

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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FEB 18 2003

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
AMENDMENTS TO 35 ILL. )  
ADM. CODE 740; SITE )  
REMEDICATION PROGRAM )

) R03- 20  
) (Rulemaking)

N O T I C E

Dorothy Gunn, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Ste. 11-500  
Chicago, Illinois 60601

Robert T. Lawley  
Dept. Of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702

Attorney General's Office  
Environmental Bureau  
188 W. Randolph, 20<sup>th</sup> Floor  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of  
the Clerk of the Pollution Control Board the Motion for Acceptance  
of the Illinois Environmental Protection Agency, a copy of which is  
herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY  
OF THE STATE OF ILLINOIS

By:

  
Judy S. Dyer  
Assistant Counsel

DATE: February 14, 2003  
Agency File #:  
Illinois Environmental  
Protection Agency  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
Amendments to 35 Ill. Adm. )  
Code 740; Site Remediation )  
Program )

R03- 20  
(Rulemaking)

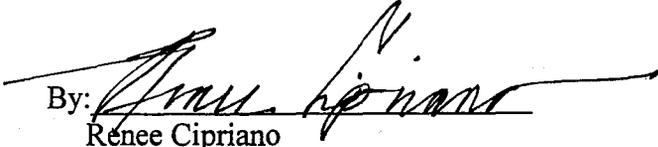
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Pollution Control Board

**MOTION FOR ACCEPTANCE**

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency"), pursuant to 35 Ill. Adm. Code 102.121, moves that the Board accept for hearing the Agency's proposal for amendment of 35 Ill. Adm. Code 740. This regulatory proposal includes: 1) the proposed amendments; 2) the Statement of Reasons; 3) a certification of origination; and 4) an Appearance for the attorney representing the Illinois EPA.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By:   
Renee Cipriano  
Director

DATED: 12/10/02

1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-3397

**THIS FILING IS SUBMITTED ON RECYCLED PAPER.**

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

**TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD**

**PART 740  
SITE REMEDIATION PROGRAM**

**SUBPART A: GENERAL**

<b>Section</b>	
740.100	Purpose
740.105	Applicability
740.110	Permit Waiver
740.115	Agency Authority
740.120	Definitions
740.125	Incorporations by Reference
740.130	Severability

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

<b>Section</b>	
740.200	General
740.205	Submittal of Application and Agreement
740.210	Contents of Application and Agreement
740.215	Approval or Denial of Application and Agreement
740.220	Acceptance and Modification of Application and Agreement
740.225	Termination of Agreement by the Remediation Applicant (RA)
740.230	Termination of Agreement by the Agency
740.235	Use of Review and Evaluation Licensed Professional Engineer (RELPE)

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

<b>Section</b>	
740.300	General
740.305	Recordkeeping for Agency Services
740.310	Request for Payment
740.315	Submittal of Payment
740.320	Manner of Payment

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

<b>Section</b>	
740.400	General
740.405	Conduct of Site Activities and Preparation of Plans and Reports by Licensed Professional Engineer (LPE)
740.410	Form and Delivery of Plans and Reports, Signatories and Certifications
740.415	Site Investigation -- General
740.420	Comprehensive Site Investigation
740.425	Site Investigation Report -- Comprehensive Site Investigation
740.430	Focused Site Investigation
740.435	Site Investigation Report -- Focused Site Investigation
740.440	Determination of Remediation Objectives
740.445	Remediation Objectives Report
740.450	Remedial Action Plan
740.455	Remedial Action Completion Report

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

<b>Section</b>	
740.500	General
740.505	Reviews of Plans and Reports
740.510	Standards for Review of Site Investigation Reports and Related Activities
740.515	Standards for Review of Remediation Objectives Reports
740.520	Standards for Review of Remedial Action Plans and Related Activities
740.525	Standards for Review of Remedial Action Completion Reports and Related Activities
740.530	Establishment of Groundwater Management Zones

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

<b>Section</b>	
740.600	General
740.605	Issuance of No Further Remediation Letter
740.610	Contents of No Further Remediation Letter
740.615	Payment of Fees
740.620	Duty to Record No Further Remediation Letter
740.625	Voidance of No Further Remediation Letter

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

<b>Section</b>	
740.700	General
740.705	Preliminary Review of Estimated Remediation Costs
740.710	Application for Final Review of Remediation Costs
740.715	Agency Review of Application for Final Review of Remediation Costs
740.720	Fees and Manner of Payment
740.725	Remediation Costs
740.730	Ineligible Costs

**SUBPART H: REVIEW OF REMEDIATION COSTS FOR BROWNFIELDS SITE  
RESTORATION PROGRAM (New)**

<u>Section</u>	
<u>740.800</u>	<u>General</u>
<u>740.801</u>	<u>Pre-application Assessment and Eligibility Determination</u>
<u>740.805</u>	<u>Preliminary Review of Estimated Remediation Costs</u>
<u>740.810</u>	<u>Application for Final Review and Payment of Remediation Costs</u>
<u>740.811</u>	<u>Application for Final Review and Payment of Remediation Costs Where the Remediation Applicant Will Remediate Groundwater For More Than One Year</u>
<u>740.815</u>	<u>Agency Review of Application for Review and Payment of Remediation Costs</u>
<u>740.820</u>	<u>Fees and Manner of Payment</u>
<u>740.825</u>	<u>Remediation Costs</u>
<u>740.830</u>	<u>Ineligible Costs</u>

Appendix A	Target Compound List
Table A	Volatile Organics Analytical Parameters and Required Quantitation Limits
Table B	Semivolatile Organic Analytical Parameters and Required Quantitation Limits
Table C	Pesticide and Aroclors Organic Analytical Parameters and Required Quantitation Limits
Table D	Inorganic Analytical Parameters and Required Quantitation Limits
Appendix B	Review and Evaluation Licensed Professional Engineer Information

AUTHORITY: Implementing Sections 58 through 58.145 and authorized by Sections 58.5, 58.6, 58.7, 58.11, and 58.14 and 58.15 of the Environmental Protection Act [415 ILCS 5/58 through 58.145].

SOURCE: Adopted in R97-11 at 21 Ill. Reg. 7889, effective July 1, 1997; amended in R98-27 at 22 Ill. Reg. 19580, effective October 26, 1998; ; amended in R01-27 and R01-29 at 26 Ill. Reg.

ILLINOIS REGISTER

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7197, effective April 25, 2002, amended at \_\_\_\_\_ Illinois Register \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: Italics denotes statutory language. In this Part, the abbreviation  $\mu\text{g}$  is used to indicate micrograms.

**SUBPART A: GENERAL**

**Section 740.100 Purpose**

The purposes of this Part ~~is~~ are:

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

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

**Section 740.120 Definitions**

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

"Abandoned property" means real property previously used for, or that has the potential to be used for, commercial or industrial purposes that reverted to the ownership of the state, a county or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default, or settlement, including conveyance by deed in lieu of foreclosure; or privately owned property

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that has been vacant for a period of not less than 3 years from the time an application is made to the Department of Commerce and Community Affairs.  
(Section 58.15(B)(b)(2) of the Act)

“Act” means the Environmental Protection Act [415 ILCS 5].

“Agency” means the Illinois Environmental Protection Agency.

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

“AGRICHEMICAL FACILITY” MEANS A SITE ON WHICH AGRICULTURAL PESTICIDES ARE STORED OR HANDLED, OR BOTH, IN PREPARATION FOR END USE, OR DISTRIBUTED. THE TERM DOES NOT INCLUDE BASIC MANUFACTURING FACILITY SITES. (Section 58.2 of the Act)

“ASTM” MEANS THE AMERICAN SOCIETY FOR TESTING AND MATERIALS. (Section 58.2 of the Act)

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

“Board” means the Pollution Control Board.

“Contaminant of concern” or “REGULATED SUBSTANCE OF CONCERN” MEANS ANY CONTAMINANT THAT IS EXPECTED TO BE PRESENT AT THE SITE BASED UPON PAST AND CURRENT LAND USES AND ASSOCIATED RELEASES THAT ARE KNOWN TO THE REMEDIATION APPLICANT BASED UPON REASONABLE INQUIRY. (Section 58.2 of the Act)

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

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

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

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

“LICENSED PROFESSIONAL ENGINEER” or “LPE” MEANS A PERSON, CORPORATION OR PARTNERSHIP LICENSED UNDER THE LAWS OF THIS STATE TO PRACTICE PROFESSIONAL ENGINEERING. (Section 58.2 of the Act)

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

“PERSON” MEANS INDIVIDUAL, TRUST, FIRM, JOINT STOCK COMPANY, JOINT VENTURE, CONSORTIUM, COMMERCIAL ENTITY, CORPORATION (INCLUDING A GOVERNMENT CORPORATION), PARTNERSHIP, ASSOCIATION, STATE, MUNICIPALITY, COMMISSION, POLITICAL SUBDIVISION OF A STATE, OR ANY INTERSTATE BODY, INCLUDING THE UNITED STATES GOVERNMENT AND EACH DEPARTMENT, AGENCY, AND INSTRUMENTALITY OF THE UNITED STATES. (Section 58.2 of the Act)

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

“PESTICIDE” MEANS ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR PREVENTING, DESTROYING, REPELLING, OR MITIGATING ANY PEST OR ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR USE AS A PLANT REGULATOR, DEFOLIANT OR DESICCANT. (Illinois Pesticide Act [415 ILCS 60/4])

“Practical quantitation limit” or “PQL” or “Estimated quantitation limit” means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with “Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,” EPA Publication No. SW-846, incorporated by reference at Section 740.125 of this Part. For filtered water

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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 Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 740.125 of this Part.

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

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

"REGULATED SUBSTANCE" MEANS ANY HAZARDOUS SUBSTANCE AS DEFINED UNDER SECTION 101(14) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (P.L. 96-510) AND PETROLEUM PRODUCTS, INCLUDING CRUDE OIL OR ANY FRACTION THEREOF, NATURAL GAS, NATURAL GAS LIQUIDS, LIQUEFIED NATURAL GAS, OR SYNTHETIC GAS USABLE FOR FUEL (OR MIXTURES OF NATURAL GAS AND SUCH SYNTHETIC GAS). (Section 58.2 of the Act)

"REGULATED SUBSTANCE OF CONCERN" or "contaminant of concern" MEANS ANY CONTAMINANT THAT IS EXPECTED TO BE PRESENT AT THE SITE BASED UPON PAST AND CURRENT LAND USES AND ASSOCIATED RELEASES THAT ARE KNOWN TO THE REMEDIATION APPLICANT BASED UPON REASONABLE INQUIRY. (Section 58.2 of the Act)

"RELEASE" MEANS ANY SPILLING, LEAKING, PUMPING, POURING, EMITTING, EMPTYING, DISCHARGING, INJECTING, ESCAPING, LEACHING, DUMPING, OR DISPOSING INTO THE ENVIRONMENT, BUT EXCLUDES ANY RELEASE WHICH RESULTS IN EXPOSURE TO

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PERSONS SOLELY WITHIN A WORKPLACE, WITH RESPECT TO A CLAIM WHICH SUCH PERSONS MAY ASSERT AGAINST THE EMPLOYER OF SUCH PERSONS; EMISSIONS FROM THE ENGINE EXHAUST OF A MOTOR VEHICLE, ROLLING STOCK, AIRCRAFT, VESSEL, OR PIPELINE PUMPING STATION ENGINE; RELEASE OF SOURCE, BYPRODUCT, OR SPECIAL NUCLEAR MATERIAL FROM A NUCLEAR INCIDENT, AS THOSE TERMS ARE DEFINED IN THE federal ATOMIC ENERGY ACT OF 1954, IF SUCH RELEASE IS SUBJECT TO REQUIREMENTS WITH RESPECT TO FINANCIAL PROTECTION ESTABLISHED BY THE NUCLEAR REGULATORY COMMISSION UNDER SECTION 170 OF SUCH ACT; AND THE NORMAL APPLICATION OF FERTILIZER. (Section 3.33 of the Act)

“REMEDIAL ACTION” MEANS ACTIVITIES ASSOCIATED WITH COMPLIANCE WITH THE PROVISIONS OF SECTIONS 58.6 AND 58.7 of the Act, including, but not limited to, the conduct of site investigations, preparation of work plans and reports, removal or treatment of contaminants, construction and maintenance of engineered barriers, and/or implementation of institutional controls. (Section 58.2 of the Act)

“REMEDICATION APPLICANT” or “RA” MEANS ANY PERSON SEEKING TO PERFORM OR PERFORMING INVESTIGATIVE OR REMEDIAL ACTIVITIES UNDER Title XVII of the Act, INCLUDING THE OWNER OR OPERATOR OF THE SITE OR PERSONS AUTHORIZED BY LAW OR CONSENT TO ACT ON BEHALF OF OR IN LIEU OF THE OWNER OR OPERATOR OF THE SITE. (Section 58.2 of the Act)

“REMEDICATION COSTS” MEANS REASONABLE COSTS PAID FOR INVESTIGATING AND REMEDIATING REGULATED SUBSTANCES OF CONCERN CONSISTENT WITH THE REMEDY SELECTED FOR the SITE. FOR PURPOSES OF Subpart G and H of this Part, “REMEDICATION COSTS” SHALL NOT INCLUDE COSTS INCURRED PRIOR TO JANUARY 1, 1998, COSTS INCURRED AFTER THE ISSUANCE OF A NO FURTHER REMEDIATION LETTER UNDER Subpart F of this Part, OR COSTS INCURRED MORE THAN 12 MONTHS PRIOR TO ACCEPTANCE INTO THE SITE REMEDIATION PROGRAM under this Part. (Section 58.2 of the Act)

“Remediation objective” means a goal to be achieved in performing remedial action, including but not limited to the concentration of a contaminant, an engineered barrier or engineered control, or an institutional control established under Section 58.5 of the Act or Section 740.Subpart D of this Part.

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

“RESIDENTIAL PROPERTY” MEANS ANY REAL PROPERTY THAT IS USED FOR HABITATION BY INDIVIDUALS, or where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, child care facilities, or outdoor recreational areas. (Section 58.2 of the Act)

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

“SITE” MEANS ANY SINGLE LOCATION, PLACE, TRACT OF LAND OR PARCEL OF PROPERTY OR PORTION THEREOF, INCLUDING CONTIGUOUS PROPERTY SEPARATED BY A PUBLIC RIGHT-OF-WAY. (Section 58.2 of the Act) This term also includes, but is not limited to, all buildings and improvements present at that location, place or tract of land.

“Underutilized property” means real property of which less than 35% of the commercially usable space of the property and improvements thereon are used for their most commercially profitable and economically productive uses.  
(Section 58.15(B)(b)(2) of the Act)

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

SUBPART H: REVIEW OF REMEDIATION COSTS FOR BROWNFIELDS SITE RESTORATION PROGRAM

Section 740.800      General

- a) This Subpart sets forth the procedures an RA must follow to obtain Agency review, a final determination and payment of remediation costs under the Brownfields Site Restoration Program. It contains procedures for preliminary reviews of estimated remediation costs and final reviews of remediation costs actually incurred, establishes fees for the Agency’s reviews, provides for appeals of Agency determinations, and includes listings of eligible and ineligible costs.

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- b) For each fiscal year in which funds are made available to the Agency for payment under this Subpart, the Agency must allocate 20% of the funds to be available to counties with populations over 2,000,000. The remaining funds must be made available to all other counties in the state. (Section 58.15(B)(a)(2) of the Act)
- c) The total payment to be made to an applicant must not exceed an amount equal to 20% of the capital investment at the site. (Section 58.15(B)(a)(3) of the Act)
- d) Only those remediation projects for which a No Further Remediation Letter is issued by the Agency after December 31, 2001 are eligible to participate in the Brownfields Site Restoration Program. The program does not apply to any sites that have received a No Further Remediation Letter prior to December 31, 2001 or to costs incurred prior to DCCA approving a site eligible for the Brownfields Site Restoration Program. (Section 58.15(B)(a)(4) of the Act)
- e) Except as provided in Section 740.811, an application for review of remediation costs must not be submitted until:
  - 1) a No Further Remediation Letter has been issued by the Agency or has issued by operation of law; and
  - 2) the No Further Remediation Letter, or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law, has been recorded in the chain of title for the site in accordance with Subpart F of this Part. (Section 58.15(B)(e) of the Act)
- f) The Agency must not approve payment in excess of \$750,000 to a Remediation Applicant for remediation costs incurred at a remediation site. (Section 58.15(B)(a)(3) of the Act)
- g) Brownfields Site Restoration Program funds shall be subject to availability of funding and distributed based on the order of receipt of applications satisfying all applicable requirements as set forth in the Act and this Part. (Section 58.15(B)(a)(5) of the Act)

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

Section 740.801      Pre-application Assessment and Eligibility Determination

- a) Prior to submitting an application to determine eligibility to the Department of Commerce and Community Affairs, a Remediation Applicant shall first submit to the Agency its proposed remediation costs. The Agency shall make a pre-application assessment, which is not to be binding upon the Department of Commerce and Community Affairs or upon future review of the project, relating only to whether the

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Agency has adequate funding to reimburse the applicant for the remediation costs if the applicant is found to be eligible for reimbursement of remediation costs.  
(Section 58.15(B)(b) of the Act)

- b) If the Agency determines that it is likely to have adequate funding to reimburse the applicant for remediation costs, the Remediation Applicant may then submit to the Department of Commerce and Community Affairs ["DCCA"] an application for review of eligibility. (Section 58.15(B)(b) of the Act) To be eligible for payment, an RA must have a minimum capital investment in the redevelopment of the site. Procedures for applying for eligibility and for obtaining a determination from DCCA are set forth [at 14 Ill. Adm. Code Part 521].
- c) Once DCCA has determined that an RA is eligible, the RA may submit an application to the Agency in accordance with Section 740.810 or Section 740.811 of this Part.
- d) The Agency must rely on DCCA's decision as to eligibility. The maximum amount of the payment to be made to the RA for remediation costs may not exceed the "net economic benefit" to the State of the remediation project, as determined by DCCA, based on factors including, but not limited to, the capital investment, the number of jobs created, the number of jobs retained if it is demonstrated the jobs would otherwise be lost, capital improvements, the number of construction-related jobs, increased sales, material purchases, other increases in service and operational expenditures. (Section 58.15(B)(b)(3) of the Act)

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

Section 740.805 Preliminary Review of Estimated Remediation Costs

- a) An RA may request a preliminary review of estimated remediation costs for the development and implementation of a Remedial Action Plan, required under Section 740.450 of this Part, by submitting a budget plan along with the Remedial Action Plan. (Section 58.15(B)(i)(1) of the Act) The Agency shall not accept a budget plan unless a Remedial Action Plan satisfying the requirements of Section 740.450 of this Part also has been submitted.
- b) The budget plan must be set forth on forms prescribed and provided by the Agency and must include, but is not limited to, the following information:
- 1) Identification of applicant and remediation site, including:
- A) The full legal name, address and telephone number of the RA, any authorized agents acting on behalf of the RA, and any contact persons to whom inquiries and correspondence must be addressed;

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- B) The address, site name, tax parcel identification number(s) and Illinois inventory identification number for the remediation site and the date of acceptance of the site into the Site Remediation Program; and
  - C) The Federal Employer Identification Number (FEIN) or Social Security Number (SSN) of the RA.
- 2) Line item estimates of the costs that the RA anticipates will be incurred for the development and implementation of the Remedial Action Plan, including but not limited to:
- A) Site investigation activities:
    - i) Drilling costs;
    - ii) Physical soil analysis;
    - iii) Monitoring well installation; and
    - iv) Disposal costs.
  - B) Sampling and analysis activities:
    - i) Soil analysis costs;
    - ii) Groundwater analysis costs;
    - iii) Well purging costs; and
    - iv) Water disposal costs.
  - C) Remedial activities:
    - i) Groundwater remediation costs;
    - ii) Excavation and disposal costs;
    - iii) Land farming costs;
    - iv) Above-ground bio-remediation costs;
    - v) Land application costs;

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- vi) Low temperature thermal treatment costs;
  - vii) Backfill costs; and
  - viii) In-situ soil remediation costs.
- D) Report preparation costs.
- 3) A certification, signed by the RA or authorized agent and notarized, as follows:
- I, [name of RA, if individual, or authorized agent of RA], hereby certify that neither ["I" if RA is certifying or name of RA if authorized agent is certifying], nor any related party (as described in Section 201(l) of the Illinois Income Tax Act [35 ILCS 5/201(l)], nor any person whose tax attributes ["I" if RA is certifying or name of RA if authorized agent is certifying] have [has] succeeded to under Section 381 of the Internal Revenue Code, caused or contributed in any material respect to the release or substantial threat of a release of regulated substance(s) or pesticide(s) that are identified and addressed in the Remedial Action Plan submitted for the site identified above.
- 4) The original signature of the RA or authorized agent acting on behalf of the RA.
- c) The RA must submit the applicable fee, as provided in Section 740.820 of this Subpart, with the budget plan, except as provided in subsections (f) and (i)(4) of this Section.
- d) Budget plans must be mailed or delivered to the address designated by the Agency on the forms. Requests that are hand-delivered must be delivered during the Agency's normal business hours.
- e) Submittal of a budget plan must be deemed an automatic 60-day waiver of the Remedial Action Plan deadlines set forth in the Act and Section 740.505 of this Part. (Section 58.15(B)(i)(4) of the Act)
- f) If the Remedial Action Plan is amended by the Remediation Applicant or as a result of Agency action, the corresponding budget plan must be revised accordingly and resubmitted. (Section 58.15(B)(i)(2) of the Act) No additional fee shall be required for this review.
- g) The following rules apply to the Agency's review period for budget plans:
- 1) The Agency's review period begins on the date of receipt of the budget plan by the Agency. The Agency's record of the date of receipt of a budget plan shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
  - 2) In reviewing budget plans and the remedial action plans they accompany, the Agency is subject to the deadlines set forth in Section 740.505 of this Part

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with an additional 60 days, due to the automatic waiver, in accordance with subsection (e) of this Section.

- 3) Submittal of an amended plan restarts the time for review.
- 4) The RA may waive the time line for review upon a request from the Agency or at the RA's discretion.
- h) The Agency must review the budget plan along with the Remedial Action Plan to determine whether the estimated costs submitted are remediation costs and whether the costs estimated for the activities are reasonable. (Section 58.15(B)(i)(1) of the Act)
- i) Upon completion of the review, the Agency must issue a letter to the Remediation Applicant approving, disapproving or modifying the estimated remediation costs submitted in the budget plan. (Section 58.15(B)(i)(4) of the Act) The following rules apply regarding Agency determinations:
  - 1) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have been made on the postmarked date that the notice is mailed.
  - 2) The Agency may combine the notification of its final determination on a budget plan with the notification of its final determination on the corresponding Remedial Action Plan.
  - 3) If a budget plan is disapproved or approved with modification of estimated remediation costs, the written notification shall contain the following information as applicable:
    - A) An explanation of the specific type of information or documentation, if any, that the Agency finds the RA did not provide;
    - B) The reasons for the disapproval or modification of estimated remediation costs; and
    - C) Citations to statutory or regulatory provisions upon which the determination is based.
  - 4) If the Agency disapproves a Remedial Action Plan or approves a Remedial Action Plan with conditions, in accordance with Subpart E of this Part, the Agency may return the corresponding budget plan to the RA without review. If the Remedial Action Plan is amended in response to Agency action, the

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RA may submit a revised budget plan for review. No additional fee shall be required for this review.

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

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

Section 740.810 Application for Final Review and Payment of Remediation Costs Following Perfection of No Further Remediation Letter

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

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- 3) A true and correct copy of the Department of Commerce and Community Affairs' letter approving eligibility, including the net economic benefit of the remediation project (Section 58.15(B)(e)(4) of the Act);
- 4) Itemization and documentation of remediation activities for which payment is sought and of remediation costs incurred, including invoices, billings and dated, legible receipts with canceled checks or other Agency-approved methods of proof of payment;
- 5) A certification, signed by the RA or authorized agent and notarized, as follows:

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

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

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

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

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

None of the costs were incurred before approval of the site by the Department of Commerce and Community Affairs as eligible for the Brownfields Site Restoration Program; and

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

- 6) The original signature of the RA or of the authorized agent acting on behalf of the RA.
- c) The application for final review shall be accompanied by the applicable fee for review as provided in Section 740.820 of this Subpart. Applications shall be mailed

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

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

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

Section 740.811 Application for Review and Payment of Remediation Costs Prior to Perfection of No Further Remediation Letter

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

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- 3) A true and correct copy of the Department of Commerce and Community Affairs' letter approving eligibility, including the net economic benefit of the remediation project (Section 58.15(B)(f)(4) of the Act);
- 4) Itemization and documentation of remediation activities for which payment is sought and of remediation costs incurred, including invoices, billings and dated, legible receipts with canceled checks or other Agency-approved methods of proof of payment;
- 5) A certification, signed by the RA or authorized agent and notarized, as follows:

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

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

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

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

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

None of the costs were incurred before approval of the site by the Department of Commerce and Community Affairs as eligible for the Brownfields Site Restoration Program; and

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

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

## POLLUTION CONTROL BOARD

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- c) Until the Agency issues a No Further Remediation Letter for the site (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law), no more than 75% of the allowed payment may be claimed by the Remediation Applicant. The remaining 25% may be claimed following the issuance by the Agency of a No Further Remediation Letter (or an affidavit under Section 740.620(a)(2) of this Part stating that the No Further Remediation Letter has issued by operation of law) for the site (Section 58.15(B)(g)) of the Act).
- d) The Agency's acceptance of a certification that the RA did not cause or contribute in any material respect to the release or substantial threat of a release for which the payment is requested shall not bind the Agency or the State and shall not be used as a defense with regard to any enforcement or cost recovery actions that may be initiated by the State or any other party.

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

Section 740.815 Agency Review of Application for Payment of Remediation Costs

- a) The Agency must review each application submitted pursuant to Section 740.810 or Section 740.811 to determine, in accordance with Sections 740.825 and 740.830 of this Part, whether the costs submitted are remediation costs and whether the costs incurred are reasonable (Section 58.15(B)(e), (f) of the Act).
- b) Within 60 days after receipt by the Agency of an application meeting the requirements of Section 740.810 or Section 740.811, the Agency must issue a letter to the RA approving, disapproving, or modifying the remediation costs submitted in the application. (Section 58.15(B)(h)(1) of the Act)
- c) The Agency's review period begins on the date of receipt of the application by the Agency. The Agency's record of the date of receipt of an application shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- d) The RA may waive the time for review.
- e) Submittal of an amended application restarts the time for review.
- f) The Agency's notification of final determination shall be by certified or registered mail postmarked with a date stamp and with return receipt requested. The Agency's determination shall be deemed to have been made on the postmarked date that the notice is mailed.

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- g) If a preliminary review of a budget plan has been obtained under Section 740.805 of this Part, the Remediation Applicant may submit, with the application, the applicable fee under Section 740.820 of this Part, and supporting documentation under Section 740.810 or Section 740.811 of this Part, a copy of the Agency's final determination on the budget plan accompanied by a certification, signed by the RA or authorized agent and notarized, stating as follows:
- I, \_\_\_\_\_ [name of RA, if individual, or name of authorized agent of RA], hereby certify that the actual remediation costs incurred at the site for line items [list line items to which certification applies] and identified in the application for final review of remediation costs are equal to or less than the costs approved for the corresponding line items in the attached budget plan determination.
- h) If the budget plan determination and certification are submitted pursuant to subsection (g) of this Section, the Agency may conduct further review of the certified line item costs and may approve such costs as submitted. The Agency's further review shall be limited to confirmation that costs approved in the Agency's budget plan determination were actually incurred by the RA in the development and implementation of the Remedial Action Plan.
- i) If the certification in subsection (g) of this Section does not apply to all line items as approved in the budget plan, the Agency shall conduct its review of the costs for the uncertified line items as if no budget plan had been approved. In its review, the Agency shall not reconsider the appropriateness of any activities, materials, labor, equipment, structures or services already approved by the Agency for the development or implementation of the Remedial Action Plan.
- j) If an application is disapproved or approved with modification of remediation costs, the written notification to the RA must contain the following information as applicable:
- 1) An explanation of the specific type of information or documentation, if any, that the Agency deems the RA did not provide;
  - 2) The reasons for the disapproval or modification of remediation costs; and
  - 3) Citations to statutory or regulatory provisions upon which the determination is based.

POLLUTION CONTROL BOARD

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- k) Within 35 days after receipt of an Agency letter disapproving or modifying an application for approval of remediation costs, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of the Act. (Section 58.15(B)(h)(3) of the Act)

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

Section 740.820      Fees and Manner of Payment

- a) The fee for the preliminary review of estimated remediation costs conducted under Section 740.805 of this Part shall be \$500 for each remediation site reviewed.
- b) The fee for the final review of remediation costs under Section 740.810 or Section 740.811 of this Part shall be \$1000 for each remediation site reviewed.
- c) The fee for a review under this Subpart shall be in addition to any other fees, payments or assessments under Title XVII of the Act and this Part.
- d) All fees shall be paid by check or money order made payable to "Treasurer – State of Illinois, for deposit in the Brownfields Redevelopment Fund." The check or money order shall include the Illinois inventory identification number and the Federal Employer Identification Number (FEIN) or social security number (SSN) of the RA.

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

Section 740.825      Remediation Costs

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

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- 5) Collection, analysis or measurement of site samples in accordance with Section 740.415(d) of this Part;
- 6) Groundwater monitoring well installation, operation, maintenance and construction materials;
- 7) Removal, excavation, consolidation, preparation, containerization, packaging, transportation, treatment or off-site disposal of wastes, environmental media (e.g., soils, sediments, groundwater, surface water, debris), containers or equipment contaminated with regulated substances or pesticides at concentrations exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part. Activities must be in compliance with all applicable state or federal statutes and regulations;
- 8) Clean backfill materials in quantities necessary to replace soils excavated and disposed off-site that were contaminated with regulated substances or pesticides at levels exceeding remediation objectives pursuant to an approved Remediation Objectives Report in accordance with Section 740.445 of this Part;
- 9) Transportation, preparation and placement of clean backfill materials pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 10) Design, testing, permitting, construction, monitoring and maintenance of on-site treatment systems pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 11) Engineering costs associated with preparation of a budget plan in accordance with Section 740.805 of this Subpart or an application for review and payment of remediation costs in accordance with Section 740.810 or Section 740.811 of this Subpart if prepared before the issuance of the No Further Remediation Letter (by the Agency or by operation of law);
- 12) Removal or replacement of concrete, asphalt or paving to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- 13) Clay, soil, concrete, asphalt or other appropriate materials as a cap, barrier or cover to the extent necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;

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

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

**Section 740.830 Ineligible Costs**

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

- a) Costs not incurred by the RA, including:
  - 1) Costs incurred for activities, materials, labor or services relative to remediation at a site other than the site for which the No Further Remediation Letter was issued;
  - 2) Costs for remediating a release or substantial threat of a release of regulated substances or pesticides that was caused or contributed to in any material respect by the RA;
- b) Costs incurred before approval of the site by the Department of Commerce and Community Affairs as eligible for the Brownfields Site Restoration Program;
- c) Costs associated with material improvements to the extent that such improvements are not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;

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- d) Costs or losses resulting from business interruption;
- e) Costs incurred as a result of vandalism, theft, negligence or fraudulent activity by the RA or the agent of the RA;
- f) Costs incurred as a result of negligence in the practice of professional engineering as defined in Section 4 of the Professional Engineering Practice Act of 1989 [225 ILCS 325/4];
- g) Costs incurred as a result of negligence by any contractor, subcontractor, or other person providing remediation services at the site;
- h) Costs associated with replacement of above-grade structures destroyed or damaged during remediation activities to the extent such destruction or damage and such replacement is not necessary to achieve remediation objectives pursuant to an approved Remedial Action Plan in accordance with Section 740.450 of this Part;
- i) Attorney fees;
- j) Purchase costs of non-consumable materials, supplies, equipment or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment or tools;
- k) Costs for repairs or replacement of equipment or tools due to neglect, improper or inadequate maintenance, improper use, loss or theft;
- l) Costs associated with activities that violate any provision of the Act or Board, Agency or Illinois Department of Transportation regulations;
- m) Costs associated with improperly installed or maintained groundwater monitoring wells;
- n) Costs associated with unnecessary, irrelevant or improperly conducted activities, including, but not limited to, data collection, testing, measurement, reporting, analysis, modeling, risk assessment or sample collection, transportation, measurement, analysis or testing;
- o) Stand-by or demurrage costs;
- p) Interest or finance costs charged as direct costs;
- q) Insurance costs charged as direct costs;

FEB 18 2003

IN THE MATTER OF: )  
)  
Amendments to 35 Ill. Adm. )  
Code 740; Site Remediation )  
Program )

R03-20  
(Rulemaking)

STATE OF ILLINOIS  
Pollution Control Board

STATEMENT OF REASONS IN SUPPORT OF PROPOSAL

Now comes the Illinois Environmental Protection Agency ("Agency") and, pursuant to 35 Ill. Adm. Code 102.121(b), submits its STATEMENT OF REASONS for the above-captioned proceeding to the Illinois Pollution Control Board ("Board").

**I. Facts in Support, Purpose and Effect**

**A. Background**

The Agency is proposing amendments to 35 Ill. Adm. Code 740, the body of regulations addressing the state's Site Remediation Program. These regulations, adopted pursuant to Sections 58 through 58.15 of the Environmental Protection Act (415 ILCS 5/58), prescribe procedures and standards for the Agency's administration of its duties under the Site Remediation Program ("SRP"). The amendments the Agency is proposing establish procedures, in a new Subpart H, for requesting review and payment of remediation costs under the newly-amended Brownfields Site Restoration Program (5 ILCS 415/58.15).

**B. Regulatory Development**

Prior to submitting this regulatory proposal to the Board,

the Agency distributed the proposal to the Department of Commerce and Community Affairs ("DCCA") and the St. Louis Regional Chamber and Growth Association for comment. This was done in an effort to expedite the rulemaking before the Board.

## II. The Proposed Amendments

The changes to Part 740 in the regulatory proposal before the Board are as follows:

1. Section 740.100 Purpose - amendatory language is proposed setting forth the purpose, as provided in the Illinois Environmental Protection Act ("Act"), of the Brownfields Site Restoration Program.
2. Section 740.120 Definitions - definitions are proposed for the terms "abandoned property" and "underutilized property." The proposed language is verbatim from the Act.
3. Subpart H Review of Remediation Costs for Brownfields Site Restoration Program - this is a new Subpart setting forth rules and standards for the Agency's implementation of the statutorily-prescribed Brownfields Site Restoration Program. There are nine sections in this Subpart.
4. Section 740.800 General - this Section comprises 7 subsections. Most of this Section is taken directly from the Act. Subsection (a) describes the content of Subpart H. Subsection (b) sets forth a statutory requirement that 20% of funding go to counties with populations great than 2 million and

the remainder to all other counties in Illinois. It further provides that reimbursements are subject to availability of funding and distributed based on order of receipt of applications. Subsection (c) sets forth the statutory requirement that reimbursements cannot exceed 20% of the capital investment at a site. Subsection (d) contains the statutory limitation of eligibility to sites that have received a No Further Remediation ("NFR") letter after December 31, 2001. Subsection (e) requires the receipt and filing of an NFR letter prior to submittal of an application. Subsection (f) limits reimbursement to \$750,000 per site. Subsection (g) sets forth that reimbursement is subject to availability of funding and distribution of funds is to be done in order of receipt of applications.

Section 740.801 Pre-Application Assessment and Eligibility Determination - This Section comprises four subsections.

Subsection (a) requires the Agency to make a non-binding pre-application assessment as to whether there is adequate funding to reimburse the applicant should the applicant be found eligible by DCCA. Subsection (b) states that an application for review of eligibility is to be submitted to DCCA. Subsection (c) provides that once DCCA has found a Remediation Applicant eligible, the RA may submit an application to the Agency. Subsection (d) states that the Agency must rely on DCCA's decision as to eligibility

and that reimbursement may not exceed the net economic benefit to the State of the remediation project, as determined by DCCA based on statutorily-specified factors.

#### Section 740.805 Preliminary Review of Estimated Remediation Costs

- This Section comprises nine subsections. Subsection (a) provides a remediation applicant ("RA") the option to submit a budget plan with a remedial action plan. Subsection (b) sets forth the information that must be included in a budget plan, including identification of the RA and remediation site, line item estimates of anticipated costs, a certification as to not having contributed to a release or substantial threat of a release, and the signature of the RA or his agent. Subsection (c) requires the RA to submit the applicable fee with the budget plan. Subsection (d) sets forth acceptable means of delivering budget plans. Subsection (e) states that submittal of a budget plan is deemed an automatic 60 day waiver of the remedial action plan deadlines. Subsection (f) requires that, if the remedial action plan is amended, the corresponding budget plan also be revised. Subsection (g) addresses the Agency's review period for budget plans. Subsection (h) requires the Agency to review the budget plan. Subsection (i) provides procedures the Agency must follow in notifying the RA of its determination regarding a budget plan. This subsection also provides appeal procedures.

#### Section 740.810 Application for Final Review and Payment of

Remediation Costs Following Perfection of No Further Remediation Letter - This Section comprises four subsections. Subsection (a) allows an RA to submit an application for reimbursement following perfection of a No Further Remediation letter. Subsection (b) sets forth the information that must be provided in an application for reimbursement, including identification of the RA and remediation site, a copy of the No Further Remediation Letter, a copy of DCCA's letter approving eligibility, itemization and documentation of the activities for which reimbursement is sought, a certification regarding the site, the costs incurred and the release, and the signature of the RA or his agent. Subsection (c) requires payment of the applicable fee with the application. Subsection (d) provides that the Agency's acceptance of a certification that the RA did not cause or contribute in any material respect to the release or substantial threat of a release does not bind the Agency or the State and cannot be used as a defense in enforcement actions.

Section 740.811 Application For Review and Payment of Costs Prior to Perfection of No Further Remediation Letter - This Section comprises four subsections. Subsection (a) provides that an RA with an approved Remedial Action Plan requiring the remediation of groundwater for more than one year may submit an application for reimbursement prior to the issuance of a No Further Remediation letter. Subsection (b) parallels subsection

(b) of Section 740.810, stating the information that must be included in an application for reimbursement. Subsection (c) limits payment to the RA prior to issuance of the No Further Remediation letter to 75% of the allowed reimbursement total. Subsection (d) provides a disclaimer regarding certification that is identical to the one in subsection (d) of Section 740.810.

Section 740.815 Agency Review of Application for Payment of Remediation Costs - This Section has 11 subsections addressing the Agency's review of reimbursement applications. Subsection (a) requires the Agency to review each application to determine whether the costs are remediation costs and are reasonable. Subsection (b) provides that the Agency must make a determination within 60 days of the date of receipt of a reimbursement application. Subsection (c) addresses the beginning date for the Agency's review period. Subsection (d) provides that the RA may waive the time for review. Subsection (e) states that submittal of an amended application restarts the review period. Subsection (f) requires that the Agency's notification of final determination be by certified or registered mail and deemed made on the postmarked date of mailing. Subsection (g) provides that the RA may submit a copy of the Agency's final determination on a budget plan and a specified certification with the reimbursement application. Subsection (h) addresses Agency review of a budget plan determination in the context of the review of a

reimbursement application. Subsection (i) addresses Agency review of line items in an approved budget plan that are not certified pursuant to subsection (g). Subsection (j) sets forth the information the Agency must provide in the written notification to an RA if the application is disapproved or approved with modifications. Subsection (k) provides for RA appeal of an Agency final determination.

Section 740.820 Fees and Manner of Payment - This Section sets forth fees (\$500 for a preliminary review, \$1000 for final review) and prescribes the manner in which payment is to be made.

Section 740.825 Remediation Costs - This Section lists the activities, materials, labor, equipment, structure and service costs that the Agency may reimburse as remediation costs under the Brownfields Site Restoration Program. The list is not intended to be exhaustive. Subsection (a) lists 16 specific types of reimbursable costs. Subsection (b) states that an RA may submit an itemized accounting and documentation of costs not identified in subsection (a) if the RA submits detailed information that those costs are necessary for compliance with the regulations governing the Site Remediation Program, the regulations implementing TACO and the approved Remedial Action Plan.

Section 740.830 Ineligible Costs - This Section lists some but not all costs that are ineligible for payment under the

Brownfields Site Restoration Program. The list identifies 24 types of ineligible costs, including costs not incurred by the RA, costs incurred before approval of the site by DCCA as eligible, costs associated with material improvements not necessary to achieve remediation objectives, etc.

### **III. Technical Feasibility and Economic Reasonableness**

#### **A. Technical Feasibility**

The Agency submits that the proposed amendments raise no issues of technical feasibility.

#### **B. Economic Reasonableness**

The Agency submits that the proposed amendments are economically reasonable. The enabling legislation [415 ILCS 5/58.15] is very detailed and the proposed changes mirror the statute; thus, they can be presumed reasonable. Where we have had to fill gaps, we have used language from other Board rules.

### **IV. Agency Witnesses and Synopsis of Testimony**

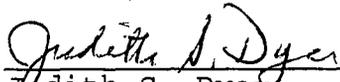
The Agency expects to provide one witness in this rulemaking proceeding: Gary King, manager of the Bureau of Land's Division of Remediation Management. The Agency will provide the written pre-filed testimony of Gary King. In his testimony, Mr. King will further elucidate and provide justification for the above-described proposed amendments.

### **V. Conclusion**

In conclusion, the Agency respectfully submits this STATEMENT OF REASONS in support of the above-described technically feasible and economically reasonable proposed amendments to 35 Ill. Adm. Code 740 for the Board's consideration.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

  
\_\_\_\_\_  
Judith S. Dyer  
Assistant Counsel

DATED: 2/14/03  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276  
217-782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 18 2003

STATE OF ILLINOIS  
Pollution Control Board

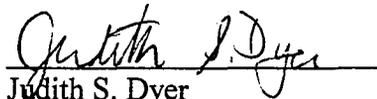
IN THE MATTER OF: )  
 )  
Amendments to 35 Ill. Adm. )  
Code 740; Site Remediation )  
Program )

R03-20  
(Rulemaking)

APPEARANCE

The undersigned hereby enters her appearance as attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,  
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

  
Judith S. Dyer  
Assistant Counsel

DATED: 12/10/02  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276  
217-782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

STATE OF ILLINOIS     )  
  )  
COUNTY OF SANGAMON )

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Motion for Acceptance on behalf of the Illinois Environmental Protection Agency upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy M. Gunn, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph St., Ste 11-500  
Chicago, Illinois 60601

Robert T. Lawley  
Dept. Of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702

Attorney General's Office  
Environmental Bureau  
188 W. Randolph, 20<sup>th</sup> Floor  
Chicago, Illinois 60601

and mailing it from Springfield, Illinois on 2-14-03

Robert T. Lawley

SUBSCRIBED AND SWORN TO BEFORE ME

this 14<sup>th</sup> day of February, 2003

Brenda Boehner  
Notary Public



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