

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )

PROPOSED AMENDMENTS TO )

REGULATION OF PETROLEUM )

LEAKING UNDERGROUND STORAGE )

TANKS (35 ILL. ADM. CODE 732) )

R 84-22

(Rulemaking – Land)

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JAN 13 2004

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

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PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the Motion for Acceptance; Appearance; Statement of Reasons, Synopsis of Testimony, Statement Regarding Material Incorporated by Reference, and Statement of Amendment to the Board's Version of the Rules; and proposed amendments to 35 Ill. Adm. Code 732 by the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Kyle Rominger

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Dated: 1.12.04  
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**STATEMENT OF REASONS, SYNOPSIS OF TESTIMONY, STATEMENT  
REGARDING MATERIAL INCORPORATED BY REFERENCE, AND STATEMENT  
OF AMENDMENT TO THE BOARD'S VERSION OF THE RULES**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") and, pursuant to 35 Ill. Adm. Code 102.202, submits its Statement of Reasons, Synopsis of Testimony, Statement Regarding Material Incorporated by Reference, and Statement of Amendment to the Illinois Pollution Control Board's ("Board's") Version of the Rules for the above referenced proceeding.

**I. STATEMENT OF REASONS**

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

**1. Background**

In this proposal the Illinois EPA submits proposed amendments to 35 Ill. Adm. Code 732 ("Part 732"), the rules governing the Leaking Underground Storage Tank ("LUST") Program. Part 732 prescribes the corrective action measures that must be taken in response to releases from petroleum underground storage tanks ("USTs"). It also sets forth procedures and requirements for seeking payment from the Underground Storage Tank Fund ("UST Fund"). The amendments are proposed in response to Public Act 92-0554, which amended the LUST Program's response requirements for UST releases reported on or after June 24, 2002, and Public

Act 92-0735, which allows Licensed Professional Geologists to certify certain information submitted to the Illinois EPA. In addition, the Illinois EPA is proposing amendments designed to streamline the process for obtaining payment from the UST Fund. The amendments are more specifically described in section I(A)(3) below. For the Board's convenience this proposal includes the non-amended sections of Part 732 as well as the amended sections.

Concurrent with this proposal, the Illinois EPA is submitting a separate proposal for a new Part 734 to Title 35 of the Illinois Administrative Code ("Part 734") for UST owners and operators subject to the new requirements of Public Act 92-0554. The proposed new Part 734 is identical to Part 732, as amended in this proposal, except for the changes resulting from the enactment of Public Act 92-0554: different corrective action requirements and increased caps on the total amount owners and operators can be paid from the UST Fund. Because Parts 732 and 734 both apply to UST releases, and their applicability depends only upon the date the release was reported, or whether the UST owner or operator elected to proceed under Part 734, the Illinois EPA respectfully requests that the dockets for this proposal and the Part 734 proposal be combined.

## **2. Regulatory Development**

The Illinois EPA developed the proposed regulations with input from the regulated community. The amendments in response to Public Acts 92-0554 and 92-0735 were initially drafted by an Illinois EPA workgroup and then distributed to members of the Illinois Environmental Regulatory Group, the Illinois Petroleum Marketers Association, and the Illinois Petroleum Council for comment. Meetings have been held with these groups to discuss the amendments, and changes to the amendments have been made as a result of the meetings. In addition, the Illinois EPA met with the following parties during its development of the proposed

amendments relating to payment from the UST Fund: the Consulting Engineers Council of Illinois, the Illinois Petroleum Contractors Association, and the Illinois Association of Environmental Laboratories. Comments received from members of these parties were used in the development of proposed Subpart H. The Illinois EPA believes it has addressed most of the concerns brought to its attention. However, some outstanding issues may remain. Items that may generate discussion in this rulemaking include the following:

- a. Quantifying the amount of free product that triggers the free product removal requirements.
- b. Amendments relating to deferrals of response activities.
- c. The proposed deadline for submitting applications for payment from the UST Fund (one year after the issuance of a No Further Remediation Letter).
- d. Various additions to the list of costs ineligible for payment from the UST Fund.
- e. The addition of auditing provisions.
- f. Issues related to proposed Subpart H, including, but not limited to, the proposed maximum payment amounts and payment by lump sums or unit rates.

### **3. Description of the Proposed Regulations**

#### **Subpart A: General**

**Section 732.100 – Applicability.** Sections 732.100(a) and (b) are amended to make Part 732 applicable to releases reported on or after September 24, 1994, but prior to June 24, 2002, the effective date of Public Act 92-0554. Section 732.100(a) is further amended to make Part 732 applicable to releases reported prior to September 12, 1993, if the owner or operator elected prior to June 24, 2002, to proceed in accordance with Part 732 (i.e., elected to proceed in

accordance with Title XVI). Owners and operators electing on or after June 24, 2002, to proceed in accordance with Title XVI are subject to Title XVI as amended by Public Act 92-0554, and therefore are subject to the site investigation and corrective action requirements in proposed Part 734. The applicability provisions of proposed Part 734 dovetail with the amended applicability provisions of Part 732 so that releases subject to Title XVI fall under either Part 732 or Part 734.

New Section 732.100(e) is proposed to inform owners and operators subject to Part 732 that they may elect to proceed in accordance with Part 734.

Section 732.101 – Election to Proceed under Part 732. Sections 732.101(a), (b), and (d) are amended to reflect the fact that owners and operators could elect to proceed in accordance with Part 732 (i.e., in accordance with Title XIV as it existed prior to Public Act 92-0554) only until June 23, 2002. Proposed Part 734 contains corresponding provisions that allow owners and operators to elect to proceed in accordance with Part 734 (i.e., in accordance with Title XVI as amended by Public Act 92-0554) on or after June 24, 2002. Sections 732.101(a) and (b) are further amended to clarify that owners and operators who elected to proceed in accordance with Part 732 may subsequently elect to proceed in accordance with Part 734.

In Section 732.101(d), “payable or reimbursable” is amended to “payable from the Fund.” Similar changes are made throughout Part 732 in order to make references to “payment” or “reimbursement” from the UST Fund consistently “payment” from the UST Fund. In addition, language is added to clarify that costs incurred on or after the effective date of an election to proceed in accordance with Part 734 shall be payable from the UST Fund in accordance with Part 734.

Section 732.103 – Definitions. The following amendments to Section 732.103 are proposed in addition to non-substantive amendments related to the recent re-numbering of the Act's definitions by Public Act 92-0574:

- a. "Board" – This definition is added because the term is used in Part 732.
- b. "Community water supply" – The definition for this term is the statutory definition found in the Act. The term is used in the proposed definition of "public water supply," in map requirements, and in the proposed water supply well survey requirements.
- c. "Confirmation of a release" – This definition is added to clarify what constitutes the confirmation of a release.
- d. "County highway" – The definition for this term is the statutory definition found in the Illinois Highway Code. The term is used in the proposed definition of "highway authority."
- e. "District road" – The definition for this term is the statutory definition found in the Illinois Highway Code. The term is used in the proposed definition of "highway authority."
- f. "Environmental Land Use Control" – The definition for this term is amended to reference the definition of Environmental Land Use Control in 35 Ill. Adm. Code 742. The term is used in proposed Section 732.845(c)(4).
- g. "Financial interest" – This term is used in proposed Sections 732.606(ss) and 732.612(b)(6).
- h. "Fund" – Words in the definition are capitalized to match the statutory definition.
- i. "Half-day" – This definition is added to specify the amount of time that constitutes one-half of a work day for the purposes of payment from the UST Fund. The term is used in the proposed Subpart H.

j. “Highway authority” – This definition is added to define the entities considered highway authorities for the purposes of highway authority agreements. The definition is taken from the Illinois Highway Code. The Illinois EPA plans to propose the addition of this definition to the Tiered Approach to Corrective Action Objectives (“TACO”) rules of 35 Ill. Adm. Code 742 in the future.

k. “Highway Authority Agreement” – This term is used in proposed Section 732.845(c)(4).

l. “Indicator contaminants” – This definition is added to guide owners and operators to Section 732.310, which sets forth the indicator contaminants for various types of petroleum.

m. “Licensed Professional Geologist” – The definition for this term is the statutory definition added to the Act by Public Act 92-0735.

n. “Line Estimate” – This term is deleted in conjunction with the proposed deletion of line item estimates.

o. “Non-community water supply” – The definition for this term is the statutory definition found in the Act. The term is used in the proposed definition of “public water supply.”

p. “Practical quantitation limit” – This term is used in Part 732 but is not defined.

q. “Public water supply” – The definition for this term is the statutory definition found in the Act. The term is used in the proposed definitions of “community water supply” and “non-community water supply,” as well as proposed Sections 732.605(a)(19) and 732.606(zz).

r. “Right-of-way” – The definition for this term is the statutory definition found in the Illinois Highway Code. The term is used in Section 732.703(c) and in the definition of “site”.

s. “State highway” – The definition for this term is the statutory definition found in the Illinois Highway Code. The term is used in the proposed definition of “highway authority.”

t. “Street” – The definition for this term is the statutory definition found in the Illinois Highway Code. The term is used in the proposed definition of “highway authority.”

u. “Toll highway” – The definition for this term is the statutory definition found in the Toll Highway Act. The term is used in the proposed definition of “highway authority.”

v. “Township road” – The definition for this term is the statutory definition found in the Illinois Highway Code. The term is used in the proposed definition of “highway authority.”

w. “Wellhead Protection Area” – This definition is added to identify one of the areas referenced in water supply well survey requirements. See Sections 732.306(f) and 732.404(e).

Section 732.104 – Incorporations by Reference. Section 732.104 is amended to update documents incorporated by reference to their latest versions, delete documents no longer used under Part 732, and add documents referenced in the definition of “practical quantitation limit.”

Section 732.106 – Laboratory Certification. Section 732.106 is amended to require the submission of laboratory certifications with analytical sample results.

Section 732.108 – Licensed Professional Engineer or Licensed Professional Geologist Supervision. In accordance with Title XVI as amended by Public Act 92-0735, which allows Licensed Professional Geologists to certify certain information submitted to the Agency, new Section 732.108 requires all plans, budget plans, and reports, excluding high priority corrective action completion reports and corrective action completion reports submitted pursuant to Section 732.300(b), to be conducted or prepared under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist. The certification of a Licensed Professional



Engineer continues to be required for high priority corrective action completion reports and corrective action completion reports submitted pursuant to Section 732.300(b).

Section 732.110 – Form and Delivery of Plans, Budgets, and Reports; Signatures and Certifications. New Section 732.110 is proposed to consolidate general requirements for plans, budget plans, and reports that are currently repeated numerous times in several different sections.

#### Subpart B: Early Action

Section 732.200 – General. Because a work plan is not required for early action activities, Section 732.200 is amended to exclude the submission of a corresponding budget plan. An exception is provided for free product removal activities conducted more than 45 days after the confirmation of the presence of free product (i.e., free product removal activities conducted during the additional seven days allowed for other Subpart B activities when free product is discovered on the same day the release is discovered). Please refer to the discussion of the amendments to Section 732.203 for new requirements applicable to free product removal activities conducted more than 45 days after confirmation of the presence of free product.

Section 732.202 – Early Action. Sections 732.202(b), (c), (d), and (e) are amended for consistency with Section 732.202(g). Section 732.202(f) is amended to reflect changes to the Act made by Public Act 92-0554. The reference to Section 57.7(a)(1)(B) of the Act is deleted from Section 732.202(f) due to the repeal of Section 57.7(a)(1)(B). In addition, language from Section 57.7(a)(1)(B) that was moved to Section 57.6(b) of the Act is added to the statutory language repeated in Section 732.202(f). In light of these changes, the Illinois EPA also proposes to delete the Board Note at the end of Section 732.202 because it references the deleted Section 57.7(a)(1)(B) of the Act and is no longer necessary.

Section 732.202(g) and its subsequent Board Note are amended in response to changes to the Office of the State Fire Marshal's release investigation and confirmation requirements in 41 Ill. Adm. Code 170.580. Effective May 1, 2003, owners and operators have 14 days instead of seven to confirm a release. See 27 Ill. Reg. 8164 (May 9, 2003). Therefore, the Illinois EPA proposes to extend the time frame in which early action activities must be performed, for purposes of payment from the UST Fund, to 45 days plus 14 days after the initial notification of a release to the Illinois Emergency Management Agency ("IEMA"). The Board Note following Section 732.202(g) is further amended by deleting a reference to 41 Ill. Adm. Code 170.600, which was repealed on May 1, 2003. Id.

A new Section 732.202(h)(1) is added to specify the locations where early action soil samples must be collected when a UST is removed. A new Section 732.202(h)(2) is added to specify the locations where the samples must be collected when a UST is not removed. Renumbered Section 732.202(h)(3) is amended to require owners and operators to submit a report demonstrating compliance with the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 ("Tier 1 remediation objectives") if the remediation objectives have not been exceeded and a groundwater investigation is not required. Renumbered Section 732.202(h)(4) is amended to require owners and operators to continue with a site evaluation under Subpart C of Part 732 if the Tier 1 remediation objectives are exceeded or a groundwater investigation is necessary. The criteria for determining when a groundwater investigation is necessary have been added in new Sections 732.202(h)(4)(A) through (C). The criteria are taken from Section 732.300(b)(2).

Throughout the rules, for the purposes of consistency, references to remediation objectives have been amended to "the most stringent Tier 1 remediation objectives for the

applicable indicator contaminants” in the context of site classification and site investigation, and to “applicable remediation objectives” in the context of remedial action.

Section 732.203 – Free Product Removal. Section 732.203(a) is amended to delineate the amount of free product that must be present in order to trigger the free product removal requirements. Section 732.203(a)(4) is amended in conjunction with the consolidation of the report form requirements in the new Section 732.110. Section 732.203(a)(4) is further amended to require additional information in the free product removal report. Section 732.203(b) is amended to remove the reference to approval in accordance with Section 732.202(g) because the confirmation of the presence of free product may or may not be contemporaneous with the discovery of a release.

New Section 732.203(c) is added to require the submission of a free product removal plan for free product removal activities conducted more than 45 days after the confirmation of the presence of free product, and to state that such activities are not considered early action activities. If the owner or operator will seek payment from the UST Fund, new Section 732.203(d) requires the submission of a budget plan for the free product removal activities conducted more than 45 days after the confirmation of the presence of free product. New Section 732.203(d) requires owners and operators to proceed with a free product removal plan once it is approved by the Agency. As with other plans and budget plans, new Section 732.203(f) provides that owners and operators may conduct free product removal activities without first submitting a plan or budget plan, but that a plan and a budget plan must be submitted prior to the payment of any free product removal costs. If an owner or operator determines that an approved free product removal plan or budget plan needs to be revised, new Section 732.203(g) requires the submission of an amended plan or budget plan. New Sections

732.203(c) through (g) are consistent with the requirements for site classification plans and budgets plans in Section 732.305 and corrective action plans and budgets plans in Section 732.405. The Board Notes following Sections 732.203(f) and (g) are consistent with the Board Notes in Sections 732.305 and 732.405.

Section 732.204 – Application for Payment of Early Action Costs. In conjunction with the amendments to Section 732.200, Section 732.204 is amended to reflect that budget plans are not required for early action activities at any time. As in Section 732.200, an exception is provided for free product removal activities conducted more than 45 days after the confirmation of the presence of free product.

#### Subpart C: Site Evaluation and Classification

Section 732.300 – General. Section 732.300(a) is amended to clarify that owners and operators do not need to evaluate and classify their sites in accordance with Subpart C if, after early action, they submit a report demonstrating that the Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met. Section 732.300(b)(1) is amended by deleting site ownership certification provisions that are consolidated in the proposed new Section 732.110. Similar changes are made throughout Part 732. Section 732.300(b)(1) is further amended by adding provisions addressing the contents of the corrective action completion report. These provisions are repeated from Section 732.409. In addition, Sections 732.300(b)(1)(A) and (b)(3) are added in conjunction with the addition of water supply well survey requirements in other areas of Part 732. The Illinois EPA proposes to amend the Board Note following Section 732.300(b) to clarify that owners and operators proceeding under Section 732.300(b) are not entitled to payment from the UST Fund for costs incurred after

completion of early action activities in accordance with Subpart B. See 35 Ill. Adm. Code 732.606(z).

Section 732.305 – Plan Submittal and Review. Section 732.305(a) is amended by deleting language that is consolidated in the proposed new Section 732.110. Section 732.305(b)(1) is deleted to remove the requirement that owners and operators submit an application for payment of early action costs prior to conducting site evaluation activities.

Section 732.305(b)(2) is amended to require budget plans to be submitted with the corresponding site classification plans, and to exclude line item estimates and handling charges from budget plans. Similar amendments are proposed throughout Part 732. Line item estimates are not necessary under the proposed new payment procedures, and handling charge estimates are not necessary because Section 732.607 prescribes the payment limits for handling charges. Section 732.305(b)(2) is further amended to add a reference to the maximum payments amounts in proposed Subpart H.

Section 732.305(c) is amended for clarity. Section 732.305(d) is amended to make it consistent with Sections 732.312(j) (re-lettered to Section 732.312(jj)) and 732.405(d), and to prevent owners and operators from seeking payment from the UST Fund for site classification activities without submitting a site classification budget plan. The Illinois EPA proposes an amendment to the Board Note following Section 732.305(d) to help alert owners and operators to the time limit for the submission of applications for payment proposed in new Section 732.601(j). The Illinois EPA also proposes the addition of a Board Note after Section 732.305(e) to help alert owners and operators of the UST Fund payment limits set forth in the proposed new Subpart H.

Section 732.306 – Deferred Site Classification; Priority List for Payment. The statutory language repeated in Section 732.306(a) is replaced with non-statutory language due to changes made to amendment of Section 57.8(b) of the Act by P.A. 92-0554. In addition, references to deferrals of low priority groundwater monitoring or remediation, which are addressed in Section 732.406, are deleted from Sections 732.306(a) and (b). The remainder of the amendments to Section 732.306 are proposed to make it consistent with Section 732.406. Please see the discussion of Section 732.406 for additional information on proposed amendments to the deferral provisions.

Section 732.307 – Site Evaluation. In response to Public Act 92-0735, Section 732.307 is amended in several locations to allow Licensed Professional Geologist certifications and oversight. For the purposes of consistency, Section 732.307(a) is amended to exclude sites where the Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants are met after early action.

Sections 732.307(c)(1)(G) and 732.307(c)(3)(A) are amended to remove redundant language. Section 732.307(f) is revised to provide a more accurate survey of water supply wells that may be affected by the release. Requirements for documentation of the results of the water supply well survey have been moved to Section 732.309(a).

Section 732.307(g)(3) is expanded to include sources other than J.U.L.I.E. that owners and operators use to identify man-made pathways. In Sections 732.307(j)(2) and (j)(5), references to groundwater quality standards are replaced with references to groundwater remediation objectives. Similar amendments are proposed throughout Part 732. Please see the discussion of the proposed amendments to Section 732.311 for additional information on references to groundwater quality standards.

Section 732.307(j)(5)(A) is amended to remove documents deleted from the incorporations by reference in Section 732.104. In addition, to provide consistency with other provisions specifying sampling procedures, such as 732.307(j)(5)(C)(ii), Illinois EPA authority to approve other sampling procedures is added to Section 732.307(j)(5)(A).

Section 732.309 – Site Classification Completion Report. Requirements for documentation of the results of the water supply well survey are added to Section 732.309(a). In addition, report format and site ownership certification requirements consolidated in the proposed new Section 732.110 are deleted from Section 732.309(a).

Section 732.310 – Indicator Contaminants. Section 732.310(d) is amended to remove redundant wording. Section 732.310(g) is amended for consistency with the soil sampling requirements of Sections 732.202(h)(1)(A) and (B), and to clarify sampling and analysis procedures for used oil samples. Section 732.310(g)(2) is amended to reflect the historical use of all polynuclear aromatics as standard indicator contaminants for used oil.

Section 732.310(i) is amended by codifying the procedures for elections to include MTBE as an indicator contaminant. Section 732.310(i)(1) is amended to remove a date that is no longer needed. Sections 732.310(i)(1) and (2) are amended to reflect the fact that No Further Remediation Letters are applicable to individual releases. Section 732.310(i)(2) is amended by deleting language similar to language added in Section 732.310(i).

Section 732.311 – Groundwater Remediation Objectives. In this section, as well as throughout Part 732, for the purposes of consistency the term “groundwater remediation objectives” replaces the term “indicator contaminant groundwater quality standards.” Historically, “groundwater remediation objectives” is the term commonly used for groundwater cleanup standards, and is the term used in the TACO rules of 35 Ill. Adm. Code 742.

Section 732.312 – Classification by Exposure Pathway Exclusion. Section 732.312(a) is amended to reference two exceptions to the Section. Section 732.312(a)(1) is amended to require owners and operators desiring to classify a site by the exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, to elect to proceed under the new Part 734 rather than remain under Part 732. The Part 734 rules are preferred because they give such owners and operators more direction than the Part 732 rules and should help ensure consistent response activities.

Section 732.312(b) is deleted due to its redundancy with the early action sampling requirements of Section 732.202(h). Section 732.312(c) (re-lettered to Section 732.312(b)) is amended to reflect the deletion of Section 732.312(b) and to delete provisions consolidated in Section 732.110. In addition, an incorrect cross-reference to 732.300(b)(1) is amended to reference Sections 732.202(h)(4)(A) through (C), which contain the criteria for when a groundwater investigation is required.

Section 732.312(f) (re-lettered to Section 732.312(e)) is amended to provide consistency with 732.305(b). Section 732.312(i) (re-lettered to Section 732.312(h)) is amended to delete provisions consolidated in 732.110. Section 732.312(j) (re-lettered to Section 732.312(i)) is amended for clarity. Section 732.312(k) (re-lettered to 732.312(j)) is amended to provide consistency with Section 732.305(d), and to reflect the proposed amendments to Section 732.312(a)(1) that allow owners and operators to proceed with site classification under Section 732.312 only until the effective date of the amendments.

An amendment to the Board Note at the end of Section 732.312 is proposed to alert owners and operators to the proposed deadline for the submission of applications for payment in Section 732.601(j). In addition, the Illinois EPA proposes adding a reminder that total payment



from the UST Fund cannot exceed the amounts set forth in proposed Subpart H. These amendments are consistent with proposed amendments to the Board Notes in Section 732.305.

#### Subpart D: Corrective Action

Section 732.403 – Low Priority Site. Section 732.403(b) is amended to delete redundant language. Section 732.403(c) is amended to delete a requirement for line item estimates in a budget plan. In addition, Sections 732.403(c) and (d) are amended to delete provisions consolidated in Section 732.110.

Section 732.404 – High Priority Site. Because the Agency may re-classify sites high priority pursuant to Sections 732.302(b) and 732.403(g), Section 732.404(a) is amended to clarify that Section 732.404 applies to all sites classified as high priority, not just those certified as high priority by a Licensed Professional Engineer. Section 732.404(b) is amended by deleting redundant language.

To help ensure the identification of potable water supply wells that may be impacted by the release, Section 732.404(e)(1) is amended to expand the initial water supply well survey in Section 732.307(f) when contamination extends beyond the site property boundary and when contamination left in place is modeled to extend beyond the site property boundary. In addition, Section 732.404(e)(2) is added to allow the Agency to require additional investigation of water supply wells when site-specific circumstances warrant, such as when the initial water supply well survey indicates the absence of a well on nearby residential property that is not served by a public water supply.

Section 732.404(f) is amended to delete a requirement for line item estimates in a budget plan and to delete provisions consolidated in Section 732.110.

Section 732.405 – Plan Submittal and Review. Section 732.405(a) is amended to delete provisions consolidated in Section 732.110. Section 732.405(b) is amended to provide consistency with 732.305(b) by requiring budget plans to be submitted with the corresponding groundwater monitoring or corrective action plan, removing line item estimates and handling charges from budget plan requirements, and adding a reference to the maximum payment amounts in proposed Subpart H. To help ensure that the cost of a proposed method of remediation is reasonable in comparison to other methods of remediation that are available, Section 732.305(b) is further amended by giving the Illinois EPA the authority to require a cost comparison between the proposed method of remediation and other methods of remediation.

Section 732.405(c) is amended for clarity. Consistent with the proposed amendments to Section 732.305(d), Section 732.405(d) is amended to prevent owners and operators from seeking payment for corrective action activities without submitting a budget plan. An amendment to the Board Note after Section 732.405(d) is proposed to alert owners and operators to the proposed deadline for the submission of applications for payment.

Section 732.405(f) is amended to require the submission of revised budget plans with revised corrective action plans if owners or operators will seek payment from the UST Fund. Consistent with the proposed amendments to Section 732.305, a Board Note is proposed at the end of Section 732.405 to remind owners and operators that payment from the UST Fund cannot exceed the amounts set forth in new Subpart H.

Section 732.406 – Deferred Corrective Action; Priority List for Payment. Section 732.406(a) is changed from statutory language to non-statutory language due to the changes made to Section 57.8(b) of the Act by P.A. 92-0554. The remainder of the Section is amended to provide consistency with Section 732.306.

For administrative ease, Section 732.406(a)(2) is amended to require the Illinois EPA to provide notice of the UST Fund's balance to owners and operators only if the UST Fund does not contain sufficient resources to pay the costs approved in a budget plan. The last sentence in Section 732.406(a)(2) is deleted to prevent owners and operators from deferring corrective action when funds are available, regardless of whether there are still persons waiting for vouchers to be forwarded to the Office of the State Comptroller.

Proposed new Sections 732.406(a)(3) and (4) set forth procedural requirements for the submission and review of elections to defer site classification. The Sections are consistent with the procedural requirements in Section 732.503 for plans and reports. Because the Agency may receive incomplete elections to defer that cannot be approved, Section 732.406(a)(3) (re-numbered to 732.406(a)(5)) is amended so sites are placed on the priority list for payment when the election to defer is approved, and priority is determined by the date the Agency received the complete election to defer. The last sentence in the old Section 732.406(a)(3) is moved to the new Section 732.406(a)(3).

Section 732.406(b) is expanded to ensure that remedial activities continue at sites posing a greater risk to human health or the environment. Section 732.406(c) is amended for easier comprehension and to clarify that a withdrawal of an election to defer must be made by the owner or operator.

Section 732.407 – Alternative Technologies. Section 732.407(b) is amended to ensure that a proposed alternative technology does not substantially exceed the cost of other available alternative technologies. New Section 732.407(d) is proposed to allow the Illinois EPA to require remote monitoring of alternative technologies.

Section 732.409 – Groundwater Monitoring and Corrective Action Completion Reports.

Section 732.409(a)(2) is expanded to set forth documentation requirements relating to water supply well surveys. Section 732.409(b) is amended to delete provisions consolidated in Section 732.110.

Section 732.411 – Off-site Access. Section 732.411(b)(1) and (2) are amended to correct references to the Act. Section 732.411(d)(5) is amended to incorporate the newly defined “wellhead protection areas.”

Subpart E: Review of Plans, Budget Plans, and Reports

Section 732.500 – General. Section 732.500 is amended to delete Sections (b) and (c), which set forth what constitutes a “plan” and a “report” for the purposes of Part 732. In place of these Sections, terms throughout Part 732 are amended to clarify whether a referenced document is specifically a plan, a budget plan, or a report.

Section 732.501 – Submittal of Plans or Reports. Section 732.501 is deleted due to the consolidation of form requirements in Section 732.110.

Section 732.502 – Completeness Review. The Illinois EPA proposes to delete this Section because of the administrative burden it creates by requiring an additional review of every plan, budget plan, and report the Illinois EPA receives. The Illinois EPA can determine during its review of the substantive portions of a document whether the document is complete. Furthermore, in some cases a substantive review may be necessary to determine whether a plan or report contains all the information necessary for its approval. Section 732.502 was adopted at a time when the Agency did not have a sufficient number of staff to provide a timely “full” review of all plans, budget plans, and reports it received. The Agency has since added, and

continues to maintain, the level of staff needed to provide a timely “full” review of all plans, budgets plans, and reports.

Section 732.503 – Full Review of Plans or Reports. Sections 732.503(a), (b), and (g) are amended in conjunction with the deletion of Section 732.502. Under the proposed amendments every review is a “full” review, which reflects the Illinois EPA’s practice.

Section 732.503(f) is amended so owners and operators are no longer required to submit a revised plan or report if they agree with the Illinois EPA’s modifications. The Illinois EPA proposes this amendment because of the unnecessary burden placed upon owners and operators to submit an amended report that merely re-states the Illinois EPA’s modifications. Furthermore, the requirement to submit an amended plan or report is rendered moot in the next sentence, which deems a plan or report approved as modified if a revised plan or report is not submitted. The last sentence in Section 732.503(f) is deleted because, and described above, the Agency maintains sufficient staff to review all plans and reports within the 120 day deadline.

In conjunction with the proposed amendments to Section 732.406, Section 732.503(h) is amended to require the Illinois EPA to provide notice of the UST Fund’s balance to owners and operators only if the UST Fund does not contain sufficient resources to pay the costs approved in a budget plan.

Section 732.504 – Selection of Plans or Reports for Full Review. In conjunction with the proposed changes to Sections 732.502 and 732.503 regarding completeness reviews, the Illinois EPA proposes to delete Section 732.504. The Section is no longer necessary due to the Illinois EPA’s practice of conducting a “full” review of every plan, budget plan, and report.

## Subpart F: Payment or Reimbursement

Section 732.601 – Applications for Payment. Because, under the proposed new Subpart H, payment from the UST Fund will generally no longer be submitted and paid on a “time and materials” basis, references to “materials, activities, or services” are deleted from Section 732.601(a). In conjunction with the proposed amendments to Sections 732.200 and 732.204, Section 732.601(a) is also amended to reflect that a budget plan is not required for early action activities, other than free product removal activities conducted more than 45 days after confirmation of the presence of free product.

New Sections 732.601(b)(9) through (11) are proposed to require the submission of certain information as part of the application for payment. The information under Section 732.601(b)(9) is necessary to provide adequate documentation of the costs incurred by and owners and operators, and has always been required by the Illinois EPA prior to providing payment from the UST Fund. The information under Section 732.601(b)(10) is necessary to confirm that subcontractors have been paid in cases where handling charges are requested. Finally, the information under Section 732.601(b)(11) is necessary to confirm that sample analyses for which costs are requested were conducted by an accredited laboratory in cases where Section 732.106 requires analysis by an accredited laboratory.

In conjunction with the amendments to Section 732.305(d) and 732.405(d), Section 732.601(f) is amended to require the submission of a budget plan prior to the Illinois EPA’s review of a corresponding application for payment, except for early action costs other than costs associated with free product removal activities conducted more than 45 days after the confirmation of the presence of free product. Due to numerous additional citations that need to

be added to Section 732.601(g), the reference to revised budget plan requirements is amended to a general reference.

New Section 732.601(i) is proposed to prohibit the submission of applications for payment of deferred costs prior to the submission of the corresponding completion report. To provide a defined limit on the liability of the UST Fund with respect to individual releases, new Section 732.601(j) is proposed to require the submission of all budget plans, budget plan amendments, and applications for payment of corrective action costs no later than one year after the Illinois EPA's issuance of a No Further Remediation Letter, or one year after the effective date of these amendments if a No Further Remediation Letter was issued prior to the effective date of these amendments. This deadline does not apply to indemnification costs, which may remain unknown to the owner or operator for some time after the issuance of a No Further Remediation Letter.

Section 732.602 – Review of Applications for Payment. Sections 732.602(a) through (d) (re-lettered to 732.602(a) through (c)) are revised in conjunction with previous amendments to reflect that the Agency performs “full” reviews of all applications for payment, that budget plans are not required for early action costs other than free product removal activities conducted more than 45 days after confirmation of the presence of free product, and that line items estimates are no longer required as part of a budget plan. In conjunction with the amendment to Section 732.503(f), Section 732.602(h) (re-lettered to 732.602(g)) is amended to delete the requirement that owners and operators submit a revised plan when the Illinois EPA approves a plan with modifications.

Section 732.603 – Authorization for Payment; Priority List. Section 732.603(b)(1) is amended to provide consistency with Section 732.603(e)(2) and to reflect the fact that the Board

or a court may order payment from the UST Fund. Section 732.603(c) is amended to add a cross-reference to Section 732.601(c), a Section added in the last rulemaking.

Section 732.604 – Limitations on Total Payments. Sections 732.604(a) and (b) are changed from statutory language to non-statutory language due to the changes made to Sections 57.8(d) and (g) of the Act by P.A. 92-0554. The old statutory language is retained because it remains applicable to releases being remediated under Part 732. Sections 732.604(c) and (d) are changed from capital letters to italics to reflect the current method for denoting statutory language.

Section 732.605 – Eligible Costs. “Corrective Action” is added to the heading of Section 732.605 to denote that the Section applies only to corrective action costs. Indemnification costs are addressed separately in the Act and in new Section 732.610. Section 732.605(a) is amended to remind owners and operators that costs must be reasonable in order to be eligible for payment from the UST Fund. Section 732.605(a)(4) is deleted and its language is moved to Section 732.605(a)(11) (re-numbered to 732.605(a)(10)) because feasibility studies are associated with alternative technologies. Section 732.605(a)(12) (re-numbered to 732.605(a)(11)) is amended to reflect when free product removal is required.

Section 732.605(a)(17) (re-numbered to 732.605(a)(16)) is amended to add requirements for the payment of costs associated with the destruction and replacement of concrete, asphalt, or paving. Under the proposed amendment, destroyed and replaced concrete, asphalt, or paving must have been installed prior to the initiation of corrective action activities, the owner or operator must obtain prior written Illinois EPA approval for the work and the costs, all of the costs must be submitted in a single application, and the costs cannot be submitted until after the Illinois EPA issues a No Further Remediation Letter. These amendments are proposed to help



ensure that the UST Fund does not pay for the destruction and replacement of concrete, asphalt, or paving numerous times at a site, or pay for the destruction and replacement of concrete, asphalt, or paving installed after the owner or operator became aware of a release and the need for corrective action. The Section is further amended to clarify that replacement costs are limited to replacement of only the material that was destroyed and removed (i.e., same material, depth, and area).

Section 732.605(a)(18) (re-numbered to 732.605(a)(17)) is amended to require prior written approval from the Illinois EPA for work and costs associated with the destruction or dismantling and reassembly of above grade structures. The Section is further amended to limit the payment of such costs to \$10,000.00. Section 732.605(a)(19) (re-numbered to 732.605(a)(18)) is amended to include reports and budget plans submitted pursuant to Section 732.202(h)(2) and free product removal plans, budget plans, and reports in the list of documents whose preparation costs may be eligible for payment from the UST Fund.

New Section 732.605(a)(19) is proposed to make costs associated with the removal or abandonment of potable water supply wells, and replacement of the wells or connections to a public water supply, costs that may be eligible for payment from the UST Fund under the circumstances proposed in the Section. New Section 732.605(a)(20) is proposed to make costs associated with the repair or replacement of potable water supply lines damaged as a direct result of the release costs that may be eligible for payment under the circumstances proposed in the Section. New Section 732.605(a)(20) is not intended to include costs incurred because of damage resulting from the performance of corrective action activities, such as damage to a potable water supply line during drilling or the excavation of soil.

Section 732.606 – Ineligible Costs. “Corrective Action” is added to the heading of Section 732.606 to denote the distinction between corrective action costs and indemnification costs. Indemnification costs are addressed separately in the Act and in Section 732.610. In conjunction with this change, Section 732.606(e) is amended to delete a reference to indemnification costs. To reflect historical practice, Section 732.606(g) is amended to clarify that all legal fees and costs are ineligible for payment from the UST Fund.

Section 732.606(r) is amended to make laboratory analysis costs for any samples not approved by the Illinois EPA ineligible for payment from the UST Fund. In certain cases laboratory analysis other than for the applicable indicator contaminants is necessary (e.g., the geo-technical analyses listed in APPENDIX D). Section 732.606(cc) is amended to provide that any costs associated with any activities that are unnecessary, inconsistent with professional practices or principles, or unreasonable are ineligible for payment from the UST Fund. Section 732.606(jj) is amended to clarify that costs incurred on or after the date an owner or operator enters the Site Remediation Program are ineligible for payment from the UST Fund. Section 732.606(kk) is amended to allow payment of certain additional costs incurred after the receipt of the No Further Remediation Letter. Sections 732.606(ll) and (mm) are amended for consistency, and Section 732.606(mm) is further amended in conjunction with the added requirement for proof of payment of subcontractor costs as a part of the owner’s or operator’s application for payment. (See proposed new Section 732.601(b)(10)).

Finally, the following new Sections to Section 732.606 are proposed to make the costs described ineligible for payment from the UST Fund:

- pp) Costs incurred after the an owner or operator elects to proceed in accordance with 35 Ill. Adm. Code 734.

- qq) Costs associated with the preparation of free product removal reports not submitted in accordance with a schedule established by the Agency.
- rr) Costs submitted more than one year after the Illinois EPA's issuance of a No Further Remediation Letter.
- ss) Costs for subcontractor handling charges when the contractor has a direct or indirect financial interest in the subcontractor.
- tt) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Sections 732.605(a)(16).
- uu) 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 732.605(a)(16) or (17).
- vv) Costs associated with oversight by an owner or operator.
- ww) Costs for handling charges charged by persons other than the owner's or operator's primary contractor.
- xx) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier that exceed the cost to install an asphalt engineered barrier four inches in depth. This Section does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 732.605(a)(16).
- yy) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless the owner or operator obtains prior written approval from the Illinois EPA.
- zz) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 732.605(a)(19).
- aaa) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 732.605(a)(20).
- bbb) Costs associated with the replacement of underground structures or utilities, except as otherwise provided in Sections 732.605(a)(19) or (20).
- ccc) Costs associated with sample collection, transportation, or analysis required as a result of improperly collected, transported, or analyzed laboratory samples.

- ddd) Costs an owner or operator is required to pay to a governmental entity or other person in order to conduct corrective action, such as permit fees, institutional control fees, and property access fees.
- eee) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment.
- fff) Costs that exceed the maximum payment amounts set forth in proposed Subpart H.

Section 732.607 – Payment for Handling Charges. Section 732.607 is changed from italics to plain type because it no longer contains current statutory language. Section 57.8(f) of the Act was repealed by Public Act 92-0574.

Section 732.608 – Apportionment of Costs. Language in Section 732.608(a) is changed from capital letters to italics in accordance with the current method of indicating statutory language. Section 732.608(b) is amended to specify that the Illinois EPA will determine at the time of payment a favorable method for apportioning costs when the owner or operator is eligible to seek payment for costs related to some, but not all, of the USTs at a site.

Section 732.610 – Indemnification. Section 732.610 is amended to set forth in more detail the procedures an owner or operator must follow when seeking indemnification from the UST Fund. The procedures are based on the procedures for seeking payment of corrective action costs. New Section 732.610(a) sets forth requirements for submitting applications for indemnification from the UST Fund. Old Section 732.610(a) (re-lettered to 732.610(b)) is amended to set forth the items the Illinois EPA must consider when determining whether an owner or operator is eligible for indemnification from the UST Fund. Finally, new Section 732.610(d) lists costs that are not eligible indemnification costs. The ineligible costs mirror the requirements of the Act as well as appropriate provisions from the list of ineligible corrective action costs in Section 732.606.

Section 732.612 – Determination and Collection of Excess Payments. New Section 732.612(b)(6) is proposed to clarify that an excess payment from the UST Fund includes the payment of a cost that is not eligible for payment.

Section 732.614 – Audits and Access to Records; Records Retention. New Section 732.614 is proposed to set forth record retention requirements and auditing provisions for documents related to the remediation of releases and obtaining payment from the UST Fund. The proposed language is based upon record retention provisions in other Board rules and Agency rules.

Subpart G: No Further Remediation Letters and Recording Requirements

Section 732.701 – Issuance of a No Further Remediation Letter. Section 732.701(a) is amended to reference reports submitted pursuant to Section 732.202(h)(2), approval of which results in the issuance of a No Further Remediation Letter. Section 732.701(e) is amended to correct a cross-reference.

Section 732.702 – Contents of No Further Remediation Letters. Section 732.702(d)(3) is amended to clarify that the owner or operator is not relieved of responsibility to clean up portions of the release that have migrated off-site in cases where the No Further Remediation Letter is issued pursuant to Section 732.411(e). Section 732.702(h) is amended to correct a cross-reference.

Section 732.703 – Duty to Record a No Further Remediation Letter. Section 732.703(a) is amended to ensure that attachments to No Further Remediation Letters are recorded with the letters. In addition, Sections 732.703(a) and (b) are amended by moving from Section 732.703(b) to Section 732.703(a) language stating that the Agency may void unrecorded No Further Remediation Letters after expiration of the 45-day period for recording the letters.

Section 732.703(c) is amended to allow sites located in a right-of-way of any highway authority to perfect a No Further Remediation Letter via a Memorandum of Agreement between the highway authority and the Agency. Currently, such perfection of a No Further Remediation Letter is available only to sites located in Illinois Department of Transportation right-of-ways. Corresponding amendments are made to Sections of Section 732.703(c).

Section 732.704 – Voidance of a No Further Remediation Letter. Section 732.704(a)(2) is amended to delete unnecessary language. Owners and operators must complete any groundwater monitoring program prior to the issuance of a No Further Remediation Letter.

For consistency with the language of other provisions, Section 732.704(a)(5) is amended to refer to the 45-day period for recording the No Further Remediation Letter rather than a 45-day period for perfection of the letter. The amendment makes no substantive change to the Section because the date of perfection is the date of recording.

Section 732.704(a)(7) is amended in conjunction with the proposed amendments to Section 732.703(c). Sections 732.704(b) and (b)(1) are amended for consistency with Section 732.704(b)(2).

#### Subpart H: Maximum Payment Amounts

The Agency proposes new Subpart H as a part of the amendments designed to streamline payment from the UST Fund. Subpart H contains proposed maximum amounts that can be paid from the UST Fund for various release response activities. The maximum amounts for some activities are set forth as lump sums or unit rates, while the maximum amounts for others will continue to require review on a time and materials basis due to the inability to adequately determine standard lump sums or unit rates for all sites. A more detailed description of the Subpart follows.

Section 732.800 – Applicability. Section 732.800(a) explains that Subpart H divides all response activities into tasks and sets forth the maximum amounts that can be paid from the UST Fund for each task. Because of the difficulty of enumerating every cost that may be associated with a site, Section 732.800(b) explains that the costs identified in Subpart H are only the major costs associated with a particular task. The maximum payment amount is intended to include all costs associated with completing the identified task. Section 732.800(c) explains that Subpart H sets forth only the maximum payment amounts for eligible costs. Whether a particular costs is eligible for payment is still determined under Subpart F.

Section 732.810 – UST Removal or Abandonment Costs. Section 732.810 sets forth the maximum payment amounts for costs associated with the removal or abandonment of USTs. The maximum payment amount is based upon the volume of each UST removed or abandoned in place.

Section 732.815 – Free Product or Groundwater Removal and Disposal. Section 732.810 sets forth the maximum payment amounts for costs associated with the removal and disposal of free product or groundwater. Payment of costs associated with the removal of free product or groundwater via handbailing or a vacuum truck is based upon the number of gallons removed. Payment for costs associated with other methods of removal is determined on a time and materials basis.

Section 732.820 – Drilling, Well Installation, and Well Abandonment. Section 732.820 sets forth the maximum payment amounts for costs associated with drilling, well installation, and well abandonment, excluding drilling conducted as part of free product removal or an alternative technology. Payment for costs associated with drilling are based upon the drilling method used and the number of feet drilled. Payment for costs associated with the installation and

abandonment of monitoring wells, excluding drilling, is based upon the type of borehole in which the well is installed and the length of the well.

Section 732.825 – Soil Removal and Disposal. Section 732.825 sets forth the maximum payment amounts for costs associated with soil removal, transportation, and disposal. Payment is based upon the volume of soil exceeding the applicable remediation objectives that is removed and disposed of, the volume of material used to backfill the excavation, and the volume of soil removed that does not exceed the applicable remediation objectives.

Section 732.830 – Drum Disposal. Section 732.830 sets forth the maximum payment amounts for costs associated with the disposal of material via 55-gallon drums. Payment is based upon the contents of the drums.

Section 732.835 – Sample Handling and Analysis. Section 732.835 addresses costs associated with the handling and laboratory analysis of samples. The maximum payment amounts for costs associated with each analysis, certain sampling devices, and sample shipping are listed in Section 732.APPENDIX D.

Section 732.840 – Replacement of Concrete, Asphalt, or Paving; Destruction or Dismantling and Reassembly of Above Grade Structures. Section 732.840(a) sets forth the maximum payment amounts for costs associated with the replacement of concrete, asphalt, or paving. Payment is based upon the type and thickness of the replacement material. Section 732.840(b) sets forth the maximum payment amounts for costs associated with the destruction and dismantling of above grade structures. Payment is based upon time and materials, but may not exceed a total of \$10,000.00 per site.

Section 732.845 – Professional Consulting Services. Section 732.845 sets forth the maximum payment amounts for costs associated with consulting services. Depending upon the



work being performed, payment amounts are determined according to lump sums, half-day rates, or time and materials.

Section 732.850 – Payment on Time and Materials Basis. Section 732.850 addresses the calculation of maximum payment amounts when payment is determined on a time and materials basis. Under Section 732.850(a), tasks with payment amounts already set forth in Subpart H, such as sample handling and analysis, cannot exceed those payment amounts. Under Section 732.850(b), costs that do not have payment amounts set forth in Subpart H are determined by the Agency on a site-specific basis, excluding personnel costs. Personnel costs may not exceed the rates set forth in Section 732.APPENDIX E. The applicable personnel rate is determined by the work being performed, not necessarily the title of the person performing the work. Finally, Section 732.850(b) states that owners and operators must demonstrate that the costs submitted are reasonable. A proposed Board Note at the end of the Section reminds owners and operators that alternative technology costs in excess of conventional technology costs are not eligible for payment from the Fund.

Section 732.855 – Unusual or Extraordinary Expenses. In cases where an owner or operator incurs an unusual or extraordinary expense that exceeds the maximum payment amounts set forth in Subpart H, Section 732.855 allows the Agency determine a maximum payment amount for the expense on a site-specific basis. Owners and operators must demonstrate that the expense is unavoidable, required as part of corrective action, and otherwise eligible for payment from the UST Fund.

Section 732.860 – Handling Charges. Section 732.860 refers to the maximum payment amounts for handling charges set forth in Section 732.607.

Section 732.865 – Agency Review of Payment Amounts. Section 732.865 requires the Agency to review Subpart H at least every two years to determine whether the payment amounts generally reflect the prevailing market rates. The Agency is required to propose appropriate amendments to the Board if, upon review, the amounts do not generally reflect the prevailing market rates.

#### Appendices

Section 732.APPENDIX A – Indicator Contaminants. Section 732.APPENDIX A is amended to correct the spelling of Naphthalene. In addition, acenaphthylene, benzo(g,h,i)perylene, and phenanthrene are listed as individual indicator contaminants and “other non-carcinogenic PNAs (total)” is deleted. The Illinois EPA now uses the individual concentrations of acenaphthylene, benzo(g,h,i)perylene, and phenanthrene as remediation objectives instead of their total concentration.

Section 732.APPENDIX B – Additional Parameters. Section 732.APPENDIX B is amended by deleting “Other Non-Carcinogenic PNAs (total),” the acids and the pesticides. “Other Non-Carcinogenic PNAs (total)” is deleted in conjunction with the amendments to Section 732.APPENDIX A. The acids and the pesticides are deleted because they are no longer used as standard parameters for used oil like the volatiles, base/neutrals, polynuclear aromatics, and metals.

Section 732.APPENDIX C – Backfill Volumes. The Illinois EPA proposes to amend Section 732.APPENDIX C so backfill material calculations are consistent with the conversion factor proposed in Sections 732.825(a)(1), (b)(1), and (c).

Section 732.APPENDIX D – Sample Handling and Analysis. In conjunction with Section 732.835, Section 732.APPENDIX D sets forth the maximum payment amounts for costs

associated with sample handling and analysis. The maximum payment amounts are based upon the analysis conducted. Maximum payment amounts are also provided for sampling devices and sample shipping.

Section 732.APPENDIX E – Personnel Title and Rates. Section 732.APPENDIX E sets forth the titles and maximum hourly rates for personnel when personnel costs are paid on a time and materials basis. The Section also sets forth the educational, licensing, and experience requirements applicable to each title and rate.

**B. Technical Feasibility and Economic Reasonableness**

**1. Technical Feasibility**

No new technical requirements are created by the proposed amendments. The only amendments affecting technical requirements are those updating existing methods and procedures. Therefore, the Illinois EPA believes that no issues of technical feasibility are raised in this proposal.

**2. Economic Reasonableness**

This proposal may result in both increased and decreased incidental costs to the Illinois EPA and the Board. As a result of the proposed amendments, the Illinois EPA anticipates incurring costs related to forms revisions, internal training, public outreach, and an expected increase in application for payment submittals during the year following the adoption of the proposed amendments due to the deadline added at Section 732.601(j). The Illinois EPA anticipates a costs savings as a result of the streamlining of plan, budget plan, and report reviews provided by the proposed changes to Subpart E and addition of Subpart H.

As a result of the proposed deadline for the submission of applications for payment, the Board may see an increase in the number of appeals relating to applications for payment from the

UST Fund for approximately one year after the adoption of these amendments. However, as a result of the new standardized payment process provided by Subpart H, the Illinois EPA hopes to see an overall reduction in the number of appeals to the Board and a resulting savings to the Illinois EPA, the Board, and owners and operators seeking payment from the UST Fund. The Illinois EPA believes that any cost increases associated with the proposed amendments will be reasonable.

## **II. SYNOPSIS OF TESTIMONY**

The Illinois EPA plans to provide the following witnesses at hearing: Gary King, Doug Clay, Hernando Albarracin, Harry Chappel, Brian Bauer, and Doug Oakley. Mr. Clay, Manager of the Illinois EPA's LUST Section, will testify about the proposed amendments in general as well as amendments relating specifically to deferred corrective action; indicator contaminants; the review of plans, budget plans, and reports; payment from the UST Fund; and No Further Remediation Letters and their recording requirements. Mr. Albarracin, a unit manager in the LUST Section, will testify about proposed amendments to the general provisions of Subpart A, early action requirements, site evaluation and classification requirements, and corrective action requirements. Mr. Chappel, a unit manager in the LUST Section, and Mr. Bauer, a project manager in the LUST Section, will testify about proposed new Subpart H and related appendices. Mr. Oakley, manager of the Illinois EPA's LUST Claims Unit, will testify about proposed amendments relating to payment from the UST Fund. Mr. King, Manager of the Division of Remediation Management in the Illinois EPA's Bureau of Land, will not offer prepared testimony but will assist in answering questions as a part of the panel requested below.

Written testimony will be submitted prior to hearing in accordance with the Board's procedural rules. The Illinois EPA respectfully requests that the Board allow Illinois EPA

witnesses to present their oral testimony in panel form rather than calling each individually. A panel format should streamline the hearing process, and has proved beneficial in past rulemakings.

**III. STATEMENT REGARDING MATERIAL INCORPORATED BY REFERENCE**

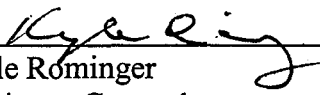
The Board's technical staff indicates that the Board already possesses copies of the new material proposed to be incorporated by reference in Section 732.104. Therefore, the Illinois EPA respectfully requests that the Board waive submission of copies of the material as required under 35 Ill. Adm. Code 102.202(d).

**IV. STATEMENT OF AMENDMENT TO THE BOARD'S VERSION OF THE RULES**

This proposal amends 35 Ill. Adm. Code 732 as published on the Board's website.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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

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

**SUBPART A: GENERAL**

**Section**

732.100	Applicability
732.101	Election to Proceed under Part 732
732.102	Severability
732.103	Definitions
732.104	Incorporations by Reference
732.105	Agency Authority to Initiate Investigative, Preventive or Corrective Action
732.106	Laboratory Certification
732.108	<u>Licensed Professional Engineer or Licensed Professional Geologist</u>
	<u>Supervision</u>
732.110	<u>Form and Delivery of Plans, Budget Plans, and Reports; Signatures and</u>
	<u>Certifications</u>

**SUBPART B: EARLY ACTION**

**Section**

732.200	General
732.201	Agency Authority to Initiate
732.202	Early Action
732.203	Free Product Removal
732.204	Application for Payment <u>of Early Action Costs</u>

**SUBPART C: SITE EVALUATION AND CLASSIFICATION**

**Section**

732.300	General
732.301	Agency Authority to Initiate
732.302	No Further Action Sites
732.303	Low Priority Sites
732.304	High Priority Sites
732.305	Plan Submittal and Review
732.306	Deferred Site Classification; Priority List for Payment
732.307	Site Evaluation

732.308	Boring Logs and Sealing of Soil Borings and Groundwater Monitoring Wells
732.309	Site Classification Completion Report
732.310	Indicator Contaminants
732.311	<del>Indicator Contaminant</del> Groundwater <u>Remediation</u> Objectives
732.312	Classification by Exposure Pathway Exclusion

#### **SUBPART D: CORRECTIVE ACTION**

##### **Section**

732.400	General
732.401	Agency Authority to Initiate
732.402	No Further Action Site
732.403	Low Priority Site
732.404	High Priority Site
732.405	Plan Submittal and Review
732.406	Deferred Corrective Action; Priority List for Payment
732.407	Alternative Technologies
732.408	Remediation Objectives
732.409	Groundwater Monitoring and Corrective Action Completion Reports
732.410	“No Further Remediation” Letter (Repealed)
732.411	Off-site Access

#### **SUBPART E: REVIEW OF ~~SELECTION AND REVIEW PROCEDURES FOR~~ PLANS, BUDGET PLANS, AND REPORTS**

##### **Section**

732.500	General
732.501	Submittal of Plans or Reports ( <u>Repealed</u> )
732.502	Completeness Review ( <u>Repealed</u> )
732.503	<del>Full</del> Review of Plans, <u>Budget Plans</u> , or Reports
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ILLUSTRATION C Equation for Calculating Groundwater Objectives at the Source  
(Repealed)

ILLUSTRATION D Equation for Calculating Soil Objectives at the Source (Repealed)

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

SOURCE: Adopted in R94-2 at 18 Ill. Reg. 15008, effective September 23, 1994; amended in R97-10 at 21 Ill. Reg. 3617, effective July 1, 1997; amended in R01-26 at 26 Ill. Reg. 7119, effective April 29, 2002; amended in R \_\_\_\_\_ at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: Italics denotes statutory language.

## **SUBPART A: GENERAL**

### **Section 732.100      Applicability**

- a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to IEMA on or after September 23, 1994, but prior to June 24, 2002, in accordance with regulations adopted by the OSFM. It also applies to owners or operators that, prior to June 24, 2002, elected to proceed in accordance with this Part pursuant to Section 732.101 of this Part. ~~This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release has been confirmed and required to be reported to Illinois Emergency Management Agency (IEMA) on or after September 23, 1994 in accordance with regulations adopted by the Office of State Fire Marshal (OSFM). It 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 Environmental Protection Act (Act) [415 ILCS 5/57.5]. Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to IEMA on or before September 12, 1993, may elect to proceed in accordance with this Part pursuant to Section 732.101.~~
- b) Upon the receipt of a corrective action order issued by ~~from~~ the OSFM prior to June 24, 2002, and pursuant to Section 57.5(g) of the Act, where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and

which serves other than a farm or residential unit shall conduct corrective action in accordance with this Part.

- c) Owners or operators subject to this Part by law or by election shall proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 732.105 of this Part to expedite investigative, preventive or corrective action by an owner or operator or to initiate such action.
- d) The following underground storage tank systems are excluded from the requirements of this Part:
  - 1) Equipment or machinery that contains petroleum substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
  - 2) Any underground storage tank system whose capacity is 110 gallons or less.
  - 3) Any underground storage tank system that contains a de minimis concentration of petroleum substances.
  - 4) Any emergency spill or overfill containment underground storage tank system that is expeditiously emptied after use.
  - 5) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act (33 U.S.C. 1251 *et seq.* (1972)).
  - 6) Any UST system holding hazardous waste listed or identified under Subtitle C of the Solid Waste Disposal Act (42 U.S.C. 3251 *et seq.*) or a mixture of such hazardous waste or other regulated substances.
- e) Owners or operators subject to this Part may, pursuant to 35 Ill. Adm. Code 734.105, elect to proceed in accordance with 35 Ill. Adm. Code 734 instead of this Part.

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

#### **Section 732.101 Election to Proceed under Part 732**

- a) Prior to June 24, 2002, owners ~~Owners~~ or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority on or before September 12, 1993, were able to ~~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 shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Corrective action shall then follow the requirements of this Part.~~ The election became ~~shall be~~ effective upon receipt by the Agency and shall not be withdrawn ~~once made~~. However, an owner or operator that elected to proceed in accordance with this Part may, pursuant to 35 Ill. Adm. Code 734.105, elect to proceed in accordance with 35 Ill. Adm. Code 734 instead of this Part.
- b) Prior to June 24, 2002, except ~~Except~~ as provided in Section 732.100(b) of this Part, owners or operators of underground storage tanks (USTs) used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit were able to ~~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 shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Corrective action shall then follow the requirements of this Part.~~ The election became ~~shall be~~ effective upon receipt by the Agency and shall not be withdrawn ~~once made~~. However, an owner or operator that elected to proceed in accordance with this Part may, pursuant to 35 Ill. Adm. Code 734.105, elect to proceed in accordance with 35 Ill. Adm. Code 734 instead of this Part.
- c) If the owner or operator elected ~~elects~~ to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election shall be payable from the Fund ~~or reimbursable~~ in the same manner as was allowable under the law applicable to the owner or operator prior to the notification of election ~~then existing law~~. Corrective action costs incurred after the notification of election shall be payable from the Fund ~~or reimbursable~~ in accordance with Subparts E and F ~~of this Part~~. Corrective action costs incurred on or after the effective date of an election to proceed in accordance with 35 Ill. Adm. Code 734 shall be payable from the Fund in accordance with that Part.

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

## Section 732.103      Definitions

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

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

“Agency” means the Illinois Environmental Protection Agency.

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

“Board” means the Illinois Pollution Control Board.

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

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

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

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

“Confirmed Exceedence” means laboratory verification of an exceedence of the applicable remediation groundwater quality standards or objectives.

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

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

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

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

“County highway” means county highway as defined in the Illinois Highway Code, 605 ILCS 5.

“District road” means 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. ~~an instrument that meets the requirements of these regulations and is placed in the chain of title to real property that limits or places requirements upon the use of the property for the purpose of protecting human health or the environment, is binding upon the property owner, heirs, successors, assigns, and lessees, and runs in perpetuity or until the Agency approves, in writing, removal of the limitation or requirement from the chain of title.~~

“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, advisor, 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 ~~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] ~~[415 ILCS 5/3.64]~~.

“Half-day” means five hours or less of billable work time. The number of half-days per calendar day shall not exceed two.

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

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

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

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

“IEMA” means the Illinois Emergency Management Agency.

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

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

“Indicator contaminants” means the indicator contaminants set forth in Section 732.310 of this Part.

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

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

“Licensed Professional Engineer”~~“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].

~~“Line Item Estimate” means an estimate of the costs associated with each line item (including, but not necessarily limited to, personnel, equipment, travel, etc.) that an owner or operator anticipates will be incurred for the development, implementation and completion of a plan or report.~~

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

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

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

*“Non-community water supply” means a public water supply that is not a community water supply [415 ILCS 5/3.145].*

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

“OSFM” means the Office of the State Fire Marshal.

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

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

“Owner” means:

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

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

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

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

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



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

*“Potable” means generally fit for human consumption in accordance with accepted water supply principles and practices [415 ILCS 5/3.340] [415-ILCS-5/3.65].*

"Practical quantitation limit" ("PQL") means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 732.104 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 732.104 of this Part.

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

*“Public water supply” means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally,*

actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a “community water supply” or a “non-community water supply” [415 ILCS 5/3.365].

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

*“Regulated recharge area” means a compact geographic area, as determined by the Board, the geology of which renders a potable resource groundwater particularly susceptible to contamination [415 ILCS 5/3.390] [415 ILCS 5/3.67].*

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

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

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

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

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

*“Setback Zone” means a geographic area, designated pursuant to the Act or regulations (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]. [415-ILCS 5/3.61].*

*“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 state highway as defined in the Illinois Highway Code, 605 ILCS 5.

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

“Street” means street as defined in the Illinois Highway Code, 605 ILCS 5.

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

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

“Toll highway” means toll highway as defined in the Toll Highway Act, 605 ILCS 10.

“Township road” means township road as defined in the Illinois Highway Code, 605 ILCS 5.

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

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

Septic tank;

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

Surface impoundment, pit, pond, or lagoon;

Storm water or waste water collection system;

Flow-through process tank;

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

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

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

“UST system” or “tank system” means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

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

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

## **Section 732.104      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 D 422-63, Standard Test Method for Particle-Size Analysis of Soils, approved November 21, 1963 (reapproved 1990).

ASTM D 1140-92, Standard Test Method for Amount of Material in Soils Finer than the No. 200 (75  $\mu\text{m}$ ) Sieve, approved November 15, 1992.

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

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

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

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

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

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

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

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

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

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

~~“Methods for Chemical Analysis of Water and Wastes,” EPA Publication No. EPA 600/4-79-020 (March 1983), Doc. No. PB 84-128677.~~

“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,” EPA, EMSL, EPA 600/4-88/039 (December 1988), Doc. No. PB 89-220461.~~

“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);

~~“Practical Guide for Ground Water Sampling,” EPA Publication No. EPA 600/2-85/104 (September 1985), Doc. No. PB 86-137304.~~

~~“Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination Sites,” EPA Publication No. EPA 600/8-85/002 (February 1985), Doc. No. PB 85-192219.~~

“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.

~~USGS. United States Geological Survey, 1961 Stout Street, Denver, CO 80294 (303) 844-4169~~

~~“Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground Water Samples for Selected Unstable Constituents,” Book I, Chapter D2 (1981).~~

- b) ~~CFR (Code of Federal Regulations). Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402- (202) 783-3238  
40 CFR 261, Appendix II (1992).  
40 CFR 761, Subpart G (2000).~~

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

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

### **Section 732.106      Laboratory Certification**

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

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

### **Section 732.108      Licensed Professional Engineer or Licensed Professional Geologist Supervision**

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

### **Section 732.110      Form and Delivery of Plans, Budget Plans, and Reports; Signatures and Certifications**

- a) All plans, budget plans, and reports shall be submitted to the Agency on forms prescribed and provided by the Agency and, if specified by the

Agency in writing, in an electronic format. At a minimum, all site maps submitted to the Agency shall meet the following requirements:

- 1) The maps shall be of sufficient detail and accuracy to show required information;
- 2) The maps shall contain the map scale, an arrow indicating north orientation, and the date the map was created; and
- 3) The maps shall show the following:
  - A) The property boundary lines of the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release;
  - B) The uses of the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release;
  - C) The locations of all current and former USTs at the site, and the contents of each UST; and
  - D) All structures, other improvements, and other features at the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release, including but not limited to buildings, pump islands, canopies, roadways and other paved areas, utilities, easements, rights-of-way, and actual or potential natural or man-made pathways.
- b) All plans, budget plans, and reports shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- c) All plans, budget plans, and reports shall be signed by the owner or operator and list the owner's or operator's full name, address, and telephone number.
- d) All plans, budget plans, and reports submitted pursuant to this Part, excluding Corrective Action Completion Reports submitted pursuant to Sections 732.300(b) or 732.409 of this Part, shall contain the following certification from a Licensed Professional Engineer or Licensed Professional Geologist. Corrective Action Completion Reports submitted pursuant to Sections 732.300(b) or 732.409 of this Part shall contain the following certification from a Licensed Professional Engineer.



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

- e) Except in the case of sites subject to Section 732.703(d) of this Part, reports documenting the completion of corrective action at a site must contain a form addressing site ownership. At a minimum, the form shall identify the land use limitations proposed for the site, if land use limitations are proposed; the site's common address, legal description, and real estate tax/parcel index number; and the names and addresses of all title holders of record of the site or any portion of the site. The form shall also contain the following certification, by original signature, of all title holders of record of the site or any portion of the site, or the agent(s) of such person(s):

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

## **SUBPART B: EARLY ACTION**

### **Section 732.200      General**

*Owners and operators of underground storage tanks shall, in response to all confirmed releases of petroleum, comply with all applicable statutory and regulatory reporting and response requirements. [415 ILCS 5/57.6](Section 57.6(a) of the Act)* No work plan or corresponding budget plan shall be required for conducting

early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product.

**Section 732.202      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, shall perform the following initial response actions within 24 hours after the release:
  - 1) Report the release to IEMA (e.g., by telephone or electronic mail);
  - 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
  - 3) Identify and mitigate fire, explosion and vapor hazards.
- b) Within 20 days after initial notification to IEMA of a release plus 14 days, ~~after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM,~~ the owner or operator shall perform the following initial abatement measures:
  - 1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;
  - 2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;
  - 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
  - 4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator shall comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;
  - 5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill,

depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

- 6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 732.203.
- c) Within 20 days after initial notification to IEMA of a release plus 14 days, ~~the owner or operator after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM,~~ owners or operators shall submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data. ~~The report shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~
- d) Within 45 days after initial notification to IEMA of a release plus 14 days, ~~the owner or operator after confirmation of a release,~~ owners or operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information shall include, but is not limited to, the following:
  - 1) Data on the nature and estimated quantity of release;
  - 2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;
  - 3) Results of the site check required at subsection (b)(5) of this Section; and
  - 4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 732.203 of this Part.
- e) Within 45 days after initial notification to IEMA of a release plus 14 days, ~~the owner or operator after confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM,~~ owners or operators shall submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy. The information

shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

- f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal (see 41 Ill. Adm. Code 160, 170, 180, 200). The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment for early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank. Early action may also include disposal in accordance with applicable regulations or ex situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank. ~~in accordance with Section 57.7(a)(1)(B) of the Act [415 ILCS 5/57.6(b)].~~*
- g) For purposes of payment from the Fund reimbursement, the activities set forth in subsection (f) of ~~this the~~ Section shall be performed within 45 days after initial notification to IEMA of a release plus 14 7-days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 7-days. The owner or operator shall notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 7-days. Costs incurred beyond 45 days plus 14 7-days shall be eligible if the Agency determines that they are consistent with early action.

BOARD NOTE: Owners or operators seeking payment from the Fund reimbursement are to first notify IEMA of a suspected release and then confirm the release within 14 seven-days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and ~~170.580, 170.600~~. The Board is setting the beginning of the payment reimbursement period at subsection (g) to correspond to the notification and confirmation to IEMA.

- h) The owner or operator shall determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. ~~applicable Tier 1 remediation objectives pursuant to 35 Ill. Adm. Code 742, Subpart E. Six samples shall be collected, one on each sidewall and two at the bottom of the excavation. If contaminated backfill is returned to the excavation, 2 representative samples must be collected and analyzed for the applicable indicator contaminants. Additional samples may be required for a multiple tank excavation.~~

- 1) At a minimum, for each UST that is removed, the owner or operator shall collect and analyze soil samples as follows:
  - A) One sample shall be collected from each UST excavation wall. The samples shall 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 shall 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 shall be collected for each 20 feet of wall length, or fraction thereof, and the samples shall be evenly spaced along the length of the wall. For USTs abandoned in place, the samples shall be collected via borings drilled as close as practical to the UST backfill.
  - B) Two samples shall be collected from the excavation floor below each UST with a volume of 1,000 gallons or more. One sample shall be collected from the excavation floor below each UST with a volume of less than 1,000 gallons. The samples shall 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 shall 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 shall be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples shall 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 shall be collected from the center of the length being sampled. For UST piping abandoned in place, the samples shall 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 shall be collected for each UST with a volume of less than 12,000 gallons and two representative samples of the backfill shall be collected for each UST with a volume of 12,000 gallons or more.

- E) The samples shall 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 shall be analyzed in accordance with Section 732.310(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) through (D) of this Section shall 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 shall collect and analyze soil samples as follows:
- A) One boring shall 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 shall be drilled for each 20 feet of side length, or fraction thereof, and the borings shall be evenly spaced along the side. The borings shall be drilled in the native soil surrounding the UST(s) and as close practicable to, but not more than five feet from, the backfill material surrounding the UST(s). Each boring shall be drilled to a depth of 30 feet, or until groundwater or bedrock is encountered, whichever is less.
- B) Two borings, one on each side of the piping, shall be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings shall be drilled as close 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 shall be drilled in the center of the length being sampled. Each boring shall be drilled to a depth of 15 feet, or until groundwater or bedrock is encountered, whichever is less. For UST piping that is removed, samples shall 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 shall be drilled in an alternate location that will allow the boring to be drilled to the required depth. The alternate location shall 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 shall cease and the soil samples collected from the location in which the boring was drilled to the greatest depth shall be analyzed for the applicable indicator contaminants.

D) One soil sample shall be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample shall 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 shall be collected from the center of the five-foot interval, provided, however, that soil samples shall not be collected from soil below the groundwater table. All samples shall be analyzed for the applicable indicator contaminants.

3)4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) are met, within 30 days after the completion of early action activities ~~there is no evidence that contaminated soils may be or may have been in contact with groundwater~~, the owner or operator shall submit a ~~corrective action completion~~ report demonstrating compliance with those remediation objectives. The report shall 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 732.110(a)(1) of this Part that shows the locations of all samples collected pursuant to this subsection (h);

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

iii) A table comparing the analytical results of all samples collected pursuant to this subsection (h) to

the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

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

4)2) 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, ~~there is evidence that contaminated soils may be or may have been in contact with groundwater,~~ the owner or operator shall continue evaluation in accordance with Subpart C of this Part.

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

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

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

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

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

~~BOARD NOTE: Section 57.7(a)(1)(B) of the Act limits payment or reimbursement from the Fund for removal of contaminated fill material during early action activities. Owners or operators proceeding with activities set forth in subsection (f) of this Section are advised that they may not be entitled to full payment or reimbursement. See Subpart F of this Part.~~

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



## Section 732.203      Free Product Removal

- a) Under any circumstance in which conditions at a site indicate the presence of free product, owners or operators shall remove free product exceeding one-eighth of an inch in depth, or present as a sheen on groundwater in the tank removal excavation or on surface water, to the maximum extent practicable while initiating or continuing any actions required pursuant to this Part or other applicable laws or regulations. In meeting the requirements of this Section, owners or operators shall:
- 1) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, State and federal regulations;
  - 2) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
  - 3) Handle any flammable products in a safe and competent manner to prevent fires or explosions;
  - 4) Within 45 days after the confirmation of presence of free product from a UST, prepare and submit to the Agency a free product removal report ~~on forms prescribed and provided by the Agency and, if specified by the Agency, by written notice, in an electronic format.~~ The report shall, at a minimum, provide the following:
    - A) The name of the persons responsible for implementing the free product removal measures;
    - B) The estimated quantity, type and thickness of free product observed or measured in wells, boreholes and excavations;
    - C) The type of free product recovery system used;
    - D) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
    - E) The type of treatment applied to, and the effluent quality expected from, any discharge;
    - F) The steps that have been or are being taken to obtain necessary permits for any discharge; ~~and~~

- G) The disposition of the recovered free product; ~~and~~
  - H) The steps taken to identify the source and extent of the free product; and
  - I) A schedule of future activities necessary to complete the recovery of free product still exceeding one-eighth of an inch in depth, or still present as a sheen on groundwater in the tank removal excavation or on surface water. The schedule shall include, but not be limited to, the submission of plans and budget plans required pursuant to subsections (c) and (d) of this Section; and
- 5) If free product removal activities are conducted more than 45 days after the confirmation of the presence of free product, submit free product removal reports in accordance with a schedule established by the Agency.
- b) For purposes of ~~payment from the Fund reimbursement~~, owners or operators are not required to obtain Agency approval ~~pursuant to Section 732.202(g)~~ for free product removal activities conducted ~~within more than~~ 45 days after the confirmation of the presence of free product initial notification to IEMA of a release.
  - c) If free product removal activities will be conducted more than 45 days after the confirmation of the presence of free product, the owner or operator shall submit to the Agency for review a free product removal plan. The plan shall be submitted with the free product removal report required under subsection (a)(4) of this Section. Free product removal activities conducted more than 45 days after the confirmation of the presence of free product shall not be considered early action activities.
  - d) Any owner or operator intending to seek payment from the Fund shall, prior to conducting free product removal activities more than 45 days after the confirmation of the presence of free product, submit to the Agency a free product removal budget plan with the corresponding free product removal plan. The budget plan shall include, but shall not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the free product removal plan, excluding handling charges. The budget plan should be consistent with the eligible and ineligible costs listed in Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget plan the Agency may require a comparison between the costs of the

proposed method of free product removal and other methods of free product removal.

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

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

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

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

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

#### **Section 732.204      Application for Payment of Early Action Costs**

Owners or operators intending to seek payment ~~or reimbursement~~ for early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product, are not required to submit a corresponding budget plan ~~to the Agency prior to the application for payment~~. The application for payment may be submitted to the Agency upon completion of the early action activities

in accordance with the requirements at Subpart F of this Part, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product. Applications for payment of free product removal activities conducted more than 45 days after confirmation of the presence of free product may be submitted upon completion of the free product removal activities.

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

## **SUBPART C: SITE EVALUATION AND CLASSIFICATION**

### **Section 732.300      General**

- a) Except as provided in subsection (b) of this Section, or unless the owner or operator submits a report pursuant to Section 732.202(h)(3) of this Part demonstrating that the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, the owner or operator of any site subject to this Part shall evaluate and classify the site in accordance with the requirements of this Subpart C. All such sites shall be classified as No Further Action, Low Priority or High Priority. Site classifications shall be based on the results of the site evaluation, including, but not limited to, the physical soil classification and the groundwater investigation, if applicable.
- b) An owner or operator may choose to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part as an alternative to conducting site classification activities pursuant to this Subpart C provided that:
  - 1) Upon completion of the remediation, the owner or operator shall submit a corrective action completion report; demonstrating compliance with the required levels. The corrective action completion report shall include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the remediation and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. ~~With the exception of Federal Landholding Entities subject to Section 732.703(d), the owner or operator must sign and submit, with the corrective action completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so~~

~~indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:~~

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

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

i) One or more maps, to an appropriate scale, showing the following:

The location of the community water supply wells and other potable water supply wells identified pursuant to subsection (b)(3) of this Section, and the setback zone for each well;

The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to subsection (b)(3) of this Section;

The current extent of groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

The modeled extent of groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

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

- iii) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to subsection (b)(3) of this Section, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and
- iv) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of subsection (b)(3) of this Section and that the documentation submitted pursuant to subsection (b)(1)(A) of this Section includes the information obtained as a result of the survey.

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

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

- A) If there is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants ~~Tier 1 residential numbers set forth in 35 Ill. Adm. Code 742. Appendix B~~ (e.g., as found during release confirmation or previous corrective action measures);
- B) If free product that may impact groundwater is found to need recovery in compliance with Section 732.203 of this Part; or
- C) If there is evidence that contaminated soils may be or may have been in contact with groundwater, except that, if the owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and

demonstrates to the Agency that no recharge is evident during the 24 hours following pumping, the owner or operator does not have to complete a groundwater investigation, unless the Agency's review reveals that further groundwater investigation is necessary.

- 3) As part of the remediation conducted under subsection (b) of this Section, owners and operators shall conduct a water supply well survey in accordance with this subsection (b)(3).
  - A) At a minimum, the owner or operator shall identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells shall include, but not be limited to, the following:
    - i) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;
    - ii) Contacting the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and
    - iii) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.
  - B) In addition to the potable water supply wells identified pursuant to subsection (b)(3)(A) of this Section, the owner or operator shall extend the water supply well survey if soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of remediation, the owner or operator leaves in place soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination

exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey shall identify the following:

- i) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
- ii) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants is located.

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

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

- c) For corrective action completion reports submitted pursuant to subsection (b) of this Section, the Agency shall issue a No Further Remediation



Letter upon approval of the report by the Agency in accordance with Subpart E.

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

**Section 732.302      No Further Action Sites**

- a) Unless an owner or operator elects to classify a site under Section 732.312, sites shall be classified as No Further Action if all of the following criteria are satisfied:
  - 1) The physical soil classification procedure completed in accordance with Section 732.307 confirms either of the following:
    - A) Berg Circular
      - i) The site is located in an area designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled “Potential for Contamination of Shallow Aquifers in Illinois,” incorporated by reference at Section 732.104 of this Part; and
      - ii) The site's actual physical soil conditions are verified as consistent with those designated D, E, F or G on the Illinois State Geological Survey Circular (1984) entitled “Potential for Contamination of Shallow Aquifers in Illinois”; or
    - B) The site soil characteristics satisfy the criteria of Section 732.307(d)(3) of this Part;
  - 2) The UST system is not within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;
  - 3) After completion of early action measures in accordance with Subpart B of this Part, there is no evidence that, through natural pathways or man-made pathways, migration of petroleum or vapors threatens human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;
  - 4) There is no designated Class III special resource groundwater within 200 feet of the UST system; and

- 5) After completing early action measures in accordance with Subpart B of this Part, no surface bodies of water are adversely affected by the presence of a visible sheen or free product layer as a result of a release of petroleum.
- b) Groundwater investigation shall be required to confirm that a site meets the criteria of a No Further Action site if the Agency has received information indicating that the groundwater is contaminated at levels in excess of the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants applicable groundwater objectives specified in 35 Ill. Adm. Code 742 at the property boundary line or 200 feet from the UST system, whichever is less. In such cases, a groundwater investigation that meets the requirements of Section 732.307(j) shall be performed. If the investigation confirms there is an exceedence of the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants applicable Tier 1 residential indicator contaminant objectives (set forth in 35 Ill. Adm. Code 742 Appendix B), the Agency may reclassify the site as High Priority.

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

### **Section 732.303 Low Priority Sites**

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

- a) The physical soil classification and groundwater investigation procedures confirm the following:
- 1) The most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have groundwater quality standard or groundwater objective for any applicable indicator contaminant has not been exceeded at the property boundary line or 200 feet from the UST system, whichever is less; and
  - 2) "Berg Circular"
    - A) The site is located in an area designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and

- B) The site's actual physical soil conditions are verified as consistent with those designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois"; or
- 3) The site soil characteristics do not satisfy the criteria of Section 732.307(d)(3) of this Part;
- b) The UST system is not within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;
- c) After completing early action measures in accordance with Subpart B of this Part, there is no evidence that, through natural or man-made pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;
- d) There is no designated Class III special resource groundwater within 200 feet of the UST system; and
- e) After completing early action measures in accordance with Subpart B of this Part, there are no surface bodies of water adversely affected by the presence of a visible sheen or free product layer as a result of the release of petroleum.

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

### **Section 732.304 High Priority Sites**

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

- a) The physical soil classification and groundwater investigation procedures confirm the following:
  - 1) The most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have groundwater quality standard or groundwater objective for  
~~any applicable indicator contaminant~~ has been exceeded at the property boundary line or 200 feet from the UST system, whichever is less; and

2) "Berg Circular"

- A) The site is located in an area designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part; and
- B) The site's actual physical soil conditions are verified as consistent with those designated A1, A2, A3, A4, A5, AX, B1, B2, BX, C1, C2, C3, C4, or C5 on the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois"; or

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

- b) The UST system is within the minimum or maximum setback zone of a potable water supply well or regulated recharge area of a potable water supply well;
- c) After completing early action measures in accordance with Subpart B of this Part, there is evidence that, through natural or man-made pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;
- d) There is designated Class III special resource groundwater within 200 feet of the UST system; or
- e) After completing early action measures in accordance with Subpart B of this Part, a surface body of water is adversely affected by the presence of a visible sheen or free product layer as a result of a release of petroleum.

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

**Section 732.305 Plan Submittal and Review**

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

sufficient to determine the site classification in accordance with Section 732.302, 732.303 or 732.304 of this Part. ~~Site classification plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

- b) In addition to the plan required in subsection (a) of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a :
- 1) ~~— An application for payment of costs associated with eligible early action costs incurred pursuant to Subpart B of this Part; and~~
  - 2) ~~— A site classification budget plan with the corresponding site classification plan. The budget plan that shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an a line item estimate of all costs associated with the development, implementation and completion of the site evaluation activities required in Section 732.307, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part. Site classification budget plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~
- c) The Agency shall have the authority to review and approve, reject or require modification of any plan or budget plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.
- d) Notwithstanding subsections (a), and (b), and (c) of this Section, an owner or operator may proceed to conduct site evaluation activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required site classification plan or budget plan (including physical soil classification and groundwater investigation plans, costs associated with activities to date, and anticipated further costs). However, any such plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment ~~or reimbursement~~ for any related costs or the issuance of a No Further Remediation Letter. ~~If the owner or operator has obtained Agency approval of a Site Classification Work Plan and site classification completion report without submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided~~

~~by the Agency and attached to the application for payment, the actual costs incurred in performing site evaluation activities.~~

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

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

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

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

### **Section 732.306      Deferred Site Classification; Priority List for Payment**

- a) An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the Fund may elect to defer site classification activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met. ~~An OWNER OR OPERATOR WHO HAS RECEIVED APPROVAL FOR ANY BUDGET PLAN SUBMITTED PURSUANT TO this Part AND WHO IS ELIGIBLE FOR PAYMENT FROM THE UNDERGROUND STORAGE TANK FUND MAY ELECT TO DEFER SITE CLASSIFICATION, LOW PRIORITY GROUNDWATER MONITORING, OR REMEDIATION ACTIVITIES UNTIL FUNDS ARE AVAILABLE IN AN AMOUNT EQUAL TO THE AMOUNT APPROVED IN THE BUDGET PLAN if the requirements of subsection (b) of this Section are met. (Section 57.8(b) of the Act)~~
  - 1) Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.

- 2) ~~The Agency shall monitor the availability of funds to determine whether sufficient resources exist to provide payment in an amount equal to the total of the approved budget plans and shall provide notice of insufficient funds to owners or operators in accordance with Section 732.503(g) of this Part. of the availability of funds in accordance with Section 732.503(h). Funds shall not be deemed available for owners or operators electing to defer site classification so long as there are owners or operators on the priority list established pursuant to Section 732.603(d) of this Part awaiting forwarding of vouchers to the Office of the State Comptroller.~~
- 3) Owners and operators shall submit elections to defer site classification activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The forms shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- 4) The Agency shall review elections to defer site classification activities to determine whether the requirements of subsection (b) of this Section are met. The Agency shall notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.
- A) The Agency shall mail notices of final action on an election by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.
- B) Any action by the Agency to reject an election, or rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.
- 5)3) Upon approval of an election ~~receiving written notification that an owner or operator elects~~ to defer site classification until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment based solely on the date the Agency receives a complete ~~the~~ written election of deferral, with

the earliest dates having the highest priority. ~~The Agency's record of the date of receipt shall be deemed conclusive, unless a contrary date is proven by a dated, signed receipt from registered or certified mail.~~

~~6)4)~~ As funds become available, the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the owner or operator's site. After such notification the owner or operator shall commence site classification activities.

~~7)5)~~ Authorization of payment of encumbered funds for deferred site classification activities shall be approved in accordance with the requirements of Subpart F of this Part.

~~8)6)~~ The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred corrective action pursuant to Section 732.406 with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.

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

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

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

~~3)4)~~ The early action requirements of Subpart B of this Part have been met; ~~and~~

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



5) Soil contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied shall include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

2) ~~The release does not pose a threat to human health or the environment through migratory pathways following the investigation of migration pathways requirements of Section 732.307(g).~~

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

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

## **Section 732.307      Site Evaluation**

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

b) As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct a physical soil

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

c) Method One for Physical Soil Classification:

1) Soil Borings

- A) Prior to conducting field activities, a review of scientific publications and regional geologic maps shall be conducted to determine if the subsurface strata are as generally mapped in the Illinois State Geological Survey Circular (1984) entitled “Potential for Contamination of Shallow Aquifers in Illinois,” incorporated by reference in Section 732.104 of this Part. A list of the publications reviewed and any preliminary conclusions concerning the site geology shall be included in the site classification completion report.
- B) A minimum of one soil boring to a depth that includes 50 feet of native soil or to bedrock shall be performed for each tank field with a release of petroleum.
- C) If, during boring, bedrock is encountered or if auger refusal occurs because of the density of a geologic material, a sample of the bedrock or other material shall be collected to determine permeability or an in situ test shall be performed to determine hydraulic conductivity in accordance with subsections (c)(3)(A) and (c)(3)(B) of this Section. If bedrock is encountered or auger refusal occurs, the Licensed Professional Engineer or Licensed Professional Geologist shall verify that the conditions that prevented the full boring are expected to be continuous through the remaining required depth.
- D) Borings shall be performed within 200 feet of the outer edge of the tank field or at the property boundary, whichever is less. If more than one boring is required per site, borings shall be spaced to provide reasonable representation of site characteristics. The actual spacing of

the borings shall be based on the regional hydrogeologic information collected in accordance with subsection (c)(1)(A) of this Section. Location shall be chosen to limit to the greatest extent possible the vertical migration of contamination.

- E) Soil borings shall be continuously sampled to ensure that no gaps appear in the sample column.
- F) If anomalies are encountered, additional soil borings may be necessary to verify the consistency of the site geology.
- G) Any water bearing units encountered shall be protected as necessary to prevent cross-contamination of ~~water bearing units~~ during drilling.
- H) The owner or operator may utilize techniques other than those specified in this subsection (c)(1) for soil classification provided that:
  - i) The techniques provide equivalent, or superior, information as required by this Section;
  - ii) The techniques have been successfully utilized in applications similar to the proposed application;
  - iii) Methods for quality control can be implemented; and
  - iv) The owner or operator has received written approval from the Agency prior to the start of the investigation.

## 2) Soil Properties

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

- A) A soil particle analysis using the test methods specified in ASTM (American Society for Testing and Materials) Standard D 422-63 or D 1140-92, "Standard Test Method for Particle-Size Analysis of Soils," or "Standard Test Method for Amount of Material in Soils Finer than the No. 200 (75  $\mu$ m) Sieve," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;
  - B) A soil moisture content analysis using the test methods specified in ASTM Standard D 2216-92 or D 4643-93, "Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock," or "Standard Test Method for Determination of Water (Moisture) Content of Soil by the Microwave Oven Method," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;
  - C) A soil classification using the test methods specified in ASTM Standard D 2487-93 or D 2488-93, "Standard Test Method for Classification of Soils for Engineering Purposes" or "Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;
  - D) Unconfined compression strength shall be determined in tons per square foot by using a hand penetrometer; and
  - E) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Standard Test Method D 1587-83, incorporated by reference in Section 732.104 of this Part, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of Section 732.308(a) of this Part.
- 3) Hydraulic Conductivity
- A) If a water bearing unit is encountered while performing soil boring(s) for the physical soil classification, an in situ hydraulic conductivity test shall be performed in the first fully saturated layer below the water table. If multiple water bearing units are encountered, an in-situ hydraulic conductivity test shall be performed on each such unit. ~~Wells used for hydraulic conductivity testing shall be constructed in a manner that ensures the most accurate results.~~

- i) Wells used for hydraulic conductivity testing shall be constructed in a manner that ensures the most accurate results.
  - ii) The screen must be contained within the saturated zone.
- B) If no water bearing unit is encountered in the required soil boring(s), then the following laboratory analyses shall be conducted, as applicable, on a representative sample from each stratigraphic unit:
  - i) A hydraulic conductivity analysis of undisturbed or laboratory compacted granular soils (i.e., clay, silt, sand or gravel) using the test method specified in ASTM Standard D 5084-90, "Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter," incorporated by reference in Section 732.104 of this Part, or other Agency approved method.
  - ii) Granular soils that are estimated to have hydraulic conductivity greater than  $1 \times 10^{-3}$  cm/sec will fail the minimum geologic conditions for "No Further Action", i.e., rating of D, E, F, or G as described in the Berg Circular, and therefore, no physical tests need to be run on the soils.
  - iii) A hydraulic conductivity analysis of bedrock using the test method specified in ASTM Standard D 4525-90, "Standard Test Method for Permeability of Rocks by Flowing Air," incorporated by reference in Section 732.104 of this Part, or other Agency approved method.
  - iv) If representative samples of each stratigraphic unit are collected for soil property testing by the use of thin-walled tube sampling, an additional soil boring must be performed for this sampling within 5 feet of the site classification boring. Thin-walled tube sampling must be conducted in accordance with ASTM Standard Test Method D 1587-83, incorporated by reference in Section 732.104 of this Part, or other Agency approved method. The boring from which the thin-walled tubes are collected must be logged in accordance with the requirements of Section 732.308(a) of this Part.

- 4) If the results of the physical soil classification or groundwater investigation reveal that the actual site geologic characteristics are different from those generally mapped by the Illinois State Geological Survey Circular (1984) entitled "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference at Section 732.104 of this Part, the site classification shall be determined using the actual site geologic characteristics.
- d) Method Two for Physical Soil Classification:
- 1) Soil Borings
    - A) A minimum of one soil boring to a depth that includes native material from the invert elevation of the most shallow UST to 15 feet below the invert elevation of the deepest UST for each tank field with a release of petroleum.
    - B) This boring shall meet the requirements of subsections (c)(1)(C) through (c)(1)(G) of this Section.
  - 2) Soil Properties

The following tests shall be performed on a representative sample of each of the stratigraphic units encountered in the native soil boring that has been determined most conducive to transporting contaminants from the source based on site factors including but not limited to visual and tactile observations, the classification of the soil, any prior evaluation of the site stratigraphy, the volume of the release, the size or extent of the unit, and the requirements of ASTM D 2488-93, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure), approved September 15, 1993 and incorporated by reference in Section 732.104 of this Part:

    - A) A soil particle analysis satisfying the requirements of subsection (c)(2)(A) of this Section; and
    - B) Either:
      - i) A pump test or equivalent to determine the yield of the geologic material. Methodology, assumptions and any calculations performed shall be submitted as part of the site classification completion report. If the aquifer geometry and transmissivity have been obtained through a site-specific field

investigation, an analytical solution may be used to estimate well yield. The Licensed Professional Engineer or Licensed Professional Geologist shall demonstrate the appropriateness of the analytical solution to estimate well yield versus an actual field test. Well yield should be determined for either confined or unconfined formations. Once the yield has been determined site-specifically, the hydraulic conductivity shall be calculated; or

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

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

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

- A) Does not contain unconsolidated sand, gravel or sand and gravel that is 5 feet or more in thickness with 12 percent or less fines (i.e., fines that pass through a No. 200 sieve tested according to ASTM Standard Test Method D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference at Section 732.104 of this Part, or other Agency approved method);
- B) Does not contain sandstone that is 10 feet or more in thickness, or fractured carbonate that is 15 feet or more in thickness;

- C) Is not capable of sustained groundwater yield, from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; and
  - D) Is not capable of hydraulic conductivity of  $1 \times 10^{-4}$  cm/sec or greater.
- e) If, during the completion of the requirements of subsection (c) or (d) of this Section, a Licensed Professional Engineer or Licensed Professional Geologist determines that the site geology is not consistent with area D, E, F or G of the Illinois State Geological Survey Circular (1984) entitled, "Potential for Contamination of Shallow Aquifers in Illinois," incorporated by reference in Section 732.104 of this Part or that the criteria of subsection (d)(3) are not satisfied, any remaining steps required by subsection (c) or (d) may be suspended, provided that the soil investigation has been sufficient to satisfy the requirements of subsection (g) of this Section. If activities are suspended under this subsection (e), the Licensed Professional Engineer or Licensed Professional Geologist shall complete the requirements of subsections (f) through (j) of this Section in order to determine whether the site is High Priority or Low Priority. The site conditions upon which the suspension of the requirements of subsection (c) or (d) of this Section is based shall be documented in the site classification completion report.
- f) Survey of Water Supply Wells. At a minimum, the owner or operator shall conduct a water supply well survey to identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells shall include, but not be limited to, the following.
  - 1) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;
  - 2) Contacting the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and
  - 3) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.



- ~~1) The Licensed Professional Engineer shall conduct a survey of water supply wells for the purpose of identifying and locating all community water supply wells within 2500 feet of the UST system and all potable water supply wells within 200 feet of the UST system. The survey shall include, but not be limited to, contacting the Illinois State Geological Survey and the Illinois State Water Survey. The unit of local government with authority over the site shall be contacted to determine if there is a local ordinance or policy regulating the usage of potable water supply wells.~~
- ~~2) The Licensed Professional Engineer shall provide a map to scale showing the locations of all community water supply wells and potable water supply wells including the designated minimum and maximum setback zones of the wells identified pursuant to subsection (f)(1) of this Section. Radii of 200, 400, 1000, and 2500 feet from the UST system shall be marked on the map.~~
- ~~3) The Licensed Professional Engineer shall provide a table indicating the setback zone for each community water supply well and potable water supply well identified pursuant to subsection (f)(1) of this Section and the distance from the UST system to the well. The locations of each well shall be identified on the map by numbers corresponding to the information provided in the table.~~
- ~~4) The Licensed Professional Engineer shall determine if the UST system is within the regulated recharge area of any community water supply well or potable water supply well. The sources consulted in making this determination shall be described in the site classification completion report.~~

g) Investigation of Migration Pathways

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

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

- B) May cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces.
- 2) Natural pathways shall be identified using data obtained from investigation at the site. This must include, but is not limited to, identification and location of groundwater if encountered during excavation activities or soil boring activities, identification of different soil strata during excavation activities or soil boring activities and inspection of surface water bodies. Investigation and evaluation of natural migration pathways shall include, for applicable indicator contaminants along potential natural migration pathways:
  - A) Soil sampling and laboratory analysis of samples; and
  - B) When groundwater is encountered or when there is potential for surface water contamination, groundwater and surface water sampling and laboratory analysis of samples.
- 3) Man-made pathways shall be identified from available sources, including but not limited to site plans; a review of underground utilities as identified by the Joint Utility Location Information for Excavators (J.U.L.I.E.), the Chicago Utility Alert Network (Digger), another public locator, or a private locator; and interviews with site owners or personnel. The Licensed Professional Engineer or Licensed Professional Geologist must determine whether migration of indicator contaminants ~~contaminants of concern~~ along any of these pathways has occurred, using laboratory analytical data for applicable indicator contaminants obtained as follows:
  - A) From prior sampling, provided that such laboratory analytical data demonstrates that no contaminant of concern has migrated to or along any man-made pathways;
  - B) From soil samples, and groundwater samples if groundwater is encountered, taken between man-made pathways and contaminated soil, provided that such laboratory analytical data demonstrates that no contaminant of concern has migrated to or along any man-made pathways; or
  - C) From soil samples, and groundwater samples if groundwater is encountered, taken along man-made pathways.

- 4) The Licensed Professional Engineer or Licensed Professional Geologist shall provide a map of the site and any surrounding areas that may be adversely affected by the release of petroleum from the UST system. At a minimum, the map shall be to scale, oriented with north at the top, and shall show the location of the leaking UST system(s) with any associated piping and all potential natural and man-made pathways that are on the site, that are in rights-of-way attached to the site, or that are in areas that may be adversely affected as a result of the release of petroleum.
- 5) Unless the Agency's review reveals objective evidence to the contrary, the Licensed Professional Engineer or Licensed Professional Geologist shall be presumed correct when certifying whether or not there is evidence that, through natural or man-made pathways, migration of petroleum or vapors:
  - A) May potentially threaten human health or human safety; or
  - B) May cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces.
- h) The Licensed Professional Engineer or Licensed Professional Geologist shall verify whether Class III groundwater exists within 200 feet of the UST system.
- i) The Licensed Professional Engineer or Licensed Professional Geologist shall locate all surface bodies of water on site and within 100 feet of the site and provide a map noting the locations. All such surface bodies of water shall be inspected to determine whether they have been adversely affected by the presence of a sheen or free product layer resulting from the release of petroleum from the UST system.
- j) Groundwater Investigation
  - 1) For sites failing to meet NFA site classification or for sites where a groundwater investigation is necessary pursuant to Section 732.302(b) of this Part, the Licensed Professional Engineer or Licensed Professional Geologist shall perform a groundwater investigation as required under this Part in accordance with this subsection (j) to determine whether the most stringent Tier 1 groundwater remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have an applicable indicator ~~contaminant groundwater quality standard has been exceeded at~~

the property boundary or 200 feet from the UST system, whichever is less, as a result of the UST release of petroleum.

- 2) Applicable indicator contaminants ~~and groundwater quality standards~~ shall be those identified pursuant to Sections 732.310 ~~and 732.311~~ of this Part.
- 3) Except as provided in subsection (j)(6) of this Section, a minimum of four groundwater monitoring wells shall be installed at the property boundary or 200 feet from the UST system, whichever is less. In the event that a groundwater monitoring well cannot be physically installed at the property line or 200 feet from the UST system, whichever is closer, in accordance with this subsection (j), the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a monitoring well in a location that is closer to the UST system than this Part requires. However, once the election is made, the owner or operator may not withdraw the election at a later time. The Agency may require the installation of additional monitoring wells to ensure that at least one monitoring well is located hydraulically upgradient and three monitoring wells are located hydraulically downgradient of the UST system. The wells must be installed so that they provide the greatest likelihood of detecting migration of groundwater contamination. At a minimum, monitoring well construction shall satisfy the following requirements:
  - A) Construction shall be in a manner that will enable the collection of representative groundwater samples;
  - B) All monitoring wells shall be cased in a manner that maintains the integrity of the borehole. Casing material shall be inert so as not to affect the water sample. Casing requiring solvent-cement type couplings shall not be used;
  - C) Wells shall be screened to allow sampling only at the desired interval. Annular space between the borehole wall and well screen section shall be packed with clean, well-rounded and uniform material sized to avoid clogging by the material in the zone being monitored. The slot size of the screen shall be designed to minimize clogging. Screens shall be fabricated from material that is inert with respect to the constituents of the groundwater to be sampled;
  - D) Annular space above the well screen section shall be sealed with a relatively impermeable, expandable material such as

cement/bentonite grout that does not react with or in any way affect the sample, in order to prevent contamination of groundwater samples and groundwater and avoid interconnections. The seal shall extend to the highest known seasonal groundwater level;

- E) The annular space shall be backfilled with expanding cement grout from an elevation below the frost line and mounded above the surface and sloped away from the casing so as to divert surface water away;
  - F) All monitoring wells shall be covered with vented caps and equipped with devices to protect against tampering and damage. Locations of wells shall be clearly marked and protected against damage from vehicular traffic or other activities associated with expected site use; and
  - G) All wells shall be developed to allow free entry of groundwater ~~water~~, minimize turbidity of the sample, and minimize clogging.
- 4) Monitoring well construction diagrams prescribed and provided by the Agency shall be completed for each monitoring well.
- 5) Static water elevations shall be measured for each monitoring well. Groundwater samples shall be taken from each well and analyzed for the applicable indicator contaminants. The data collected shall be used to determine the direction of groundwater flow and whether the applicable groundwater remediation quality standards ~~or clean-up~~ objectives have been exceeded. Samples shall be collected and analyzed in accordance with the following procedures:
- A) Samples shall be collected in accordance with ~~the procedures set forth in the documents “Methods for Chemical Analysis of Water and Wastes,” “Methods for the Determination of Organic Compounds in Drinking Water,” “Practical Guide for Ground Water Sampling,” “Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,” EPA Publication No. SW-846, or “Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground Water Samples for Selected Unstable Constituents,” as appropriate for the applicable indicator contaminants or groundwater objectives and as~~

incorporated by reference at Section 732.104 of this Part, or other procedures approved by the Agency.

- B) Groundwater elevation in a groundwater monitoring well shall be determined and recorded to establish the gradient of the groundwater table.
- C) The analytical methodology used for the analysis of the indicator contaminants shall be consistent with both of the following:
  - i) The methodology shall have a practical quantitation limit (PQL) at or below the objectives or detection levels set forth in 35 Ill. Adm. Code 742 or as set for mixtures or degradation products as provided in Section 732.310 of this Part; and
  - ii) The methodology must be consistent with the methodologies contained in ~~“Methods for Chemical Analysis of Water and Wastes,” “Methods for the Determination of Organic Compounds in Drinking Water,” “Practical Guide for Ground Water Sampling,” “Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,”~~ EPA Publication No. SW-846, and “Techniques of Water Resources Investigations of the United States Geological Survey, Guidelines for Collection and Field Analysis of Ground Water Samples for Selected Unstable Constituents,” as incorporated by reference at Section 732.104, or other Agency approved methods.
- D) In addition to analytical results, sampling and analytical reports shall contain the following information:
  - i) Sample collection information including but not limited to the name of sample collector, time and date of sample collection, method of collection, and monitoring location;
  - ii) Sample preservation and shipment information including but not limited to field quality control;
  - iii) Analytical procedures including but not limited to the method detection limits and the practical quantitation limits (PQL);

- iv) Chain of custody and control; and
  - v) Field and lab blanks.
- 6) As an alternative to the installation of monitoring wells under subsection (j)(3) of this Section, the Licensed Professional Engineer or Licensed Professional Geologist may demonstrate to the Agency through a site-specific evaluation that the groundwater monitoring should not be required.
- A) The evaluation shall be based on a demonstration of the following factors:
    - i) Whether groundwater is present within the depth of the boring used to perform physical soil classification under the selected method (Method One under subsection (c) of this Section or Method Two under subsection (d) of this Section);
    - ii) Whether groundwater is withdrawn for potable use within 1000 feet of the UST system and at what depths; and
    - iii) Whether seasonal fluctuation in groundwater could result in groundwater contacting contaminated soil (e.g., historical records).
  - B) The presence or absence of a water bearing unit under subsection (j)(6)(A)(i) of this Section shall be determined on the basis of at least one soil boring to the depth necessary to perform physical soil classification under the selected method (Method One under subsection (c) of this Section or Method Two under subsection (d) of this Section), unless auger refusal occurs because of the density of a geologic material or because bedrock is encountered. If auger refusal occurs, then the Licensed Professional Engineer or Licensed Professional Geologist must demonstrate the depth to a water bearing unit from the available site specific or regional information.
  - C) If the evaluation fails to demonstrate to the Agency that a groundwater investigation should not be required as part of site classification activities, then the Licensed Professional Engineer or Licensed Professional Geologist shall perform

a groundwater investigation in accordance with the remainder of this subsection (j).

- D) If the evaluation demonstrates to the Agency that a groundwater investigation should not be required, then the site shall be classified as Low Priority, unless other High Priority criteria are present. Upon Agency approval of the evaluation to demonstrate that a groundwater investigation should not be required, then the site shall be classified as Low Priority and a No Further Remediation Letter shall be issued to the owner or operator of the site, unless other High Priority criteria are present.

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

**Section 732.308      Boring Logs and Sealing of Soil Borings and Groundwater Monitoring Wells**

- a) Soil boring logs shall be kept for all soil borings. The logs shall be submitted along with the site classification completion report and shall be on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
  - 1) Soil boring logs shall contain the following information at a minimum:
    - A) Sampling device, sample number and amount of recovery;
    - B) Total depth of boring to the nearest 6 inches;
    - C) Detailed field observations describing materials encountered in boring, including soil constituents, consistency, color, density, moisture, odors, and the nature and extent of sand or gravel lenses or seams equal to or greater than 1 inch in thickness;
    - D) Petroleum hydrocarbon vapor readings (as determined by continuous screening of borings with field instruments capable of detecting such vapors);
    - E) Locations of sample(s) used for physical or chemical analysis; and
    - F) Groundwater levels while boring and at completion.



- 2) Boring logs for soil boring(s) completed for physical soil classification also shall include the following information, as applicable for the classification method chosen, for each stratigraphic unit encountered at the site:
  - A) Moisture content;
  - B) Unconfined compression strength in tons per square foot (TSF) using a hand penetrometer;
  - C) Unified Soil Classification System (USCS) soil classification group symbol in accordance with ASTM Standard D 2487-93, "Standard Test Method for Classification of Soils for Engineering Purposes," incorporated by reference in Section 732.104 of this Part, or other Agency approved method; and
  - D) The reasoning behind the Licensed Professional Engineer's or Licensed Professional Geologist's decision to perform or not perform soil testing pursuant to Section 732.307(c)(2) and (d)(2) of this Part as to each identified stratigraphic unit.
- b) Boreholes and monitoring wells shall be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120.

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

#### **Section 732.309      Site Classification Completion Report**

- a) Within 30 days after the completion of a site evaluation in accordance with Section 732.307 of this Part, the owner or operator shall submit to the Agency a site classification completion report addressing all applicable elements of the site evaluation. The report shall contain all maps, diagrams, and any other information required by Section 732.307 of this Part, ~~as well as the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions, and, The report shall be submitted on forms prescribed and provided by the Agency, shall be signed by the owner or operator, and shall contain~~ the certification of a Licensed Professional Engineer of the site's classification as No Further Action, Low Priority or High Priority in accordance with this Subpart C. Documentation of the water supply well survey conducted pursuant to Section 732.307(f) of this Part shall include, but not be limited to, the following:

- 1) One or more maps, to an appropriate scale, showing the following:
  - A) The location of the community water supply wells and other potable water supply wells identified pursuant to Section 732.307(f) of this Part, and the setback zone for each well;
  - B) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to Section 732.307(f) of this Part;
  - C) The current extent of groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
  - D) The modeled extent of groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The information required under this subsection (D) is not required to be shown in the site classification completion report if modeling is not performed as part of site investigation;
- 2) One or more tables listing the setback zones for each community water supply well and other potables water supply wells identified pursuant to Section 732.307(f) of this Part;
- 3) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to Section 732.307(f) of this Part, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and
- 4) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of Section 732.307(f) of this Part and that the documentation submitted pursuant to this Section includes the information obtained as a result of the survey.

~~For No Further Action sites, with the exception of Federal Landholding Entities subject to Section 732.703(d), the owner or operator must sign and submit, with the site classification completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), state as follows:~~

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

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

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

### **Section 732.310 Indicator Contaminants**

- a) For purposes of this Part, the term “indicator contaminants” shall mean the parameters identified in subsections (b) through (i) of this Section.
- b) For gasoline, including but not limited to leaded, unleaded, premium and gasohol, the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes and methyl tertiary butyl ether (MTBE), except as provided in subsection (h) of this Section. For leaded gasoline, lead shall also be an indicator contaminant.
- c) For aviation turbine fuels, jet fuels, diesel fuels, gas turbine fuel oils, heating fuel oils, illuminating oils, kerosene, lubricants, liquid asphalt and dust laying oils, cable oils, crude oil, crude oil fractions, petroleum feedstocks, petroleum fractions and heavy oils, the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes and the polynuclear aromatics ~~(PNA)~~ listed in Section 732.Appendix B of this Part. For leaded aviation turbine fuels, lead shall also be an indicator contaminant.
- d) For transformer oils the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics ~~listed in Appendix B~~ and the polychlorinated biphenyl parameters listed in Section 732.Appendix B of this Part.
- e) For hydraulic fluids the indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, the polynuclear aromatics listed in Section 732.Appendix B of this Part and barium.
- f) For petroleum spirits, mineral spirits, Stoddard solvents, high-flash aromatic naphthas, moderately volatile hydrocarbon solvents and petroleum extender oils, the indicator contaminants shall be the volatile,

base/neutral and polynuclear aromatic parameters listed in Section 732.Appendix B of this Part. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.

- g) For used oil the indicator contaminants shall be determined by the results of a used oil soil sample analysis. In accordance with Section 732.202(h) of this Part, soil samples shall be collected from the walls and floor of the used oil UST excavation if the UST is removed, or from borings drilled along each side of the used oil UST if the UST remains in place. The sample that appears to be the most contaminated as a result of a release from the used oil UST shall then be analyzed for the following parameters. If none of the samples appear to be contaminated a soil sample shall be collected from the floor of the used oil UST excavation below the former location of the UST if the UST is removed, or from soil located at the same elevation as the bottom of the used oil UST if the UST remains in place, and analyzed for the following parameters: Prior to the submission of a site classification plan the owner or operator shall collect a grab sample from a location representative of soil that is the most contaminated as a result of the release from the used oil UST. If an area of contamination cannot be identified, the sample shall be collected from beneath the used oil UST. The sample shall be analyzed for:
- 1) All volatile, base/neutral, polynuclear aromatic, and metal parameters listed at Section 732.Appendix B of this Part and any other parameters the Licensed Professional Engineer or Licensed Professional Geologist suspects may be present based on UST usage. The Agency may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.
  - 2) The used oil indicator contaminants shall be those volatile, base/neutral, ~~polynuclear aromatic~~ and metal parameters listed at Section 732.Appendix B of this Part or as otherwise identified at subsection (g)(1) of this Section that exceed their remediation objective at 35 Ill. Adm. Code 742 in addition to benzene, ethylbenzene, toluene, total xylenes, and polynuclear aromatics listed in Section 732.Appendix B of this Part ~~and PNAs~~.
  - 3) If none of the parameters exceed their remediation objective, the used oil indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Section 732.Appendix B of this Part.
- h) Unless an owner or operator elects otherwise pursuant to subsection (i) of this Section, the term “indicator contaminants” shall not include MTBE

for any release reported to the Illinois Emergency Management Agency prior to June 1, 2002 (the effective date of amendments establishing MTBE as an indicator contaminant).

- i) An owner or operator ~~of a site exempt from having to address MTBE as an indicator contaminant pursuant to subsection (h) of this Section may elect to include MTBE as an indicator contaminant under the circumstances listed in subsections (1) or (2) of this subsection (i).~~ following circumstances: Elections to include MTBE as an indicator contaminant shall be made by submitting to the Agency a written notification of such election signed by the owner or operator. The election shall be effective upon the Agency's receipt of the notification and shall not be withdrawn once made. Owners or operators electing to include MTBE as an indicator contaminant shall remediate MTBE contamination in accordance with the requirements of this Part.
  - 1) If the Agency has not issued a No Further Remediation Letter for the release site by June 1, 2002 (the effective date of the amendments establishing MTBE as an indicator contaminant); or
  - 2) If the Agency has issued a No Further Remediation Letter for the release and the release ~~at the site~~ has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 Ill. Adm. Code 742, provided that the owner or operator complies with all applicable requirements of this Part.

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

#### **Section 732.311      ~~Indicator Contaminant~~ Groundwater Remediation Objectives**

For purposes of this Part, remediation objectives for groundwater indicator contaminant ~~groundwater quality standards~~ shall be the groundwater remediation ~~groundwater~~ objectives specified in 35 Ill. Adm. Code 742 for the applicable indicator contaminants. For mixtures and degradation products that have been included as indicator contaminants in accordance with Section 732.310 of this Part, the Agency shall determine groundwater remediation objectives on a site-by-site basis.

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

#### **Section 732.312      Classification by Exposure Pathway Exclusion**

- a) An owner or operator electing to classify a site by exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, shall meet

the requirements of this Section, except as provided in subsections (a)(1) and (j) of this Section.

- 1) Such election shall be made in writing by the owner or operator as part of the submission of the site classification plan under subsection (b) (e) of this Section. The election may be made at any time until the Agency issues a No Further Remediation Letter, provided, however, that the election must be received by the Agency prior to [effective date of this amendment]. On or after [effective date of this amendment], owners and operators desiring to proceed with the exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, shall elect pursuant to 35 Ill. Adm. Code 734.105 to proceed in accordance with 35 Ill. Adm. Code 734 and conduct site investigation and corrective action in accordance with that Part instead of meeting the requirements of this Section.
  - 2) An owner or operator who chooses to revoke an election submitted under subsection (b) (e) of this Section shall do so in writing.
- ~~b) — Upon completion of early action requirements pursuant to Subpart B of this Part, the owner or operator shall determine whether the areas or locations addressed under early action (e.g., backfill) meet the requirements applicable for a Tier 1 evaluation pursuant to 35 Ill. Adm. Code 742, Subpart E.~~
- ~~1) — If the remediation objectives have been met, the owner or operator shall submit a corrective action completion report demonstrating compliance with the required levels.~~
  - ~~2) — If the remediation objectives have not been met, evaluation shall continue in accordance with subsection (e) of this Section.~~
- ~~b)e) The If, upon completion of early action requirements pursuant to Subpart B of this Part, the requirements under subsection (b) of this Section have not been met, then the owner or operator, prior to conducting any site evaluation activities, shall submit to the Agency a site classification plan including, but not limited to, a contaminant identification and groundwater investigation plan (if one or more of the criteria set forth in Sections 732.202(h)(4)(A) through (C) of this Part are met applicable in accordance with Section 732.300(b)(1)), satisfying the minimum requirements for site evaluation activities as set forth in this Section. Site classification plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The plans shall be designed to:~~

- 1) Determine the full extent of soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. ~~remediation objectives for Tier 1 sites under 35 Ill. Adm. Code 742, Subpart E.~~ Such activities may include soil borings with sampling and analysis, groundwater monitoring wells with sampling and analysis, groundwater modeling, or a combination of these activities.
  - 2) Collect data sufficient to determine which, if any, of the applicable exposure routes under 35 Ill. Adm. Code 742 can be excluded pursuant to 35 Ill. Adm. Code 742, Subpart C. The data shall include, but is not limited to, site-specific data demonstrating the physical characteristics of soil and groundwater.
- ~~c)d)~~ A Licensed Professional Engineer or Licensed Professional Geologist (or, where appropriate, persons working under the direction of a Licensed Professional Engineer or Licensed Professional Geologist) shall conduct the site evaluation. The results of the site evaluation shall provide the basis for determining the site classification. The site classification shall be certified by the supervising Licensed Professional Engineer or Licensed Professional Geologist.
- ~~d)e)~~ As a part of each site evaluation, the Licensed Professional Engineer or Licensed Professional Geologist shall conduct physical soil classification and contaminant identification in accordance with the procedures at subsection (b) ~~(e)~~ of this Section.
- ~~e)f)~~ In addition to the plan required in subsection (b) ~~(e)~~ of this Section and prior to conducting any site evaluation activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a ÷
- 1) ~~— An application for payment of costs associated with eligible early action costs incurred pursuant to Subpart B of this Part, except as provided in subsection (f)(2) of this Section; and~~
  - 2) ~~— A site classification budget plan with the corresponding site classification plan. The budget plan, that~~ shall include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an a line item ~~estimate~~ estimate of all costs associated with the development, implementation and completion of the site evaluation activities required under subsection (b) ~~(e)~~ of this Section, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at

Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part.

- f)g) Sites shall be classified as No Further Action if the Licensed Professional Engineer or Licensed Professional Geologist determines that all applicable exposure routes can be excluded from further consideration pursuant to 35 Ill. Adm. Code 742, Subpart C.
- g)h) Sites shall be classified as High Priority if the Licensed Professional Engineer or Licensed Professional Geologist determines that any of the applicable exposure routes cannot be excluded from further consideration pursuant to 35 Ill. Adm. Code 742, Subpart C.
- h)i) Within 30 days after the completion of a site evaluation in accordance with this Section, the owner or operator shall submit to the Agency a site classification completion report addressing all applicable elements of the site evaluation. The report shall contain all maps, diagrams, and any other information required by this Section, ~~as well as the results or conclusions of all surveys and investigations and any documentation necessary to demonstrate those results or conclusions, and.~~ ~~The report shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format, shall be signed by the owner or operator, and shall contain the certification of a Licensed Professional Engineer or Licensed Professional Geologist of the site's classification as No Further Action or High Priority in accordance with this Section. For any site classified as High Priority, the report shall also contain the certification of a Licensed Professional Engineer or Licensed Professional Geologist as to which exposure routes, if any, have been excluded from further consideration under 35 Ill. Adm. Code 742, Subpart C. With the exception of Federal Landholding Entities subject to Section 732.703(d), the owner or operator must sign and submit, with the site classification completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:~~

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



- i)j) The Agency shall have the authority to review and approve, reject or require modification of any plan, budget plan, or report submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.
- j)k) Notwithstanding subsections ~~(b) (e)~~ and ~~(e) (f)~~ of this Section, prior to [effective date of this amendment] an owner or operator may proceed to conduct site evaluation activities in accordance with this Section prior to the submittal or approval of any otherwise required site classification plan or budget plan and associated budget plans. However, any such plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to ~~receiving payment or reimbursement~~ for any related costs or the issuance of a No Further Remediation Letter. On or after [effective date of this amendment], owners and operators desiring to proceed with the exclusion of human exposure pathways under 35 Ill. Adm. Code 742, Subpart C, shall elect pursuant to 35 Ill. Adm. Code 734.105 to proceed in accordance with 35 Ill. Adm. Code 734 and conduct site investigation and corrective action in accordance with that Part instead of meeting the requirements of this Section. If the owner or operator has obtained Agency approval of a Site Classification Work Plan and site classification completion report without submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing site evaluation activities.
- k)l) If, following the approval of any site classification plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended site classification plan or associated budget plan for review by the Agency. The Agency shall have the authority to review and approve, reject, or require modification of the amended plan or budget plan in accordance with the procedures contained in Subpart E of this Part.

BOARD NOTE: Owners or operators proceeding under subsection (a)(2) or ~~(j) (k)~~ of this Section are advised that they may not be entitled to full payment from the Fund and that applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter or reimbursement. Furthermore, owners or operators may only be reimbursed for one method of site classification. See Subpart F of this Part.

Owners and operators are also advised that the total payment from the Fund for all corrective action plans and associated budget plans submitted by an owner or operator shall not exceed the amounts set forth in Subpart H of this Part.

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

## **SUBPART D: CORRECTIVE ACTION**

### **Section 732.400      General**

- a) Following approval of the site evaluation and classification by the Agency pursuant to Subpart C of this Part and except as provided in subsection (b) or (c) of this Section, the owner or operator of an UST system subject to the requirements of this Part shall develop and submit a corrective action plan and perform corrective action activities in accordance with the procedures and requirements contained in this Subpart D.
- b) Owners or operators of sites classified in accordance with the requirements of Subpart C as No Further Action may choose to conduct remediation sufficient to satisfy the remediation objectives referenced in Section 732.408 of this Part.
- c) Owners or operators of sites classified in accordance with the requirements of Subpart C as Low Priority may choose to conduct remediation sufficient to satisfy the remediation objectives referenced in Section 732.408 of this Part. Any owner or operator choosing to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part shall so notify the Agency in writing prior to conducting such efforts. Upon completion of the remediation activities, owners or operators choosing to conduct remediation sufficient to satisfy the remediation objectives in Section 732.408 of this Part shall submit a corrective action completion report to the Agency demonstrating compliance with the required levels. Upon approval of the corrective action completion report by the Agency in accordance with Subpart E, a No Further Remediation Letter shall be issued by the Agency.

BOARD NOTE: Owners or operators proceeding under subsection (b) or (c) of this Section are advised that they may not be entitled to full payment from the Funder reimbursement. See Subpart F of this Part.

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

### **Section 732.402      No Further Action Site**

The owner or operator of a site that has been certified as a No Further Action site by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall have no additional remediation responsibilities beyond those

performed pursuant to Subpart B or C of this Part. If the Agency fails to approve, reject or modify the site classification completion report within 120 days after receipt of the completion report pursuant to Section 732.309 or Section 732.312, the site classification completion report is rejected by operation of law.

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

### **Section 732.403      Low Priority Site**

- a) The owner or operator of a site that has been certified as a Low Priority site by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Agency shall develop a groundwater monitoring plan and perform groundwater monitoring in accordance with the requirements of this Section.
- b) The owner or operator ~~of a site certified as Low Priority by a Licensed Professional Engineer and approved as such by the Agency~~ shall develop a groundwater monitoring plan designed to satisfy the following requirements at a minimum:
  - 1) Groundwater monitoring shall be conducted for a period of three years following the Agency's approval of the site classification, unless subsection (b)(6) or subsection (i) of this Section applies;
  - 2) Groundwater monitoring wells shall be placed at the property line or 200 feet from the UST system, whichever is closer. The wells shall be placed in a configuration designed to provide the greatest likelihood of detecting migration of groundwater contamination. In the event that a groundwater monitoring well cannot physically be installed at the property line or 200 feet from the UST system, whichever is closer, in accordance with this subsection (b)(2), the owner or operator shall request approval from the Agency to place the well further out, but at the closest practical point to the compliance point. The owner or operator may elect to place a monitoring well in a location that is closer to the UST system than the rule requires. However, once the election is made the owner or operator may not withdraw the election at a later time;
  - 3) Groundwater monitoring wells shall satisfy the requirements at subsections 732.307(j)(3) and (4) of this Part;
  - 4) During the first year of groundwater monitoring, samples from each well shall be collected and analyzed on a quarterly basis. During the second year of groundwater monitoring, samples from each well shall be collected and analyzed during the second and

fourth quarters. During the third and final year of groundwater monitoring, at a minimum, samples from each well shall be collected and analyzed in the fourth quarter;

- 5) To determine whether groundwater remediation quality standards ~~or Agency approved~~ objectives have been exceeded, samples for groundwater monitoring shall be collected and analyzed in accordance with the procedures set forth in Section 732.307(j)(5) of this Part for the applicable indicator contaminants determined pursuant to Section 732.310 of this Part;
  - 6) The owner or operator may use groundwater monitoring data that has been collected up to 3 years prior to the site being certified as Low Priority, if the data meets the requirements of subsections (b)(2) through (b)(5) of this Section. This data may be used to satisfy all or part of the three year period of groundwater monitoring required under this Section.
- c) Prior to the implementation of groundwater monitoring, except as provided under subsection (b)(6) of this Section, the owner or operator shall submit the groundwater monitoring plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a groundwater monitoring budget plan also shall be submitted to the Agency for review. ~~The groundwater monitoring budget plan shall include a line item estimate of all costs associated with the implementation and completion of the groundwater monitoring plan. Groundwater monitoring plans and budgets shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~
- d) Groundwater analysis results obtained pursuant to subsection (b) of this Section shall be submitted to the Agency within 30 days after the end of each annual sampling period ~~on forms prescribed and provided by the Agency~~, except as provided under subsection (b)(6) of this Section. Groundwater analysis data being used pursuant to subsection (b)(6) shall be submitted to the Agency as part of a Low Priority groundwater monitoring plan or the Low Priority groundwater monitoring completion report.
- 1) The information to be collected shall include, but not be limited to, the information set forth in Section 732.307(j)(5) of this Part.
  - 2) If at any time the groundwater analysis results indicate a confirmed exceedence of the applicable indicator contaminant groundwater remediation quality standards ~~or Agency approved~~ objectives as a result of the underground storage tank release of petroleum, the

owner or operator shall notify the Agency of the exceedence within 30 days and provide supporting documentation of the nature and extent of the exceedence.

- 3) Indicator contaminant groundwater ~~remediation objectives~~ quality standards shall be determined in accordance with Section 732.311 of this Part.
- e) Within 30 days after the completion of the Low Priority groundwater monitoring plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report in accordance with Section 732.409 of this Part. If there is no confirmed exceedence of applicable indicator contaminant objectives during the three year groundwater monitoring period, the report shall contain a certification to that effect by a Licensed Professional Engineer or Licensed Professional Geologist.
- f) The Agency shall review the groundwater monitoring completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval of the report by the Agency. If the owner or operator elects to appeal an Agency action to disapprove, modify, or reject by operation of law a Low Priority groundwater monitoring completion report, the Agency shall indicate to the Board in conjunction with such appeal whether it intends to reclassify the site as High Priority.
- g) If at any time groundwater analysis results indicate a confirmed exceedence of applicable indicator contaminant objectives, the Agency may reclassify the site as a High Priority site any time before the Agency's final approval of a Low Priority groundwater monitoring completion report. The Agency shall notify the owner or operator in writing if a site is reclassified. Notice of reclassification shall be by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. Any action by the Agency to reclassify the site as a High Priority site shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for in the review of permit decisions in Section 40 of the Act.
- h) The owner or operator of a Low Priority site reclassified to High Priority pursuant to subsection (g) of this Section shall develop and submit for Agency approval a High Priority corrective action plan satisfying the requirements of Section 732.404 of this Part within 120 days after receiving the notice of reclassification. If the owner or operator intends to seek payment reimbursement from the Fund, a corrective action budget

plan ~~budget~~ also shall be submitted within 120 days after receiving the notice of reclassification.

- i) As a result of the demonstration under Section 732.307(j)(6), the owner or operator of a site classified as Low Priority by a Licensed Professional Engineer or Licensed Professional Geologist shall prepare a report in accordance with Section 732.409 of this Part, that supports the issuance of a No Further Remediation Letter or reclassification of the site as a High Priority site. In the event the site is reclassified as a High Priority site, the owner or operator shall develop and submit for Agency approval a High Priority corrective action plan in accordance with subsection (h) Section 732.403(h) of this Section Part.

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

#### **Section 732.404      High Priority Site**

- a) The owner or operator of a site classified as High Priority ~~that has been certified by a Licensed Professional Engineer as a High Priority site and approved as such by the Agency~~ shall develop a corrective action plan and perform corrective action in accordance with the requirements of this Section. The purpose of the corrective action plan shall be to remediate or eliminate each of the criteria set forth in subsection (b) of this Section that caused the site to be classified as High Priority.
- b) The owner or operator ~~of a site certified as High Priority by a Licensed Professional Engineer and approved as such by the Agency or reclassified as High Priority by the Agency pursuant to Section 732.403(g)~~ shall develop a corrective action plan based on site conditions and designed to achieve the following as applicable to the site:
  - 1) For sites that have submitted a site classification report under Section 732.309, provide that:
    - A) After complete performance of the corrective action plan, applicable indicator contaminants identified in the groundwater investigation are not present in groundwater, as a result of the underground storage tank release, in concentrations exceeding the remediation objectives referenced in Section 732.408 of this Part at the property boundary line or 200 feet from the UST system, whichever is less:-
    - B) After complete performance of the corrective action plan, Class III special resource groundwater quality standards for

Class III special resource groundwater within 200 feet of the UST system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;

- C) After complete performance of the corrective action plan, remediation of contamination in natural or man-made exposure pathways as a result of the underground storage tank release has been conducted in accordance with 35 Ill. Adm. Code 742;
  - D) Threats to potable water supplies are remediated; and
  - E) Threats to bodies of surface water are remediated.
- 2) For sites that have submitted a site classification completion report under Section 732.312 of this Part, provide that, after complete performance of the corrective action plan, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 for any applicable exposure route not excluded from consideration under Section 732.312.
- c) The owner or operator is not required to perform corrective action on an adjoining or off-site property to meet the requirements of this Section, even where complete performance of the corrective action plan under subsection (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411 of this Part.
  - d) In developing the corrective action plan, if the Licensed Professional Engineer or Licensed Professional Geologist selects soil or groundwater remediation, or both, to satisfy any of the criteria set forth in subsection (b) of this Section, remediation objectives shall be determined in accordance with Section 732.408 of this Part. Groundwater monitoring wells shall satisfy the requirements of Section 732.307(j)(3) and (4) of this Part.
  - e) Except where provided otherwise pursuant to Section 732.312 of this Part, in developing the corrective action plan, additional investigation activities beyond those required for the site evaluation and classification may be necessary to determine the full extent of soil or groundwater contamination and of threats to human health or the environment. Such activities may include, but are not limited to, additional soil borings with sampling and analysis or additional groundwater monitoring wells with sampling and analysis. Such activities as are technically necessary and

consistent with generally accepted engineering practices may be performed without submitting a work plan or receiving prior approval from the Agency, and associated costs may be included in a High Priority corrective action budget plan. A description of these activities and the results shall be included as a part of the corrective action plan.

- 1) In addition to the potable water supply wells identified pursuant to Section 732.307(f) of this Part, the owner or operator shall extend the water supply well survey if soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey shall identify the following:
  - A) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
  - B) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants is located.
- 2) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances shall include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to Section 732.307(f)(1) of this Part or subsection (e)(1) of this Section. The additional investigation may include, but shall not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties



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

- f) The owner or operator shall submit the corrective action plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a corrective action ~~budget plan budget~~ also shall be submitted to the Agency for review. ~~The corrective action plan budget shall include a line item estimate of all costs associated with the implementation and completion of the corrective action plan. The corrective action plan and corrective action plan budget shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~
- g) Within 30 days after completing the performance of the High Priority corrective action plan, the owner or operator shall submit to the Agency a corrective action completion report in accordance with Section 732.409 of this Part.
- h) Within 120 days, the Agency shall review the corrective action completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval by the Agency.

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

#### **Section 732.405      Plan Submittal and Review**

- a) Prior to conducting any corrective action activities pursuant to this Subpart D, the owner or operator shall submit to the Agency a Low Priority groundwater monitoring plan or a High Priority corrective action plan satisfying the minimum requirements for such activities as set forth in Section 732.403 or 732.404 of this Part, as applicable. ~~Groundwater monitoring and corrective action plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~
- b) In addition to the plans required in subsections (a), (e), and (f) of this Section and prior to conducting any groundwater monitoring or corrective action activities, any owner or operator intending to seek payment from the Fund shall submit to the Agency a groundwater monitoring or corrective action budget plan with the corresponding groundwater monitoring or corrective action plan. Such budget plans shall include, but not be limited to, a copy of the eligibility and deductibility determination

of the OSFM and ~~an a line item~~ estimate of all costs associated with the development, implementation and completion of the applicable activities, excluding handling charges. Formulation of budget plans should be consistent with the eligible and ineligible costs listed at Sections 732.605 and 732.606 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget plan the Agency may require a comparison between the costs of the proposed method of remediation and other methods of remediation. ~~Groundwater monitoring and corrective action budget plans shall be submitted on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.~~

- c) The Agency shall have the authority to review and approve, reject or require modification of any plan or budget plan submitted pursuant to this Section in accordance with the procedures contained in Subpart E of this Part.
- d) Notwithstanding subsections (a), (b), (e), and (f) of this Section and except as provided at Section 732.407 of this Part, an owner or operator may proceed to conduct Low Priority groundwater monitoring or High Priority corrective action activities in accordance with this Subpart D prior to the submittal or approval of an otherwise required groundwater monitoring plan or budget plan or corrective action plan or budget plan. However, any such plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in ~~this Subpart E of this Part~~ prior to payment ~~or reimbursement~~ for any related costs or the issuance of a No Further Remediation Letter. ~~If the owner or operator has obtained Agency approval of a Low Priority groundwater monitoring plan and a Low Priority groundwater monitoring completion report, or has obtained Agency approval of a High Priority corrective action plan and a High Priority corrective action completion report, without the submittal of a budget plan pursuant to subsection (b) of this Section, the owner or operator may, as an alternative to submitting a budget plan, submit, on a form provided by the Agency and attached to the application for payment, the actual costs incurred in performing the applicable activities required, for a Low Priority site, in Section 732.403 of this Part or, for a High Priority site, in Section 732.404 of this Part.~~

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

- e) If, following approval of any groundwater monitoring plan, corrective action plan or associated budget plan, an owner or operator determines

that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended groundwater monitoring plan, corrective action plan or associated budget plan for review by the Agency. The Agency shall review and approve, reject, or require modifications of the amended plan or budget plan in accordance with the procedures contained in Subpart E of this Part.

- f) If the Agency determines any approved corrective action plan has not achieved applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit a revised corrective action plan. If the owner or operator intends to seek payment from the Fund, the owner or operator must also submit a revised budget plan. Any action by the Agency to require a revised corrective action plan pursuant to this subsection (f) shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all groundwater monitoring plans and associated budget plans, and for all corrective action plans and associated budget plans, submitted by an owner or operator shall not exceed the amounts set forth in Subpart H of this Part.

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

#### **Section 732.406      Deferred Corrective Action; Priority List for Payment**

- a) An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the underground storage tank fund may elect to defer site classification, low priority groundwater monitoring, or remediation activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met. ~~An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the underground storage tank fund may elect to defer site classification, low priority groundwater monitoring, or remediation activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met [415 ILCS 5/57.8(b)].~~
- 1) Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.

- 2) ~~The Agency shall monitor the availability of funds to determine whether sufficient resources exist to provide payment of approved budget plans and shall provide notice of insufficient funds to owners or operators of the availability of funds in accordance with Section 732.503(g) of this Part. Funds shall not be deemed available for owners or operators electing to defer corrective action so long as there are owners or operators on the priority list established pursuant to Section 732.603(d) of this Part awaiting forwarding of vouchers to the Office of the State Comptroller.~~
- 3) Owners and operators shall submit elections to defer low priority groundwater monitoring or high priority corrective action activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- 4) The Agency shall review elections to defer low priority groundwater monitoring or high priority corrective action activities to determine whether the requirements of subsection (b) of this Section are met. The Agency shall notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.
- A) The Agency shall mail notices of final action on an election to defer by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.
- B) Any action by the Agency to reject an election, or the rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.
- 5)3) Upon approval of an election receiving written notification that an owner or operator elects to defer low priority groundwater monitoring or high priority corrective action activities corrective action until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment and move up based solely on the date the Agency receives a complete

~~the written election of deferral, with the earliest dates having the highest priority. The Agency's record of the date of receipt shall be deemed conclusive, unless a contrary date is proven by a dated, signed receipt from registered or certified mail.~~

- ~~6)4)~~ As funds become available the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the owner's or operator's site. After such notification the owner or operator shall commence corrective action.
- ~~7)5)~~ Authorization of payment of encumbered funds for deferred low priority groundwater monitoring or high priority corrective action ~~corrective action~~ activities shall be approved in accordance with the requirements of Subpart F of this Part.
- ~~8)6)~~ The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred site classification pursuant to Section 732.306 of this Part with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.

b) An owner or operator who elects to defer ~~site classification, low priority groundwater monitoring or high priority corrective action, or remediation~~ activities under subsection (a) of this Section shall submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:

- ~~1)~~ The Agency has approved the owner's or operator's low priority groundwater monitoring or high priority corrective action budget plan;
- ~~2)~~ The owner or operator has been determined eligible to seek payment from the Fund;
- ~~3)4)~~ The early action requirements of Subpart B of this Part have been met; ~~and~~
- ~~4)~~ Groundwater contamination does not exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1

remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied shall include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

~~2) The release does not pose a threat to human health or the environment through migratory pathways following the investigation of migration pathways requirements of Section 732.307(g) of this Part.~~

c) An owner or operator may, at any time, withdraw the election to defer low priority groundwater monitoring or high priority corrective action activities. ~~commence corrective action upon the availability of funds at any time.~~ The owner or operator shall notify the Agency ~~shall be notified~~ in writing of the withdrawal. Upon such withdrawal, the owner or operator shall proceed with corrective action in accordance with the requirements of this Part.

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

## **Section 732.407      Alternative Technologies**

a) An owner or operator may choose to use an alternative technology for corrective action in response to a release of petroleum at a High Priority site. Corrective action plans proposing the use of alternative technologies shall be submitted to the Agency in accordance with Section 732.405 of this Part. In addition to the requirements for corrective action plans contained in Section 732.404, the owner or operator who seeks approval of an alternative technology shall submit documentation along with the corrective action plan demonstrating that:

1) The proposed alternative technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and all corrective action remediation objectives necessary to comply with the Act and regulations and to protect human health or the environment;

- 2) The proposed alternative technology will not adversely affect human health or the environment;
  - 3) The owner or operator will obtain all Agency permits necessary to legally authorize use of the alternative technology;
  - 4) The owner or operator will implement a program to monitor whether the requirements of subsection (a)(1) of this Section have been met; and
  - 5) Within one year from the date of Agency approval the owner or operator will provide to the Agency monitoring program results establishing whether the proposed alternative technology will successfully achieve compliance with the requirements of subsection (a)(1) of this Section and any other applicable regulations. The Agency may require interim reports as necessary to track the progress of the alternative technology. The Agency will specify in the approval when those interim reports shall be submitted to the Agency.
- b) An owner or operator intending to seek payment ~~or reimbursement~~ for costs associated with the use of an alternative technology shall submit a corresponding budget plan in accordance with Section 732.405 of this Part. In addition to the requirements for corrective action budget plans at Section 732.404 of this Part, the budget plan must demonstrate that the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies.
- c) If an owner or operator has received approval of a corrective action plan and associated budget plan from the Agency prior to implementing the plan and the alternative technology fails to satisfy the requirements of subsection (a)(1) or (a)(2) of this Section, such failure shall not make the owner or operator ineligible to seek payment ~~or reimbursement~~ for the activities associated with the subsequent performance of a corrective action using conventional technology. However, in no case shall the total payment ~~or reimbursement~~ for the site exceed the statutory maximums. Owners or operators implementing alternative technologies without obtaining pre-approval shall be ineligible to seek payment ~~or reimbursement~~ for the subsequent performance of a corrective action using conventional technology.
- d) The Agency may require remote monitoring of an alternative technology. The monitoring may include, but shall not be limited to, monitoring the alternative technology's operation and progress in achieving the applicable remediation objectives.

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

**Section 732.409      Groundwater Monitoring and Corrective Action Completion Reports**

- a) Within 30 days after completing the performance of a Low Priority groundwater monitoring plan or High Priority corrective action plan, the owner or operator shall submit to the Agency a groundwater monitoring completion report or a corrective action completion report.
  - 1) The Low Priority groundwater monitoring completion report shall include, but not be limited to, a narrative describing the implementation and completion of all elements of the groundwater monitoring plan and the procedures used for collection and analysis of samples, analytical results in tabular form, actual analytical results, laboratory certification and any other information or documentation relied upon by the Licensed Professional Engineer or Licensed Professional Geologist in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site.
  - 2) The High Priority corrective action completion report shall include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the corrective action plan and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. Documentation of any water supply well survey conducted pursuant to Section 732.404(e) of this Part shall include, but not be limited to, the following:
    - A) One or more maps, to an appropriate scale, showing the following:
      - i) The location of the community water supply wells and other potable water supply wells identified pursuant to Section 732.404(e) of this Part, and the setback zone for each well;



- ii) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to Section 732.404(e) of this Part;
    - iii) The current extent of groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
    - iv) The modeled extent of groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.
  - B) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to Section 732.404(e) of this Part;
  - C) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to Section 732.404(e) of this Part, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and
  - D) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of Section 732.404(e) of this Part and that the documentation submitted pursuant to this Section includes the information obtained as a result of the survey.
- 3) A High Priority corrective action completion report shall demonstrate the following:
- A) For sites submitting a site classification report under Section 732.309 of this Part:
    - i) Applicable indicator contaminant groundwater objectives are not exceeded at the property boundary line or 200 feet from the UST system, whichever is less, as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

- ii) Class III resource groundwater quality standards for Class III special use resource groundwater within 200 feet of the UST system are not exceeded as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;
- iii) The release of petroleum does not threaten human health or human safety due to the presence or migration, through natural or manmade pathways, of petroleum in concentration sufficient to harm human health or human safety or to cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;
- iv) The release of petroleum does not threaten any surface water body; and
- v) The release of petroleum does not threaten any potable water supply.

B) For sites submitting a site classification completion report under Section 732.312 of this Part, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 of this Part for any applicable exposure route not excluded from further consideration under Section 732.312 of this Part.

- b) ~~The applicable report shall be submitted on forms prescribed and provided by the Agency, and, if specified by the Agency by written notice, in an electronic format, shall be signed by the owner or operator, and shall be accompanied by a certification from a Licensed Professional Engineer, in accordance with subsection (a) of this Section, that the information presented in the applicable report is accurate and complete, that groundwater monitoring or corrective action have been completed in accordance with the requirements of the Act and this Subpart D, and that no further remediation is required at the site. With the exception of Federal Landholding Entities subject to Section 732.703(d), the owner or must sign and submit, with the corrective action completion report, a form prescribed and provided by the Agency addressing ownership of the site. Where the owner or operator owns the site, the owner or operator must so indicate on the form. Where the owner or operator either does not own or does not solely own the site, the owner or operator must provide, on the form, a certification by original signature of the title holder(s) of record~~

~~for the remediation site or each portion thereof, or the agent(s) of such person(s), stating as follows:~~

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

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

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

#### **Section 732.411      Off-site Access**

- a) An owner or operator seeking to comply with the best efforts requirements of Section 732.404(c) of this Part must demonstrate compliance with the requirements of this Section.
- b) In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:
- 1) Citation to Title XVI Section 57 of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;
  - 2) That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c ~~22.2(e)~~ of the Act;
  - 3) That, in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by the investigation;
  - 4) If contamination results from a release by the owner or operator, the owner or operator will conduct all associated remediation at its own expense;

- 5) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release; and
  - 6) A reasonable time to respond to the letter, not less than 30 days.
- c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the corrective action completion report, the following documentation:
- 1) A sworn affidavit, signed by the owner or operator identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and
  - 2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.
- d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:
- 1) The physical and chemical characteristics, including toxicity, persistence and potential for migration, of applicable indicator contaminants at the property boundary line;
  - 2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;
  - 3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;
  - 4) The potential effects of residual contamination on nearby surface water and groundwater;
  - 5) The proximity, quality and current and future uses of nearby surface water and groundwater, including ~~setback zones and~~ regulated recharge areas, wellhead protection areas, and setback zones of potable water supply wells;
  - 6) Any known or suspected natural or man-made migration pathways existing in or near the suspected area of off-site contamination;

- 7) The nature and use of the part of the off-site property that is the suspected area of contamination;
  - 8) Any existing on-site engineered barriers or institutional controls that might have an impact on the area of suspected off-site contamination, and the nature and extent of such impact; and
  - 9) Any other applicable information assembled in compliance with this Part.
- e) The Agency shall issue a No Further Remediation Letter to an owner or operator subject to this Section and otherwise entitled to such issuance only if the owner or operator has, in accordance with this Section, either completed any requisite off-site corrective action or demonstrated to the Agency's satisfaction an inability to obtain off-site access despite best efforts.
  - f) The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the property boundary even where off-site access is denied.

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

#### **SUBPART E: REVIEW OF SELECTION AND REVIEW PROCEDURES FOR PLANS, BUDGET PLANS, AND REPORTS**

##### **Section 732.500      General**

- a) — The Agency shall have the authority to review any plan, budget plan, or report, including any amended plan, budget plan, or report, submitted pursuant to this Part. All such reviews shall be subject to the procedures set forth in the Act and this Subpart E.
- b) — For purposes of this Part, “plan” shall mean:
  - 1) — ~~Any physical soil classification or groundwater investigation plan or associated budget plan submitted pursuant to Subpart C of this Part;~~
  - 2) — ~~Any groundwater monitoring plan or associated budget plan submitted pursuant to Subpart D of this Part; or~~
  - 3) — ~~Any site specific corrective action plan or associated budget plan submitted pursuant to Subpart D of this Part.~~

c) — ~~For purposes of this Part, “report” shall mean:~~

- 1) — ~~Any early action report or free product removal report submitted pursuant to Subpart B of this Part;~~
- 2) — ~~Any site classification completion report submitted pursuant to Subpart C;~~
- 3) — ~~Any annual groundwater monitoring report submitted pursuant to Subpart D of this Part;~~
- 4) — ~~Any groundwater monitoring completion report submitted pursuant to Subpart D of this Part; or~~
- 5) — ~~Any corrective action completion report submitted pursuant to Subpart D of this Part or Section 732.300(b) or 732.400(b).~~

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

#### **Section 732.501      Submittal of Plans or Reports (Repealed)**

~~All plans or reports shall be made on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. Plans or reports shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.~~

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

#### **Section 732.502      Completeness Review (Repealed)**

- a) — ~~The Agency shall review for completeness all plans submitted pursuant to this Part 732. The completeness review shall be sufficient to determine whether all information and documentation required by the Agency for the particular plan are present. The review shall not be used to determine the technical sufficiency of a particular plan or of the information or documentation submitted along with the plan.~~
- b) — ~~The Agency shall have 45 days from the receipt of a plan to finish the completeness review. If the completeness review finds that the plan is complete, the Agency shall so notify the owner or operator in writing and proceed, where appropriate, to approval, rejection or modification of the substantive portions of the plan. If the completeness review finds that the~~

~~plan is incomplete, the Agency shall notify the owner or operator in writing. The notification shall include an explanation of the specific type of information or documentation that the Agency deems necessary to complete the plan.~~

- ~~1) — The Agency may, to the extent consistent with Agency deadlines, provide the owner or operator with a reasonable opportunity to correct deficiencies prior to a final determination on completeness.~~
  - ~~2) — The Agency shall mail notice of incompleteness by registered or certified mail, post marked with a date stamp and with return receipt requested. The decision shall be deemed to have taken place on the post marked date that such notice is mailed.~~
  - ~~3) — All time limits for Agency final action on a plan or report shall be calculated from the date the Agency receives a plan or report. Receipt of an amended plan or report, after a notice of incompleteness, shall restart all time limits for Agency final action on that plan or report.~~
- e) — ~~Any budget plan submitted must be preceded or accompanied by an associated technical plan in order for the budget plan to be deemed complete.~~
- d) — ~~The failure of the Agency to notify an owner or operator within 45 days that a plan is incomplete shall result in the plan being deemed complete. Any action by the Agency pursuant to this Section shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for in the review of permit decisions in Section 40 of the Act.~~

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

### **Section 732.503      ~~Full~~ Review of Plans, Budget Plans, or Reports**

- a)      The Agency may review ~~In addition to the completeness review for plans conducted pursuant to Section 732.502 of this Part, the Agency may conduct a full review of plans or reports selected in accordance with the requirements of Section 732.504 of this Part. A full review may include any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any the plan, budget plan, or report selected for review. The Agency may also full review also may include the review of any other plans, budget plans, or reports submitted in conjunction with the site.~~

- b) The Agency shall have the authority to approve, reject or require modification of any plan, budget plan, or report it reviews ~~that has been given a full review~~. The Agency shall notify the owner or operator in writing of its final action on any such plan, budget plan, or report, except in the case of 20 day, 45 day or free product removal reports, in which case no notification is necessary. Except as provided in subsections (c) and (d) ~~and (e)~~ of this Section, if the Agency fails to notify the owner or operator of its final action on a plan, budget plan, or report within 120 days after the receipt of a plan, budget plan, or report, the owner or operator may deem the plan, budget plan, or report rejected by operation of law. If the Agency rejects a plan, budget plan, or report or requires modifications, the written notification shall contain the following information, as applicable:
- 1) An explanation of the specific type of information, if any, that the Agency needs to complete the ~~full~~ review;
  - 2) An explanation of the Sections of the Act or regulations that may be violated if the plan, budget plan, or report is approved; and
  - 3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the plan, budget plan, or report is approved.
- c) For High Priority corrective action plans submitted by owners or operators not seeking payment reimbursement from the Fund, the Agency may delay final action on such plans until 120 days after it receives the corrective action completion report required pursuant to Section 732.409 of this Part.
- d) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete plan, budget plan, or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 60 days.
- e) The Agency shall mail notices of final action on plans, budget plans, or reports by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed.
- f) Any action by the Agency to reject or require modification, or rejection by failure to act, of a plan, budget plan, or report shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. ~~If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, a revised plan or report shall be submitted to the Agency within 35 days after the receipt of the Agency's written~~



notification. If no revised plan or report is submitted to the Agency or no appeal to the Board is filed within the specified time frames, the plan or report shall be deemed approved as modified by the Agency. If any plan or report is rejected by operation of law, in lieu of an immediate appeal to the Board the owner or operator may either resubmit the plan or report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decisions in Section 40 of the Act.

g) ~~Notification of Selection for Full Review~~

1) ~~Owners or operators submitting plans shall be notified by the Agency within 60 days after the date the plan is deemed complete if the plan has not been selected for full review in accordance with Section 732.504 of this Part. Failure of the Agency to so notify the owner or operator shall mean that the plan has been selected for full review. Notification by the Agency that the plan has not been selected for full review shall constitute approval of the plan.~~

2) ~~Owners or operators submitting reports shall be notified by the Agency within 60 days after the receipt of the report if the report has not been selected for full review in accordance with Section 732.504 of this Part, except in the case of 20 day, 45 day or free product reports, in which case no notification of selection is necessary. Failure of the Agency to so notify the owner or operator shall mean that the report has been selected for full review. Notification by the Agency that the report has not been selected for full review shall constitute approval of the report.~~

3) ~~Notice shall be sent and the date of notification shall be computed in accordance with subsection (e) of this Section.~~

g)h) In accordance with Sections 732.306 and 732.406 of this Part, upon the approval of any budget plan by the Agency, the Agency shall include as part of the final notice to the owner or operator a notice of insufficient funds if the Fund does not contain sufficient funds to provide payment of the total costs approved in the budget plan, ~~statement of whether or not the Fund contains sufficient resources in order to immediately commence the approved measures.~~

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

**Section 732.504      Selection of Plans or Reports for Full Review (Repealed)**

a) ~~The Agency shall select for full review a reasonable number of each type of plan or report. The number of plans or reports selected for full review~~

shall be determined by the Agency based on the resources available to the Agency, the potential environmental impact at the site, the financial and technical complexity of the plan or report, and experience with prior reviews. To assure consistency and fairness in the selection process, the Agency shall follow a selection process that has the following goals:

- 1) — A full technical and financial review of every “High Priority” corrective action plan, associated budget plan, and completion report submitted pursuant to Subpart D of this Part;
- 2) — A full technical and financial review of every corrective action plan, associated budget plan, and completion report submitted pursuant to Sections 732.300(b) or 732.400© of this Part;
- 3) — A full technical review of approximately 20% of the site classification reports submitted pursuant to Subpart C of this Part;
- 4) — Site Classification Plans
  - A) — A full technical review of any site classification plan (including physical soil classification and groundwater investigation plans) for which the associated site classification report was selected for full review or that has an associated budget plan exceeding the typical cost for such plans as determined by the Agency;
  - B) — A full financial review of any site classification budget plan exceeding the typical cost for such plans as determined by the Agency;
- 5) — “Low Priority” Groundwater Monitoring Plans
  - A) — A full technical review of any “Low Priority” groundwater monitoring plan that has an associated budget plan exceeding the typical cost for such plans as determined by the Agency;
  - B) — A full financial review of any “Low Priority” groundwater monitoring budget plan exceeding the typical cost for such plans as determined by the Agency;
- 6) — A full technical review of any “Low Priority” annual groundwater sampling and analysis report or any groundwater monitoring completion report submitted pursuant to Subpart D of this Part;

- ~~7) — A full technical review of any 20-day report, 45-day report, or free-product report submitted pursuant to Subpart B of this Part in conjunction with the review of another plan or report selected in accordance with this Section.~~
- ~~b) — The Agency may conduct a full review of any plan or report not selected in accordance with the provisions of this Section if the Agency has reason to believe that such review is necessary in conjunction with the review of another plan or report selected for that site.~~
- ~~c) — Notwithstanding any other limitations on reviews, the Agency may conduct a full technical review on any plan or report identified in this Section that concerns a site for which an investigation has been or may be initiated pursuant to Section 732.105 of this Part.~~
- ~~d) — Agency decisions on whether or not to select a plan or report for full review shall not be subject to appeal.~~

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

#### **Section 732.505      Standards for Review of Plans, Budget Plans, or Reports**

- a) A full technical review shall consist of a detailed review of the steps proposed or completed to accomplish the goals of the plan and to achieve compliance with the Act and regulations. Items to be reviewed, if applicable, shall include, but not be limited to, number and placement of wells and borings, number and types of samples and analysis, results of sample analysis, and protocols to be followed in making determinations. The overall goal of the technical review for plans shall be to determine if the plan is sufficient to satisfy the requirements of the Act and regulations and has been prepared in accordance with generally accepted engineering practices or principles of professional geology. The overall goal of the technical review for reports shall be to determine if the plan has been fully implemented in accordance with generally accepted engineering practices or principles of professional geology, if the conclusions are consistent with the information obtained while implementing the plan, and if the requirements of the Act and regulations have been satisfied.
- b) If the Licensed Professional Engineer or Licensed Professional Geologist certifies that there is no evidence that, through natural or manmade pathways, migration of petroleum or vapors threaten human health or human safety or may cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces, the Licensed Professional Engineer's or Licensed Professional Geologist's certification to that effect shall be presumed correct unless the Agency's review reveals objective evidence to the contrary.

- c) A ~~full~~ financial review shall consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed shall include, but not be limited to, costs associated with any materials, activities or services that are included in the budget plan. The overall goal of the financial review shall be to assure that costs associated with materials, activities and services shall be reasonable, shall be consistent with the associated technical plan, shall be incurred in the performance of corrective action activities, ~~and shall not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and shall not exceed the maximum payment amounts set forth in Subpart H of this Part.~~

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

## **SUBPART F: PAYMENT FROM THE FUND ~~OR REIMBURSEMENT~~**

### **Section 732.601      Applications for Payment**

- a) An owner or operator seeking payment from the Fund shall submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The owner or operator may submit an application for partial payment or final payment ~~for materials, activities or services contained in an approved budget plan.~~ Costs for which payment is sought must be approved in a budget plan, provided, however, that no budget plan shall be required for early action activities conducted pursuant to Subpart B of this Part other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. ~~An application for payment also may be submitted for materials, activities or services for early action conducted pursuant to Subpart B of this Part and for which no budget plan is required.~~
- b) A complete application for payment shall consist of the following elements:
- 1) A certification from a Licensed Professional Engineer or a Licensed Professional Geologist acknowledged by the owner or operator that the work performed has been in accordance with a technical plan approved by the Agency or, for early action activities, in accordance with Subpart B of this Part;
  - 2) A statement of the amounts approved in the corresponding budget plan and the amounts actually sought for payment along with a

certified statement by the owner or operator that the amounts so sought have been expended in conformance with the elements of a budget plan approved by the Agency;

- 3) A copy of the OSFM or Agency eligibility and deductibility determination;
  - 4) Proof that approval of the payment requested will not exceed the limitations set forth in the Act and Section 732.604 of this Part;
  - 5) A federal taxpayer identification number and legal status disclosure certification;
  - 6) A private insurance coverage ~~Private Insurance Coverage~~ form;
  - 7) A minority/women's business ~~Minority/Women's Business Usage~~ form; ~~and~~
  - 8) Designation ~~designation~~ of the address to which payment and notice of final action on the application for payment are to be sent;
  - 9) An accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed;
  - 10) Proof of payment of subcontractor costs for which handling charges are requested; and
  - 11) If the owner or operator requests costs for one or more quantitative analyses of samples required to be certified pursuant to Section 732.106 of this Part, a copy of the accredited laboratory certification required pursuant to that Section.
- c) The address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change in address.
- d) Applications for payment and change of address forms shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.
- e) Applications for partial or final payment may be submitted no more frequently than once every 90 days.

- f) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part, other than costs associated with free product removal activities conducted more than 45 days after confirmation of the presence of free product, or applications for payment/budget plans submitted pursuant to Sections 732.305(e), 732.312(l), 732.405(e), and 732.405(f) of this Part, in no case shall the Agency review an application for payment unless there is an approved budget plan on file corresponding to the application for payment.
- g) In no case shall the Agency authorize payment to an owner or operator in amounts greater than the amounts approved by the Agency in a corresponding budget plan. Revised cost estimates or increased costs resulting from revised procedures must be submitted to the Agency for review in accordance with Subpart E of this Part using amended budget plans as required under in accordance with Section 732.305(e) or 732.405(e) of this Part.
- h) Applications for payment of costs associated with site classification may not be submitted prior to approval or modification of the site classification completion report.
- i) Applications for payment of costs associated with site classification, low priority groundwater monitoring, or high priority corrective action that was deferred pursuant to Section 732.306 or 732.406 of this Part may not be submitted prior to approval or modification of the corresponding site classification completion report, low priority groundwater monitoring completion report, or high priority corrective action completion report.
- j) All budget plans, budget plan amendments, and applications for payment of corrective action costs shall be submitted no later than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. For releases for which the Agency issued a No Further Remediation Letter prior to the effective date of this subsection (j), all budget plans, budget plan amendments, and applications for payment shall be submitted no later than one year after the effective date of this subsection (j).

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

## **Section 732.602      Review of Applications for Payment**

- a) At a minimum, the Agency shall review each application for payment submitted pursuant to this Part to determine the following:

- 1) whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part;
- 2) for costs incurred pursuant to Subpart B of this Part, other than free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought are reasonable, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part;
- 3) for costs incurred pursuant to Subpart C of this Part and free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought exceed the amounts approved in the corresponding budget plan, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part and a plan approved by the Agency; and
- 4) Whether the amounts sought are eligible for payment.

~~The Agency shall conduct a review of any application for payment submitted pursuant to this Part. Each application for payment shall be reviewed to determine whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part and whether the amounts sought for payment have been certified in accordance with Section 732.601(b)(2) of this Part as equal to or less than the amounts approved in the corresponding budget plan. Any action by the Agency pursuant to this subsection shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.~~

- b) ~~The Agency may conduct a full review of any application for payment:~~
- 1) ~~If the amounts sought for payment exceed the amounts approved in the corresponding budget plan;~~
  - 2) ~~If the Agency has reason to believe that the application for payment is fraudulent; or~~
  - 3) ~~If the application for payment includes costs for early action activities conducted pursuant to Subpart B of this Part and either of the following circumstances exists:~~
    - A) ~~The application for payment is solely for early action costs that have not been approved as part of a prior budget plan;~~~~or~~

~~B) — The application for payment includes early action costs that have not been approved as part of a prior budget plan, except that only the portion of the application for the unapproved early action costs may be given a full review.~~

- ~~b)e)~~ When conducting a full review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) ~~subsection (d)~~ of this Section.
- ~~c)d)~~ ~~A full review of an application for payment shall be sufficient to determine which line items contained in the application for payment have caused the application for payment to exceed the corresponding approved budget plan pursuant to subsection (b)(1) of this Section, which line items, if any, are ineligible for payment pursuant to subsection (b)(2) or (b)(3) of this Section, and whether there is sufficient documentation to demonstrate that line items have been completed in accordance with a plan approved by the Agency. The Agency's A full review may include review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The full review also may include the review of any plans, budget plans, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.~~
- ~~d)e)~~ Following a review, the Agency shall have the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency shall notify the owner or operator in writing of its final action on any such application for payment. Except as provided in subsection (e) ~~subsection (f)~~ of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law. If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification shall contain the following information, as applicable:
- 1) An explanation of the specific type of information, if any, that the Agency needs to complete the full review;
  - 2) An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and



- 3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.
- e)f) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete application for payment by submitting written notice to the Agency prior to the applicable deadline. Any waiver shall be for a minimum of 30 days.
  - f)g) The Agency shall mail notices of final action on applications for payment by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the post marked date that such notice is mailed. The Agency shall mail notices of final action on applications for payment, and direct the Comptroller to mail payments to the owner or operator, at the address designated for receipt of payment in the application for payment or on a change of address form, provided by the Agency, submitted subsequent to submittal of the application for payment.
  - g)h) Any action by the Agency to deny payment for an application for payment or portion thereof or to require modification shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. ~~If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, a revised application for payment shall be submitted to the Agency within 35 days after the receipt of the Agency's written notification. If no revised application for payment is submitted to the Agency or no appeal to the Board is filed within the specified time frames, the application for payment shall be deemed approved as modified by the Agency and payment shall be authorized in the amount approved.~~

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

### **Section 732.603      Authorization for Payment; Priority List**

- a) Within 60 days after notification to an owner or operator that the application for payment or a portion thereof has been approved by the Agency or by operation of law, the Agency shall forward to the Office of the State Comptroller in accordance with subsection (d) or (e) of this Section a voucher in the amount approved. If the owner or operator has filed an appeal with the Board of the Agency's final decision on an application for payment, the Agency shall have 60 days after the final resolution of the appeal to forward to the Office of the State Comptroller a voucher in the amount ordered as a result of the appeal. Notwithstanding the time limits imposed by this Section, the Agency shall not forward

vouchers to the Office of the State Comptroller until sufficient funds are available to issue payment.

- b) The following rules shall apply regarding deductibles:
  - 1) Any deductible, as determined by the OSFM or the Agency, shall be subtracted from any amount approved for payment by the Agency or by operation of law or ordered by the Board or courts;
  - 2) Only one deductible shall apply per occurrence;
  - 3) If multiple incident numbers are issued for a single site in the same calendar year, only one deductible shall apply for those incidents, even if the incidents relate to more than one occurrence; and
  - 4) Where more than one deductible determination is made, the higher deductible shall apply.
- c) The Agency shall instruct the Office of the State Comptroller to issue payment to the owner or operator at the address designated in accordance with ~~Sections~~ Section 732.601(b)(8) or (c) of this Part. In no case shall the Agency authorize the Office of the State Comptroller to issue payment to an agent, designee, or entity that ~~who~~ has conducted corrective action activities for the owner or operator.
- d) For owners or operators who have deferred site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, payment shall be authorized from funds encumbered pursuant to Section 732.306(a)(6) or 732.406(a)(6) ~~732.306(a)(4) or 732.406(a)(4)~~ of this Part upon approval of the application for payment by the Agency or by operation of law.
- e) For owners or operators not electing to defer site classification or corrective action in accordance with Section 732.306 or 732.406 of this Part, the Agency shall form a priority list for payment for the issuance of vouchers pursuant to subsection (a) of this Section.
  - 1) All such applications for payment shall be assigned a date that is the date upon which the complete application for partial or final payment was received by the Agency. This date shall determine the owner's ~~owner~~ or operator's priority for payment in accordance with subsection (e)(2) of this Section, with the earliest dates receiving the highest priority.
  - 2) Once payment is approved by the Agency or by operation of law or ordered by the Board or courts, the application for payment

shall be assigned priority in accordance with subsection (e)(1) of this Section. The assigned date shall be the only factor determining the priority for payment for those applications approved for payment.

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

#### **Section 732.604      Limitations on Total Payments**

a)      Limitations per occurrence:

- 1)      The Agency shall not approve any payment from the Fund to pay an owner or operator for costs of corrective action incurred by such owner or operator in an amount in excess of \$1,000,000 per occurrence. ~~THE AGENCY SHALL NOT APPROVE ANY PAYMENT FROM THE FUND TO PAY AN OWNER OR OPERATOR FOR COSTS OF CORRECTIVE ACTION INCURRED BY SUCH OWNER OR OPERATOR IN AN AMOUNT IN EXCESS OF \$1,000,000 PER OCCURRENCE.~~ (Section 57.8(g) of the Act)
- 2)      The Agency shall not approve any payment from the Fund to pay an owner or operator for costs of indemnification of such owner or operator in an amount in excess of \$1,000,000 per occurrence. ~~THE AGENCY SHALL NOT APPROVE ANY PAYMENT FROM THE FUND TO PAY AN OWNER OR OPERATOR FOR COSTS OF INDEMNIFICATION OF SUCH OWNER OR OPERATOR IN AN AMOUNT IN EXCESS OF \$1,000,000 PER OCCURRENCE.~~ (Section 57.8(g) of the Act)

b)      Aggregate limitations:

- 1)      Notwithstanding any other provision of this Part 732, the Agency shall not approve payment to an owner or operator from the Fund for costs of corrective action or indemnification incurred during a calendar year in excess of the following amounts based on the number of petroleum underground storage tanks owned or operated by such owner or operator in Illinois:

<u>Amount</u>	<u>Number of Tanks</u>
<u>\$1,000,000</u>	<u>fewer than 101</u>
<u>\$2,000,000</u>	<u>101 or more</u>

~~NOTWITHSTANDING ANY OTHER PROVISION OF THIS Part 732, THE AGENCY SHALL NOT APPROVE PAYMENT~~

~~TO AN OWNER OR OPERATOR FROM THE FUND FOR COSTS OF CORRECTIVE ACTION OR INDEMNIFICATION INCURRED DURING A CALENDAR YEAR IN EXCESS OF THE FOLLOWING AMOUNTS BASED ON THE NUMBER OF PETROLEUM UNDERGROUND STORAGE TANKS OWNED OR OPERATED BY SUCH OWNER OR OPERATOR IN ILLINOIS:~~

~~AMOUNT NUMBER OF TANKS~~

~~\$1,000,000 FEWER THAN 101~~

~~\$2,000,000 101 OR MORE~~

- 2) Costs incurred in excess of the aggregate amounts set forth in subsection (b)(1) of this Section shall not be eligible for payment in subsequent years. ~~COSTS INCURRED IN EXCESS OF THE AGGREGATE AMOUNTS SET FORTH IN subsection (b)(1) of this Section SHALL NOT BE ELIGIBLE FOR PAYMENT IN SUBSEQUENT YEARS. (Section 57.8(d) of the Act)~~
- c) For purposes of subsection (b) of this Section, requests submitted by any of the agencies, departments, boards, committees or commissions of the State of Illinois shall be acted upon as claims from a single owner or operator [415 ILCS 5/57.8(d)(2)]. ~~FOR PURPOSES OF subsection (b) of this Section, REQUESTS SUBMITTED BY ANY OF THE AGENCIES, DEPARTMENTS, BOARDS, COMMITTEES OR COMMISSIONS OF THE STATE OF ILLINOIS SHALL BE ACTED UPON AS CLAIMS FROM A SINGLE OWNER OR OPERATOR. (Section 57.8(d) of the Act)~~
- d) For purposes of subsection (b) of this Section, owner or operator includes;
  - 1) any subsidiary, parent, or joint stock company of the owner or operator; and
  - 2) any company owned by any parent, subsidiary, or joint stock company of the owner or operator [415 ILCS 5/57.8(d)(3)].

~~FOR PURPOSES OF subsection (b) of this Section, OWNER OR OPERATOR INCLUDES;~~

- 1) ~~ANY SUBSIDIARY, PARENT, OR JOINT STOCK COMPANY OF THE OWNER OR OPERATOR; AND~~

- 2) ~~ANY COMPANY OWNED BY ANY PARENT, SUBSIDIARY, OR JOINT STOCK COMPANY OF THE OWNER OR OPERATOR. (Section 57.8(d) of the Act)~~

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

**Section 732.605      Eligible Corrective Action Costs**

- a) Types of costs that may be eligible for payment from the Fund include those for corrective action activities and for materials or services provided or performed in conjunction with corrective action activities. Such activities and services may include but are not limited to reasonable costs for:
- 1) Early action activities conducted pursuant to Subpart B of this Part;
  - 2) Engineer or geologist ~~Engineering~~ oversight services;
  - 3) Remedial investigation and design;
  - 4) ~~Feasibility studies;~~
  - 4)5) Laboratory services necessary to determine site classification and whether the established remediation ~~corrective action~~ objectives have been met;
  - 5)6) The installation ~~Installation~~ and operation of groundwater investigation and groundwater monitoring wells;
  - 6)7) The removal, treatment, transportation and disposal of soil contaminated by petroleum at levels in excess of the established remediation ~~corrective action~~ objectives;
  - 7)8) The removal, treatment, transportation and disposal of water contaminated by petroleum at levels in excess of the established remediation ~~corrective action~~ objectives;
  - 8)9) The placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established remediation ~~corrective action~~ objectives;
  - 9)10) Groundwater corrective action systems;

- ~~10)~~11) Alternative technology, including but not limited to feasibility studies approved by the Agency;
- ~~11)~~12) Recovery of free product exceeding one-eighth of an inch in depth, or present as a sheen on groundwater in the tank removal excavation or on surface water phase petroleum from groundwater;
- ~~12)~~13) The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the OSFM Office of State Fire Marshal;
- ~~13)~~14) Costs incurred as a result of a release of petroleum because of vandalism, theft or fraudulent activity by a party other than an owner, operator or agent of an owner or operator;
- ~~14)~~15) Engineer or geologist Engineering costs associated with seeking payment or reimbursement from the Fund including, but not limited to, completion of an application for partial or final payment;
- ~~15)~~16) Costs associated with obtaining an Eligibility and Deductibility Determination from the OSFM or the Agency;
- ~~16)~~17) Costs for destruction and replacement of concrete, asphalt, or ~~and~~ paving to the extent necessary to conduct corrective action ~~and~~ if the concrete, asphalt, or paving was installed prior to the initiation of corrective action activities, the destruction and replacement has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer, and the destruction and replacement and its costs are approved by the Agency in writing prior to the destruction and replacement. All such costs shall be submitted in a single application for payment and shall not be submitted prior to the Agency's issuance of a No Further Remediation Letter pursuant to Subpart G of this Part. Costs associated with the replacement of concrete, asphalt, or paving shall not be paid in excess of the cost to install, in the same area and to the same depth, the same material that was destroyed (e.g., replacing four inches of concrete with four inches of concrete);
- ~~17)~~18) The destruction or dismantling and reassembly of above grade structures in response to a release of petroleum if such activity has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer and such activity and its costs are approved by the Agency in writing prior to the destruction or dismantling and re-assembly. Such costs shall not be paid in

excess of a total \$10,000 per site. For purposes of this subsection (a)(17) ~~(a)(18)~~, destruction, dismantling or reassembly of above grade structures does not include costs associated with replacement of pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies; and

18)49) Preparation of reports submitted pursuant to Section 732.202(h)(3) of this Part, free product removal plans and associated budget plans, free product removal reports, site classification plans (including physical soil classification and groundwater investigation plans) and associated budget plans, site classification reports, groundwater monitoring plans and associated budget plans, groundwater monitoring completion reports, High Priority corrective action plans and associated budget plans, and High Priority corrective action completion reports;-

19) Costs associated with the removal or abandonment of a potable water supply well, and replacement of the well or connection to a public water supply, whichever is less, if a Licensed Professional Engineer or Licensed Professional Geologist certifies that such activity is necessary to the performance of corrective action and that the property served by the well cannot receive an adequate supply of potable water from an existing source other than the removed or abandoned well, and the Agency approves such activity in writing. If the well being removed or abandoned is a public water supply well, the Licensed Professional Engineer or Licensed Professional Geologist is required to certify only that the removal or abandonment of the well is necessary to the performance of corrective action; and

20) Costs associated with the repair or replacement of potable water supply lines damaged to the point of requiring repair or replacement as a direct result of the release, if such activity is certified by a Licensed Professional Engineer or Licensed Professional Geologist as necessary for the protection of the potable water supply and approved by the Agency in writing.

- b) An owner or operator may submit a budget plan or application for partial or final payment that includes an itemized accounting of costs associated with activities, materials or services not identified in subsection (a) of this Section if the owner or operator submits detailed information demonstrating that the activities, materials or services not identified in subsection (a) of this Section are essential to the completion of the minimum corrective action requirements of the Act and this Part.

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

### **Section 732.606      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 Section 732.Appendix C of this Part, during early action activities conducted pursuant to Section 732.202(f), and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Section 732.Appendix C of this Part during early action activities conducted pursuant to Section 732.202(f) of this Part;
- b) Costs or losses resulting from business interruption;
- c) Costs incurred as a result of vandalism, theft or fraudulent activity by the owner or operator or agent of an owner or operator including the creation of spills, leaks or releases;
- d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts or canopies, including but not limited to those structures destroyed or damaged during corrective action activities;
- e) *Costs of corrective action ~~or indemnification~~ 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 ~~*Legal defense costs including legal costs for seeking payment under these regulations unless the owner or operator prevails before the Board and the Board authorizes payment of legal fees [415 ILCS 5/57.8(l)];*~~
- h) Purchase costs of non-expendable materials, supplies, equipment or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment or tools;
- i) Costs associated with activities that violate any provision of the Act or Board, OSFM or Agency regulations;



- j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 732.105 of this Part and Section 57.12 of the Act;
- k) Costs for removal, disposal or abandonment of UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;
- l) Costs associated with the installation of new USTs, the repair of existing USTs and removal and disposal of USTs determined to be ineligible by the Office of State Fire Marshal;
- m) Costs exceeding those contained in a budget plan or amended budget plan approved by the Agency;
- n) Costs of corrective action ~~or indemnification~~ incurred before providing notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;
- o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;
- p) Costs associated with improperly installed sampling or monitoring wells;
- q) Costs associated with improperly collected, transported or analyzed laboratory samples;
- r) Costs associated with the analysis of laboratory samples not approved by the Agency for constituents other than applicable indicator contaminants or groundwater objectives;
- s) Costs for any corrective activities, services or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;
- t) Interest or finance costs charged as direct costs;
- u) Insurance costs charged as direct costs;
- v) Indirect corrective action costs for personnel, materials, service or equipment charged as direct costs;

- w) Costs associated with the compaction and density testing of backfill material;
- x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;
- y) Costs related to activities, materials or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act [415 ILCS 5] and regulations;
- z) Costs incurred after completion of early action activities in accordance with Subpart B by owners or operators choosing, pursuant to Section 732.300(b) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;
- aa) Costs incurred after completion of site classification activities in accordance with Subpart C by owners or operators choosing, pursuant to Section 732.400(b) or (c) of this Part, to conduct remediation sufficient to satisfy the remediation objectives;
- bb) Costs of alternative technology that exceed the costs of conventional technology;
- cc) Costs for ~~investigative~~ activities and related services or materials ~~for developing a High Priority corrective action plan~~ that are unnecessary, or inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;
- dd) Costs to prepare site classification plans and associated budget plans under Section 732.305 of this Part, to perform site classification under Section 732.307 of this Part, or to prepare site classification completion reports under Section 732.309 of this Part, for sites where owners or operators have elected to classify under Section 732.312 of this Part;
- ee) Costs to prepare site classification plans and associated budget plans under Section 732.312 of this Part, to perform site classification under Section 732.312 of this Part, or to prepare site classification completion reports under Section 732.312 of this Part, for sites where owners or operators have performed classification activities under Sections 732.305, 732.307, or 732.309 of this Part;
- ff) Costs requested that are based on mathematical errors;
- gg) Costs that lack supporting documentation;

- hh) Costs proposed as part of a budget plan that are unreasonable;
- ii) Costs incurred during early action that are unreasonable;
- jj) Costs incurred on or after the date the owner or operator enters at a site that has entered the Site Remediation Program under Title XVII and 35 Ill. Adm. Code 740 to address the UST release;
- kk) Costs incurred ~~for additional remediation~~ after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received, except costs incurred for MTBE remediation pursuant to Section 732.310(i)(2) of this Part, monitoring well abandonment costs, county recorder or registrar of titles fees for recording the No Further Remediation Letter, and costs associated with seeking payment from the Fund;
- ll) Handling charges for subcontractor ~~subcontractors~~ costs that have been billed directly to the owner or operator;
- mm) Handling charges for subcontractor ~~subcontractor's~~ costs when the contractor has not submitted proof of payment of the subcontractor costs paid the subcontractor;
- nn) Costs associated with standby and demurrage; ~~and~~
- oo) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 732.405(f) of this Part, that a revised corrective action plan is required,; provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment reimbursement if they meet the requirements of this Part,;
- pp) Costs incurred after the effective date of an owner's or operator's election to proceed in accordance with 35 Ill. Adm. Code 734;
- qq) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 732.203(a)(5) of this Part;
- rr) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;
- ss) Handling charges for subcontractor costs where any person with a direct or indirect financial interest in the contractor has a direct or indirect financial interest in the subcontractor;

- tt) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 732.605(a)(16) of this Part;
- uu) 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 732.605(a)(16) or (17) of this Part;
- vv) Costs associated with oversight by an owner or operator;
- ww) Handling charges charged by persons other than the owner's or operator's primary contractor;
- xx) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 732.605(a)(16) of this Part;
- yy) 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;
- zz) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 732.605(a)(19) of this Part;
- aaa) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 732.605(a)(20) of this Part;
- bbb) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 732.605(a)(19) or (20) of this Part;
- ccc) Costs associated with sample collection, transportation, or analysis required as a result of improperly collected, transported, or analyzed laboratory samples;
- ddd) Costs an owner or operator is required to pay to a governmental entity or other person in order to conduct corrective action, including but not

limited to permit fees, institutional control fees, and property access fees;  
and

eee) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment.

fff) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part.

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

### **Section 732.607      Payment for Handling Charges**

Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table:

<u>Subcontract or Field</u>	<u>Eligible Handling Charges</u>
<u>Purchase Cost:</u>	<u>as a Percentage of Cost:</u>
<u>\$0 - \$5,000.....</u>	<u>12%</u>
<u>\$5,001 - \$15,000.....</u>	<u>\$600 + 10% of amt. over \$5,000</u>
<u>\$15,001 - \$50,000.....</u>	<u>\$1,600 + 8% of amt. over \$15,000</u>
<u>\$50,001 - \$100,000.....</u>	<u>\$4,400 + 5% of amt. over \$50,000</u>
<u>\$100,001 - \$1,000,000.....</u>	<u>\$6,900 + 2% of amt. over \$100,000</u>

*Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act):*

<u>SUBCONTRACT</u>	<u>ELIGIBLE HANDLING CHARGES</u>
<u>OR FIELD</u>	<u>AS A PERCENTAGE OF COST:</u>
<u>PURCHASE COST:</u>	
<u>\$0 - \$5,000</u>	<u>12%</u>
<u>\$5,001 - \$15,000</u>	<u>\$600 PLUS 10% OF AMOUNT OVER \$5,000</u>
<u>\$15,001 - \$50,000</u>	<u>\$1,600 PLUS 8% OF AMOUNT OVER \$15,000</u>
<u>\$50,001 - \$100,000</u>	<u>\$4,400 PLUS 5% OF AMOUNT OVER \$50,000</u>
<u>\$100,001 - \$1,000,000</u>	<u>\$6,900 PLUS 2% OF AMOUNT OVER \$100,000 [415-</u>
	<u>ILCS 5/57.8 (f)]</u>

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

### **Section 732.608      Apportionment of Costs**

a) The Agency may apportion payment of costs if:

- 1) The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and ~~THE OWNER OR OPERATOR WAS DEEMED ELIGIBLE TO ACCESS THE FUND FOR PAYMENT OF CORRECTIVE ACTION COSTS FOR SOME, BUT NOT ALL, OF THE UNDERGROUND STORAGE TANKS AT THE SITE; AND~~
  - 2) The owner or operator failed to justify all costs attributable to each underground storage tank at the site. ~~THE OWNER OR OPERATOR FAILED TO JUSTIFY ALL COSTS ATTRIBUTABLE TO EACH UNDERGROUND STORAGE TANK AT THE SITE.~~ (Derived from Section 57.8(m) of the Act)
- b) At the time of payment, the ~~The~~ Agency will determine, based on volume or number of tanks, which method of apportionment will be most favorable to the owner or operator. The Agency will notify the owner or operator of such determination in writing.

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

## **Section 732.610 Indemnification**

- a) An owner or operator seeking indemnification from the Fund for payment of costs incurred as a result of a release of petroleum from an underground storage tank shall submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.
  - 1) A complete application for payment shall contain the following:
    - A) A certified statement by the owner or operator of the amount sought for payment;
    - B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof shall include, but not be limited to, the following:
      - i) A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement

certified by the owner or operator as a true and correct copy; and

ii) Documentation demonstrating that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator;

C) A copy of the OSFM or Agency eligibility and deductibility determination;

D) Proof that approval of the indemnification requested will not exceed the limitations set forth in the Act and Section 732.604 of this Part;

E) A federal taxpayer identification number and legal status disclosure certification;

F) A private insurance coverage form; and

G) Designation of the address to which payment and notice of final action on the request for indemnification are to be sent to the owner or operator.

2) The owner's or operator's address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change of address.

3) Applications for payment shall be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt shall be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

b)a) ~~The~~ Upon submittal of a request for indemnification for payment of costs incurred as a result of a release of petroleum from an underground storage tank, the Agency shall review applications ~~the application~~ for payment in accordance with this Subpart F. In addition, the Agency shall review each application for payment to determine the following:

1) Whether the application contains all of the information and supporting documentation required by subsection (a) of this Section;

- 2) Whether there is sufficient documentation of a legally enforceable judgment entered against the owner or operator in a court of law, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator;
  - 3) Whether there is sufficient documentation that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; and
  - 4) Whether the amounts sought for indemnification are eligible for payment.
- c)b) If the application for payment of the costs of indemnification is deemed complete and otherwise satisfies all applicable requirements of this Subpart F, the Agency shall forward the request for indemnification to the Office of the Attorney General for review and approval in accordance with Section 57.8(c) of the Act. The owner or operator's request for indemnification shall not be placed on the priority list for payment until the Agency has received the written approval of the Attorney General. The approved application for payment shall then enter the priority list established at Section 732.603(e)(1) ~~Section 732.603(d)(1)~~ of this Part based on the date the complete application was received by the Agency in accordance with Section 57.8(c) of the Act.
- d) Costs ineligible for indemnification from the Fund include, but are not limited to:
- 1) Amounts an owner or operator is not legally obligated to pay pursuant to a judgment entered against the owner or operator in court of law, a final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or any settlement entered into by the owner or operator;
  - 2) Amounts of a judgment, final order, determination, or settlement that do not arise out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator;
  - 3) Amounts incurred prior to July 28, 1989;
  - 4) Amounts incurred prior to notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;



- 5) Amounts arising out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank for which the owner or operator is not eligible to access the Fund;
- 6) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;
- 7) Amounts associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;
- 8) Amounts associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 732.105 of this Part and Section 57.12 of the Act;
- 9) Amounts associated with a release that has not been reported to IEMA or is not required to be reported to IEMA;
- 10) Amounts incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII and 35 Ill. Adm. Code 740 to address the UST release; and
- 11) Amounts incurred after the effective date of the owner's or operator's election to proceed in accordance with 35 Ill. Adm. Code 734.

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

#### **Section 732.612      Determination and Collection of Excess Payments**

- a) If, for any reason, the Agency determines that an excess payment has been paid from the Fund, the Agency may take steps to collect the excess amount pursuant to subsection (c) of this Section.
  - 1) Upon identifying an excess payment, the Agency shall notify the owner or operator receiving the excess payment by certified or registered mail, return receipt requested.

- 2) The notification letter shall state the amount of the excess payment and the basis for the Agency's determination that the payment is in error.
  - 3) The Agency's determination of an excess payment shall be subject to appeal to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.
- b) An excess payment from the Fund includes, but is not limited to:
- 1) Payment for a non-corrective action cost;
  - 2) Payment in excess of the limitations on payments set forth in Sections 732.604 and 732.607 and Subpart H of this Part;
  - 3) Payment received through fraudulent means;
  - 4) Payment calculated on the basis of an arithmetic error;
  - 5) Payment calculated by the Agency in reliance on incorrect information; or;
  - 6) Payment of costs that are not eligible for payment.
- c) Excess payments may be collected using any of the following procedures:
- 1) Upon notification of the determination of an excess payment in accordance with subsection (a) of this Section or pursuant to a Board order affirming such determination upon appeal, the Agency may attempt to negotiate a payment schedule with the owner or operator. Nothing in this subsection (c)(1) of this Section shall prohibit the Agency from exercising at any time its options at subsection (c)(2) or (c)(3) of this Section or any other collection methods available to the Agency by law.
  - 2) If an owner or operator submits a subsequent claim for payment after previously receiving an excess payment from the Fund, the Agency may deduct the excess payment amount from any subsequently approved payment amount. If the amount subsequently approved is insufficient to recover the entire amount of the excess payment, the Agency may use the procedures in this Section or any other collection methods available to the Agency by law to collect the remainder.
  - 3) The Agency may deem an excess payment amount to be a claim or debt owed the Agency, and the Agency may use the Comptroller's

Setoff System for collection of the claim or debt in accordance with Section 10.5 of the "State Comptroller Act." 15 ILCS 405/10.05 (1993).

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

**Section 732.614 Audits and Access to Records; Records Retention**

The Agency has the authority to audit all data, reports, plans, documents and budgets submitted pursuant to Title XVI of the Act and this Part. If the data, report, plan, document or budget audited by the Agency pursuant to this Section fails to conform to all applicable requirements of Title XVI of the Act and this Part, the Agency may take appropriate actions. [415 ILCS 5/57.15]

- a) Owners or operators that submit data, reports, plans, documents, or budget plans under this Part, and Licensed Professional Engineers and Licensed Professional Geologists that certify such data, reports, plans, documents, or budget plans, shall maintain all books, records, documents, and other evidence directly pertinent to the data, reports, plans, documents, or budget plans, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence shall be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.
- b) The Agency or any of its duly authorized representatives shall have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists shall provide proper facilities for such access and inspection.
- c) Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists shall maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:
  - 1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter issued pursuant to Subpart G of this Part;
  - 2) For books, records, documents, or other evidence relating to an appeal, litigation, or other dispute or claim, the expiration of 3

years after the date of the final disposition of the appeal, litigation, or other dispute or claim; or

3) The expiration of any other applicable record retention period.

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

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

### **Section 732.701 Issuance of a No Further Remediation Letter**

- a) Upon approval by the Agency of a report submitted pursuant to Section 732.202(h)(3) of this Part, a No Further Action site classification report, a Low Priority groundwater monitoring completion report, ~~or~~ a High Priority corrective action completion report, the Agency shall issue to the owner or operator a No Further Remediation Letter. The No Further Remediation Letter shall have the legal effect prescribed in Section 57.10 of the Act. The No Further Remediation Letter shall be denied if the Agency rejects or requires modification of the applicable report.
- b) The Agency shall have 120 days after the date of receipt of a complete report to issue a No Further Remediation Letter and may include the No Further Remediation Letter as part of the notification of approval of the applicable report in accordance with Subpart E of this Part. If the Agency fails to send the No Further Remediation Letter within 120 days, it shall be deemed denied by operation of law.
- c) The notice of denial of a No Further Remediation Letter by the Agency may be included with the notification of rejection or modification of the applicable report. The reasons for the denial shall be stated in the notification. The denial shall be considered a final determination appealable to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for a No Further Remediation Letter is denied by operation of law, in lieu of an immediate appeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.
- d) The Agency shall mail the No Further Remediation Letter by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action shall be deemed to have taken place on the postmarked date that the letter is mailed.

- e) The Agency at any time may correct errors in No Further Remediation Letters that arise from oversight, omission or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency shall mail the corrected letter to the owner or operator as set forth in subsection (d) ~~(e)~~ of this Section. The corrected letter shall be perfected by recording in accordance with the requirements of Section 732.703 of this Part.

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

## **Section 732.702      Contents of a No Further Remediation Letter**

A No Further Remediation Letter issued pursuant to this Part shall include all of the following:

- a) An acknowledgment that the requirements of the applicable report were satisfied;
- b) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries, or, for purposes of Section 732.703(d) of this Part, other means sufficient to identify site location with particularity;
- c) A statement that the ~~The~~ remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;
- d) A statement that the Agency's issuance of the No Further Remediation Letter signifies that:
  - 1) *All corrective action requirements applicable to the occurrence have been complied with;*
  - 2) *All corrective action concerning the remediation of the occurrence has been completed; and*
  - 3) *No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment, or, if the No Further Remediation Letter is issued pursuant to Section 732.411(e) of this Part, that the owner or operator has demonstrated to the Agency's satisfaction an inability to obtain access to an off-site property despite best efforts and therefore is not required to perform corrective action on the off-site property in order to satisfy the corrective action requirements of this Part, but is not relieved of responsibility to clean up portions*

of the release that have migrated off-site. [415 ILCS 5/57.10(c)(1)-(3)]

- e) The prohibition under Section 732.703(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;
- f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in avoidance of the No Further Remediation Letter;
- g) The recording obligations pursuant to Section 732.703 of this Part;
- h) The opportunity to request a change in the recorded land use pursuant to Section 732.703(e) ~~732.704(e)~~ of this Part;
- i) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]; and
- j) Any other provisions agreed to by the Agency and the owner or operator.

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

### **Section 732.703      Duty to Record a No Further Remediation Letter**

- a) Except as provided in subsections (c) and (d) of this Section, an owner or operator receiving a No Further Remediation Letter from the Agency pursuant to this Subpart G shall submit the letter, with a copy of any applicable institutional controls (as set forth in 35 Ill. Adm. Code 742, Subpart J) proposed as part of a corrective action completion report, to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter and any attachments shall be filed in accordance with Illinois law so that they form it forms a permanent part of the chain of title for the site. Upon the lapse of the 45 day period for recording, pursuant to Section 732.704(a)(5) of this Part the Agency may void an unrecorded No Further Remediation Letter for failure to record it in a timely manner.
- b) Except as provided in subsections (c) and (d) of this Section, a No Further Remediation Letter shall be perfected upon the date of the official recording of such letter. The owner or operator shall obtain and submit to the Agency, within 30 days after the official recording date, a certified or otherwise accurate and official copy of the letter and any attachments as

recorded. An unperfected No Further Remediation Letter is effective only as between the Agency and the owner or operator. ~~The Agency may, pursuant to Section 732.704(a)(5) 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.~~

- c) For sites located in a highway authority right-of-way ~~an Illinois Department of Transportation (IDOT) right of way~~, the following requirements shall apply:
- 1) In order for the No Further Remediation Letter to be perfected, the highway authority with jurisdiction over the right-of-way ~~IDOT~~ must enter into a Memorandum of Agreement (MOA) with the Agency. The MOA must include, but is not limited to:
    - A) The name of the site, if any, and any highway authority ~~IDOT~~ or Agency identifiers (e.g., incident number, Illinois inventory identification number);
    - B) The address of the site (or other description sufficient to identify the location of the site with certainty);
    - C) A copy of the No Further Remediation Letter for each site subject to the MOA;
    - D) Procedures for tracking sites subject to the MOA so that all highway authority offices and personnel ~~IDOT bureaus~~ whose responsibilities (e.g., land acquisition, maintenance, construction, utility permits) may affect land use limitations will have notice of any environmental concerns and land use limitations applicable to a site;
    - E) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the site to any other agency, private person or entity and the steps that will be taken to ensure the long-term integrity of any land use limitations including, but not limited to, the following:
      - i) Upon creation of a deed, the recording of the No Further Remediation Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742, with copies of the recorded instruments sent to the Agency within 30 days after recording;

- ii) Any other arrangements necessary to ensure that property that is conveyed or transferred remains subject to any land use limitations approved and implemented as part of the corrective action plan and the No Further Remediation Letter; and
  - iii) Notice to the Agency at least 60 days prior to any such intended conveyance or transfer indicating the mechanism(s) to be used to ensure that any land use limitations will be operated or maintained as required in the corrective action plan and No Further Remediation Letter; and
- F) Provisions for notifying the Agency if any actions taken by the highway authority IDOT or its permittees at the site result in the failure or inability to restore the site to meet the requirements of the corrective action plan and the No Further Remediation Letter.
- 2) Failure to comply with the requirements of this subsection (c) may result in voidance of the No Further Remediation Letter pursuant to Section 732.704 of this Part as well as any other penalties that may be available.
- d) For sites located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title, the following requirements shall apply:
  - 1) To perfect a No Further Remediation Letter containing any restriction on future land use(s), the Federal Landholding Entity or Entities responsible for the site must enter into a Land Use Control Memorandum of Agreement (LUC MOA) with the Agency that requires the Federal Landholding Entity to do, at a minimum, the following:
    - A) Identify the location on the Federally Owned Property of the site subject to the No Further Remediation Letter. Such identification shall be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identify the site in question with particularity;
    - B) Implement periodic site inspection procedures that ensure oversight by the Federal Landholding Entities of any land



use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

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

Remediation Letter may be revised only by the perfecting of a subsequent No Further Remediation Letter, issued pursuant to Title XVII of the Act and regulations thereunder, following further investigation or remediation that demonstrates the attainment of objectives appropriate for the new land use.

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

#### **Section 732.704      Voidance of a No Further Remediation Letter**

- a) The No Further Remediation Letter shall be voidable if site activities are not carried out in full compliance with the provisions of this Part, and 35 Ill. Adm. Code 742 where applicable, or the remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter include, but shall not be limited to:
  - 1) Any violations of institutional controls or land use restrictions, if applicable;
  - 2) The failure of the owner or operator or any subsequent transferee to operate and maintain preventive, engineering and institutional controls ~~or comply with a groundwater monitoring plan, if applicable;~~
  - 3) Obtaining the No Further Remediation Letter by fraud or misrepresentation;
  - 4) Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based which:
    - A) were not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based;
    - B) results in the following:
      - i) the site no longer satisfying the criteria of a No Further Action site classification;
      - ii) the site no longer satisfying the criteria of a Low Priority site classification;

- iii) failing to meet the remediation ~~remedial~~ objectives established for a High Priority site; and
- C) pose a threat to human health or the environment;
- 5) Upon the lapse of the 45 day period for recording ~~perfection~~ of the No Further Remediation Letter ~~for recording~~, the failure to record and thereby perfect the No Further Remediation Letter in a timely manner;
- 6) The disturbance ~~Disturbance~~ or removal of contamination left in place under an approved plan;
- 7) The failure to comply with the requirements of Section 732.703(c) and the Memorandum of Agreement entered in accordance with Section 732.703(c) for a site that is located in a highway authority right-of-way ~~an IDOT right-of-way~~;
- 8) The failure to comply with the requirements of Section 732.703(d) and the LUC MOA entered in accordance with Section 732.703(d) for a site located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title;
- 9) The failure to comply with the requirements of Section 732.703(d) of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 732.703(d) within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation Letter to any entity that will not remain or become a Federal Landholding Entity; or
- 10) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1015(b)(5) and (c).
- b) If the Agency seeks to void a No Further Remediation Letter, it shall provide Notice of Voidance ~~notice~~ to the current title holder of the site and the owner or operator at his or her last known address.
  - 1) The Notice of Voidance ~~notice~~ shall specify the cause for the voidance and describe the facts in support of the cause.
  - 2) The Agency shall mail Notices of Voidance by registered or certified mail, date stamped with return receipt requested.
- c) Within 35 days after receipt of the Notice of Voidance, the current title holder and owner or operator of the site at the time the No Further

Remediation Letter was issued may appeal the Agency's decision to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.

- d) If the Board fails to take final action within 120 days, unless such time period is waived by the petitioner, the petition shall be deemed denied and the petitioner shall be entitled to an appellate court order pursuant to subsection (d) of Section 41 of the Act. The Agency shall have the burden of proof in such action.
  - 1) If the Agency's action is appealed, the action shall not become effective until the appeal process has been exhausted and a final decision is reached by the Board or courts.
    - A) Upon receiving a notice of appeal, the Agency shall file a Notice of lis pendens with the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The notice shall be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site.
    - B) If the Agency's action is not upheld on appeal, the Notice of lis pendens shall be removed in accordance with Illinois law within 45 days after receipt of the final decision of the Board or the courts.
  - 2) If the Agency's action is not appealed or is upheld on appeal, the Agency shall submit the Notice of Voidance to the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The Notice shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

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

## **SUBPART H: MAXIMUM PAYMENT AMOUNTS**

### **Section 732.800      Applicability**

- a) This Subpart H divides all activities conducted pursuant to this Part into tasks and sets forth the maximum total amount an owner or operator can be paid from the Fund for all costs associated with each task. Payments to owners or operators shall not exceed the amounts set forth in this Subpart H.

- b) The costs listed under a particular task identify only some of the costs associated with the task; they are not intended as an exclusive list of all costs associated with the task for purposes of payment from the Fund.
- c) This Subpart H sets forth only the maximum amounts that may be paid from the Fund for eligible costs. Whether a particular cost is eligible for payment shall be determined under Subpart F of this Part.

### **Section 732.810 UST Removal or Abandonment Costs**

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

<u>UST Volume</u>	<u>Maximum Total Amount per UST</u>
<u>110 – 999 gallons</u>	<u>\$2,100.00</u>
<u>1,000 – 14,999 gallons</u>	<u>\$3,150.00</u>
<u>15,000 or more gallons</u>	<u>\$4,100.00</u>

### **Section 732.815 Free Product or Groundwater Removal and Disposal**

Payment for costs associated with the removal and disposal of free product or groundwater shall not exceed the amounts set forth in this Section. Such costs shall include, but not be limited to, those associated with the removal, transportation, and disposal of free product or groundwater, and the design, construction, installation, operation, maintenance, and closure of free product or groundwater removal systems.

- a) Payment for costs associated with each round of free product or groundwater removal via hand bailing or a vacuum truck shall not exceed a total of \$0.68 per gallon or \$200.00, whichever is greater.
- b) Payment for costs associated with the removal of free product or groundwater via a method other than hand bailing or vacuum truck shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part. Such costs shall include, but not be limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product removal systems.

### **Section 732.820 Drilling, Well Installation, and Well Abandonment**

Payment for costs associated with drilling, well installation, and well abandonment shall not exceed the amounts set forth in this Section, excluding drilling conducted as part of free product removal or an alternative technology. Payment for costs associated with

drilling conducted as part of free product removal or an alternative technology shall be determined in accordance with Section 732.850 of this Part instead of this Section.

- a) Payment for costs associated with each round of drilling shall not exceed the following amounts. Such costs shall include, but not be limited to, those associated with mobilization, drilling labor, decontamination, and drilling for the purposes of soil sampling or well installation.

<u>Type of Drilling</u>	<u>Maximum Total Amount</u>
<u>Hollow-stem auger</u>	<u>greater of \$23.00 per foot or \$1,500.00</u>
<u>Direct-push platform</u>	<u>greater of \$18.00 per foot or \$1,200.00</u>

- b) Payment for costs associated with the installation of monitoring wells, excluding drilling, shall not exceed the following amounts. Such costs shall include, but not be limited to, those associated with well construction and development.

<u>Type of Borehole</u>	<u>Maximum Total Amount</u>
<u>Hollow-stem auger</u>	<u>\$16.50/foot (well length)</u>
<u>Direct-push platform</u>	<u>\$12.50/foot (well length)</u>

- c) Payment for costs associated with the abandonment of monitoring wells shall not exceed \$1.50 per foot of well length.

### **Section 732.825 Soil Removal and Disposal**

Payment for costs associated with soil removal, transportation, and disposal shall not exceed the amounts set forth in this Section. Such costs shall include, but not be limited to, those associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives or visibly contaminated fill removed pursuant to Section 732.202(f) of this Part, and the purchase, transportation, and placement of material used to backfill the resulting excavation.

- a) Payment for costs associated with the removal, transportation, and disposal of contaminated soil exceeding the applicable remediation objectives, visibly contaminated fill removed pursuant to Section 732.202(f) of this Part, and concrete, asphalt, or paving overlying such contaminated soil or fill shall not exceed a total of \$57.00 per cubic yard.

- 1) Except as provided in subsection (a)(2) of this Section, the volume of soil removed and disposed shall be determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard shall be used to convert tons to cubic yards.

- 2) The volume of soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 732.202(f) of this Part shall be determined in accordance with Section 732.Appendix C of this Part.
- b) Payment for costs associated with the purchase, transportation, and placement of material used to backfill the excavation resulting from the removal and disposal of soil shall not exceed a total of \$20.00 per cubic yard.
  - 1) Except as provided in subsection (b)(2) of this Section, the volume of backfill material shall be determined by the following equation using the dimensions of the backfilled excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard shall be used to convert tons to cubic yards.
  - 2) The volume of backfill material used to replace soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 732.202(f) of this Part shall be determined in accordance with Section 732.Appendix C of this Part.
- c) Payment for costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action shall not exceed a total of \$6.50 per cubic yard. The volume of soil removed and returned shall be determined by the following equation using the dimensions of the excavation resulting from the removal of the soil: (Excavation Length x Excavation Width x Excavation Depth). A conversion factor of 1.5 tons per cubic yard shall be used to convert tons to cubic yards.

### **Section 732.830 Drum Disposal**

Payment for costs associated with the purchase, transportation, and disposal of 55-gallon drums containing waste generated as a result of corrective action (e.g., boring cuttings, water bailed for well development or sampling, hand-bailed free product) shall not exceed the following amounts or a total of \$500.00, whichever is greater.

<u>Drum Contents</u>	<u>Maximum Total Amount per Drum</u>
<u>Solid waste</u>	<u>\$250.00</u>
<u>Liquid waste</u>	<u>\$150.00</u>

### **Section 732.835 Sample Handling and Analysis**

Payment for costs associated with sample handling and analysis shall not exceed the amounts set forth in Section 732.Appendix D of this Part. Such costs shall include, but

not be limited to, those associated with the transportation, delivery, preparation, and analysis of samples, and the reporting of sample results. For laboratory analyses not included in this Section, the Agency may determine reasonable maximum payment amounts on a site-specific basis.

**Section 732.840 Replacement of Concrete, Asphalt, or Paving; Destruction or Dismantling and Reassembly of Above Grade Structures**

- a) Payment for costs associated with the replacement of concrete, asphalt, or paving shall not exceed the following amounts:

<u>Depth of Replacement Material</u>	<u>Maximum Total Amount per Square Foot</u>
<u>Two inches of asphalt or paving</u>	<u>\$1.51</u>
<u>Three inches of asphalt or paving</u>	<u>\$1.70</u>
<u>Four inches of concrete, asphalt, or paving</u>	<u>\$2.18</u>

For depths other than those listed above, the Agency shall determine reasonable maximum payment amounts on a site-specific basis.

- b) Payment for costs associated with the destruction or the dismantling and reassembly of above grade structures shall not exceed the time and material amounts set forth in Section 732.850 of this Part. The total cost for the destruction or the dismantling and reassembly of above grade structures shall not exceed \$10,000.00 per site.

**Section 732.845 Professional Consulting Services**

Payment for costs associated with professional consulting services shall not exceed the amounts set forth in this Section. Such costs shall include, but not be limited to, those associated with project planning and oversight; field work, field oversight; travel; per diem; mileage; transportation; and the preparation, review, certification, and submission of all plans, budget plans, reports, applications for payment, and other documentation.

- a) Early Action and Free Product Removal. Payment of costs for professional consulting services associated with early action and free product removal activities conducted pursuant to Subpart B of this Part shall not exceed the following amounts:
- 1) Payment for costs associated with preparation for the abandonment or removal of USTs shall not exceed a total of \$960.00.
  - 2) Payment for costs associated with early action field work and field oversight shall not exceed a total of \$500.00 per half-day. The number of half-days shall not exceed the following:



- A) If one or more USTs are removed, a maximum of one half-day plus a maximum of one-half day for each 250 cubic yards, or fraction thereof, of visibly contaminated fill material removed and disposed of in accordance with 732.202(f);
  - B) If one or more USTs remain in place, one half-day for every four soil borings, or fraction thereof, drilled pursuant to Section 732.202(h)(2) of this Part; and
  - C) One half-day if a UST line release is repaired.
- 3) Payment for costs associated with the preparation and submission of 20-day and 45-day reports, including, but not limited to, field work not covered by subsection (a)(2) of this Section, shall not exceed a total of \$4,800.00.
  - 4) Payment for costs associated with the preparation and submission of free product removal plans and the installation of free product removal systems shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part.
  - 5) Payment for costs associated with the field work and field oversight for free product removal shall not exceed a total of \$500.00 per half-day. The Agency shall determine the reasonable number of half-days on a site-specific basis.
  - 6) Payment for costs associated with the preparation and submission of free product removal reports shall not exceed a total of \$1,600.00 per report.
  - 7) Payment for costs associated with the preparation and submission of reports submitted pursuant to Section 732.202(h)(3) of this Part shall not exceed a total of \$500.00.
- b) Site Evaluation and Classification. Payment of costs for professional consulting services associated with site evaluation and classification activities conducted pursuant to Subpart C of this Part shall not exceed the following amounts:
    - 1) For site evaluation and classifications conducted pursuant to Section 732.307 of this Part, payment for costs associated with the preparation and submission of site classification plans, site classification preparation, field work, field oversight, and the

preparation and submission of the site classification completion report shall not exceed a total of \$9,870.00.

2) For site evaluation and classifications conducted pursuant to Section 732.312 of this Part, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part. For owners and operators that elect to proceed in accordance with 35 Ill. Adm. Code 734, costs incurred after the notification of election shall be payable from the Fund in accordance with that Part.

c) Low Priority Corrective Action. Payment of costs for professional consulting services associated with low priority corrective action activities conducted pursuant to Subpart D of this Part shall not exceed the following amounts:

1) Payment for costs associated with the preparation and submission of low priority groundwater monitoring plans shall not exceed a total of \$3,200.00.

2) Payment for costs associated with low priority groundwater monitoring field work and field oversight shall not exceed a total of \$500.00 per half-day, up to a maximum of seven half-days.

3) Payment for costs associated with the preparation and submission of the first year groundwater monitoring report shall not exceed a total of \$2,560.00.

4) Payment for costs associated with the preparation and submission of the second year groundwater monitoring report shall not exceed a total of \$2,560.00.

5) Payment for costs associated with the preparation and submission of low priority groundwater monitoring completion report shall not exceed a total of \$2,560.00.

d) High Priority Corrective Action. Payment of costs for professional consulting services associated with high priority corrective action activities conducted pursuant to Subpart D of this Part shall not exceed the following amounts:

1) For conventional technology, payment for costs associated with the preparation and submission of corrective action plans shall not exceed a total of \$5,120.00. For alternative technologies, payment for costs shall be determined on a time and materials basis and

shall not exceed the amounts set forth in Section 732.850 of this Part.

- 2) Payment for costs associated with high priority corrective action field work and field oversight shall not exceed the following amounts:
  - A) For conventional technology, a total of \$500.00 per half-day, not to exceed one half-day for each 250 cubic yards, or fraction thereof, of soil removed and disposed.
  - B) For alternative technologies, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part.
- 3) Payment for costs associated with the development of remediation objectives other than Tier 1 remediation objectives pursuant to 35 Ill. Adm. Code 742 shall not exceed a total of \$800.00.
- 4) Payment for costs associated with Environmental Land Use Controls and Highway Authority Agreements used as institutional controls pursuant to 35 Ill. Adm. Code 742 shall not exceed \$800.00 per Environmental Land Use Control or Highway Authority Agreement.
- 5) Payment for costs associated with the preparation and submission of high priority corrective action completion reports shall not exceed a total of \$5,120.00.

#### **Section 732.850      Payment on Time and Materials Basis**

This Section sets forth the maximum amounts that may be paid when payment is allowed on a time and materials basis.

- a) Payment for costs associated with activities that have a maximum payment amount set forth in other sections of this Subpart H (e.g, sample handling and analysis, drilling, well installation and abandonment, drum disposal, or consulting fees for plans, field work, field oversight, and reports) shall not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 732.855 of this Part.
- b) Maximum payments amounts for costs associated with activities that do not have a maximum payment amount set forth in other sections of this Subpart H shall be determined by the Agency on a site-specific basis, provided, however, that personnel costs shall not exceed the amounts set

forth in Section 732.Appendix E of this Part. Personnel costs shall be based upon the work being performed, regardless of the title of the person performing the work. Owners and operators seeking payment shall demonstrate to the Agency that the amounts sought are reasonable.

BOARD NOTE: Alternative technology costs in excess of the costs of conventional technology are ineligible for payment from the Fund. See Sections 732.407(b) and 732.606(bb) of this Part.

#### **Section 732.855 Unusual or Extraordinary Expenses**

If an owner or operator incurs unusual or extraordinary expenses that cause costs eligible for payment to substantially exceed the amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the expenses on a site-specific basis. Owners and operators seeking payment for unusual or extraordinary expenses shall demonstrate that such expenses are unavoidable, required as part of corrective action, and otherwise eligible for payment under this Part.

#### **Section 732.860 Handling Charges**

Payment of handling charges shall not exceed the amounts set forth in Section 732.607 of this Part.

#### **Section 732.865 Agency Review of Payment Amounts**

No less than every two years the Agency shall review the provisions of this Subpart H. As part of its review the Agency shall determine whether the amounts set forth in this Subpart H generally reflect prevailing market rates. If, as a result of the review, the Agency determines that the amounts set forth in this Subpart H no longer generally reflect prevailing market rates, it shall propose appropriate amendments to the Board.

#### **Section 732.APPENDIX A Indicator Contaminants**

##### **TANK CONTENTS**

##### **INDICATOR CONTAMINANTS**

##### **GASOLINE**

leaded(1), unleaded, premium and gasohol

benzene

ethylbenzene

toluene

xylene

Methyl tertiary butyl ether (MTBE)

##### **MIDDLE DISTILLATE AND HEAVY ENDS**

aviation turbine fuels(1)

jet fuels

benzene

ethylbenzene

diesel fuels  
 gas turbine fuel oils  
 heating fuel oils  
 illuminating oils  
 kerosene  
 lubricants  
 liquid asphalt and dust laying oils  
 cable oils  
 crude oil, crude oil fractions  
 petroleum feedstocks  
 petroleum fractions  
 heavy oils  
 transformer oils(2)  
 hydraulic fluids(3)  
 petroleum spirits(4)  
 mineral spirits(4), Stoddard solvents(4)  
 high-flash aromatic naphthas(4)  
 VM&P naphthas(4)  
 moderately volatile hydrocarbon solvents(4)  
 petroleum extender oils(4)

toluene  
 xylene  
 Acenaphthene  
 Anthracene  
 benzo(a)anthracene  
 benzo(a)pyrene  
 benzo(b)fluoranthene  
 benzo(k)fluoranthene  
 Chrysene  
 dibenzo(a,h)anthracene  
 Fluoranthene  
 Fluorene  
 indeno(1,2,3-c,d)pyrene  
Naphthalene ~~Naphthalene~~  
 Pyrene  
Acenaphthylene  
Benzo(g,h,i)perylene  
Phenanthrene  
~~other non-carcinogenic PNAs (total) (6)~~

#### USED OIL

screening sample(5)

- (1) lead is also an indicator contaminant
- (2) the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants
- (3) barium is also an indicator contaminant
- (4) the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B are also indicator contaminants
- (5) used oil indicator contaminants shall be based on the results of a used oil soil sample analysis - refer to Section 732.310(g)
- ~~(6) — acenaphthylene, benzo(g,h,i)perylene and phenanthrene~~

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

#### Section 732. ~~APPENDIX~~ Appendix B

#### Additional Parameters

##### Volatiles

1. Benzene
2. Bromoform
3. Carbon tetrachloride

4. Chlorobenzene
5. Chloroform
6. Dichlorobromomethane
7. 1,2-Dichloroethane
8. 1,1-Dichloroethene
9. cis-1,2-Dichloroethylene
10. trans-1,2-Dichloroethylene
11. Dichloromethane (Methylene chloride)
12. 1,2-Dichloropropane
13. 1,3-Dichloropropylene (cis + trans)
14. Ethylbenzene
15. Styrene
16. Tetrachloroethylene
17. Toluene
18. 1,1,1-Trichloroethane
19. 1,1,2-Trichloroethane
20. Trichloroethylene
21. Vinyl chloride
22. Xylenes (total)

#### Base/Neutrals

1. Bis(2-chloroethyl)ether
2. Bis(2-ethylhexyl)phthalate
3. 1,2-Dichlorobenzene
4. 1,4-Dichlorobenzene
5. Hexachlorobenzene
6. Hexachlorocyclopentadiene
7. *n*-Nitrosodi-*n*-propylamine
8. *n*-Nitrosodiphenylamine
9. 1,2,4-Trichlorobenzene

#### Polynuclear Aromatics

1. Acenaphthene
2. Anthracene
3. Benzo(a)anthracene
4. Benzo(a)pyrene
5. Benzo(b)fluoranthene
6. Benzo(k)fluoranthene
7. Chrysene
8. Dibenzo(a,h)anthracene
9. Fluoranthene
10. Fluorene
11. Indeno(1,2,3-c,d)pyrene
12. Naphthalene
13. Pyrene
14. Acenaphthylene

15. Benzo(g,h,i)perylene
16. Phenanthrene
17. ~~Other Non-Carcinogenic PNAs (total)~~

Metals (total inorganic and organic forms)

1. Arsenic
2. Barium
3. Cadmium
4. Chromium (total)
5. Lead
6. Mercury
7. Selenium

Acids

1. ~~Pentachlorophenol~~
2. ~~Phenol (total)~~
3. ~~2,4,6-Trichlorophenol~~

Pesticides

1. ~~Aldrin~~
2. ~~alpha-BHC~~
3. ~~Chlordane~~
4. ~~4,4'-DDD~~
5. ~~4,4'-DDE~~
6. ~~4,4-DDT~~
7. ~~Dieldrin~~
8. ~~Endrin~~
9. ~~Heptachlor~~
10. ~~Heptachlor-epoxide~~
11. ~~Lindane (gamma-BHC)~~
12. ~~Toxaphene~~

Polychlorinated Biphenyls

1. Polychlorinated Biphenyls  
(as Decachlorobiphenyl)

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

**Section 732. ~~APPENDIX~~Appendix C Backfill Volumes and Weights**

Volume of Tank in Gallons	Maximum amount of backfill material to be removed <del>in</del> :		Maximum amount of backfill material to be replaced <del>in</del> :	
	<u>Cubic yards</u>	<u><del>tons</del></u>	<u>Cubic yards</u>	<u><del>tons</del></u>
<285	54	<del>94</del>	56	<del>94</del>
285 to 299	55	<del>92</del>	57	<del>96</del>

300 to 559	56	94	58	97
560 to 999	67	113	70	118
1000 to 1049	81	136	87	146
1050 to 1149	89	150	96	161
1150 to 1999	94	158	101	170
2000 to 2499	112	188	124	208
2500 to 2999	128	215	143	240
3000 to 3999	143	240	161	270
4000 to 4999	175	294	198	333
5000 to 5999	189	318	219	368
6000 to 7499	198	333	235	395
7500 to 8299	206	346	250	420
8300 to 9999	219	368	268	450
10,000 to 11,999	252	423	312	524
12,000 to 14,999	286	480	357	600
>15,000	345	580	420	706

A conversion factor of 1.5 tons per cubic yard shall be used to convert tons to cubic yards.

~~Site specific information may be used to determine the weight of backfill material if site conditions such as backfill material, soil moisture content, and soil conditions differ significantly from the default values.~~

~~BOARD NOTE: The weight of backfill material is calculated by using the default bulk density values listed in the TACO regulations at 35 Ill. Adm. Code 742, Appendix C, Table B. The weight of backfill material to be removed is based on a dry bulk density value of 1.8 g/cm<sup>3</sup> for sand and a moisture content of 10 percent, which equals 1.98 g/cm<sup>3</sup>. The Board has rounded the removed backfill density to 2.0 g/cm<sup>3</sup>. The weight of backfill material to be replaced is based on a dry bulk density value of 2.0 g/cm<sup>3</sup> for gravel.~~

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

#### **Section 732.APPENDIX D Sample Handling and Analysis**

	<u>Max. Total Amount per Sample</u>
<b><u>Chemical</u></b>	
<u>BETX Soil with MTBE (EPA 8260)</u>	<u>\$85.00</u>
<u>BETX Water with MTBE (EPA 8260)</u>	<u>\$81.00</u>
<u>COD (Chemical Oxygen Demand)</u>	<u>\$30.00</u>
<u>Corrosivity</u>	<u>\$15.00</u>



<u>Flash Point or Ignitability Analysis EPA 1010</u>	<u>\$33.00</u>
<u>FOC (Fraction Organic Carbon)</u>	<u>\$38.00</u>
<u>Fat, Oil, &amp; Grease (FOG)</u>	<u>\$60.00</u>
<u>LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 734.AppendixB of this Part</u>	<u>\$693.00</u>
<u>Organic Carbon (ASTM-D 2974-87)</u>	<u>\$33.00</u>
<u>Dissolved Oxygen (DO)</u>	<u>\$24.00</u>
<u>Paint Filter (Free Liquids)</u>	<u>\$14.00</u>
<u>PCB / Pesticides (combination)</u>	<u>\$222.00</u>
<u>PCBs</u>	<u>\$111.00</u>
<u>Pesticides</u>	<u>\$140.00</u>
<u>PH</u>	<u>\$14.00</u>
<u>Phenol</u>	<u>\$34.00</u>
<u>Polynuclear Aromatics PNA, or PAH SOIL EPA 8270</u>	<u>\$152.00</u>
<u>Polynuclear Aromatics PNA, or PAH WATER EPA 8270</u>	<u>\$152.00</u>
<u>Reactivity</u>	<u>\$68.00</u>
<u>SVOC - Soil (Semi-volatile Organic Compounds)</u>	<u>\$313.00</u>
<u>SVOC - Water (Semi-volatile Organic Compounds)</u>	<u>\$313.00</u>
<u>TKN (Total Kjeldahl) "nitrogen"</u>	<u>\$44.00</u>
<u>TOC (Total Organic Carbon) EPA 9060A</u>	<u>\$31.00</u>
<u>TPH (Total Petroleum Hydrocarbons)</u>	<u>\$122.00</u>
<u>VOC (Volatile Organic Compound) - Soil (Non-Aqueous)</u>	<u>\$175.00</u>
<u>VOC (Volatile Organic Compound) - Water</u>	<u>\$169.00</u>
<b><u>Geo-Technical</u></b>	
<u>Bulk Density ASTM D4292 / D2937</u>	<u>\$22.00</u>
<u>Ex-Situ Hydraulic Conductivity / Permeability</u>	<u>\$255.00</u>
<u>Moisture Content ASTM D2216-90 / D4643-87</u>	<u>\$12.00</u>
<u>Porosity</u>	<u>\$30.00</u>
<u>Rock Hydraulic Conductivity Ex-Situ</u>	<u>\$350.00</u>
<u>Sieve / Particle Size Analysis ASTM D422-63 / D1140-54</u>	<u>\$145.00</u>
<u>Soil Classification ASTM D2488-90 / D2487-90</u>	<u>\$68.00</u>
<b><u>Metals</u></b>	
<u>Arsenic TCLP Soil</u>	<u>\$16.00</u>
<u>Arsenic Total Soil</u>	<u>\$16.00</u>
<u>Arsenic Water</u>	<u>\$18.00</u>
<u>Barium TCLP Soil</u>	<u>\$10.00</u>
<u>Barium Total Soil</u>	<u>\$10.00</u>
<u>Barium Water</u>	<u>\$12.00</u>
<u>Cadmium TCLP Soil</u>	<u>\$16.00</u>
<u>Cadmium Total Soil</u>	<u>\$16.00</u>

<u>Cadmium Water</u>	<u>\$18.00</u>
<u>Chromium TCLP Soil</u>	<u>\$10.00</u>
<u>Chromium Total Soil</u>	<u>\$10.00</u>
<u>Chromium Water</u>	<u>\$12.00</u>
<u>Cyanide TCLP Soil</u>	<u>\$28.00</u>
<u>Cyanide Total Soil</u>	<u>\$34.00</u>
<u>Cyanide Water</u>	<u>\$34.00</u>
<u>Iron TCLP Soil</u>	<u>\$10.00</u>
<u>Iron Total Soil</u>	<u>\$10.00</u>
<u>Iron Water</u>	<u>\$12.00</u>
<u>Lead TCLP Soil</u>	<u>\$16.00</u>
<u>Lead Total Soil</u>	<u>\$16.00</u>
<u>Lead Water</u>	<u>\$18.00</u>
<u>Mercury TCLP Soil</u>	<u>\$19.00</u>
<u>Mercury Total Soil</u>	<u>\$10.00</u>
<u>Mercury Water</u>	<u>\$26.00</u>
<u>Selenium TCLP Soil</u>	<u>\$16.00</u>
<u>Selenium Total Soil</u>	<u>\$16.00</u>
<u>Selenium Water</u>	<u>\$15.00</u>
<u>Silver TCLP Soil</u>	<u>\$10.00</u>
<u>Silver Total Soil</u>	<u>\$10.00</u>
<u>Silver Water</u>	<u>\$12.00</u>
<u>Metals TCLP Soil (a combination of all RCRA metals)</u>	<u>\$103.00</u>
<u>Metals Total Soil (a combination of all RCRA metals)</u>	<u>\$94.00</u>
<u>Metals Water (a combination of all RCRA metals)</u>	<u>\$119.00</u>
<u>Soil preparation for Metals TCLP Soil (one fee per sample)</u>	<u>\$79.00</u>
<u>Soil preparation for Metals Total Soil (one fee per sample)</u>	<u>\$16.00</u>
<u>Water preparation for Metals Water (one fee per sample)</u>	<u>\$11.00</u>
<b><u>Other</u></b>	
<u>En Core® Sampler, purge-and-trap sampler, or equivalent sampling device</u>	<u>\$10.00</u>
<u>Sample Shipping (*maximum total amount for shipping all samples collected in a calendar day)</u>	<u>\$50.00*</u>

### **Section 732.APPENDIX E Personnel Titles and Rates**

<u>Title</u>	<u>Degree Required</u>	<u>Ill. License Req'd.</u>	<u>Min. Yrs. Experience</u>	<u>Max. Hourly Rate</u>
<u>Engineer I</u>	<u>Bachelor's in Engineering</u>	<u>None</u>	<u>0</u>	<u>\$70.00</u>
<u>Engineer II</u>	<u>Bachelor's in Engineering</u>	<u>None</u>	<u>2</u>	<u>\$80.00</u>
<u>Engineer III</u>	<u>Bachelor's in Engineering</u>	<u>None</u>	<u>4</u>	<u>\$100.00</u>

<u>Professional Engineer</u>	<u>Bachelor's in Engineering</u>	<u>P.E.</u>	<u>4</u>	<u>\$110.00</u>
<u>Senior Prof. Engineer</u>	<u>Bachelor's in Engineering</u>	<u>P.E.</u>	<u>8</u>	<u>\$130.00</u>
<u>Geologist I</u>	<u>Bachelor's in Geology or Hydrogeology</u>	<u>None</u>	<u>0</u>	<u>\$60.00</u>
<u>Geologist II</u>	<u>Bachelor's in Geology or Hydrogeology</u>	<u>None</u>	<u>2</u>	<u>\$70.00</u>
<u>Geologist III</u>	<u>Bachelor's in Geology or Hydrogeology</u>	<u>None</u>	<u>4</u>	<u>\$85.00</u>
<u>Professional Geologist</u>	<u>Bachelor's in Geology or Hydrogeology</u>	<u>P.G.</u>	<u>4</u>	<u>\$90.00</u>
<u>Senior Prof. Geologist</u>	<u>Bachelor's in Geology or Hydrogeology</u>	<u>P.G.</u>	<u>8</u>	<u>\$110.00</u>
<u>Scientist I</u>	<u>Bachelor's in a Natural or Physical Science</u>	<u>None</u>	<u>0</u>	<u>\$60.00</u>
<u>Scientist II</u>	<u>Bachelor's in a Natural or Physical Science</u>	<u>None</u>	<u>2</u>	<u>\$65.00</u>
<u>Scientist III</u>	<u>Bachelor's in a Natural or Physical Science</u>	<u>None</u>	<u>4</u>	<u>\$70.00</u>
<u>Scientist IV</u>	<u>Bachelor's in a Natural or Physical Science</u>	<u>None</u>	<u>6</u>	<u>\$75.00</u>
<u>Senior Scientist</u>	<u>Bachelor's in a Natural or Physical Science</u>	<u>None</u>	<u>8</u>	<u>\$85.00</u>
<u>Project Manager</u>	<u>None</u>	<u>None</u>	<u>8<sup>1</sup></u>	<u>\$90.00</u>
<u>Senior Project Manager</u>	<u>None</u>	<u>None</u>	<u>12<sup>1</sup></u>	<u>\$100.00</u>
<u>Technician I</u>	<u>None</u>	<u>None</u>	<u>0</u>	<u>\$45.00</u>
<u>Technician II</u>	<u>None</u>	<u>None</u>	<u>2<sup>1</sup></u>	<u>\$50.00</u>
<u>Technician III</u>	<u>None</u>	<u>None</u>	<u>4<sup>1</sup></u>	<u>\$55.00</u>
<u>Technician IV</u>	<u>None</u>	<u>None</u>	<u>6<sup>1</sup></u>	<u>\$60.00</u>
<u>Senior Technician</u>	<u>None</u>	<u>None</u>	<u>8<sup>1</sup></u>	<u>\$65.00</u>
<u>Account Technician I</u>	<u>None</u>	<u>None</u>	<u>0</u>	<u>\$35.00</u>
<u>Account Technician II</u>	<u>None</u>	<u>None</u>	<u>2<sup>2</sup></u>	<u>\$40.00</u>
<u>Account Technician III</u>	<u>None</u>	<u>None</u>	<u>4<sup>2</sup></u>	<u>\$45.00</u>
<u>Account Technician IV</u>	<u>None</u>	<u>None</u>	<u>6<sup>2</sup></u>	<u>\$50.00</u>
<u>Senior Acct. Technician</u>	<u>None</u>	<u>None</u>	<u>8<sup>2</sup></u>	<u>\$55.00</u>
<u>Administrative Assistant I</u>	<u>None</u>	<u>None</u>	<u>0</u>	<u>\$25.00</u>
<u>Administrative Assistant II</u>	<u>None</u>	<u>None</u>	<u>2<sup>3</sup></u>	<u>\$30.00</u>
<u>Administrative Assistant III</u>	<u>None</u>	<u>None</u>	<u>4<sup>3</sup></u>	<u>\$35.00</u>
<u>Administrative Assistant IV</u>	<u>None</u>	<u>None</u>	<u>6<sup>3</sup></u>	<u>\$40.00</u>
<u>Senior Admin. Assistant</u>	<u>None</u>	<u>None</u>	<u>8<sup>3</sup></u>	<u>\$45.00</u>
<u>Draftperson/CAD I</u>	<u>None</u>	<u>None</u>	<u>0</u>	<u>\$40.00</u>
<u>Draftperson/CAD II</u>	<u>None</u>	<u>None</u>	<u>2<sup>4</sup></u>	<u>\$45.00</u>
<u>Draftperson/CAD III</u>	<u>None</u>	<u>None</u>	<u>4<sup>4</sup></u>	<u>\$50.00</u>
<u>Draftperson/CAD IV</u>	<u>None</u>	<u>None</u>	<u>6<sup>4</sup></u>	<u>\$55.00</u>
<u>Senior Draftperson/CAD</u>	<u>None</u>	<u>None</u>	<u>8<sup>4</sup></u>	<u>\$60.00</u>

<sup>1</sup> Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.

<sup>2</sup> Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.

<sup>3</sup> Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.

<sup>4</sup> Equivalent work-related or college level education with significant coursework in drafting or computer aided design ("CAD") can be substituted for all or part of the specified experience requirements.