated by the  
 719 OSFM. In selecting sample types, sample locations, and measurement  
 720 methods, the owner or operator must consider the nature of the stored  
 721

- 722 substance, the type of backfill, depth to groundwater and other factors as  
 723 appropriate for identifying the presence and source of the release; and  
 724
- 725 6) Investigate to determine the possible presence of free product, and begin  
 726 removal of free product as soon as practicable and in accordance with  
 727 Section 734.215 of this Part.  
 728
- 729 c) Within 20 days after initial notification to IEMA of a release plus 14 days, the  
 730 owner or operator must submit a report to the Agency summarizing the initial  
 731 abatement steps taken under subsection (b) of this Section and any resulting  
 732 information or data.  
 733
- 734 d) Within 45 days after initial notification to IEMA of a release plus 14 days, the  
 735 owner or operator must assemble information about the site and the nature of the  
 736 release, including information gained while confirming the release or completing  
 737 the initial abatement measures in subsections (a) and (b) of this Section. This  
 738 information must include, but is not limited to, the following:  
 739
- 740 1) Data on the nature and estimated quantity of release;  
 741
- 742 2) Data from available sources or site investigations concerning the  
 743 following factors: surrounding populations, water quality, use and  
 744 approximate locations of wells potentially affected by the release,  
 745 subsurface soil conditions, locations of subsurface sewers, climatological  
 746 conditions and land use;  
 747
- 748 3) Results of the site check required at subsection (b)(5) of this Section; and  
 749
- 750 4) Results of the free product investigations required at subsection (b)(6) of  
 751 this Section, to be used by owners or operators to determine whether free  
 752 product must be recovered under Section 734.215 of this Part.  
 753
- 754 e) Within 45 days after initial notification to IEMA of a release plus 14 days, the  
 755 owner or operator must submit to the Agency the information collected in  
 756 compliance with subsection (d) of this Section in a manner that demonstrates its  
 757 applicability and technical adequacy.  
 758
- 759 f) *Notwithstanding any other corrective action taken, an owner or operator may, at*  
 760 *a minimum, and prior to submission of any plans to the Agency, remove the tank*  
 761 *system, or abandon the underground storage tank in place, in accordance with*  
 762 *the regulations promulgated by the Office of the State Fire Marshal (see 41 Ill.*  
 763 *Adm. Code 160, 170, 180, 200). The owner may remove visibly contaminated fill*  
 764 *material and any groundwater in the excavation which exhibits a sheen. For*

765 *purposes of payment of early action costs, however, fill material shall not be*  
 766 *removed in an amount in excess of 4 feet from the outside dimensions of the tank*  
 767 *[415 ILCS 5/57.6(b)]. Early action may also include disposal in accordance with*  
 768 *applicable regulations or ex-situ treatment of contaminated fill material removed*  
 769 *from within 4 feet from the outside dimensions of the tank.*  
 770

- 771 g) For purposes of payment from the Fund, the activities set forth in subsection (f) of  
 772 this Section must be performed within 45 days after initial notification to IEMA  
 773 of a release plus 14 days, unless special circumstances, approved by the Agency  
 774 in writing, warrant continuing such activities beyond 45 days plus 14 days. The  
 775 owner or operator must notify the Agency in writing of such circumstances within  
 776 45 days after initial notification to IEMA of a release plus 14 days. Costs  
 777 incurred beyond 45 days plus 14 days must be eligible if the Agency determines  
 778 that they are consistent with early action.  
 779

780 BOARD NOTE: Owners or operators seeking payment from the Fund are to first  
 781 notify IEMA of a suspected release and then confirm the release within 14 days to  
 782 IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code  
 783 170.560 and 170.580. The Board is setting the beginning of the payment period  
 784 at subsection (g) to correspond to the notification and confirmation to IEMA.  
 785

- 786 h) The owner or operator must determine whether the areas or locations of soil  
 787 contamination exposed as a result of early action excavation (e.g., excavation  
 788 boundaries, piping runs) or surrounding USTs that remain in place meet the most  
 789 stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the  
 790 applicable indicator contaminants.  
 791

- 792 1) At a minimum, for each UST that is removed, the owner or operator must  
 793 collect and analyze soil samples as indicated in subsections (h)(1)(A)  
 794 through (E). The Agency must allow an alternate location for, or excuse  
 795 the collection of, one or more samples if sample collection in the  
 796 following locations is made impracticable by site-specific circumstances.  
 797

- 798 A) One sample must be collected from each UST excavation wall.  
 799 The samples must be collected from locations representative of soil  
 800 that is the most contaminated as a result of the release. If an area  
 801 of contamination cannot be identified on a wall, the sample must  
 802 be collected from the center of the wall length at a point located  
 803 one-third of the distance from the excavation floor to the ground  
 804 surface. For walls that exceed 20 feet in length, one sample must  
 805 be collected for each 20 feet of wall length, or fraction thereof, and  
 806 the samples must be evenly spaced along the length of the wall.  
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- 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

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

860  
 861 B) Two borings, one on each side of the piping, must be drilled for  
 862 every 20 feet of UST piping, or fraction thereof, that remains in  
 863 place. The borings must be drilled as close as practicable to, but  
 864 not more than five feet from, the locations of suspected piping  
 865 releases. If no release is suspected within a length of UST piping  
 866 being sampled, the borings must be drilled in the center of the  
 867 length being sampled. Each boring must be drilled to a depth of 15  
 868 feet below grade, or until groundwater or bedrock is encountered,  
 869 whichever is less. Borings may be drilled below the groundwater  
 870 table if site specific conditions warrant, but no more than 15 feet  
 871 below grade. For UST piping that is removed, samples must be  
 872 collected from the floor of the piping run in accordance with  
 873 subsection (h)(1)(C) of this Section.

874  
 875 C) If auger refusal occurs during the drilling of a boring required  
 876 under subsection (h)(2)(A) or (B) of this Section, the boring must  
 877 be drilled in an alternate location that will allow the boring to be  
 878 drilled to the required depth. The alternate location must not be  
 879 more than five feet from the boring's original location. If auger  
 880 refusal occurs during drilling of the boring in the alternate location,  
 881 drilling of the boring must cease and the soil samples collected  
 882 from the location in which the boring was drilled to the greatest  
 883 depth must be analyzed for the applicable indicator contaminants.

884  
 885 D) One soil sample must be collected from each five-foot interval of  
 886 each boring required under subsections (h)(2)(A) through (C) of  
 887 this Section. Each sample must be collected from the location  
 888 within the five-foot interval that is the most contaminated as a  
 889 result of the release. If an area of contamination cannot be  
 890 identified within a five-foot interval, the sample must be collected  
 891 from the center of the five-foot interval, provided, however, that  
 892 soil samples must not be collected from soil below the

- 893 groundwater table. All samples must be analyzed for the  
 894 applicable indicator contaminants.  
 895
- 896 3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code  
 897 742 for the applicable indicator contaminants have been met, and if none  
 898 of the criteria set forth in subsections (h)(4)(A) through (C) of this Section  
 899 are met, within 30 days after the completion of early action activities the  
 900 owner or operator must submit a report demonstrating compliance with  
 901 those remediation objectives. The report must include, but not be limited to,  
 902 the following:  
 903
- 904 A) A characterization of the site that demonstrates compliance with  
 905 the most stringent Tier 1 remediation objectives of 35 Ill. Adm.  
 906 Code 742 for the applicable indicator contaminants;  
 907
- 908 B) Supporting documentation, including, but not limited to, the  
 909 following:  
 910
- 911 i) A site map meeting the requirements of Section 734.440 of  
 912 this Part that shows the locations of all samples collected  
 913 pursuant to this subsection (h);  
 914
- 915 ii) Analytical results, chain of custody forms, and laboratory  
 916 certifications for all samples collected pursuant to this  
 917 subsection (h); and  
 918
- 919 iii) A table comparing the analytical results of all samples  
 920 collected pursuant to this subsection (h) to the most  
 921 stringent Tier 1 remediation objectives of 35 Ill. Adm.  
 922 Code 742 for the applicable indicator contaminants; and  
 923
- 924 C) A site map containing only the information required under Section  
 925 734.440 of this Part.  
 926
- 927 4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code  
 928 742 for the applicable indicator contaminants have not been met, or if one  
 929 or more of the following criteria are met, the owner or operator must  
 930 continue in accordance with Subpart C of this Part:  
 931
- 932 A) There is evidence that groundwater wells have been impacted by  
 933 the release above the most stringent Tier 1 remediation objectives  
 934 of 35 Ill. Adm. Code 742 for the applicable indicator contaminants

935 (e.g., as found during release confirmation or previous corrective  
936 action measures);

- 937
- 938 B) Free product that may impact groundwater is found to need  
939 recovery in compliance with Section 734.215 of this Part; or
- 940
- 941 C) There is evidence that contaminated soils may be or may have  
942 been in contact with groundwater, unless:
- 943
- 944 i) The owner or operator pumps the excavation or tank cavity  
945 dry, properly disposes of all contaminated water, and  
946 demonstrates to the Agency that no recharge is evident  
947 during the 24 hours following pumping; and
- 948
- 949 ii) The Agency determines that further groundwater  
950 investigation is not necessary.

951  
952 (Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

953  
954 **SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION**

955  
956 **Section 734.360 Application of Certain TACO Provisions**

957  
958 *For purposes of payment from the Fund, corrective action activities required to meet the*  
959 *minimum requirements of this Part shall include, but not be limited to, the following use of the*  
960 *Board's Tiered Approach to Corrective Action Objectives rules adopted under Title XVII of the*  
961 *Act [415 ILCS 5/57.7(c)(3)(A)]:*

- 962
- 963 a) *For the site where the release occurred, the use of Tier 2 remediation objectives*  
964 *that are no more stringent than Tier 1 remediation objectives. [415 ILCS*  
965 *5/57.7(c)(3)(A)(i)]*
- 966
- 967 b) *The use of industrial/commercial property remediation objectives, unless the*  
968 *owner or operator demonstrates that the property being remediated is residential*  
969 *property or is being developed into residential property. [415 ILCS*  
970 *5/57.7(c)(3)(A)(ii)]*
- 971
- 972 c) *If a groundwater ordinance already approved by the Agency for use as an*  
973 *institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an*  
974 *institutional control for the release being remediated, the groundwater ordinance*  
975 *must be used as an institutional control, provided that the Agency may approve*  
976 *remediation to the extent necessary to remediate or prevent groundwater*

977 contamination of off-site property that is not subject to a groundwater ordinance  
978 already approved by the Agency for use as an institutional control.  
979

980 d) If the use of a groundwater ordinance as an institutional control is not required  
981 pursuant to subsection (c) of this Section, another institutional control must be  
982 used in accordance with 35 Ill. Adm. Code 742 to address groundwater  
983 contamination at the site where the release occurred, provided that the Agency  
984 may approve remediation to the extent necessary to remediate or prevent  
985 groundwater contamination at off-site property that is not subject to a  
986 groundwater ordinance or other institutional control that it used to address  
987 groundwater contamination. Institutional controls used to comply with this  
988 subsection (d) include, but are not limited to, the following:  
989

- 990 1) Groundwater ordinances that are not required to be used as institutional  
991 controls pursuant to subsection (c) of this Section.  
992  
993 2) No Further Remediation Letters that prohibit the use and installation of  
994 potable water supply wells at the site.  
995

996 (Source: Added at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
997

998 SUBPART F: PAYMENT FROM THE FUND  
999

1000 **Section 734.630 Ineligible Corrective Action Costs**  
1001

1002 Costs ineligible for payment from the Fund include, but are not limited to:  
1003

- 1004 a) Costs for the removal, treatment, transportation, and disposal of more than four  
1005 feet of fill material from the outside dimensions of the UST, as set forth in  
1006 Appendix C of this Part, during early action activities conducted pursuant to  
1007 Section 734.210(f) of this Part, and costs for the replacement of contaminated fill  
1008 materials with clean fill materials in excess of the amounts set forth in Appendix  
1009 C of this Part during early action activities conducted pursuant to Section  
1010 734.210(f) of this Part;  
1011  
1012 b) Costs or losses resulting from business interruption;  
1013  
1014 c) Costs incurred as a result of vandalism, theft, or fraudulent activity by the owner  
1015 or operator or agent of an owner or operator, including the creation of spills,  
1016 leaks, or releases;  
1017  
1018 d) Costs associated with the replacement of above grade structures such as pumps,  
1019 pump islands, buildings, wiring, lighting, bumpers, posts, or canopies, including



- 1020 but not limited, to those structures destroyed or damaged during corrective action  
 1021 activities;
- 1022
- 1023 e) *Costs of corrective action incurred by an owner or operator prior to July 28,*  
 1024 *1989 [415 ILCS 5/57.8(j)];*
- 1025
- 1026 f) Costs associated with the procurement of a generator identification number;
- 1027
- 1028 g) Legal fees or costs, including but not limited to legal fees or costs for seeking  
 1029 payment under this Part unless the owner or operator prevails before the Board  
 1030 and the Board authorizes payment of such costs;
- 1031
- 1032 h) Purchase costs of non-expendable materials, supplies, equipment, or tools, except  
 1033 that a reasonable rate may be charged for the usage of such materials, supplies,  
 1034 equipment, or tools;
- 1035
- 1036 i) Costs associated with activities that violate any provision of the Act or Board,  
 1037 OSFM, or Agency regulations;
- 1038
- 1039 j) Costs associated with investigative action, preventive action, corrective action, or  
 1040 enforcement action taken by the State of Illinois if the owner or operator failed,  
 1041 without sufficient cause, to respond to a release or substantial threat of a release  
 1042 upon, or in accordance with, a notice issued by the Agency pursuant to Section  
 1043 734.125 of this Part and Section 57.12 of the Act;
- 1044
- 1045 k) Costs for removal, disposal, or abandonment of a UST if the tank was removed or  
 1046 abandoned, or permitted for removal or abandonment, by the OSFM before the  
 1047 owner or operator provided notice to IEMA of a release of petroleum;
- 1048
- 1049 l) Costs associated with the installation of new USTs, the repair of existing USTs,  
 1050 and removal and disposal of USTs determined to be ineligible by the OSFM;
- 1051
- 1052 m) Costs exceeding those contained in a budget or amended budget approved by the  
 1053 Agency;
- 1054
- 1055 n) Costs of corrective action incurred before providing notification of the release of  
 1056 petroleum to IEMA in accordance with Section 734.210 of this Part;
- 1057
- 1058 o) Costs for corrective action activities and associated materials or services  
 1059 exceeding the minimum requirements necessary to comply with the Act;
- 1060
- 1061 p) Costs associated with improperly installed sampling or monitoring wells;
- 1062

- 1063 q) Costs associated with improperly collected, transported, or analyzed laboratory  
1064 samples;
- 1065
- 1066 r) Costs associated with the analysis of laboratory samples not approved by the  
1067 Agency;
- 1068
- 1069 s) Costs for any corrective action activities, services, or materials unless  
1070 accompanied by a letter from OSFM or the Agency confirming eligibility and  
1071 deductibility in accordance with Section 57.9 of the Act;
- 1072
- 1073 t) Interest or finance costs charged as direct costs;
- 1074
- 1075 u) Insurance costs charged as direct costs;
- 1076
- 1077 v) Indirect corrective action costs for personnel, materials, service, or equipment  
1078 charged as direct costs;
- 1079
- 1080 w) Costs associated with the compaction and density testing of backfill material;
- 1081
- 1082 x) Costs associated with sites that have not reported a release to IEMA or are not  
1083 required to report a release to IEMA;
- 1084
- 1085 y) Costs related to activities, materials, or services not necessary to stop, minimize,  
1086 eliminate, or clean up a release of petroleum or its effects in accordance with the  
1087 minimum requirements of the Act and regulations;
- 1088
- 1089 z) Costs of alternative technology that exceed the costs of conventional technology;
- 1090
- 1091 aa) Costs for activities and related services or materials that are unnecessary,  
1092 inconsistent with generally accepted engineering practices or principles of  
1093 professional geology, or unreasonable costs for justifiable activities, materials, or  
1094 services;
- 1095
- 1096 bb) Costs requested that are based on mathematical errors;
- 1097
- 1098 cc) Costs that lack supporting documentation;
- 1099
- 1100 dd) Costs proposed as part of a budget that are unreasonable;
- 1101
- 1102 ee) Costs incurred during early action that are unreasonable;
- 1103

- 1104 ff) Costs incurred on or after the date the owner or operator enters the Site  
1105 Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to  
1106 address the UST release;
- 1107
- 1108 gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence  
1109 for which the No Further Remediation Letter was received. This subsection (gg)  
1110 does not apply to the following:  
1111
  - 1112 1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of  
1113 this Part;
  - 1114
  - 1115 2) Monitoring well abandonment costs;
  - 1116
  - 1117 3) County recorder or registrar of titles fees for recording the No Further  
1118 Remediation Letter;
  - 1119
  - 1120 4) Costs associated with seeking payment from the Fund; ~~and~~
  - 1121
  - 1122 5) Costs associated with remediation to Tier 1 remediation objectives on-site  
1123 if a court of law voids or invalidates a No Further Remediation Letter and  
1124 orders the owner or operator to achieve Tier 1 remediation objectives in  
1125 response to the release; and
  - 1126
  - 1127 6) Costs associated with activities conducted under Section 734.632 of this  
1128 Part;
  - 1129
- 1130 hh) Handling charges for subcontractor costs that have been billed directly to the  
1131 owner or operator;
- 1132
- 1133 ii) Handling charges for subcontractor costs when the contractor has not submitted  
1134 proof of payment of the subcontractor costs;
- 1135
- 1136 jj) Costs associated with standby and demurrage;
- 1137
- 1138 kk) Costs associated with a corrective action plan incurred after the Agency notifies  
1139 the owner or operator, pursuant to Section 734.355(b) of this Part, that a revised  
1140 corrective action plan is required, provided, however, that costs associated with  
1141 any subsequently approved corrective action plan will be eligible for payment if  
1142 they meet the requirements of this Part;
- 1143
- 1144 ll) Costs incurred prior to the effective date of an owner's or operator's election to  
1145 proceed in accordance with this Part, unless such costs were incurred for activities  
1146 approved as corrective action under this Part;

- 1147
- 1148 mm) Costs associated with the preparation of free product removal reports not
- 1149 submitted in accordance with the schedule established in Section 734.215(a)(5) of
- 1150 this Part;
- 1151
- 1152 nn) Costs submitted more than one year after the date the Agency issues a No Further
- 1153 Remediation Letter pursuant to Subpart G of this Part. This subsection (nn) does
- 1154 not apply to costs associated with activities conducted under Section 734.632 of
- 1155 this Part;
- 1156
- 1157 oo) Costs for the destruction and replacement of concrete, asphalt, or paving, except
- 1158 as otherwise provided in Section 734.625(a)(16) of this Part;
- 1159
- 1160 pp) Costs incurred as a result of the destruction of, or damage to, any equipment,
- 1161 fixtures, structures, utilities, or other items during corrective action activities,
- 1162 except as otherwise provided in Sections 734.625(a)(16) or (17) of this Part;
- 1163
- 1164 qq) Costs associated with oversight by an owner or operator;
- 1165
- 1166 rr) Handling charges charged by persons other than the owner's or operator's primary
- 1167 contractor;
- 1168
- 1169 ss) Costs associated with the installation of concrete, asphalt, or paving as an
- 1170 engineered barrier to the extent they exceed the cost of installing an engineered
- 1171 barrier constructed of asphalt four inches in depth. This subsection does not apply
- 1172 if the concrete, asphalt, or paving being used as an engineered barrier was
- 1173 replaced pursuant to Section 734.625(a)(16) of this Part;
- 1174
- 1175 tt) The treatment or disposal of soil that does not exceed the applicable remediation
- 1176 objectives for the release, unless approved by the Agency in writing prior to the
- 1177 treatment or disposal;
- 1178
- 1179 uu) Costs associated with the removal or abandonment of a potable water supply well,
- 1180 or the replacement of such a well or connection to a public water supply, except
- 1181 as otherwise provided in Section 734.625(a)(19) of this Part;
- 1182
- 1183 vv) Costs associated with the repair or replacement of potable water supply lines,
- 1184 except as otherwise provided in Section 734.625(a)(20) of this Part;
- 1185
- 1186 ww) Costs associated with the replacement of underground structures or utilities,
- 1187 including but not limited to septic tanks, utility vaults, sewer lines, electrical lines,
- 1188 telephone lines, cable lines, or water supply lines, except as otherwise provided in
- 1189 Sections 734.625(a)(19) or (20) of this Part;

- 1190  
 1191 xx) ~~(Reserved) For sites electing under Section 734.105 of this Part to proceed in~~  
 1192 ~~accordance with this Part, costs incurred pursuant to Section 734.210 of this Part;~~  
 1193  
 1194 yy) Costs associated with the maintenance, repair, or replacement of leased or  
 1195 subcontracted equipment, other than costs associated with routine maintenance  
 1196 that are approved in a budget;  
 1197  
 1198 zz) Costs that exceed the maximum payment amounts set forth in Subpart H of this  
 1199 Part;  
 1200  
 1201 aaa) Costs associated with on-site corrective action to achieve remediation objectives  
 1202 that are more stringent than the Tier 2 remediation objectives developed in  
 1203 accordance with 35 Ill. Adm. Code 742. This subsection (aaa) does not apply if  
 1204 Karst geology prevents the development of Tier 2 remediation objectives for on-  
 1205 site remediation, or if a court of law voids or invalidates a No Further  
 1206 Remediation Letter and orders the owner or operator to achieve Tier 1  
 1207 remediation objectives on-site in response to the release;:-  
 1208  
 1209 bbb) Costs associated with groundwater remediation if a groundwater ordinance  
 1210 already approved by the Agency for use as an institutional control in accordance  
 1211 with 35 Ill. Adm. Code 742 can be used as an institutional control for the release  
 1212 being remediated;-  
 1213  
 1214 ccc) Costs associated with on-site corrective action to achieve Tier 2 remediation  
 1215 objectives that are more stringent than Tier 1 remediation objectives;  
 1216  
 1217 ddd) Costs associated with corrective action to achieve remediation objectives other  
 1218 than industrial/commercial property remediation objectives, unless the owner or  
 1219 operator demonstrates that the property being remediated is residential property or  
 1220 is being developed into residential property. This subsection (ddd) does not  
 1221 prohibit the payment of costs associated with remediation approved by the  
 1222 Agency pursuant to Section 734.360(c) or (d) of this Part to remediate or prevent  
 1223 groundwater contamination at off-site property;  
 1224  
 1225 eee) Costs associated with groundwater remediation if a groundwater ordinance must  
 1226 be used as an institutional control under Section 734.360(c) of this Part. This  
 1227 subsection (eee) does not prohibit the payment of costs associated with  
 1228 remediation approved by the Agency pursuant to Section 734.360(c) to remediate  
 1229 or prevent groundwater contamination at off-site property;  
 1230  
 1231 fff) Costs associated with on-site groundwater remediation if an institutional control is  
 1232 required to address on-site groundwater remediation under Section 734.360(d) of

1233 this Part. This subsection (fff) does not prohibit the payment of costs associated  
 1234 with remediation approved by the Agency pursuant to Section 734.360(d) to  
 1235 remediate or prevent groundwater contamination at off-site property.  
 1236

1237 (Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
 1238

1239 **Section 734.632 Eligible Corrective Action Costs Incurred After NFR Letter**  
 1240

1241 Notwithstanding Section 734.630(gg) and (nn) of this Part, the following shall be considered  
 1242 corrective action activities eligible for payment from the Fund even when an owner or operator  
 1243 conducts these activities after the issuance of a No Further Remediation Letter. Corrective  
 1244 action conducted under this Section and costs incurred under this Section must comply with the  
 1245 requirements of Title XVI of the Act and this Part, including, but not limited to, requirements for  
 1246 the submission and Agency approval of corrective action plans and budgets, corrective action  
 1247 completion reports, and applications for payment, provided that no plan, budget, or report is  
 1248 required for activities conducted pursuant to subsection (d) or (e) of this Section.  
 1249

- 1250 a) Corrective action to achieve residential property remediation objectives if the  
 1251 owner or operator demonstrates that property remediated to  
 1252 industrial/commercial property remediation objectives pursuant to Section  
 1253 57.7(c)(3)(A)(ii) of the Act and Section 734.360(b) of this Part is being developed  
 1254 into residential property.  
 1255
- 1256 b) Corrective action to address groundwater contamination if the owner or operator  
 1257 demonstrates that such action is necessary because a groundwater ordinance  
 1258 used as an institutional control pursuant to Section 57.7(c)(3)(A)(iii) of the Act  
 1259 and Section 734.360(c) of this Part can no longer be used as an institutional  
 1260 control.  
 1261
- 1262 c) Corrective action to address groundwater contamination if the owner or operator  
 1263 demonstrates that such action is necessary because an on-site groundwater use  
 1264 restriction used as an institutional control pursuant to Section 57.7(c)(3)(A)(iv)  
 1265 of the Act and Section 734.360(d) of this Part must be lifted in order to allow the  
 1266 installation of a potable water supply well due to public water supply service no  
 1267 longer being available for reasons other than an act or omission of the owner or  
 1268 operator.  
 1269
- 1270 d) The disposal of soil that does not exceed industrial/commercial property  
 1271 remediation objectives, but that does exceed Tier 1 residential property  
 1272 remediation objectives, if industrial/commercial property remediation objectives  
 1273 were used pursuant to Section 57.7(c)(3)(A)(ii) of the Act and Section 734.360(b)  
 1274 of this Part and the owner or operator demonstrates that the contamination is the  
 1275 result of the release for which the owner or operator is eligible to seek payment

1276 from the Fund and disposal of the soil is necessary as a result of construction  
 1277 activities conducted after the issuance of a No Further Remediation Letter on the  
 1278 site where the release occurred, including, but not limited to, the following: tank,  
 1279 line, or canopy repair, replacement, or removal; building upgrades; sign  
 1280 installation; and water or sewer line replacement. Costs eligible for payment  
 1281 under this subsection (d) are the costs to transport the soil to a properly permitted  
 1282 disposal site and disposal site fees, and may include, but are not limited to, costs  
 1283 for: disposal site waste characterization sampling; disposal site authorization,  
 1284 scheduling, and coordination; field oversight; disposal fees; and preparation of  
 1285 applications for payment.

1286  
 1287 e) The disposal of water exceeding groundwater remediation objectives that is  
 1288 removed from an excavation on the site where the release occurred if a  
 1289 groundwater ordinance is used as an institutional control pursuant to Section  
 1290 57.7(c)(3)(A)(iii) of the Act and Section 734.360(c) of this Part, or if an on-site  
 1291 groundwater use restriction is used as an institutional control pursuant to Section  
 1292 57.7(c)(3)(A)(iv) of the Act and Section 734.360(d) of this Part and the owner or  
 1293 operator demonstrates that the excavation is located within the measured or  
 1294 modeled extent of groundwater contamination resulting from the release for  
 1295 which the owner or operator is eligible to seek payment from the Fund and  
 1296 disposal of the groundwater is necessary as a result of construction activities  
 1297 conducted after the issuance of a No Further Remediation Letter on the site  
 1298 where the release occurred, including, but not limited to, the following: tank, line,  
 1299 or canopy repair, replacement, or removal; building upgrades; sign installation;  
 1300 and water or sewer line replacement. [415 ILCS 5/57.19].

1301  
 1302 f) Consulting fees for corrective action conducted pursuant to subsections (a), (b),  
 1303 and (c) of this Section. Consulting fees shall be subject to Subpart H of this Part.  
 1304

1305 (Source: Added at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
 1306

1307 SUBPART H: MAXIMUM PAYMENT AMOUNTS  
 1308

1309 **Section 734.810 UST Removal or Abandonment Costs**  
 1310

1311 Payment for costs associated with UST-removal or abandonment of each UST must not exceed  
 1312 the amounts set forth in this Section. Such costs must include, but not be limited to, those  
 1313 associated with the excavation, removal, and disposal, and abandonment of UST systems.  
 1314

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 [415 ILCS 5/57.7(c)(3)(C)] set forth in this Part. Once a maximum payment amount is determined via bidding in accordance with this Section, the Agency may approve the maximum payment amount in amended budgets and other subsequent budgets submitted for the same incident.

a) Bidding must be publicly-noticed, competitive, and sealed bidding that includes, at a minimum, the following:

1) The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measureable.

A) The invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. Invitations for bids may include, but shall not be limited to, contract terms and conditions, including but not limited to warranty and bonding or other security requirements, and qualification requirements, which may include, but shall not be limited to, factors to be considered in determining whether a bidder is responsible pursuant to subsection (d) of this Section. The time during which bids may be submitted must begin on the date the invitation for bids is issued and must end at the time and date set for opening of the bids. In no case shall the time for bid submission be less than 14 days.



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

1400 mistakes, shall be allowed in accordance with subsection (c) of this  
 1401 Section. After bid opening, no changes in bid prices or other provisions of  
 1402 bids prejudicial to the owner or operator or fair competition shall be  
 1403 allowed. All decisions to allow the correction or withdrawal of bids based  
 1404 on bid mistakes shall be supported by a written determination made by the  
 1405 owner or operator.

1407 6) The owner or operator shall select the winning bid with reasonable  
 1408 promptness by written notice to the lowest responsible and responsive  
 1409 bidder whose bid meets the requirements and criteria set forth in the  
 1410 invitation for bids. The winning bid and other relevant information must  
 1411 be recorded and submitted to the Agency in the applicable budget in  
 1412 accordance with subsection (b) of this Section.

1414 7) All bidding documentation must be retained by the owner or operator for  
 1415 a minimum of 3 years after the costs bid are submitted in an application  
 1416 for payment, except that documentation relating to an appeal, litigation,  
 1417 or other disputed claim must be maintained until at least 3 years after the  
 1418 date of the final disposition of the appeal, litigation, or other disputed  
 1419 claim. All bidding documentation must be made available to the Agency  
 1420 for inspection and copying during normal business hours. [415 ILCS  
 1421 5/57.7(c)(3)(B)]

1423 a) ~~A minimum of three written bids must be obtained. The bids must be based upon~~  
 1424 ~~the same scope of work and must remain valid for a period of time that will allow~~  
 1425 ~~the owner or operator to accept them upon the Agency's approval of the~~  
 1426 ~~associated budget. Bids must be obtained only from persons qualified and able to~~  
 1427 ~~perform the work being bid. Bids must not be obtained from persons in which the~~  
 1428 ~~owner or operator, or the owner's or operator's primary contractor, has a financial~~  
 1429 ~~interest.~~

1431 b) ~~All~~The bids must be summarized on forms prescribed and provided by the  
 1432 Agency. The bid summary ~~forms~~form, along with copies of the invitation for  
 1433 bids, the public notice required under subsection (a)(2) of this Section, proof of  
 1434 publication of the notice, and each bid received,~~the bid requests and the bids~~  
 1435 ~~obtained,~~ must be submitted to the Agency in the associated budget. ~~If more than~~  
 1436 ~~the minimum three bids are obtained, summaries and copies of all bids must be~~  
 1437 ~~submitted to the Agency.~~

1439 c) Corrections to bids are allowed only to the extent the corrections are not contrary  
 1440 to the best interest of the owner or operator and the fair treatment of other bidders.  
 1441 If a bid is corrected, copies of both the original bid and the revised bid must be

1442 submitted in accordance with subsection (b) of this Section along with an  
 1443 explanation of the corrections made.

1444  
 1445 1) Mistakes Discovered Before Opening. A bidder may correct mistakes  
 1446 discovered before the time and date set for opening of bids by  
 1447 withdrawing his or her bid and submitting a revised bid prior to the time  
 1448 and date set for opening of bids.

1449  
 1450 2) Mistakes Discovered After Opening of a Bid but Before Award of the  
 1451 Winning Bid

1452  
 1453 A) If the owner or operator knows or has reason to conclude that a  
 1454 mistake has been made, the owner or operator must request the  
 1455 bidder to confirm the information. Situations in which  
 1456 confirmation should be requested include obvious or apparent  
 1457 errors on the face of the document or a price unreasonably lower  
 1458 than the others submitted.

1459  
 1460 B) If the mistake and the intended correct information are clearly  
 1461 evident on the face of the bid, the information shall be corrected  
 1462 and the bid may not be withdrawn. Examples of mistakes that may  
 1463 be clearly evident on the face of the bid are typographical errors,  
 1464 errors extending unit prices, transportation errors, and  
 1465 mathematical errors.

1466  
 1467 C) If the mistake and the intended correct information are not clearly  
 1468 evident on the face of the bid, the low bid may be withdrawn if:

1469  
 1470 i) a mistake is clearly evident on the face of the bid but the  
 1471 intended correct bid is not similarly evident; or

1472  
 1473 ii) there is proof of evidentiary value that clearly and  
 1474 convincingly demonstrates that a mistake was made.

1475  
 1476 3) Mistakes shall not be corrected after selection of the winning bid unless  
 1477 the Agency determines that it would be unconscionable not to allow the  
 1478 mistake to be corrected (e.g., the mistake would result in a windfall to the  
 1479 owner or operator).

1480  
 1481 4) Minor informalities. A minor informality or irregularity is one that is a  
 1482 matter of form or pertains to some immaterial or inconsequential defect or  
 1483 variation from the exact requirement of the invitation for bid, the  
 1484 correction or waiver of which would not be prejudicial to the owner or

1485 operator (i.e., the effect on price, quality, quantity, delivery, or contractual  
1486 conditions is negligible). The owner or operator must waive the  
1487 informalities or allow correction depending on which is in the owner's or  
1488 operator's best interest.  
1489

1490 d) For purposes of this Section, factors to be considered in determining whether a  
1491 bidder is responsible include, but are not limited to, the following:  
1492

1493 1) The bidder has available the appropriate financial, material, equipment,  
1494 facility, and personnel resources and expertise (or the ability to obtain  
1495 them) necessary to indicate its capability to meet all contractual  
1496 requirements;  
1497

1498 2) The bidder is able to comply with required or proposed delivery or  
1499 performance schedules, taking into consideration all existing commercial  
1500 and governmental commitments;  
1501

1502 3) The bidder has a satisfactory record of performance. Bidders who are or  
1503 have been deficient in current or recent contact performance in dealing  
1504 with the owner or operator or other clients may be deemed "not  
1505 responsible" unless the deficiency is shown to have been beyond the  
1506 reasonable control of the bidder; and  
1507

1508 4) The bidder has a satisfactory record of integrity and business ethics.  
1509 Bidders who are under investigation or indictment for criminal or civil  
1510 actions that bear on the subject of the bid, or that create a reasonable  
1511 inference or appearance of a lack of integrity on the part of the bidder,  
1512 may be declared not responsible for the particular subject of the bid.  
1513

1514 e) ~~The maximum payment amount for the work bid must be the amount of the~~  
1515 ~~lowest bid, unless the lowest bid is less than the maximum payment amount set~~  
1516 ~~forth in this Subpart H, in which case the maximum payment amount set forth in~~  
1517 ~~this Subpart H must be allowed. The owner or operator is not required to use the~~  
1518 ~~lowest bidder to perform the work, but instead may use another person qualified~~  
1519 ~~and able to perform the work, including, but not limited to, a person in which the~~  
1520 ~~owner or operator, or the owner's or operator's primary consultant, has a direct or~~  
1521 ~~indirect financial interest. However, regardless of who performs the work, the~~  
1522 ~~maximum payment amount will remain the amount of the lowest bid.~~  
1523

1524 (Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
1525

1526 **Section 734.860 Unusual or Extraordinary Circumstances**  
1527

1528 If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur  
1529 eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency  
1530 may determine maximum payment amounts for the costs on a site-specific basis. Owners and  
1531 operators seeking to have the Agency determine maximum payment amounts pursuant to this  
1532 Section must demonstrate to the Agency that the costs for which they are seeking a  
1533 determination are eligible for payment from the Fund, exceed the maximum payment amounts  
1534 set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are  
1535 unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part.  
1536 ~~Examples of unusual or extraordinary circumstances include, but are not limited to, an inability~~  
1537 ~~to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited~~  
1538 ~~number of persons providing the service needed.~~

1539  
1540 (Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)