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STATE OF ILLINOIS
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD *Pollution Control Board*

IN THE MATTER OF:

SITE REMEDIATION PROGRAM:) R01-27
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking – Land)
740)
_____)

IN THE MATTER OF:

SITE REMEDIATION PROGRAM:) R01-29
PROPOSED 35 ILL. ADM. CODE) (Rulemaking – Land)
740.SUBPART H (SCHOOLS, PUBLIC) (Consolidated)
PARKS, AND PLAYGROUNDS))

NOTICE OF FILING

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
(Original and Nine Copies)
(VIA FEDERAL EXPRESS)

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Springfield, IL 62794-9276

All Other Persons on the Attached Service List

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the attached Supplement to the Pre-Filed Testimony of Georgia Vlahos, a copy of which is hereby served upon you. This Supplement is comprised of a document captioned "Suggested Revisions Submitted by the Department of Defense" which will be Exhibit 2 to that Pre-Filed Testimony and which recommends amendments to the rulemaking proposal filed by the Illinois Environmental Protection Agency on January 12, 2001.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY

By: 
GEORGIA VLAHOS

DATED: March 30, 2001

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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SUPPLEMENT TO PRE-FILED TESTIMONY OF GEORGIA VLAHOS

Please add the document attached as Exhibit 2 hereto and titled "Suggested Revisions Submitted by the Department of Defense" to the Pre-Filed Testimony of Georgia Vlahos filed with the Board on March 21, 2001. These revisions have been coordinated with and meet the approval of the Illinois Environmental Protection Agency.

Respectfully submitted,

UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY,

By: Georgia Vlahos
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EXHIBIT 2

SUGGESTED REVISIONS SUBMITTED BY THE UNITED STATES DEPARTMENT OF DEFENSE

The U.S. Department of Defense (“DoD”), through its attorneys, suggests that the Illinois Pollution Control Board (the “Board”) make the following changes to the text of a rulemaking proposal filed with this Board by the Illinois Environmental Protection Agency (the “Agency”) on January 12, 2001 and accepted by the Board through its Order dated January 18, 2001:

Section

Index	SUBPART F: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS	
	Section	
	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
	740.621	Requirements for No Further Remediation Letters Issued to Illinois Department of Transportation Remediation Sites Located in Rights-of-Way
	<u>740.622</u>	<u>Requirements for No Further Remediation Letters Issued to Federal Landholding Entities Without Authority to Record Institutional Controls</u>
	740.625	Voidance of No Further Remediation Letter
740.120	Definitions	
		<u>“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.</u>
		<u>“Federally Owned Property” means real property owned in fee by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.</u>
		<u>“GIS” means Geographic Information System</u>
		<u>“GPS” means Global Positioning System</u>

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

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

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

740.450 Remedial Action Plan

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

- a) Executive summary. This chapter shall identify the objectives of the Remedial Action Plan and the technical approach utilized to meet such objectives. At a minimum, this chapter shall include the following elements:
 - 1) The major components (e.g., treatment, containment, removal actions) of the Remedial Action Plan;
 - 2) The scope of the problems to be addressed by the proposed remedial action(s) including the specific contaminants of concern and the physical area to be addressed by the Remedial Action Plan; and
 - 3) Schedule of activities with estimated dates of completion through the recording of the No Further Remediation Letter or execution of an IDOT MOA under Section 740.621 of this Part or a LUC MOA under Section 740.622 of this Part;

740.610 Contents of No Further Remediation Letter

- a) Except as provided in subsection (b) below, a No Further Remediation letter issued pursuant to Section 58.10 of the Act shall be limited to and include all of the following:
 - 1) An acknowledgment that the requirements of the Remedial Action Plan and the Remedial Action Completion Report were satisfied;
 - 2) A description of the remediation site by adequate legal description or by reference to a plat showing the boundaries, or by other means sufficient to identify site location with particularity;

740.620 Duty to Record No Further Remediation Letter

- a) Except as provided in Sections 740.621 and 740.622 of this Part, the RA receiving a No Further Remediation Letter from the Agency pursuant to Title XVII of the Act and this Subpart F shall submit the letter, and, where the RA is not the sole owner of the remediation site, an owner certification in accordance with subsection (d) below, to the Office of the Recorder or the Registrar of Titles of the county in which the remediation site is located within 45 days after receipt of the letter. (Section 58.8(a) of the Act)
- b) Except as provided in Sections 740.621 and 740.622 of this Part, a No Further Remediation Letter or the affidavit filed under subsection (a)(2) above shall be perfected upon the date of the official recording of the letter or affidavit. An unperfected No Further Remediation Letter is effective only as between the Agency and the Remediation Applicant. The Agency may, pursuant to Section 740.625 of this Part, void a No Further Remediation Letter for failure to perfect in a timely manner in accordance with subsection (a) of this Section. The RA shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter or affidavit and the owner certification under subsection (d) below, where applicable, demonstrating that the recording requirements have been satisfied.

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

a) For sites on Federally Owned Property subject to this Part
for which the Federal Landholding Entity does not have the
authority under federal law to record institutional controls
on the chain of title, the following requirements shall apply:

1) To perfect a No Further Remediation Letter
containing any restriction on future land use(s) the
Landholding Entity or Entities responsible for the
site must enter into a Land Use Control
Memorandum of Agreement ("LUC MOA") with
the Agency that requires the Federal Landholding
Entity to do, at a minimum, the following:

A). Identify the location on the Federally
Owned Property of the site subject to the No
Further Remediation Letter. Such
identification shall be by means of common
address, notations in any available facility
master land use plan, site specific GIS or
GPS coordinates, plat maps, or any other
means that identifies the site in question
with particularity;

B). Implement periodic site inspection
procedures that ensure oversight by the
Federal Landholding Entities of any land use
limitations or restrictions imposed pursuant
to the No Further Remediation Letter;

C). Implement procedures for the
Federal Landholding Entities to periodically
advise the Agency of continued compliance
with all maintenance and inspection
requirements set forth in the LUC MOA;

D). Implement procedures for the
Federal Landholding Entities to notify the
Agency of any planned or emergency
changes in land use that may adversely
impact land use limitations or restrictions
imposed pursuant to the No Further
Remediation Letter;

E). Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of the site or sites subject to the No Further Remediation Letter, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure the No Further Remediation Letter is recorded on the chain of title upon transfer of the property with confirmation of recording provided to the Agency; and

F). Attach to the LUC MOA a copy of the No Further Remediation Letter for each site subject to the LUC MOA.

2) To perfect a No Further Remediation Letter containing no restrictions on future land use(s), the Federal Landholding Entity shall submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter shall be filed in accordance with Illinois law so it forms a permanent part of the chain of title. The Federal Landholding Entity shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter demonstrating that the recording requirements have been satisfied.

- b) Failure to comply with the requirements of this subsection and the LUC MOA may result in voidance of the No Further Remediation Letter as well as any other penalties that may be available.

740.625


Voidance of No Further Remediation Letter

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

- 10) The failure to comply with the requirements of Section 740.622 of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 740.622 within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation Letter to any entity that will not remain or become a Federal Landholding Entity; or
- ~~10)~~11) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1010(b)(3), 742.1015(b)(5) or 742.1015(c).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Supplement to the Pre-Filed Testimony of Georgia Vlahos has been served upon the Clerk by Federal Express and upon each other person on the attached Service List by First Class U.S. Mail, postage prepaid, this 30th day of March 2001.



Georgia Vlahos