ILLINOIS POLLUTION CONTROL BOARD
February 17, 2005

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO:	)	R04-22
REGULATION OF PETROLEUM LEAKING	)	(UST Rulemaking)
UNDERGROUND STORAGE TANKS (35	)	
ILL. ADM. CODE 732	)	

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO:	)	R04-23
REGULATION OF PETROLEUM LEAKING	)	(UST Rulemaking)
UNDERGROUND STORAGE TANKS (35	)	Consolidated
ILL. ADM. CODE 734	)	

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

Today the Board will proceed to first notice under the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et. seq.* (2002)) with a rulemaking proposed by the Illinois Environmental Agency (Agency). The Agency originally proposed amendments to the regulations concerning the leaking Underground Storage Tank (UST) program in January 2004. The Board has held seven days of hearings and received substantial comment on the Agency's proposal. The Board received comments from industry, trade groups, and professional organizations including a group formed as a result of the proposal called Professionals of Illinois for the Protection of the Environment (PIPE). The Board has evaluated the comments in this proceeding and the additional language changes suggested by both the Agency and the participants. The first-notice proposal adopted by the Board today reflects the Board's consideration of all the comments and testimony the Board has received.

During this process, which began over a year ago, the Agency has submitted three *errata* sheets reflecting changes based on the questions and comments at the hearings. In addition, PIPE and other participants have suggested changes to the proposal. Based on all the suggestions and the record of this proceeding, the Board proposes for first notice a rule that includes lump sum maximum payments for certain tasks, but not a scope of work for those tasks. The Board is proposing the maximum payment amounts proposed by the Agency in most cases. The Board is cognizant that the methods used to develop the rates by the Agency were not scientifically or statistically recognized methods. However, the Agency's experience in the UST program is also an element to be taken into consideration. In addition, the first-notice proposal will include provisions for bidding, extraordinary circumstances, and an annual inflation adjustment. The Board is convinced that the first-notice proposal, as a whole, will allow for reimbursement of reasonable remediation costs.

As noted above, the proposal includes a provision for bidding, and further, the proposal allows for the preparation of a request for bids and the review of the bids to be reimbursed on a time and materials basis. The Board is also proposing that Stage 3 site investigations be reimbursed based on time and materials. The Board will also propose the rule for first notice including a definition for "financial interest" and prohibiting reimbursement for handling charges when the primary contractor has a financial interest in the subcontractor. The Board will also retain the prohibition for a subcontractor to bid on a project where the primary contractor has a financial interest in the subcontractor.

The Board's opinion contains four main sections. The first section sets forth the background of this proceeding. The second section will provide a summary of the Agency's proposed language, including the Agency's testimony and comments. Third, the comments and testimony of the participants is summarized. Finally, in the discussion section, the Board identifies the main issues in this rulemaking and elaborates on the Board's decision concerning each of the issues. A list of the major issues identified in this rulemaking can be found on pages 60, 61, and 62 of this opinion.

BACKGROUND

On January 13, 2004, the Illinois Environmental Protection Agency (Agency) filed two proposals for rulemaking. The proposal docketed as R04-22 (R04-22Prop) amends Part 732 of the Board's leaking underground storage tank rules (UST rules). 35 Ill. Adm. Code 732. The proposal docketed as R04-23 (R04-23Prop) will be a new Part 734 of the Board's UST rules. On January 22, 2004, the Board accepted and consolidated the proposals for hearing.

Five groups of hearings were held before Board Hearing Officer Marie Tipsord. The first hearing was held on March 15, 2004, in Chicago (Tr.1). The second group of hearings was held on May 25, 2004, in Bloomington (Tr.2) and May 26, 2004, in Springfield (Tr.3). The third group of hearings was an additional two days held on June 21, 2004, (Tr.4) and June 22, 2004, (Tr.5) in Springfield. The fourth and fifth groups were single days of hearing in Springfield on July 6, 2004 (Tr.6) and August 9, 2004 (Tr.7). During those hearings the Board heard testimony from over 15 witnesses. In addition, the Board has received nine public comments in this proceeding.

PROPOSAL, *ERRATA* SHEETS, AND AGENCY TESTIMONY AND COMMENT

The following section will first summarize the rule language proposed by the Agency in the original proposal and how the language was amended in the subsequent *errata* sheets. The next section will summarize the Agency's testimony in support of the Agency's language as well as the Agency's positions on suggested language changes by other participants. Finally, the Agency's public comment will be summarized.

Rule Language

The amendments to Part 732 set forth corrective action measures that must be taken in response to a leak and procedures for seeking payment from the Underground Storage Tank Fund (UST Fund). R04-22Prop. at 1. The amendments to Part 732 also reflect changes from P.A. 92-0554, effective June 24, 2002 and P.A. 92-0735, effective July 25, 2002, which allow a Licensed Professional Geologist to certify certain information. *Id*. Finally, the Agency amends Part 732 to streamline the process for obtaining payment from the UST Fund. R04-22Prop. at 2.

The Agency has also proposed a new Part 734, which is applicable to releases reported after June 24, 2002. R04-23Prop. at 1. Part 734 is identical to Part 732 except for changes enacted in P.A. 92-0554. *Id*. Those exceptions include different corrective action requirements and increased caps on the total amount owners and operators can be paid from the UST Fund. *Id*.

Where the language is identical, the summary will reference both sections with citations to the R04-22 proposal. Also, certain sections of Part 734 are identical to existing language in Part 732 which is not being amended. A list of those sections can be found below. Where the proposals differ, the proposed amendments will be summarized with citations to the appropriate Agency proposal.

Section 732.100/734.100

The Agency proposes language in both applicability sections. The Agency proposes amending Section 732.100 to establish that releases reported after the effective date of P.A. 92-0554 are not subject to Part 732. R04-22Prop. at 3. The Agency proposes amendments to Section 734.100 to establish that releases which occurred after the enactment of P.A. 92-0554, but reported prior to the adoption of Part 734, can use the work performed or budget approved to satisfy the requirement of Part 734. Exh. 87 at 1-2. The Agency's proposed language in the third *errata* sheet is designed to ensure that Part 734 is not applied retroactively. Exh. 88 at 20.

Section 732.101

The Agency proposes amendments to clarify that owners or operators could only elect to proceed under Part 732 until June 23, 2002. R04-22Prop. at 1.

Section 732.103/734.115

The Agency has proposed several definitions to the rules for words or phrases used in the proposal. R04-22Prop. at 5. In the second *errata* sheet, the Agency proposed an amendment to the definition proposed for "financial interest" in the original proposal. Exh. 15 at 1. The Agency also changed the definition of "half-day" in the third *errata*, (Exh. 87 at 2), in response to a recommendation by members of PIPE, and defined a "half-day" in terms of four hours rather than five hours. Exh. 88 at 20.

Sections 732.104/734.120 and 732.106/734.420

The Agency is updating the incorporation by references and requiring the inclusion of a laboratory certification with analytical sample results. R04-22Prop. at 7.

Section 732.108/734.130

The Agency proposes a new section in Part 732 to address the statutory change which allows a licensed professional geologist to certify certain information submitted to the Agency. R04-22Prop. at 7. The new section would allow either a licensed professional geologist or engineer to certify information on all plans, budget plans and reports other than high priority corrective action completion reports and corrective action completion reports. *Id*. A licensed professional engineer must still certify information on high priority corrective action completion reports and corrective action completion reports. R04-22Prop. at 7-8.

Section 732.110/734.135/734.440

A new section is proposed to consolidate general requirements for plans, budget plans and reports. R04-22Prop. at 8. The Agency suggests amending the language in this section in both the first and third *errata* sheets. Exh. 1 at 1; Exh. 87 at 4. Specifically, in the third *errata* sheet the Agency amends the language to clarify that a professional is certifying only the "standards and practices" of their own profession. Exh. 88 at 22.

Section 732.112/734.145

The Agency proposes in the third *errata* sheet to add Section 732.112/734.145 in response to comments from members of PIPE. Exh. 87 at 3; Exh. 88 at 21. The Agency is adding language that would allow the Agency to require notification of field activities so that the Agency can elect to perform direct oversight of field activities. Exh. 88 at 21.

Section 732.114/734.145

In response to concerns regarding the Agency's administration of the UST program, the Agency recommends adding a provision which would establish a "LUST Advisory Committee" within the Agency. Exh. 87 at 3. The committee would be required to meet at least once each quarter to discuss the Agency's implementation of the rules. *Id*. The committee would include members from numerous groups involved in the UST program. *Id*.

Section 732.200/734.200

Because a work plan is not required for early action, the Agency proposes excluding the submission of a budget plan for the corresponding work plan. R04-22Prop. at 8. However, free product removal activities conducted more than 45 days after the confirmation of free product are excepted from this provision. *Id*.

Section 732.202/734.210

This section deals with early action at a site where a leaking UST has been removed. The Agency proposes changes to ensure internal consistency, to reflect changes made by the Office of State Fire Marshal (OSFM), and to reflect changes made in the enabling statute. R04-22Prop. at 8-9. The Agency proposes the addition of a new subsection (h)(1), which specifies the location from which samples must be collected when the UST is removed. R04-22Prop. at 9. The Agency suggests language in the third *errata* sheet that allows for deviation from the locations in subsection (h)(1) if a different location is necessary because of site-specific attributes. Exh. 87 at 4-5. The Agency, in the second *errata* sheet suggests that subsection (h)(1)(D) be amended to allow for one sample of backfill for every 100 cubic yards of backfill returned to the excavation. Exh. 15 at 4.

Similarly in subsection (h)(2), the Agency specifies the sample locations to be used when the UST is not removed and the deviation from those locations for site-specific circumstances in the third *errata*. R04-22Prop. at 9; Exh. 87 at 5. The Agency also suggested clarifying language for subsection (h)(2)(A) concerning sampling below the groundwater table. Exh. 15 at 4.

Subsection (h)(3) is renumbered from (h)(1) and amended to require owners and operators to submit a report demonstrating compliance with the most stringent Tier 1 remediation objectives if the remediation objectives have not been exceeded and a groundwater investigation is not required. R04-22Prop. at 9. Subsection (h)(4) is renumbered and amended to require owners or operators to continue with a site evaluation if the remediation objectives are exceeded and a groundwater investigation is required. *Id*. The Agency also proposes adding criteria for determining if groundwater investigation is necessary. *Id*.

Section 732.203/734.215

The Agency proposes to amend this section by specifying the amount of free product that must be present to trigger the free product removal requirements. R04-22Prop. at 10. The Agency also suggests clarifying language in each of the three *errata* sheets. Exh. 1 at 2, Exh. 15 at 5, Exh. 87 at 6. And specifically in the third *errata* sheet, the Agency amends the language to provide that free product be removed to the "maximum extent practicable". Exh. 88 at 23.

The Agency proposes new subsections (c), (d), (e), (f), and (g). Subsection (c) is added to require the submission of a plan for the removal of free product, if the removal will be conducted more than 45 days after the confirmation of the release. R04-22Prop. at 10. Subsection (d) requires submission of a budget plan if the removal will be conducted more than 45 days after the confirmation of the release. *Id*. Subsection (e) requires that the owner or operator proceed with the free product removal after Agency approval of the plan. *Id*. Subsection (f) allows an owner or operator to proceed with removal of free product without a plan or budget; however, reimbursement will not be approved until both are submitted. *Id*. And subsection (g) requires submission of amended plans or budgets. *Id*.

Section 732.204/734.220

The Agency proposes an amendment to this section which ensures consistency with Section 732.200. R04-22Prop. at 11.

Section 732.300/734.300

The Agency proposes clarifying language to this section. R04-22Prop. at 11. The Agency proposes language which establishes that a site classification is not required if after early action a report is submitted demonstrating compliance with Tier 1 TACO[1] objectives. *Id.* Also the Agency proposes deleting site ownership certification provisions while adding provisions addressing the content of corrective action completion reports. *Id*. The Agency also proposes the addition of two subsections in conjunction with adding water supply well survey requirements in Part 732. *Id*. The Agency suggested further clarification in the second and third *errata* sheets. Exh. 15 at 5-6; Exh. 87 at 6-7.

The Agency's proposal for Section 734.300 does not include subsections (b) and (c) as these two subsections are not necessary for Part 734. R04-23Prop. at 7.

Section 732.305

The Agency proposes changes to this section to reflect the addition of Section 732.110 and to require submission of various plans at specified times in the process. R04-22Prop. at 22. The Agency also proposes language to prevent owners or operators from seeking payment from the UST Fund for site classification before a site classification budget plan is submitted. *Id*. The Agency suggests adding language to alert owners and operators of new requirements in the proposed rule. *Id*.

Section 732.306/734.450

The Agency proposes amendments to replace statutory language with non-statutory language due to changes from P.A. 92-0554. R04-22Prop. at 13. The Agency suggests several changes to ensure consistency with Section 732.406. *Id*. In the third *errata* sheet the Agency suggests additional language referring to Tier 1 groundwater ingestion exposure routes. Exh. 87 at 9.

Section 732.307/734.415/734.425/734.430

The Agency proposes several changes for consistency with new statutory language and with other sections of the proposal. R04-22Prop. at 13. The Agency proposes additional clarifying language in each of the three *errata* sheets. Exh. 1 at 3; Exh. 15 at 6; Exh. 87 at 9. In addition subsection (f) was amended to provide a more accurate survey of water supply wells. R04-22Prop. at 13.

Section 732.309

[1] TACO is the "Tiered Approach to Corrective Action" found at 35 Ill. Adm. Code 742. TACO sets forth different "Tier" approaches to cleanup.

The Agency proposes that requirements for documentation of the results of water well surveys be added to this section. R04-22Prop. at 14. The Agency proposes additional changes in the third *errata* sheet. Exh. 87 at 9.

Section 732.310/734.405 and 732.311

The Agency recommends amending Section 732.110 for clarity as well as consistency with the other sections of the rule. R04-22Prop. at 14. The Agency also proposes the deletion of redundant language. *Id*. In Section 732.311, the Agency proposes replacing "indicator contaminant groundwater quality standards" with "groundwater remediation objectives". *Id*.

Section 732.312

The Agency proposal also includes clarifying language and amendments for consistency with the rest of the proposal. The Agency proposes language to require owners and operators to proceed under new Part 734 in certain circumstances. R04-22Prop. at 15. Specifically, the Agency would require an owner or operator desiring to classify a site by the exclusion of human exposure pathways to proceed under Part 734. *Id.*

Section 732.403

The Agency proposes to delete a requirement for line item estimates in a budget plan. R04-22Prop. at 16. The Agency's proposal also deletes redundant language. *Id*.

Section 732.404/734.345

The Agency proposes clarifying language to establish that this section applies to all sites classified as high priority. R04-22Prop. at 16. The Agency also proposes changes to ensure the identification of potable water supply wells that may be impacted by the release. *Id*.

Section 732.405/734.355

In addition to clarifying amendments and amendments for consistency with the rest of the proposal, the Agency proposes language that will allow the Agency to require a comparison of remediation costs where available. R04-22Prop. at 17. The Agency also proposes additional language that will require submission of revised budgets with revised corrective action plans, if reimbursement will be sought. *Id*.

Section 732.406/734.450

The Agency proposes clarifying language and language for consistency with the rest of the proposal. R04-22Prop. at 17. The Agency also proposes new subsections that set forth procedural requirements for the submission and review of elections to defer site classifications. R04-22Prop. at 18. The Agency also proposes a procedure for placing sites on a priority list for payments with priority being established by the date the Agency received the completed application. *Id*.

Section 732.407/734.340

The Agency proposes language that would require a comparison of the cost of the proposed alternative technology with at least two other alternative technologies. R04-22Prop. at 18; Exh. 87 at 15. The Agency also proposes provisions which will provide for remote monitoring by the Agency of alternative technologies. R04-22Prop. at 18.

Section 732.408/734.410 and 732.410

In the third *errata* sheet, the Agency proposes amendments to these two sections. Exh. 87 at 19-20. The suggested amendments set forth the parameters to be determined on-site, when the owner or operator is performing on-site corrective action in accordance with Tier 2 of TACO. *Id*.

Section 732.409 and 732.411/734.350

The Agency proposes changes which expand the section to set forth documentation requirement relating to water supply well surveys. R04-22Prop. at 19. Section 732.411 is amended to correct statutory citations and add a new statutory term. *Id*.

Section 732.500/734.500

The Agency proposes the deletion of two subsections which define what constitutes a plan or report. R04-22Prop. at 19. The Agency proposes language throughout Part 732 identifying whether a document is a plan or report. *Id*.

Sections 732.501, 732.502, and 732.504

The Agency proposes that Section 732.501, 732.502, and 732.504 be deleted. R04-22Prop. at 19-20. Section 732.501 is being deleted because of the proposed addition of Section 732.110. R04-22Prop. at 19. Section 732.503 is proposed for deletion because of the additional administrative burden the requirement places on the Agency. *Id*. The Agency believes that a completeness review can be performed during a substantive review. *Id*. Section 732.504 is no longer required because of the deletion of Section 732.502 and the changes in Section 732.503. R04-22Prop. at 20. The Agency will be conducting full reviews on every plan, budget plan, or report. *Id*.

Section 732.503/734.505

The Agency proposes amendments to subsections (a), (b), and (g) to reflect the deletion of Section 732.503. R04-22Prop. at 20. Subsection (f) is amended by removing a requirement for a revised report, if the owner or operator agrees with the Agency's modification of the report. *Id*. Further, the Agency stated that the last sentence of subsection (f) is no longer necessary as the Agency maintains sufficient staff to review submissions within 120 days. *Id*. The Agency

also proposes amendments to subsection (h) to require the Agency to provide notice of the UST Fund's balance to owners and operators. *Id*.

Section 732.601/734.605

The Agency's proposes changes to this section are necessary because of changes made throughout Part 732. R04-22Prop. at 21. For example, references to "materials, activities, or services" are deleted because pursuant to the proposed Subpart H, payment from the UST Fund will generally no longer be made based on "materials, activities, or services". *Id*. The Agency proposed new subsections (b)(9) and (b)(10)[2] requiring certain information be a part of the application for reimbursement. *Id*. The Agency seeks amendment of subsection (f) to require the submission of a budget plan prior to the Agency's review of a corresponding application for payment. *Id*.

Subsection (g) is amended to include a general reference rather than a reference to revised budget plans. R04-22Prop. at 22. The Agency recommends the addition of subsection (i) and (j) as well. *Id*. Subsection (i) would prohibit submission of applications for payment of deferred costs prior to the submission of a completion report. *Id*. Subsection (j) would require the submission of applications for payment of corrective action costs no later than one year after the issuance of a no further remediation (NFR) letter. *Id*.

Section 732.602/734.610

The Agency proposes revisions to this section in combination with other changes proposed in Part 732. For example, the Agency proposes amendments to reflect that: (1) the Agency performs "full" reviews of all applications for payment; (2) budget plans are not required for early action other than free product removal; and (3) line item estimates are no longer required as a part of the budget plan. R04-22Prop. at 22.

Section 732.603/734.615

The Agency proposes changes for consistency and also language to provide that the Board or a court may order payment from the UST Fund. R04-22Prop. at 22-23.

Section 732.604

Because of changes made in P.A. 92-0554, the Agency undesignated subsections (a) and (b) as statutory language; but retained the wording in the rule for releases reported prior to the effective date of P.A. 92-0554. R04-22Prop. at 23.

Section 732.605/734.625

[2] The Agency in the original proposal included a new subsection (b)(11); however, in the third *errata* sheet, the Agency withdrew subsection (b)(11). Exh. 87 at 20.

The Agency has proposed the addition of new subsections, rearrangement and renumbering of existing subsections, and the addition of "corrective action" to the title of the section. R04-22Prop. at 23-24. More specifically, in subsection (a)(16) the Agency is adding requirements for the payment of costs associated with the destruction and replacement of concrete, asphalt, or paving. R04-22Prop. at 23. The Agency suggests additional changes to that subsection in the first and second *errata* sheets. Exh. 1 at 3; Exh. 15 at 8-9. The Agency is proposing amendments which ensure that the Agency does not pay for the destruction and replacement of concrete, asphalt, or paving numerous times at a site. R04-22Prop. at 24.

The Agency proposes changes to subsection (a)(17) that require prior written approval by the Agency for work and costs associated with the destruction or dismantling of above grade structures. R04-22Prop. at 24. In subsection (a)(19), the Agency proposes to allow costs associated with removal or abandonment of potable water supply wells to be reimbursed under the subsection. *Id*. Likewise, in subsection (a)(20), the repair or replacement of potable water supply lines may also be eligible for reimbursement. *Id*.

Section 732.606/734.630

The Agency proposes the addition of several costs which will be deemed ineligible for reimbursement. R04-22Prop. at 25-26. In addition, the Agency suggests amending existing sections to add ineligible requirements and to clarify the existing language. R04-22Prop. at 24; Exh. 1 at3. Finally, the Agency suggests adding "corrective action" to the title of the section. R04-22Prop. at 24.

In the third *errata* sheet the Agency agrees to withdraw new subsection (ccc) from the rule and recommends a change to subsection (eee). Exh. 87 at 20-21. The Agency suggests further changes to subsection (ggg) and (hhh). *Id*.

Section 732.607/734.635

Because of changes made in P.A. 92-0574, the Agency proposes removing the language in Part 732 from statutory language. R04-22Prop. at 27. However, the Agency retains the language as non-statutory language. *Id*.

Section 732.608/734.640

In the first *errata* sheet the Agency withdrew the proposed amendment to this section. Exh. 1 at 4.

Section 732.610/734.650

The Agency is proposing amendments to this section in order to more fully set forth the procedures for an owner or operator to follow when seeking indemnification from the UST Fund. R04-22Prop. at 27. The amendments delineate the requirements for submitting applications, the items the Agency must consider when determining eligibility for indemnification, the eligible and ineligible costs. *Id*.

Section 732.612/734.660

The Agency proposes amendments to clarify that payment of an ineligible cost constitutes an "excess payment" from the UST Fund. R04-22Prop. at 28.

Section 732.614/734.665

The Agency's proposal adds this new section to set forth record retention requirements and auditing procedures. R04-22Prop. at 28. In both the second and third *errata* sheets the Agency suggests changes to the proposed language. Exh. 15 at 11; Exh. 87 at 22.

Section 732.701/734.705

The proposal amends this section to correct a cross-reference and to reference reports submitted pursuant to Section 732.202(h)(2). R04-22Prop. at 28.

Section 732.702/734.710

The Agency proposes amending this section to clarify that an owner or operator is not relieved of the responsibility for cleaning up contamination that migrates off-site where a NFR letter has been issued. R04-22Prop. at 28.

Section 732.703/734.715

The Agency's amendment would ensure that attachments to a NFR letter are filed with the letter. R04-22Prop. at 28. In addition, the amendatory language would allow a site located along a right-of-way of any highway authority to perfect a NFR letter via a Memorandum of Agreement with the highway authority. R04-22Prop. at 29.

Section 732.704/734.720

The Agency proposes clarifying language to this section as well as requiring owners or operators to complete groundwater-monitoring programs prior to the issuance of a NFR letter. R04-22Prop. at 29.

Subpart H

The Agency proposes a new subpart that proposes maximum amounts that will be paid from the UST Fund for certain activities. R04-22Prop. at 29. The Agency proposes the new subpart to "streamline payment from the UST Fund." *Id*. The Agency proposes lump sum or unit rates for some activities while other rates will be determined on a time and materials basis. *Id*. The following paragraphs will more completely summarize the Agency's proposed new subpart.

Section 732.800/734.800. This section explains what the subpart contains and noted that the subpart enumerates only the "major costs" associated with a task. R04-22Prop. at 30. The section clarifies that the maximum payment amount is intended to include all costs associated with an activity and the subpart does not enumerate eligible costs. *Id.*

Section 732.810/734.810. This section establishes the maximum payment amounts for costs involved in removing or abandonment of a UST. R04-22Prop. at 30.

Section 732.815/734.815. The maximum payment amounts for removal of free product are set forth in this section. R04-22Prop. at 30; Exh. 87 at 23.

Section 732.820/734.820. The maximum payment amounts for costs of drilling, well installation, and well abandonment are set forth in this section. R04-22Prop. at 30. The Agency proposes the addition of direct-push platform drilling in the first *errata* sheet. Exh. 1 at 4.

Section 732.825/734.825. The maximum payment amounts for costs of soil removal, transportation, and disposal are set forth in this section. R04-22Prop. at 31.

Section 732.830/734.830. The maximum payment amounts for costs associated with disposal of material using 55-gallon drums are set forth in this section. R04-22Prop. at 31.

Section 732.835/734.835. This section addresses the cost associated with handling and laboratory analysis of samples. R04-22Prop. at 31. The specific maximum payment amounts are set forth in Appendix D of the proposal.

Section 732.840/734.840. The maximum payment amounts for costs of replacement of concrete, asphalt, and paving are set forth in this section. R04-22Prop. at 31. The maximum payment for dismantling of concrete, asphalt, or paving is also included. *Id.* In the second *errata* sheet the Agency proposes language to increase the maximum payment for replacement. Exh. 15 at 9.

Section 732.845/734.845. In the proposal, the Agency included this section setting forth maximum payment amounts for consulting services. R04-22Prop. at 31-32. The Agency recommended several changes to the proposal in the third *errata* sheet. Exh. 87 at 24-25.

Section 732.850/734.850. The language of this section delineates the procedure for the Agency to determine rates based on time and material. R04-22Prop. at 32. Personnel costs cannot exceed the rates included in Appendix E and are determined based on the work being done, not the title of the person performing the work. *Id.* The Agency suggests an amendment to reflect other changes proposed in the third *errata* sheet. Exh. 87 at 35-36.

Section 732.855/734.855. In the proposal, the Agency proposed language to address the circumstance where the costs associated with an activity exceeded the maximum payment amount. R04-22Prop. at 32. In the third *errata* sheet, the Agency suggests renumbering this section to Section 732.860 and adding a new Section 732.855. Exh. 87 at 36-38.

Section 732.855/734.855 in the Third *Errata* Sheet. The Agency's language would allow the use of a bidding process as an alternative to the maximum amounts set forth in Subpart H. Exh. 87 at 36-37.

Section 732.860/734.860. In the proposal the Agency included this section to set forth maximum payment amounts for handling charges. R04-22Prop. at 32. In the third *errata* sheet this section is renumbered to Section 732.865. Exh. 87 at 38.

Section 732.865/734.865 in the First *Errata* Sheet. In the first *errata* sheet, the Agency proposed to replace the language proposed in Section 732.865 with a new section. Exh. 1 at 11. The new language sets forth a procedure for adjusting the maximum payment amounts in Subpart H. *Id*. In the third *errata* sheet, the Agency renumbered this section to Section 732.870. Exh. 87 at 37.

Section 732.865/734.865. This section requires the Agency to review the rates in Subpart H on a regular basis. R04-22Prop. at 33; Exh. 1 at 5; Exh. 87 at 38. The third *errata* sheet reinstates the language as originally proposed and renumbers this to Section 732.875. Exh. 87 at 38.

Identical provisions of Part 734

Several sections of the new Part 734 are taken from existing language in Part 732. The list that follows indicates the new Part 734 section and the corresponding section from Part 732:

Section 734.110 from Section 732.102
Section 734.125 from Section 732.105
Section 734.305 from Section 732.301
Section 734.425(c) from Section 732.308(a)(1), (c)(1)(E) and (G)
Section 734.435 from Section 732.308(b)
Section 734.510 from Section 732.505(a) and (c)
Section 734.600 from Section 732.600
Section 734.645 from Section 732.609
Section 734.655 from Section 732.611
Section 734.700 from Section 732.700.

Section 734.105

This section delineates the procedural requirements for an owner or operator to proceed under Part 734. R04-23Prop. at 5. The owner or operator is allowed to submit a summary of Part 734 requirements which have been satisfied. *Id*. However, if a NFR letter has been issued an owner or operator may not proceed under Part 734. R04-23Prop. at 5-6.

Section 734.140

The Agency suggests language that establishes the requirements for developing remediation objectives. Exh. 1 at 2-3.

Section 734.310

The Agency proposes that site investigation proceeds in three stages under Part 734. R04-23Prop. at 7. If the extent of the contamination is fully defined after any of the stages, the owner or operator may skip the remaining stages and proceed directly to a site completion report. *Id*.

Section 734.315

This section establishes the requirements for a Stage 1 site investigation. R04-23Prop. at 7. A Stage 1 site investigation is designed to gather initial information on the extent of the contamination and includes provisions for soil sampling and groundwater investigation. *Id*. The Agency suggests additional language be added to this provision in both the second and third *errata* sheets. Exh. 15 at 5; Exh. 87 at 10-11.

Section 734.320

This section establishes the requirements for Stage 2 site investigation. R04-23Prop. at 8. The Agency suggests additional language be added to this provision in the second *errata* sheet. Exh. 15 at 5.

Section 734.325

This section establishes the requirements for Stage 3 site investigation. R04-23Prop. at 9-10. The Agency suggests additional language be added to this provision in the second *errata* sheet. Exh. 15 at 5.

Section 734.330

This section sets forth the required contents of the site classification completion report. R04-23Prop. at 10.

Section 734.400

The Agency proposes this section to establish that the provisions of Subpart D apply to all activities conducted under Part 734. R04-23Prop. at 10.

Section 734.445

The Agency proposes water supply well survey requirements. R04-23Prop. at 11. The language includes requirements for what information from water supply well surveys must be included with site classification and completion reports. *Id*. Minor changes were suggested in the first and third *errata* sheets. Exh. 1 at 5-6; Exh. 87 at 16-17.

Section 734.620

This section is identical to Section 732.603 except for the caps on the amounts which may be paid. R04-23Prop. at 12.

Agency Testimony

The Agency provided prefiled testimony from five Agency employees: Mr. Douglas Clay, Mr. Hernando Albarracin, Mr. Douglas Oakley, Mr. Brian Bauer, and Mr. Harry Chappel. In addition, Agency employee, Mr. Gary King was available to answer questions and comment on the proceedings. The following will summarize the testimony.

Douglas Clay

Mr. Clay offered testimony which generally discussed the proposal and specifically addressed certain rule language. Mr. Clay also provided testimony in response to testimony offered by participants. The paragraphs below will summarize his testimony.

General. Mr. Clay is the manager of the leaking UST section within the Bureau of Land and has been in his current position since 1994. Exh. 3 at 1. Mr. Clay testified in support of the amendments to both Part 732 and 734. Tr. 1 at 16. Mr. Clay stated that the amendments are the result of modifications to the Act, "the need to reform the current reimbursement procedures," and to clarify issues that have arisen since Part 732 was last amended. Exh. 3 at 1-2.

In general, Mr. Clay stated that this proposal is intended to streamline the UST remediation process, clarify remediation requirements, and "most notably, reform the budget and reimbursement process". Exh. 3 at 2. Mr. Clay testified that the new budget and reimbursement process would eliminate a majority of the budgets and reimbursement packages submitted to the Agency based on time and materials because the lump sum and unit rates would replace them. *Id*. Mr. Clay stated that the Agency believes this will streamline the approval of budgets and the processing of reimbursement claims. *Id*.

Mr. Clay's testimony indicated that the Agency currently spends a tremendous amount of time reviewing budgets and reimbursement packages. Exh. 3 at 2. Further, Mr. Clay testified that a majority of plan and report denials, amendments to plans and reports submitted by consultants, and appeals to the Board are related to budget and reimbursement issues rather than technical issues. *Id*. Mr. Clay stated that the Agency believes that the proposal will allow for a more efficient use of Board and Agency resources. *Id*.

Mr. Clay testified that the costs proposed in Subpart H were developed with input from the industry and utilized nearly fifteen years of Agency experience. Exh. 3 at 2. Mr. Clay stated that the rates are "generally consistent" with the rates the Agency currently approves. *Id*.

Mr. Clay testified that in Part 734 in addition to the reimbursement changes, the Agency is proposing a new three-stage approach to site investigation. Exh. 3 at 3. Mr. Clay indicated that the consultants originally suggested this approach to site investigation. *Id*. Mr. Clay stated

that the concept is to allow more site investigation work to be conducted after early action, giving consultants more information to develop a site investigation plan and budget.. *Id*.

Specific Rule Language. Mr. Clay testified that in Sections 732.306/734.450 and 732.406/734.450 the Agency proposes language to clarify the procedures for deferring site classification due to insufficient funds. Exh. 3 at 3. Mr. Clay stated that the Agency believes the proposed additions are necessary to allow the Agency to determine that deferral of site investigation would not pose a threat to human health or the environment. *Id*.

Mr. Clay testified that in Section 732.404/734.345 wording was added to extend the potable water well survey if contamination migrated off-site. Exh. 3 at 3. Mr. Clay noted that the Agency may require a more extensive well survey if site-specific circumstances warrant. *Id*.

Section 732.405/734.355 eliminates line item estimates for corrective action plans, and for administrative purposes, will require the budget be approved by the Agency prior to seeking reimbursement from the UST Fund. Exh. 3 at 4. Also, Mr. Clay testified that language is included which provides for cost comparisons between remediation methods. *Id*. Mr. Clay stated that the Agency does not intend to require cost comparisons as a standard requirement; however, if a costly method of remediation is proposed, the Agency may require a comparison. *Id*. Language has also been included in these sections to require reimbursement requests be made within one year of a NFR letter. Exh. 3 at 5. This change is necessary, according to Mr. Clay, to help the Agency manage the UST Fund. *Id*.

Mr. Clay testified that the language in Section 732.407/734.340 was necessary to help prevent excessive remediation costs and to ensure the solvency of the UST Fund. Exh. 3 at 5. Also language is proposed to allow remote modeling of alternative technologies and this could result in monitoring by the Agency, the consultant, or both. Exh. 3 at 6.

In Section 732.409, the Agency proposes wording be added that will ensure that potable water supply wells are adequately protected, according to Mr. Clay. Exh. 3 at 6. And in Section 732.605/734.625, the Agency proposes a limit for destruction or dismantling and reassembly that is reasonable and reflects historical practices. Exh. 3 at 6-7. In Sections 732.605/734.625(a)(19), (a)(2), 732.606/734.630 (tt), (uu), (vv), (xx), (bbb), (ccc), and (eee), Mr. Clay testified that the language was amended to codify current Agency practices. Exh. 3 at 7-9.

Mr. Clay testified that other changes were made to Section 732.606/734.630 including in subsection (kk) expanding the list of costs that are eligible for reimbursement after a NFR letter is issued. Exh. 3 at 7. Also included is subsection (yy) to clarify that treatment or removal of soil which is not contaminated is not eligible for reimbursement. Exh. 3 at 8. Mr. Clay explained that this is necessary for situations where the contamination is below the surface and clean soil is between the surface and the contamination. *Id*. Subsection (ddd) was added to specify that fees or payments to government entities or other person for corrective action related activities is not an eligible cost. Exh. 3 at 9. Mr. Clay testified that the Agency has approved reimbursement of some reasonable fees and payments for state, county or local permits; however, these costs are more variable and "have become hard to justify as reasonable." *Id*.

Mr. Clay testified that the provisions in Section 732.614/734.665 are based upon other Board and Agency rules addressing retention and inspection of records. Exh. 3 at 9. Mr. Clay stated that the Agency plans to perform periodic audits of owners, operators, and consultants. *Id*. Mr. Clay further testified that the Agency does not intend to look at a company's financial statements; rather the Agency will review documents related to payments from the UST Fund. Exh. 88 at 26. Mr. Clay explained that the Agency needs to ensure that records related to reimbursement are retained for a certain period of time in case the Agency needs to review the records. *Id*.

Response to Testimony by Participants. Mr. Clay testified that PIPE submitted agendas from meetings between the Agency and PIPE. Exh. 88 at 3. Mr. Clay wanted to clarify that the agendas were prepared by PIPE and did not necessarily reflect what was actually discussed at the meetings. *Id*. Mr. Clay also sought to clarify the reason the Agency has proposed these revisions to the UST rules. *Id*. Mr. Clay emphasized that the changes were brought about because of statutory change and in order to streamline the preparation and review of budgets and applications for payment. Exh. 88 at 3-4. In addition, the Agency believes the proposal will allow for more efficient use of consultant, Board, and Agency resources while improving consistency in the Agency's decisions. Exh. 88 at 4. Mr. Clay stated that the Agency further believes that the proposed changes could help control cleanup costs, expedite cleanups, and ultimately allow owners and operators to be reimbursed in a more efficient and timely manner. *Id*.

Regarding the economic savings that may be expected because of this proposal, Mr. Clay stated that the Agency has not performed a formal economic analysis to determine the savings that may be generated by the proposal. Exh. 88 at 4. Mr. Clay noted that based on recent data, $25 million more a year is being paid out from the UST Fund than is being received and if this difference is not reduced, delays in payments could occur. *Id*. Under this proposal, the Agency believes there will be significant savings in cleanup costs with reasonable rates being established in regulations. *Id*. Mr. Clay testified that there will be less time needed for consultants to prepare budgets and reimbursement packages and less time required for Agency review. *Id*. Mr. Clay also stated that limiting reimbursement to Tier 2 remediation objectives and requiring use of groundwater ordinances "will significantly reduce" the cost of cleanup. Exh. 88 at 4-5.

In response to testimony concerning the time the Agency takes to make a decision under the UST program, Mr. Clay pointed out that the Act provides the Agency with 120 days to respond to submittals. Exh. 88 at 5. Mr. Clay opined that "any change to that timeframe would need to be a statutory change" and a reduction of that timeframe would impact the Agency's administration of the UST program. *Id*. Secondly, Mr. Clay noted that the Agency's actual time for review is often less than 120 days. Exh. 88 at 6. In the period from May 2003 through May 2004, the Agency completed review of more than half the submittals within sixty days. Exh. 88 at 6. Mr. Clay further pointed out that 25% of the submittals were decided within thirty days. *Id*. Mr. Clay opined that the amount of time the Agency takes to review a submittal is largely based on the quality of the submittal. *Id*.

The Agency is also opposed to the concept of requiring the Agency to prepare a draft denial letter prior to the Agency decision. Exh. 88 at 13. Mr. Clay testified that such a process

would extend review times and is counterproductive to streamlining the UST program. *Id*. Mr. Clay testified that unlike a permit decision, the Agency UST decision timeframe would not be stayed by the issuance of a draft denial. *Id*. And the Agency would "likely end up just sending" the final decision on the 120th day because the Agency was waiting for a response to the draft letter. *Id*. Mr. Clay stated that in the current review process, the project manager frequently asks consultants for additional information. Exh. 88 at 14. Thus, according to Mr. Clay, the Agency's current practice would appear to address the concerns that the draft letter process is designed to address. *Id*.

Mr. Clay noted that there had been comments asking that reimbursement requests be allowed to be submitted more often than every 90 days. Exh. 88 at 6. Mr. Clay pointed out that the statute at Section 57.8 of the Act (415 ILCS 5/57.8 (2002)) limits submissions to "no more frequently than 90 days." *Id*. Mr. Clay stated that in an attempt to allow earlier reimbursement requests, the Agency has proposed to allow submission of reimbursement requests after each stage of a site investigation under Part 734. Exh. 88 at 6-7.

Mr. Clay takes issue with the claim from PIPE that "member firms conduct or provide services on nearly all of the underground storage tank cleanups conducted" in the State. Exh. 88 at 7. Mr. Clay stated that based on the testimony of PIPE members, PIPE has twenty member firms. Exh. 88 at 7; citing Tr.4 at 137. In response, Mr. Clay stated that based on the Agency's records, there are:

1. 375 different consultants who have performed work on UST sites in the last five years;

2. 48 landfills in the State are permitted to accept UST soil;

3. 668 haulers are permitted to transport UST contaminated soils;

4. 89 laboratories are certified by the Agency to perform analyses required under the UST program;

5. 153 tank removal contractors are permitted by the OSFM;

6. Numerous drillers and excavators work with UST sites. Exh. 88 7-8.

Mr. Clay testified that the Agency appreciates the contributions of PIPE in this rulemaking; however, PIPE represents only a small fraction of the persons involved in UST work. Exh. 88 at 8. Mr. Clay stated that the Agency has "heard, either directly or indirectly," that many consultants are "happy with the rules as proposed" and have no problems with Subpart H. *Id*.

Concerning comments that consulting services have not been adequately defined in the rules, Mr. Clay stated that the Agency does not believe that a defined scope of work for every aspect of UST cleanup is necessary. Exh. 88 at 8. Further, Mr. Clay testified that a defined scope of work should not be included in the rules. *Id*. Mr. Clay conceded that there is some

variability from site to site, but that has been taken into account in the amount proposed in the rules. *Id*.

Mr. Clay responded to comments regarding the soil conversion factor and the swell factor. Mr. Clay maintained that the Agency's proposal allows for a twenty percent swell factor. Exh. 88 at 9. Mr. Clay explained that the "swell factor" proposed is actually equivalent to twenty percent because the swell factor is applied to the total for excavation, transportation, and disposal. *Id*. Regarding the conversion factor, Mr. Clay indicated that the Agency is proposing to apply a consistent conversion factor throughout the rules. Exh. 88 at 9-10. Mr. Clay testified that the Agency believes a 1.5 tons per cubic yard conversion factor is more appropriate for Illinois, because of the different types of soil that may be used as backfill. Exh. 88 at 10.

The Agency opposes allowing owners or operators back into the UST program after issuance of a NFR letter, according to Mr. Clay. Exh. 88 at 10. Mr. Clay testified that the Agency should be allowed to concentrate on sites which have not yet been remediated and not on sites that have actually received a NFR letter. *Id*.

In response to testimony and comments that the Agency should rely on the certifications of the licensed professional engineer or geologist, Mr. Clay stated that the testimony and comments assume that the certifications have a greater role in the UST program than the certifications are given by the Act and the Board rules. Exh. 88 at 11. Mr. Clay testified that Section 57.7 of the Act (415 ILCS 5/57.7 (2002)) requires that all investigations, plans and reports be conducted or prepared "under the supervision of" a licensed professional engineer or geologist. Exh. 88 at 11. Mr. Clay stated that the Act speaks "only of oversight of site investigation and corrective action." *Id*. Mr. Clay asserted that neither Section 57.7 of the Act (415 ILCS 5/57.7 (2002)) nor the regulations "are intended to grant" licensed professional engineers or geologists "with a final decision making authority that supercedes the Agency." Exh. 88 at 11.

Mr. Clay testified that the Agency is the party responsible for protecting human health and the environment and properly administering the UST Fund; therefore, preventing the Agency from reviewing the documentation certified would result in unchecked access to the UST Fund. Exh. 88 at 12. Mr. Clay stated that the Agency has discovered numerous examples where a licensed professional engineer or geologist has certified either technical or reimbursement submittals that were not in accordance with the Act and regulations. *Id*.

The Agency strongly opposes the recommendations by PIPE that the Agency develop a database for the purpose of establishing rates, according to Mr. Clay. Exh. 88 at 12. Mr. Clay explained that the development of a database would greatly complicate and lengthen the preparation of budgets by consultants and result in increased costs. *Id*. Also, Mr. Clay believes that the data submitted would be skewed from the beginning, as there is nothing to ensure that the data submitted would be reasonable. *Id*. Lastly, Mr. Clay stated that there is no need for such data collection as the Agency has proposed adding bidding provisions and the bidding procedure will provide a more accurate reflection of the prevailing market prices. Exh. 88 at 12-13.

In response to the suggestion that a committee be developed consisting of Agency supervisors as well as persons from outside the Agency who are familiar with UST cleanups, Mr. Clay expressed the Agency's opposition. Exh. 88 at 14. Mr. Clay noted that the Act gives the Agency the authority and responsibility to oversee the UST program and determine the reasonableness of reimbursement. *Id*. Mr. Clay further noted that the Act does not allow persons outside the Agency to review submittals and the decisions of such a committee would not be appealable to the Board. Exh. 88 at 14-15. However, to "foster and enable greater communication between the Agency and other parties" the Agency proposes language in the third *errata* to establish an advisory committee. Exh. 88 at 15.

Mr. Clay testified that the Agency also opposes any alternative method for resolution of issues under the UST program. Exh. 88 at 15-16. Mr. Clay stated that an alternative to an appeal to the Board is not consistent with the Act. Exh. 88 at 16. Mr. Clay further testified that a mediation or alternative dispute resolution would likely be more expensive because the owner or operator would be paying the cost. *Id*.

Mr. Clay also takes issue with the numbers taken from the UST section's annual report. Exh. 88 at 16. Mr. Clay stated that the numbers "only represent the average amount of costs submitted by owners and operators in a single application for payment. They should not be confused with the total amounts reimbursed per site." *Id*. Mr. Clay presented, for clarification, the average total amount paid per incident for incidents closed in 1997 through 2001. *Id*.

Mr. Clay offered testimony to clarify the procedure used to develop the maximum costs proposed in Subpart H. Exh. 88 at 17. Mr. Clay agreed that the Agency used the average numbers from a spreadsheet that was also used to develop the rate sheet. *Id*. The Agency compared the historical data used in developing the spreadsheet with current submittals. *Id*. Based on this comparison, the Agency determined if the historical data was still accurate and reflected a reasonable reimbursement amount. *Id*. In some cases, the current data established that the historical data was not relevant and the Agency adjusted the maximum rate. *Id*.

Mr. Clay defended proposed requirements that proof of payment to subcontractors and application for payment from the UST Fund be made within one year. Exh. 88 at 18. Mr. Clay pointed out that cancelled checks are not the only mechanism for providing proof of payment to a subcontractor; lien waivers or affidavits from the subcontractor would be acceptable. *Id*. Mr. Clay testified that such proof is necessary to show that the subcontractor was actually paid and the owner or operator is therefore entitled to reimbursement for handling charges. *Id*. As to the one-year deadline, Mr. Clay testified that the Agency does not believe the deadline creates an undue hardship on the owners and operators. *Id*. Mr. Clay stated that one year is sufficient to submit an application for final costs and the Agency has no evidence to support an exception to the one-year requirement. *Id*.

Mr. Clay clarified earlier testimony on Stage 3 investigations due to concerns raised on the issue of additional borings. Exh. 88 at 18. Mr. Clay stated that Stage 3 investigations should be contingent in nature and additional rounds of borings should be proposed to be conducted if necessary. Exh. 88 at 19. Mr. Clay testified that once a plan has been approved, additional borings will be reimbursed based on the rates in the proposed rules. *Id*.

Mr. Clay also clarified that groundwater remediation is by definition considered an alternative technology and will be reimbursed on a time and materials basis. Exh. 88 at 19. Mr. Clay also discounted the testimony that Illinois Department of Transportation's (IDOT) rates for excavation, transportation, and disposal averaged $99.75. *Id.* Mr. Clay testified that IDOT reviews total bids and does not compare individual line items. *Id.*

Mr. Clay's testimony also explained that to ensure that UST Fund money is used in the most cost effective manner, the Agency proposes changes in the third *errata* sheet which require the use of TACO. Exh. 88 at 24. The Agency proposes two changes which require the use of TACO. *Id.* First, the Agency proposes language that will limit payment from the UST Fund to costs that achieve cleanup to Tier 2 objectives. *Id.* Mr. Clay testified that owners and operators may still remediate their sites to Tier 1 objectives, but reimbursement will be limited to the cost necessary to achieve cleanup to Tier 2 objectives. *Id*

The second proposed change in the use of TACO is to require owners or operators of a site to use a groundwater ordinance as an institutional control if an ordinance already had been approved by the Agency is available. Exh. 88 at 25. Mr. Clay testified that owners or operators will not be required to seek a groundwater ordinance for their site if one has not already been approved by the Agency. *Id.* Mr. Clay stated that this change would prevent the payment from the UST Fund to cleanup groundwater that cannot be used as a potable water source because of a local groundwater ordinance. *Id.*

Hernando Albarracin

Mr. Albarracin is a unit manager in the leaking UST section within the Bureau of Land. Exh. 5 at 1, Tr.1 at 19. Mr. Albarracin testified in support of the amendments to Subparts A, B, and C (except Section 732.306) of Part 732. *Id.* He testified in support of Subparts A, B, C, and D of Part 734. Tr. 1 at 20; Exh. 6 at 1. Mr. Albarracin's testimony summarized the changes to the rule included in the proposal. *Id.*

Douglas Oakley

Mr. Oakley is the office manager of the leaking UST claims unit within the Bureau of Land and has been for the last five years. Tr.1 at 21; Exh. 7 at 1. Mr. Oakley's testimony related to Sections 732.601, 732.602, 732.605, 732.606, and 732.610 and the corresponding sections in Part 734. Tr.1 at 21. Mr. Oakley testified that Section 732.601(b)(9) was amended to require submission of legible invoices, receipts and supporting documentation. Exh. 7 at 1. Mr. Oakley stated that this information has always been requested by the Agency as a part of an application for payment. *Id.* Because "of an alarming number of phone calls" to the Agency from subcontractors claiming they have not been paid, the Agency added Section 732.601(b)(10), according to Mr. Oakley. Exh. 7 at 2. This new subsection requires primary contractors to provide proof of payment to a subcontractor before reimbursement for handling charges will be approved. *Id.* Mr. Oakley stated that the Agency feels that this requirement should resolve the problem. *Id.*

Section 732.601, Mr. Oakley testified that subsection 732.601(j) was added to encourage prompt submittals of claims. Exh. 7 at 2. Mr. Oakley stated that long delay in submitting claims has led to "numerous" problems involving documentation of costs and avoiding such delays should help to streamline the process. *Id*. Mr. Oakley also testified that this change will help to better predict the outstanding liabilities of the UST Fund. *Id*.

In Section 732.605, the Agency is adding language to clarify when concrete replacement should occur. Exh. 7 a 2-3. Mr. Oakley stated that in the past owners or operators have replaced concrete after early action, before remediation was complete. Exh. 7 at 3. According to Mr. Oakley, the Agency believes this change will ensure that costs associated with concrete replacement will only be paid once. *Id*.

In Section 732.606, the Agency proposes language to disallow handling charges for subcontractors who are associated with the primary contractor. Exh. 7 at 3. Mr. Oakley testified that there is no prohibition over hiring one's own company to do the work and be paid a fair price including a profit. *Id*.

Brian Bauer

Mr. Bauer is a project manager in the leaking UST section within the Bureau of Land and has worked in his current position since April 1992. Exh. 9 at 1. Mr. Bauer's testimony concerns maximum payment amounts in Subpart H and Appendix E. Tr.1 at 23. Mr. Bauer testified that the proposal is a result of modifications to the Act and "the need to reform the current reimbursement procedures." Exh. 9 at 1.

Mr. Bauer reiterated the maximum payment amounts in the proposal for UST Removal and Abandonment Costs (Section 732.810/734.810), Free Product or Groundwater Removal and Disposal (Section 732.815/734.815), Drilling, Well Installation and Well Abandonment (Section 732.820/734.820), Replacement of Concrete, Asphalt, or Paving; Destruction or Dismantling and Reassembly of Above Grade Structures (Section 732.840/734.840), Professional Consulting Services (Section 732.845/734.845), and Professional Titles and Rates (Section 732.Appendix E/734.Appendix E). Exh..9 at 1. Mr. Bauer then explained how the maximum rates were developed.

According to Mr. Bauer, for Section 732.810/734.810, the Agency evaluated 20 leaking UST sites, nine of which had tanks removed or abandoned. Exh. 9 at 2. The evaluation established that the average cost to remove the USTs was $3,152.71. *Id*. Mr. Bauer stated that "based on the Agency's experience, this average cost is consistent with the amounts the Agency has seen historically for the removal of USTs within the typical range of 6,000-gallons to 10,000-gallons in size." Exh. 9 at 2-3.

In establishing the maximum allowable costs for the removal, transportation, and disposal of free product or groundwater (Section 732.815/734.815), Mr. Bauer testified that the Agency evaluated 57 sites. Exh. 9 at 3. The 57 sites all had free product or contaminated groundwater removed and the average cost was $0.68 per gallon. *Id*. Mr. Bauer testified that after discussion with consultants, the Agency determined a minimum amount needed to be established and so the

Agency did so. *Id*. The minimum amount was determined based on a survey of vacuum truck contractors and the Agency determined that $200 was the appropriate minimum charge. *Id*.

Mr. Bauer indicated that the maximum amounts in Section 732.820/734.820(a) were established for three types of drilling: hollow-stem auger, direct-push platform, and direct-push platform for injection. Exh. 9 at 4. For hollow-stem auger drilling, the Agency evaluated forty-nine sites and determined the average for drilling to be $16.72 per linear foot of soil boring. Exh. 9 at 5. The Agency added in average costs for mobilization/demobilization and decontamination based on an average drilling depth of 100 to 120 feet. *Id*. The Agency also added $1.84 per foot for "incidental expenses or charges" for drilling. Exh. 9 at 6. The Agency determined a minimum charge should be set for instances where limited hollow-stem auger drilling was needed. *Id*.

For direct-push platform drilling, Mr. Bauer stated that the Agency evaluated nine sites and found that the average rate ranges from $1,000 to $1,200 per day. Exh. 9 at 6. Mr. Bauer further stated that "based on the Agency's experience this range is typical of what the Agency would normally see." *Id*. The Agency again based the rate on an average of 100 feet drilling per event and added in the same rates for mobilization/demobilization and decontamination. *Id*. The Agency also set a minimum charge that would be available. Exh. 9 at 6-7.

Mr. Bauer testified that for direct-push platform for injection, the Agency used the same data set as used for direct-push platform drilling. Exh. 9 at 7. The Agency added in cost for mobilization/demobilization but not for decontamination or incidental expenses. *Id*. The Agency again set a minimum charge that would be available. *Id*.

With Section 732.820/734.820(b), Mr. Bauer stated that the Agency evaluated 37 sites. Exh. 9 at 8. The average costs for those 37 sites resulted in the maximum payment amount proposed by the Agency. *Id*. According to Mr. Bauer for Section 732.820/734.820(c), the Agency evaluated seven sites. Exh. 9 at 10. The average rates were then used to establish the maximum payment amount. *Id*.

Mr. Bauer's testimony indicated that for Section 732.820/734.820(d), the average cost to abandon a groundwater monitoring well is $150. Exh. 9 at 11. Mr. Bauer stated that the average depth for a groundwater-monitoring well is 15 to 20 feet and so the Agency divided $150 by 15 to determine the maximum cost for abandonment of a groundwater-monitoring well. *Id*.

Mr. Bauer testified that the rates in Section 732.840/734.840(a) are based on the thickness of asphalt to be applied to the site. Exh. 9 at 11-12. The Agency used the *2003 National Construction Cost Estimator* 51st Edition to establish the rate for installation of concrete per square foot. Exh. 9 at 12. Mr. Bauer stated that concrete installed at the same thickness is more expensive and the Agency believes the most cost-effective approach should be utilized. *Id*. Therefore, Mr. Bauer stated the Agency limits the reimbursement for concrete to the same level as the maximum rate for asphalt. *Id*.

For Section 732.840/734.840(b), Mr. Bauer indicated that the limit has been established at $10,000 per occurrence. Exh. 9 at 12. For reimbursement the activities must be submitted on a time and materials basis to the Agency. *Id*.

Mr. Bauer testified concerning the rates for professional consulting services in Section 732.845/734.845. Exh. 9 at 12-15. Mr. Bauer stated that after consultation, the American Consulting Engineers Council of Illinois[3] (ACECI), the Agency determined that fieldwork should be billed on a half-day rate, which is five hours billed at $80 per hour. Exh. 9 at 12. The Agency included additional expenses for vehicles or mileage, photo ionization detector (PID), and miscellaneous supplies to develop the maximum of $500 per half-day. Exh. 9 at 12-13. Mr. Bauer testified that maximum half-day increments had been established for oversight of UST removal, removal of contaminated soil, soil borings, line release repair, free product removal, and groundwater sampling event. Exh. 9 at 13-15.

Mr. Bauer testified that Section 732.Appendix E/734.Appendix E establishes personnel titles and rates to be used when submitting activities on a time and materials basis. Exh. 9 at 15. The titles must be used and the consultant's personnel must be able to meet the title requirements. *Id*. The rates are based on the task performed and not the title of the person performing the task. *Id*. Mr. Bauer stated that the consolidation of titles is essential to maintain consistency in Agency reviews and to expedite the review process. *Id*. Mr. Bauer indicated that the maximum hourly rates are based on the average rate the Agency has seen on budgets and reimbursement claims. Exh. 9 at 16.

Harry Chappel

Mr. Chappel is a unit manager in the leaking UST section within the Bureau of Land and has been in his current position since 2002. Exh. 11 at 1. Mr. Chappel was previously employed by the Agency from 1976 to 1995 and was in private practice from 1995 to 2002. *Id*. Since 1979, Mr. Chappel has been a registered professional engineer. *Id*. Mr. Chappel's testimony supports the proposed language in Subpart H. Mr. Chappel testified that the proposal is a result of modifications to the Act and "the need to reform the current reimbursement procedures." *Id*.

Mr. Chappel testified that Section 732.800/734.800 specifies all reimbursable tasks will be limited to the maximum amounts set forth in Subpart H. Exh. 11 at 2. The Agency grouped reimbursable activities into eleven categories. *Id*. Mr. Chappel's testimony includes several attachments in support of the proposed maximum allowable rates. Exh. 11 at 3.

For Section 732.825/734.825, Mr. Chappel testified that the rate for soil excavation, transportation and disposal was developed using randomly selected projects. Exh. 11 at 3. The maximum rate for the cost to excavate, transport, and dispose (ETD) is the sum of costs for each activity plus one standard of deviation rounded up to a whole dollar amount. *Id*. The result is $57 per cubic yard. *Id*. Mr. Chappel indicated that the rate for backfill would be $20 per cubic yard. *Id*. This maximum rate was developed by using the sum of the costs to backfill plus one

[3] On July 1, 2004, the Consulting Engineers Council of Illinois became the American Consulting Engineers Council of Illinois. Tr.6 at 7-8.

standard of deviation. *Id*. Mr. Chappel testified that the Agency is proposing separate amounts for the two activities because the amount of soil excavated does not always equal the amount of backfill necessary. *Id*.

Mr. Chappel testified that to determine the volume of soil, a volume calculation is included in the proposal. Exh. 11 at 4. Mr. Chappel indicated that to account for the fact that in-place volume is less than excavated volume, the equation includes a "fluff" factor of five percent. *Id*.

Mr. Chappel testified that in developing the maximum rates for sampling handling and analysis (Section 732.834/734.835), the Agency contacted the Illinois Association of Environmental Laboratories, Inc. (IAEL) for assistance. Exh. 11 at 4. IAEL provided a survey of laboratories and recommended that the Agency use the highest rate reported. *Id*. Mr. Chappel testified that the Agency instead "opted to use the average amounts" provided by IAEL. Exh. 11 at 4-5.

To develop the limits for fees that consultants may be reimbursed, delineated in Section 732.845/734.845, Mr. Chappel indicated that the Agency consulted with ACECI. Exh. 11 at 5. The Agency coordinated with ACECI to determine the activities conducted by a consultant in each step of the process and the estimated personnel time required for each activity. Exh. 11 at 5-6. Mr. Chappel stated that once the hours required to perform an activity were determined, the Agency developed an average hourly rate by reviewing historical records of the Agency from prior reimbursements. Exh. 11 at 6. The Agency totaled the hourly rates for each job title and developed an average hourly rate. *Id*. The Agency selected 19 random requests to verify that the rate was reasonable. *Id*

Mr. Chappel stated that using the $80 rate derived, the Agency then applied that to the number of hours estimated for the various tasks to realize the maximum rate for reimbursement for an activity. Exh. 11 at 6-7. Mr. Chappel testified that a ten-hour workday was assumed and the maximum rate includes all costs incurred by a consultant for completing the specified activity. *Id*.

Mr. Chappel stated that the Agency could not develop a set fee for all activities, so the Agency proposes Section 732.850/734.850 to address those situations where the activity will be reimbursed on time and materials. Exh. 11 at 10. Also, Mr. Chappel noted that the Agency proposed Section 732.855/734.855 to provide an opportunity to an owner or operator to demonstrate that their site presents unusual or extraordinary circumstances. *Id*.

Gary King

Mr. King is the manager of the Division of Remediation Management within the Bureau of Land with the Agency. Tr.1 at 12. In his position, Mr. King is responsible for nearly all cleanup programs including the UST program. Tr.1 at 12-13. Mr. King has been a senior manager with the UST program since the establishment of the program in 1990. Tr.1 at 13. Mr. King was directly involved in every statutory change to the UST program and has testified in every UST rulemaking since 1990. *Id*.

Mr. King testified that the amendments to the UST rules in the past have been instigated because of statutory changes or because the Agency recognized the need for a change based on the Agency's experience with the program. Tr.1 at 13. This rulemaking falls into both categories. *Id*. Mr. King stated that the rulemaking is necessary "to meet statutory mandates and . . . to make the program more cost effective." *Id*.

Mr. King conceded that parts of the proposed changes will be controversial. Tr.1 at 13-14. However, even though Illinois has a successful track record, the Agency has noted issues. Tr.1` at 14. Mr. King stated that over the last few years "more and more administrative time" is spent reviewing budget approvals than overseeing UST cleanup activities. *Id*. In addition, Mr. King testified that the Agency has encountered "more frequent instances of what we believe are abuses of the system." Tr.1 at 14-15.

Mr. King indicated that while developing the proposal, the Agency was constantly aware that the Agency is responsible for reimbursing for the "reasonable costs" of remediation. Tr.1 at 15. Mr. King testified to his belief that the Board's review of the Agency's data will support the Agency's proposal. Tr.1 at 15-16.

Public Comment

The Agency commented that the development of the proposal in this proceeding has been an ongoing process and the Agency has responded to concerns and comments with three *errata* sheets. PC 4 at 1-2. The Agency believes that these changes have improved upon the original proposal and benefit all parties involved in the UST program. PC 4 at 2. The Agency indicated that the proposal reflects statutory changes and streamlines the UST program in a way that allows for quicker and easier submittals, reviews and fewer appeals to the Board. *Id*. The Agency comment is divided into three parts. The first discusses the proposed amendments. The second addresses additional amendments to the proposal. The third responds to the alternative proposal offered by PIPE. Below the Board will summarize the Agency comments on each of these areas.

Proposed Amendments

Applicability of Public Acts. The Agency responded to PIPE's concern that the Board should determine which of the four public acts which amended 415 ILCS 5/57.1 *et seq.* should apply. PC 4 at 3. The Agency argued that there is not "such a total and manifest repugnance between" the public acts that the amendments cannot stand together. PC 4 at 7. The Agency has considered the changes to the Act and has ensured that the proposal is consistent with the changes. *Id*.

Subpart H. The Agency believes that the maximum amounts set forth in Subpart H are reasonable for the work being performed, unless a higher amount can be justified either through bidding or unusual or extraordinary circumstances. PC 4 at 7. The Agency did use historical data to develop some of the maximum amounts, but those amounts are consistent with amounts owners and operators request for reimbursement and the Agency approves. PC 4 at 8. The

Agency believes that the maximum amounts are not out of date and do not need to be increased by any inflationary rate. *Id*. The amounts are consistent with current market rates, according to the Agency. *Id*.

The Agency acknowledged that there has been much discussion about alternative rates. PC 4 at 8. However, no alternative rates have been proposed and there is insufficient justification for alternative amounts. *Id*. The Agency also noted that the owners and operators are not constrained by the maximum rates. *Id*. The owner or operator can exceed those amounts by either the bidding process or demonstrating that the site poses unusual or extraordinary circumstances. *Id*. The Agency argued that taken as a whole, Subpart H provides a flexible method for determining what amounts are reasonable. PC 4 at 9.

Tier 2 Objectives. The Agency's proposal to limit on-site cleanup to Tier 2 TACO cleanup objectives is justified because the limitation will ensure cost-effective cleanup which results in the same protection of human health and the environment. PC 4 at 10-11. The Agency noted that the Tier 2 objectives are as equally protective of human health and the environment as Tier 1, but Tier 2 is generally less costly. PC 4 at 11. The Agency argued that the UST Fund is designed to ensure that sites are cleaned up to levels that protect human health, but the UST Fund is not designed to cover costs of remediation which would make a property more marketable. *Id*. The Agency clarified that the Tier 2 objectives can be met without the use of institutional controls and the Agency will not require the use of institutional controls. PC 4 at 12.

Groundwater Ordinances. The Agency proposal to require the use of groundwater ordinances is intended to ensure that the UST Fund is not used for cleanup of groundwater that cannot be used as potable water because of an existing ordinance. PC 4 at 12. The Agency proposal does not require an owner or operator to seek an ordinance. *Id*. However if an ordinance is in place and the Agency has already approved the institutional control, the owner or operator will be required to use that ordinance as an institutional control. *Id*.

Amendments to the Proposal

The Agency proposes to change "may" to "shall" in Section 723.202(h)(1) and (2), Section 734.210(h)(1) and (2). Also the Agency proposed changes to Section 732.800/734.800 to provide more of a "roadmap" to Subpart H. PC 4 at 17-18. The main change suggested by the Agency is to add Section 732.606(ggg) and 734.630(ddd). These two subsections limit reimbursement to Tier 2 remediation objectives. PC 4 at 16-17. The Agency proposes changes in other sections to reflect the addition of Section 732.606(ggg) and 734.630(ddd).

PIPE's Alternative Proposal

The Agency has continued to meet with representatives of PIPE; however at the time of the submission of the public comment, the parties had not reached agreement on the outstanding issues. PC 4 at 20. The Agency offered comments in addition to the testimony of Mr. King and Mr. Clay at the August 9, 2004 hearing (*see* Tr.7 at 19-27, 32-38, and 55-60; Exh. 88 at 3-19). PC 4 at 20. The Agency noted that absence of comment or response by the Agency should not be construed as acquiescence in or support of changes other than those proposed by the Agency.

PC 4 at 2-3. The Agency specifically commented on four areas of the PIPE's proposal. PC 4 at 20-28. The following paragraphs summarize the Agency's comment one each area.

UST Remediation Applicant. The Agency believes that the addition of the phrase "UST remediation applicant" is inappropriate for the UST program. PC 4 at 20. The phrase is borrowed from the Site Remediation Program and is used in that program so that anyone with potential liability for contamination can enter the program. *Id*. However, with the UST program only an owner or operator of the UST is liable for a release and to ensure consistency with the federal regulations the rules should maintain the narrow focus. *Id*.

Free Product Removal. PIPE's proposal would allow for free product removal "as required to address the health and safety of the site" and the Agency feels that such language would create an inconsistency between the State and Federal programs. PC 4 a 21. Under Federal regulations, the standard is removal of free product "to the maximum extent practicable" (40 C.F.R. 280.64 (2004)). PC 4 at 21. The Agency has proposed language to require removal of free product to the "maximum extent practicable". *Id*.

Review of Plans, Budgets, Reports, and Applications for Payment. The Agency believes that both the shortened review time (45-day review) and the draft denial letters proposed by PIPE are inconsistent with the Act. PC 4 at 21-23. The Agency argued that the Act grants the Agency 120 days to make a decision on submittals. PC 4 at 21. The suggestion that the review time be shortened to 45 days would be extremely difficult for the Agency to meet for review of all submittals. PC 4 at 22.

The Agency noted that the Act does not require a draft decision letter prior to denying a request. PC 4 at 22. The Agency argued that the issuance of a draft denial letter in the UST program is not required by Wells Manufacturing Co. v. IEPA, 195 Ill. App. 3d 593, 552 N.E.2d 1074 (1st Dist. 1990). PC 4 at 24-25. The Agency pointed out that, with the UST program, the Agency makes determinations based on the information provided by owner or operator unlike the permit program where information from the public is considered. PC 4 at 26. The purpose of a Wells letter in the permit program is to notify the applicant of a potential denial of a permit because of information beyond the contents of a permit application. PC 4 at 25. This situation does not occur in the UST program. PC 4 at 26.

The Agency stated that additional alternative language proposed by PIPE is inconsistent with the Board's regulations and the Act. PC 4 at 26-28. Specifically, the language proposed for Section 734.505(b) that would shift the burden of proof to the Agency (PC 4 at 26), and the language in Section 734.505(f) that allows the Agency to deem submittal rejected after 120 days is inconsistent. PC 4 at 27.

Finally, the Agency disagreed that only licensed professional engineers or geologists should review submittals to the Agency. PC 4 at 27. A requirement that licensed professional engineers or geologists review submittals would make 85% to 90% of the Agency's current project managers ineligible to review the submissions. *Id*. This limitation would "cripple" the UST program. *Id*.

SUMMARY OF TESTIMONY AND COMMENTS

This section of the Board's opinion will summarize the testimony and comments received by the Board during this proceeding. The Board will begin with PIPE and then proceed with members of PIPE in the following order: CSD Environmental Services, Inc., United Science Industries, Jarrett Thomas and CW^{3}M Company. The Board will then summarize the testimony of Russ Goodiel, Michael Rapps, Bill Fleischli, Harold Primack, and Daniel Goodwin. The Board will end this section by summarizing the comment of Maurer-Stutz, Inc.

Professionals in Illinois for Protection of the Environment (PIPE)

PIPE presented testimony (Exh. 91) and an alternative proposal (Exh. 90) at the August 2, 2004 hearing. In addition, PIPE filed a public comment on September 23, 2004, (PC 6) expanding on the issues raised in the testimony and the alternative proposal. The following discussion will summarize the general comments from PIPE and then highlight the issues raised by PIPE in the alternative proposal. Next, PIPE's testimony will be summarized. The public comment will be included, where relevant, under the subjects raised in the testimony and alternative proposal.

General Comments

PIPE was formed as a not-for-profit organization in April, 2004 to voice concerns of consultants and contractors in Illinois over the Agency's proposed changes to the UST regulations. Exh. 49 at 3. PIPE's members conduct or provide services on nearly all of the UST cleanups conducted in Illinois. *Id*. Although many of the individuals who prefiled testimony indicated that the testimony was "PIPE testimony" at the June 22, 2004 hearing, Claire Manning, PIPE's attorney, stated that the individuals were not presenting testimony on behalf of PIPE. Tr.5 at 4-5.

PIPE along with a workgroup, which included of members the ACECI, Illinois Society for Professional Engineers (ISPE) and the Illinois Petroleum Marketers Association (IPMA) met with the Agency a number of times during the course of this proceeding concerning the proposal. Exh. 90 at 5. As a result of those meetings, the Agency submitted the third *errata* sheet. Exh. 90 at 6. PIPE supports a large number of the Agency's proposed changes; however, PIPE has lingering concerns about the proposal. *Id*.

PIPE noted in its comment that participants in the rulemaking still have substantial issues with the proposal. PC 6 at 1-2. PIPE "hopes" the Board is prepared to address the substantial issues remaining. *Id*. PIPE suggests if the Board is not ready, then another hearing should be held. PC 6 at 2.

Alternative Proposal

Merger of Part 732 and 734. PIPE indicated that this is not a "serious concern" and the issue has not been discussed with the Agency. Exh. 90 at 6. PIPE questioned the necessity of

amending Part 732 and proposing a new Part 734. *Id*. PIPE suggests that with a "certain degree of wordsmithing" on the part of the Board, the rules could be merged into one set of requirements. *Id*. Such a merger might eliminate any confusion which might exist by the regulated community, according to PIPE. Exh. 90 at 6; PC 6 at 6.

Subpart A. PIPE suggested language changes in three areas under Subpart A. Specifically, PIPE suggested changes in the Applicability section, under Definitions, and in Section 732.110/734.135. The following paragraphs will specify PIPE's suggested changes.

Applicability. PIPE expressed concern that the language in Section 732.100/734.100 will result in an unlawful retroactive application of the rules. Exh. 90 at 6. PIPE was unable to review the Agency's change to the language in the third *errata* sheet, so PIPE suggested language to address their concern. Exh. 90 at 6-7. PIPE reiterated in the comment that the Agency's proposed applicability language may have the effect of retroactively applying the rules. PC 6 at 7.

Definitions. PIPE proposed that the Board add a definition for "UST Remediation Applicant" to the rule. Exh. 90 at 9. The definition suggested by PIPE is drawn from an almost identical definition in the Board's rules for the Site Remediation Program. *Id*. PIPE suggested that this concept be incorporated in the UST rules because an owner or operator may often contract out responsibility for site cleanup to a consultant, as is the case in the Site Remediation Program. *Id*. PIPE argued that the UST program would benefit by the Agency's recognition that consultants are many times authorized by the owner or operator to act on behalf of the owner or operator. *Id*.

In the public comment, PIPE noted that this proposed definition was not intended to equate the UST program with the site remediation program. PC 6 at 7. PIPE stated that the language was proposed merely to reflect the reality that the person who deals with the Agency is not always the owner or operator. *Id*.

Section 732.110/734.135. PIPE suggested adding as a subsection to this section or as a new subsection a requirement that the Agency gather data and develop efficiencies in the UST program. Exh. 90 at 10. PIPE shares the Agency's goal of protecting the UST Fund; however, PIPE believes the Agency's proposal falls short of this goal. *Id*. The proposal falls short, according to PIPE, because the proposal is not based on statistically reliable data. *Id*. Rather, the basis for the rates includes "a file pulled here and there" argued PIPE. Exh. 90 at 10-11. PIPE opined that the Board has not historically adopted a regulation based on such data. Exh. 90 at 10.

PIPE noted that the Agency maintained at hearing that other than various remediation files, the Agency does not maintain records of cost data relevant to UST remediation. Exh. 90 at 11. In addition, PIPE noted that various individuals testified at the hearings to the inefficiencies of the current program, including the multi-levels of review and time consuming rejection and appeals. *Id*.

PIPE commented that the UST Fund has collected $78,000,000 in revenue during the 2004 fiscal year, which represents a $12,000,000 increase from the 2003 fiscal year. Exh. 90 at 11. PIPE pointed out that the administration costs have also increased. *Id*; citing Exh. 76. However, the monies paid out in remediation have been decreasing, according to PIPE. Exh. 90 at 11. Therefore, while PIPE recognizes the propriety of developing rates for identifiable tasks, PIPE suggested that data should be collected on the costs of both administration and implementation of the UST Fund. Exh. 90 at 11-12.

Early Action. PIPE raised two areas of concern with Early Action and free product removal in Section 732.203/734.215. The first is the Agency's review of technical judgments. The second is the processing of free product removal requests. The following paragraphs will specify PIPE's suggested changes.

Review of Technical Judgments. Many of the members of PIPE have testified with concerns regarding the "over-prescriptive approach" of the Agency's technical review of decisions which must, by statute, be made by a licensed professional engineer or geologist. Exh. 90 at 12-13. PIPE noted that this is particularly onerous when the potential rejection of a licensed professional engineer or geologist's judgment is overturned by a project manager without similar professional credentials. Exh. 90 at 13. PIPE opined that the interests of neither the UST Fund nor the environment are served by such an overly prescriptive approach. *Id*. PIPE acknowledged that the Agency's third *errata* sheet may address some of PIPE's concerns; however, PIPE suggested specific language for Section 732.203/734.215 to address this issue. *Id*.

PIPE suggested that this section and other sections of the rule as well be amended to provide clarity and greater efficiency to the claims review and payment process. Exh. 90 at 13. Specifically, in this section and throughout the rule, PIPE recommended that "maximum payment amounts" be replaced with "reimbursable costs" in the proposal. *Id*. PIPE stated that the phrase "maximum payment amounts" is confusing and a misnomer as the rule allows for reimbursement above the "maximum payment amounts" in the case of extraordinary circumstances. *Id*. PIPE offered that the phrase "reimbursable costs" is more consistent with the rest of the rules and the history of the program. Exh. 90 at 14.

PIPE recommended that the phrase "the Agency may" should be clarified to explain when and under what circumstances such discretionary requirements will be utilized. Exh. 90 at 14. PIPE suggested that the Board review the use of "Board Notes" throughout the rule proposal and eliminate those that are obsolete. Exh. 90 at 15.

Processing of Free Product Removal Requests. PIPE asked that the language in Section 732.203(e) and (g)/734.215(e) and (g) be clarified. Exh. 90 at 15. PIPE seeks language which would require the Agency to review a free product submittal plan in a very short timeframe and if the Agency does not act expeditiously, allow the owner or operator to move forward to remove the environmental hazard. *Id*.

Subpart E, Review of Plans, Budget, and Reports. PIPE stated that "much testimony was elicited" concerning the Agency's UST review process and that the process is "overly

burdensome, too costly, and unfairly balanced in favor of the Agency." Exh. 90 at 16. PIPE acknowledged that the Agency has agreed to propose an advisory committee in the third *errata* sheet; however, that committee will not be able to address procedural deficiencies. *Id*. PIPE opined that the rulemaking process currently before the Board can address the procedural deficiencies. *Id*.

PIPE stated that the "process issues are at the very heart of this proposal" and the very workability of these rules depends on the Board recognizing and dealing with these issues. PC 6 at 21. PIPE asserted that no one other than the Agency believes these rules will work as envisioned without significant revision. *Id*. PIPE's members have no confidence in the workability of the rule and look to the Board resolve the issues before proceeding with the rule. *Id*.

PIPE noted that the UST process has followed closely the permit review process, but the traditional permit review process does not provide a proper procedural overlay for the UST reimbursement process. Exh. 90 at 16. PIPE stated that this is especially true given recent statutory changes which provide that the Agency's failure to act within the statutory timeframe results in a denial of the reimbursement. Exh. 90 at a16-17.

PIPE pointed to areas of disparity between the permit process and the UST process. First, PIPE noted that in the permit process an applicant can often operate with an existing permit during the review and appeal of a permit application; whereas a UST owner or operator is "essentially stymied" until the process is complete. Exh. 90 at 17. Second, PIPE stated that the cost of the appeal in a UST reimbursement often exceeds the dollar amount of the denial. Exh. 90 at 17.

Third, in the permit process the Agency is required to issue a letter identifying potential denial reasons and allowing the applicant to respond, before denying a permit application. *Id*. PIPE has suggested to the Agency that a procedure could be developed which would be an alternative to an appeal to the Board; however the Agency is opposed to such an alternative. PC 6 at 22. PIPE suggested that the proposal be amended to require that prior to any denial, the Agency give notice of the specific reasons for the denial and an opportunity to correct the deficiency. *Id*. PIPE suggested that this should occur during the 120-decision timeframe of the Agency. *Id*. PIPE argued that the Agency's opposition to this suggestion because of the number of denials issued by the Agency is belayed by the Agency's own testimony that ninety percent of claims would fall within the Subpart H parameters. *Id*. PIPE asserted that the lack of notice of denial may "jeopardize the due process component of the administrative process." PC 6 at 22, citing Wells Manufacturing Co., v. IEPA, 195 Ill. App. 3d 593, 552 N.E.2d 1074 (1st Dist. 1990).

Fourth, the denial letter in a UST reimbursement case often indicates that the denial is because the request "exceeds the minimum requirements of the Act" without additional specificity. Exh. 90 at 17. PIPE opined that, because the denial letter frames the issues on appeal, the UST applicant bears the burden of proving the Agency wrong when the applicant may not be sure what the issues even are. *Id*.

In the public comment, PIPE suggested that the language proposed by PIPE concerning the denial letters be adopted. PC 6 at 24. PIPE language would "require that the Agency follow the relevant provisions of the law and further, would put the burden on the Agency to establish why the plan, budget or report was not 'approvable' in the context of its new, presumably 'streamlined' rules." PC 6 at 24. PIPE feels that the Agency's continued opposition to the language is not warranted. *Id*. PIPE argued that testimony by PIPE and PIPE members establishes that one of the major costs to a company in the UST program is the cost of dealing with the Agency. *Id*.

PIPE suggested that the procedural imbalances border on a violation of due process and suggest that the offered amendments to Subpart E would restore the balance. Exh. 90 at 18. PIPE suggested changes to the appeal process, that while still being based on Section 40 of the Act (415 ILCS 5/40 (2002)) would recognize the uniqueness of the UST process. *Id*.

Subpart F. PIPE opined that expeditious processing of reimbursement payments and expeditious and judicious processing of plans, budgets and reports is crucial to the stewardship of the UST Fund. Exh. 90 at 21. PIPE conceded that the Act allows the Agency 120 days to process payments; however, PIPE maintains that there is no reason the Agency could not process payments faster if the costs have been approved in a prior submittal. *Id*. PIPE suggested a language change in Subpart F to effectuate this goal. Exh. 90 at 22.

Subpart H. PIPE offered numerous, specific language changes to Subpart H which are discussed in the testimony and final comments. Exh. 90 at 22-23. PIPE maintained that the professional service costs proposed by the Agency are too low to capture reasonable costs. PC 6 at 8. PIPE further maintained that the professional service costs proposed by the Agency do not consider the actual work required to perform the tasks. *Id*.

PIPE argued that the Subpart H rates proposed by the Agency are based on limited data from as long ago as 1998. PC 6 at 8. PIPE asserted that the cost data was not analyzed using defendable scientific statistical procedures or proper sampling. *Id*. Further, the Agency has set the rate by averaging numbers and using the average; as a result half the costs are above the rate set. *Id*. PIPE argued that these rates unfairly hurt the consultants that perform good professional work at a reasonable cost. *Id*.

PIPE opined that the Board is "challenged" to determine what is "reasonable" based upon this record for purposes of Subpart H. PC 6 at 8. PIPE suggested that one way to proceed would be to direct the Agency to redevelop the proposed amounts based upon reliable and representative data. *Id*. A second way to proceed, suggested by PIPE, would be to adjust the rates for inflation; or thirdly, to utilize where possible the *RS Means Environmental Cost Handling Options and Solutions* (10th Edition 2004). PC 6 at 9.

In addition to PIPE generally assailing the rates in Subpart H, PIPE specifically commented on (1) UST removal (Section 732.810/734.810), (2) free product or groundwater removal (Section 732.815/734.815), (3) drilling, well installation, and well abandonment (Section 732.820/734.820), (4) soil removal and disposal, and (5) drum disposal (732.830/734.830), sample handling and analysis (Section 732.835/734.835), and concrete,

asphalt, and paving (Section 732.840/734.840). PC 6 at 11-13. Other than PIPE's comment on UST removal and abandonment, PIPE offers no alternatives to the rates proposed by the Agency on each of these issues. *Id*. PIPE does offer suggested language changes to the related sections. *Id*.

PIPE proposed alternative rates for UST removal and abandonment. PC 6 at 11. PIPE based the alternative rates on the 2004 *RS Means Environmental Cost Handling Options and Solutions*. *Id*. PIPE believes that the alternative rates are "eminently more justifiable" as reasonable rates than those proposed by the Agency. *Id*.

Testimony

In addition to expressing support for some of the changes in the third *errata* sheet and testifying in support of the alternative proposal, PIPE's testimony from the August 9, 2004 hearing responds to the Agency's testimony. PIPE specifically addresses the use of TACO and reentry into the UST Fund (Exh. 91 at 11). PIPE seeks to clarify statements from the Agency regarding the agendas for meetings between the Agency and PIPE's workgroup. Exh. 91 at 2. In addition, PIPE addresses the Agency's statements regarding: (1) the "impetus for the rulemaking" (Exh. 91 at 3); (2) the "time to review claims" (Exh. 91 at 5); (3) the "vocal minority" (Exh. 91 at 7); (4) the scope of work (Exh. 91 at 9); (5) professional technical certification (Exh. 91 at 12); (6) the database (Exh. 91 at 15); (7) the average cost per site (Exh. 91 at 16); (8) the proof of payment for subcontractors (*Id*.); and (9) drilling beyond stage three (Exh. 91 at 17). Each of those will be discussed below.

TACO and Reentry into the UST Fund. PIPE believes that forcing a TACO based cleanup affects the choices available to Illinois Petroleum Marketer's Association (IPMA) owners and operators who hire PIPE members. Exh. 91 at 11. PIPE deferred to the IPMA on this issue specifically; however, PIPE has concerns regarding the Agency's position not to allow reentry into the UST Fund. *Id*. PIPE maintained that owners and operators will not accept TACO as a mandate unless they can access the UST Fund after a NFR letter. Exh. 91 at 11-12. PIPE stated in the comment that PIPE supports IPMA's concerns regarding mandating the use of TACO. PC 6 at 20.

Meeting Agendas. PIPE agreed that agendas for meetings between PIPE's workgroup and the Agency were prepared by PIPE. Exh. 91 at 2-3. The agendas reflected the issues that PIPE had with the proposal that PIPE wished to discuss at the meetings. *Id*. PIPE stated that some the issues were discussed in more detail than others. Exh. 91 at 3.

"Impetus for the Rulemaking". PIPE takes issue with statements by the Agency that the rulemaking proposal was initiated in response to statutory changes made in 2002. Exh. 91 at 3. PIPE noted that the proposal was not filed until January 13, 2004, a full year and a half after the effective date of the public act relied upon by the Agency. *Id*. PIPE asserted that the Agency's testimony is contradictory and that the impetus for the rulemaking is controlling costs. Exh. 91 at 3-4.

PIPE pointed out that although the Agency's testimony indicated that approximately $25 million more is being paid out of the UST Fund than is coming into the UST Fund, the cost of reimbursement has not historically exceeded the revenue generated by the UST Fund. Exh. 91 at 4. PIPE asserted that over the last three fiscal years, the Agency share of operational costs from the fund has risen $200,000 to $400,000 a year. *Id*. PIPE noted that for fiscal 2004, the Agency's cost was almost $4 million. *Id*. PIPE suggested that if the "State's goal is cost control" the Board and the Agency should look at the costs of the implementation of the UST program. *Id*.

PIPE noted that the Agency has not performed a formal economic analysis to determine what if any savings will be generated by the proposal. Exh. 91 at 4. PIPE asserted that the Agency's expectation of savings is predicated on the assumption that the Agency has established "reasonable costs" for reimbursement. Exh. 91 at 4-5. However, PIPE argued the "reasonable costs" have not been established based on reliable market data or scientifically sound methodology. Exh. 91 at 5.

Time to Review Claims. PIPE conceded that testimony from a PIPE member might have been inaccurate concerning the time the Agency takes to review claims. Exh. 91 at 5. PIPE researched the issue further and agrees with Agency's statements that the time for the Agency to make a decision is normally less than 120 days. *Id*. However, the PIPE member was accurate concerning the timeframe for Agency review of claims by her firm. Exh. 91 at 6.

In addition, the testimony of PIPE members is correct that reimbursement of an owner or operator "takes a very long time". Exh. 91 at 6. PIPE asks the Board to keep in mind that there are so many decisional steps that the actual timeframe from start to finish includes a number of decisional steps added together. *Id*.

PIPE takes issue with the Agency's assertion that a statutory change would be required to effectuate a change in timeframes to review claims and any change would impact the Agency's administration of the UST program. Exh. 91 at 6. PIPE asserted that the language of the statute *allows* for 120-decision timeframe but does not *require* such a timeframe. *Id*. PIPE further stated that since the Agency agrees that most of the decisions are made in less than 120 days, the Agency opposition to shortening the timeframe is "perplexing" to PIPE. Exh. 91 at 6-7.

Vocal Minority. PIPE suggested that if, as the Agency suggests, there are companies or associations who are happy with the rules but have not participated in the rulemaking, those companies or associations should participate. Exh. 91 at 8. PIPE pointed out that many recognized organizations have worked with PIPE throughout this rulemaking including those who participated in the PIPE workgroup. *Id*. PIPE maintains that member companies who have participated in this rulemaking "have the greatest market share" of businesses who remediate small retail gas stations in the State. Exh. 91 at 9.

Scope of Work. PIPE maintains that the Agency's description of the "scope of work" illustrates the differences between the Agency and the participants in the rulemaking. Exh. 91 at 9. PIPE asserted that State job descriptions are more comprehensive than the Agency's description of the scope of work. *Id*. PIPE opined that a payment structure for environmental

services requires flexibility and the ability to adjust depending on the difficulty of the project. *Id*.

The Agency's proposal divides payment for the services of consultants into lump sum payments or time and material payments and PIPE agrees that these two types of payments are appropriate in some circumstances. Exh. 91 at 9-10. PIPE suggested that time and material payments work best when the technical and financial risks and unknowns are large. Exh. 91 at 10. Alternatively, lump sum payments can be applied to discreet, well-defined tasks with small risks and unknowns, according to PIPE. *Id*.

PIPE pointed out that throughout these proceedings, PIPE and others have questioned the Agency's procedure for developing the rates, which are being proposed as "reasonable" for lump sum payments. PC 6 at 14. PIPE pointed to the averaging of all professional job titles into one lump sum rate, as one of the concerns PIPE has regarding lump sum rates. *Id*.

PIPE is not seeking a defined scope of work for every aspect of UST projects; however, any service for which the Agency suggests a lump sum payment should have a defined scope of work. Exh. 91 at 10. PIPE has drafted suggested language defining the scope of work for services that PIPE believes are appropriate for lump sum payment. Exh. 91 at 10; PC 6. PIPE asserted that the intent of the scope of work is to identify all the tasks needed to prepare the reports or services and to establish a standard of review. Exh. 91 at 10. PIPE maintained that without a clear scope of work the Agency and the consultant may have differing opinions of what work is required to perform the service. Exh. 91 at 10-11. PIPE opined that to the extent the Agency decides additional information is needed beyond the scope of work, the consultant should be paid on a time and materials basis. Exh. 91 at 11.

Professional Technical Certification. PIPE disagreed with the Agency's testimony that the legislature only intended for licensed professional engineers or geologists to perform "oversight" of site investigation and corrective action. Exh. 91 at 12. PIPE asserted that the certification of a licensed professional engineer or geologist is required to justify the work was necessary for site remediation. Exh. 91 at 13. PIPE also noted that the provision is necessary because the Agency does not oversee UST remediation from a technical perspective. *Id*.

PIPE reiterated that the point being made is that when there is a need for technical judgment regarding site remediation, the Agency ought to defer to the licensed professional engineer or geologist. Exh. 91 at 13.

Database. PIPE is perplexed by the Agency's concerns that developing a database would be burdensome and time-consuming. Exh. 91 at 15. PIPE feels that with all the resources of the UST Fund at the Agency's disposal, the Agency should be in a position to consider the benefits of an electronic database. *Id.* PIPE argued that electronic filing and data collection could reduce work and such a goal is in accordance with the Agency's stated goals for this rulemaking proposal. *Id.*

Average Cost Per Site. PIPE takes issue with the Agency's "average cost of remediating sites from 1997-2001" (*see* Exh. 88 at 16). Exh. 91 at 16. Specifically, PIPE

questioned the Agency's assumption that sites closed in later years may still have outstanding claims. *Id*. PIPE and PIPE's members have presented testimony and exhibits, which indicate many sites from 1997-2001 are still open. *Id*. PIPE asserted that the Agency did not include sites from 2002 through the present because those sites do not support the Agency's position in this rulemaking. *Id*.

Proof of Payment to Subcontractors. PIPE asserted that by definition handling charges are due to the contractor whether or not the subcontractor is paid by the contractor. Exh. 91 at 17. PIPE noted that even if the subcontractor has agreed to await payment until the Agency reimburses the owner or operator, the prime contractor has incurred the costs of insurance and administration of the subcontract. *Id*. PIPE believes that the financial interest of a prime contractor in the subcontractor's business also has no effect on the cost incurred by the prime contractor. *Id*.

PIPE opined that requiring proof of payment to a subcontractor is "an unnecessary overly bureaucratic requirement" that has nothing to do with cost containment. PC 6 at 18. PIPE maintained that this requirement will slow the process and provide a hardship to small businesses in the State. *Id*.

Stage 3. PIPE noted that the Agency indicated that if remediation of a site requires drilling beyond Stage 3, the drilling should be done and will be reimbursed. Exh. 91 at 17. PIPE stated that the Agency fails to explain whether the Agency will approve the drilling at all. *Id*. PIPE argued that the Agency has not shown a willingness to defer to the judgment of a licensed professional. *Id*.

PIPE noted that the testimony demonstrates that many of the "easier to resolve" sites have been closed and an increasing number of sites that are being remediated are more complex and difficult. PC 6 at 16. PIPE opined that the Agency's proposed lump sum payment for Stage 3 investigations is an issue. *Id*. PIPE stated that the experience of consultants demonstrates that even when monitoring and boring are performed in the most logical off-site locations, the consultant may be unable to define the contamination plume. *Id*. In order to define the plume, new plans and budgets may need to be sent to the Agency and this approach has worked well for the regulated community and the Agency, according to PIPE. *Id*. PIPE does not believe that this approach works for lump sum payments and recommends that reimbursement be treated on a time and materials basis for Stage 3 investigations. *Id*.

Section 57.7 of the Act (415 ILCS 5/57.7)

PIPE asked which version of Section 57.7 of the Act is the version which is applicable. Exh. 91 at 13. PIPE pointed out that four different bills amended Section 57.7 of the Act and all four versions are in the published volume of the Illinois Revised Statutes. *Id*. PIPE suggested that the Board should address this question in this rulemaking. *Id*.

Bidding

PIPE stated that with certain changes to the Agency's proposal on bidding, PIPE can accept the bidding process. PC 6 at 2. Specifically PIPE opined that the Agency has "seriously underestimated the amount of time and effort" that will be necessary to conduct bidding. PC 6 at 17. PIPE believes that the reimbursement for the bidding process should be based on time and materials and not a lump sum payment. *Id*. PIPE suggested that as an alternative to accepting three bids, the proposal allow a contractor to justify costs by utilizing published industry data. PC 6 at 18. Finally, PIPE stated that the record does not support the exclusion of a subcontractor when the primary consultant has a financial interest in that subcontractor. *Id.*

Compaction

In the public comment PIPE also suggests that compaction and backfill material should be removed as an ineligible cost. PC 6 at 19. PIPE believes these costs should be eligible because without compaction and backfill, the site can settle and additional backfill must be added. *Id*.

CSD Environmental Services, Inc

CSD Environmental Services, Inc. (CSD) presented testimony from two witnesses. Cindy S. Davis and Joseph W. Truesdale. The following paragraphs summarize their testimony.

Cindy S. Davis

Ms. Davis is the sole owner of CSD and Heartland Drilling & Remediation Inc., both of Springfield. Exh. 49 at 1. Ms. Davis is a member of PIPE and Consulting Engineers Council of Illinois (CECI). *Id*. As a member of CECI, Ms. Davis participated in the *ad hoc* workgroup brought together by the Agency to discuss the proposal prior to submission to the Board. *Id*. Ms. Davis raised several concerns with the proposal, which will be summarized in the following paragraphs.

Subpart H. Ms. Davis described the rates being set in the proposal as below the current market rates in Illinois and the rates do not reflect industry standards in Illinois. Exh. 49 at 4. Ms. Davis noted that many of the Agency's rates for reimbursement have decreased over the years even though the cost of doing business in Illinois has increased. *Id*. Ms. Davis indicated that when the maximum rates proposed in Subpart H were presented to the *ad hoc* committee, the Agency suggested that if the work was done for less money than the amount, the consultant would profit, if the work was done for more the consultant would lose. Exh. 49 at 5. However, Ms. Davis believes that the maximum payments proposed by the Agency are at a level where the consultant will either break even or lose. *Id*. Ms. Davis has already experienced the rates proposed by the Agency and noted that consultants and contractors were losing money. *Id*. In some cases, clients perceived that the consultant or contractor was price gouging. *Id.*

Ms. Davis suggested that the scope of work must be defined for the projects. Exh. 49 at 6. Also, the proposal does not take into consideration the level of work deemed necessary by a licensed professional engineer or a licensed professional geologist. *Id*. Ms. Davis testified that the *ad hoc* workgroup informed the Agency that a lump sum price cannot be determined without

a clear scope of work. *Id*. Further, because the Act requires much of this work to be completed by a licensed professional engineer or a licensed professional geologist, Ms. Davis finds that it is difficult to accept that an Agency reviewer who is not a licensed professional engineer or a licensed professional geologist can reject the plans. Exh. 49 at 6-7.

Frequency of Request for Reimbursement. Ms. Davis recommended that the Agency allow for reimbursement requests to be submitted more often. Exh. 49 at 7. Currently under the regulations, reimbursement requests may be submitted only every 90 days. *Id*. Ms. Davis suggested that reimbursement be allowed to be submitted at the end of early action, upon completion and submittal of each stage of site investigation, upon Agency approval of corrective action plan, and every 30 days after approval of the corrective action plan. *Id*.

UST Fund. Ms. Davis opined that the negative cash flow of the UST Fund is not as a result of the UST Fund being overcharged. Exh. 49 at 7. Ms. Davis pointed to the transfer of funds from the UST Fund as one problem. Exh. 49 at 8. A second reason for the increased costs is that corrective action (often the most expensive activity) is being performed on many sites where releases were reported prior to 2000. Exh. 49 at 7-8. A third reason for increased expenditures is that the cost of doing business in Illinois has risen, according to Ms. Davis. Exh. 49 at 8.

Site Investigation. Ms. Davis believes that the Agency's proposed staged site investigation is too prescriptive in regards to placement of wells and locations of soil samples. Exh. 49 at 8. Ms. Davis recommended leaving these decisions to the licensed professional engineer or a licensed professional geologist based on their knowledge of the site. Exh. 49 at 8-9.

Process for Denial. Ms. Davis questioned the Agency's process when denying reimbursement. Exh. 49 at 9-10. Ms. Davis noted that the Agency at the end of 120 days denies reimbursement with very little detail, leaving only three options. *Id*. The first option is to resubmit. Second, appeal to the Board; or third, accept the decision and eat the cost. Exh. 49 at 9. This approach causes two problems, according to Ms. Davis. Exh. 49 at 10. An owner or operator is never given the opportunity to submit additional information and then must bear the legal costs. *Id*. Ms. Davis recommended modifying the denial process to allow for a draft denial letter to be issued prior to the final decision and a provision to allow for mediation or arbitration prior to appeal to the Board. *Id*.

Atypical Situation. Ms. Davis expresses concern that the "atypical" situation is not defined. Exh. 49 at 10-11. Ms. Davis pointed out that the *ad hoc* workgroup proposed the use of an "atypical site form" to be used when a consultant determines that the site warrants extra expense. Exh. 49 at 11. Ms. Davis indicated that PIPE recommends the formation of a peer review committee be formed. *Id*.

Joseph W. Truesdale

Mr. Truesdale is a licensed professional engineer and geologist and he is a senior project manager and managing agent for CSD. Exh. 73 at 1. Mr. Truesdale's testimony covers four topics, which are discussed below.

Mr. Truesdale supports the Agency's position of proposing some sort of more comprehensive site investigation. Exh. 73 at 3. Mr. Truesdale believes that adequate site assessment facilitates cost effective and efficient remediation when the assessment is complete. Tr. 5 at 130-31.

Mr. Truesdale takes issue with the rates of Subpart H. Exh. 73 at 5. Mr. Truesdale stated that assuming fixed maximum payment amounts could be established for activities that do not have a clearly defined, fixed, scope of work is unreasonable. *Id.*

Swell Factor. Mr. Truesdale disagreed with the Agency's proposed "swell" factor, the amount by which the volume of the soil will change when either excavated or compacted. Exh. 73 at 4. The Agency has proposed a five percent increase and Mr. Truesdale believes that value is not consistent with the value commonly used by engineers. *Id.* Mr. Truesdale stated that the swell factor for "earth and rock" ranges from 12% to 60% and the typical value for earthen material is 25%. *Id.* Mr. Truesdale noted that given the variability of swell for various geologic materials, the Agency's use of a single value for percentage of swell is unreasonable. *Id.* Mr. Truesdale opined that the more appropriate way to evaluate the costs would be by independently evaluating the costs. Exh. 73 at 4-5.

NFR Letters. Mr. Truesdale made two points regarding NFRs. Exh. 73 at 5-7. First, Mr. Truesdale observes that of the sites which have reported releases, essentially all the easily remediated sites have been remediated and NFR letters have been issued. Exh. 73 at 5. The sites that are left are sites that are more technically challenging and as a result tremendous amounts of data are necessary to determine how best to remediate the sites, according to Mr. Truesdale. Exh. 73 at 5-6. The second point Mr. Truesdale made is that more owners or operators would use TACO to remediate a site if they could access the UST Fund after the issuance of a NFR. Exh. 73 at 6-7.

United Science Industries

United Science Industries (USI) presented testimony from Mr. Duane Doty, Mr. Joseph M. Kelly, Robert J. Pulfrey, and Mr. Barry F. Sink. In addition, Mr. Jay Koch, president of USI, filed a public comment.

Mr. Duane Doty

Mr. Doty is the General Manager for United Science Industries, Inc. (USI). Exh. 53 at 1. He is a licensed professional geologist and has consulted with owners and operators of USTs on compliance issues since 1988. *Id.* Mr. Doty offered testimony on behalf of PIPE. *Id.* Mr. Doty raised several issues concerning the Agency's proposal. The following paragraphs summarize those issues.

Work Breakdown Structure. Mr. Doty testified that after reviewing the Agency's proposal in Subpart H, USI recognized that there were several variables in some of the pay items. Mr. Doty developed with USI a standardized format to allow the Agency to collect data on the pay items. Tr.4 at 151-152, Exh. 48. Mr. Doty conceded that the format of Exhibit 48 is just a draft, but suggests that along with the suggestions from the *ad hoc* workgroup, the Agency could collect data to define the scope of work and the rates. Tr.4 at 153.

Half-Day Rate. Mr. Doty expressed several concerns with the Agency's proposed use of a half-day rate. As an initial concern, Mr. Doty feels that a half-day is four hours in duration, not the five proposed by the Agency. Exh. 53 at 1. Also, the Agency's limitation of two half-day units per calendar day does not take into consideration that many businesses have more than one eight-hour shift in a calendar day. Exh. 53 at 1-2. Mr. Doty noted that the limitation of two half-day units does not acknowledge instances where a longer day is worked to avoid potential weather or weekend delays. Exh. 53 at 2.

Mr. Doty's testimony reflects a concern that the travel time, included with the half-day rate, is not realistic. Exh. 53 at 2-3. Mr. Doty questioned the Agency's assumption that all project sites will be within a half-hour of the consultant's office. Exh. 53 at 3. Mr. Doty recommended revisiting the half-day rate to adjust the rate to better represent typical travel times or to separate travel time from the half-day rate. *Id*.

Mr. Doty suggested that the half-day rate of $500 be revisited, as the rate is not reasonable and sufficient if the rate is to include instrumentation. Exh. 53 at 3. Mr. Doty pointed out that daily rates for instrumentation can range from less than $50 per day to more than $100 per day. Exh. 53 at 3-4. If a project manager, who is entitled to $90 per hour under the Agency's proposed Subpart H, spends a half-day at the site, the cost is already $450 before instrumentation is included, according to Mr. Doty. Exh. 53 at 3.

Mr. Doty discussed the issues of whether a consultant is present when a tank is removed and the limitation of one half-day regardless of the number of tanks removed. Exh. 53 at 4-5. Mr. Doty conceded that consultants are not always present when tanks are removed; but that is because a release may not yet have been reported. Exh. 53 at 4. Mr. Doty stated that the common practice is to have a consultant present for tank removal if a release has been reported. *Id*. The consultant is present in an effort to document the event, evaluate the condition of the UST system, determine the source of the release, prepare a site map, sample the excavation, and collect the data necessary to comply with Agency reporting requirements. *Id*. Mr. Doty suggested that limiting the reimbursement to one half-day is not reasonable and the owner or operator should be eligible for reimbursement for as many half-day increments are necessary to complete the UST removal activities. Exh. 53 at 5.

Report Preparation. Mr. Doty feels that the Agency's proposal to reimburse owners or operators for preparation of various reports on a fixed rate basis does not take into consideration the variations of the scope of work. Exh. 53 at 5. Mr. Doty stated that the scope of work has a direct effect on the effort dedicated to the plan or report. *Id*. Mr. Doty offered, as an example, that a corrective action plan prepared to address a small plume of on-site contamination does not

require the same effort as a corrective action plan to address widespread contamination that has migrated to several sites. *Id*.

Mr. Doty suggested that when working with a site, unforeseen circumstances can commonly arise after the Agency has approved a plan or budget. Exh. 53 at 6. However, the Agency's proposal does not allow for reimbursement for preparation of an amended plan or budget. *Id*. Mr. Doty believes that the owner or operator should be allowed to seek reimbursement for an amended plan or budget when conditions unforeseen by both the owner or operator and the Agency arise. *Id*.

Agency Review. Mr. Doty agrees that some of the changes proposed by the Agency will streamline the reporting process for both the owner or operator and the Agency. Exh. 53 at 6. However, Mr. Doty noted that the Agency's review time remains 120 days. *Id*. Mr. Doty suggested that the 120 review might be reduced to reflect the benefit of the streamlined process. Exh. 53 at 6-7.

Excavation, Transportation and Disposal (ETD). Mr. Doty expressed concern that the Agency's calculations for ETD do not take into consideration either small amounts of soil or remote locations. Exh. 53 at 7-8. Mr. Doty suggested that this situation could be addressed either by recognizing that small amounts of soil or a remote location would constitute extraordinary circumstances or by offering a scale reflecting extended transportation requirements or less than average volumes of soil. *Id*.

Subpart C. Mr. Doty commends the Agency for proposing Subpart C and believes that the revisions have the potential to improve the current regulations. Exh. 53 at 8. Mr. Doty recommended certain changes for consideration. Mr. Doty suggested that the proposal be modified to require a minimum interval between borings to avoid the possibility of borings being placed in the same place. *Id*. Mr. Doty also suggested that the Agency provide some explanation regarding the rationale that will be used when reviewing the Stage 2 and Stage 3 plans. Exh. 53 at 9.

Joseph M. Kelly

Mr. Kelly is a licensed professional engineer and a licensed civil engineer. Exh. 54 at 1. Mr. Kelly is the Vice President of Engineering for EcoDigital Development Group, LLC and the senior professional engineer for USI. *Id*. Mr. Kelly feels that over the last few years the Agency has reduced rates by redefining what is "reasonable" and, as a result, acceptability of a plan or budget is being determined on what the plan or budget will cost rather than what is necessary. Exh. 54 at 2-4.

In general Mr. Kelly's testimony takes issue with the proposed rates in Subpart H and the methodology for developing those rates. Exh. 54 and 54a; Tr.5 at 4-77. More specifically, Mr. Kelly noted that the raw data used to develop the rates was chosen in-house by the Agency. Exh. 54 at 5. Mr. Kelly stated that reviewing costs and determining if the costs are reasonable and necessary is good, "but collecting raw data and then deriving a one-size fits all lump sum payment schedule without noting what is in the scope of work is detrimental." Exh. 54 at 6. Mr.

Kelly opined that the Agency seems to be dictating what is reasonable and necessary without taking into consideration the owner or operator, the consultant, or the professional engineer. *Id*.

Mr. Kelly also provided numerous exhibits that mapped: UST sites (Exh. 57), sites being remediated by members of PIPE (Exh. 58), and landfills which accept special waste such as contaminated soils from USTs (Exh. 59). Mr. Kelly presented these exhibits and others to provide the Board with information on how sites can vary. Tr.5 at 23.

Mr. Kelly also offered specific comments on certain issues. The first was soil measurement for purposes of budget submittals. Mr. Kelly suggested that in measuring soil, rather than using cubic yards the measurement should be in tons. Exh. 54a at 1. Mr. Kelly suggested that applying a swell factor would allow for a reliable estimate for purposes of budget submittal. Exh. 54 at 9-10; Exh. 54a at 1-2. Second, Mr. Kelly took issue with the travel time included in the half-day rate. Exh. 54a at 3. Third, Mr. Kelly expressed concern that the provision in the proposal to be used for extraordinary circumstances will need to be invoked on too many projects and, therefore, the administrative burden has not been lessened by the proposal. *Id*. Fourth, Mr. Kelly stated that the reimbursable costs for abandonment of a tank are totally inadequate. Exh. 54a at 3-4.

Robert J. Pulfrey

Mr. Pulfrey is a senior project manager for USI and has been involved in environmental investigation and remediation for 15 years, including three years in the public sector. Exh. 55 at 1. Mr. Pulfrey believes that the Agency's purpose is to protect human health and the environment. Exh. 55 at 3. However, Mr. Pulfrey opined that this purpose has transformed to protecting the UST Fund. *Id*. Mr. Pulfrey feels that the scope of projects is being driven by monetary concerns, not protection of human health or the environment. *Id*.

Mr. Pulfrey also offered insight into the Agency's proposed drilling rates in Subpart H. Exh. 55 at 2. Mr. Pulfrey noted that the basis on which drillers charge is highly dependent on the type of lithologies that are encountered and the types of drilling employed. *Id*. A comparison of drilling rates from Texas, Colorado, Oklahoma, and Arizona with Illinois would not be an accurate comparison due to the differences in the soils. Exh. 55 at 3. Drilling rates from Indiana, Ohio, and Michigan would give a more accurate comparison, according to Mr. Pulfrey. *Id*.

Barry F. Sink

Mr. Sink is a professional engineer with USI and has worked with them since 2002. Prior to joining USI, Mr. Sink worked for 20 years as a project engineer in the mining industry. Exh. 56 at 1. Mr. Sink testified that the payment amounts proposed by the Agency in Subpart H will make the "ethical professional hesitant to perform professional services" associated with UST sites. Exh. 56 at 2. Mr. Sink stated that the lump sum approach offered by the Agency is an over-simplification of the professional process associated with the remediation of UST sites. Exh. 56 at 3. Mr. Sink testified that the Agency lump sum approach suggests, among other

things, that remediation is a "cook book" process, each owner or operator is typical, and the magnitude of contamination does not effect the amount of work. Exh. 56 at 3-4.

Mr. Sink took issue with the proposal's limitation on reimbursement for an engineered barrier. Exh. 56 at 8. Specifically, the proposal at Section 734.630(tt) and Section 732.606(xx) prohibits reimbursement for the costs of an engineered barrier that exceeds the cost of asphalt four inches in depth. Exh. 56 at 7. Mr. Sink opined that the engineering characteristics of asphalt and concrete are not the same and site-specific conditions dictate the design of an engineered barrier. Exh. 56 at 8. Mr. Sink further opined that the traffic on an engineered barrier must be determined to properly construct an engineered barrier. *Id*.

Public Comment

Mr. Koch's comment asks for an additional hearing to present a testimony regarding an electronic format for developing a database. PC 8 at 8.

Jarrett Thomas

Mr. Thomas is Vice President and co-owner of Suburban Laboratories, Inc. Exh. 75 at 1. Mr. Thomas is a member of the Community Water Supply Testing Council, Chairman of the Environmental Laboratory Certification Committee, and board member of PIPE. *Id*. Mr. Thomas is also a member of the Illinois Association of Environmental Laboratories, Inc. (IAEL). Mr. Thomas offered his testimony on behalf of PIPE and IAEL. *Id*.

Mr. Thomas testified that he and IAEL surveyed members to develop a spreadsheet of rates charges by the laboratories in Illinois who do work with USTs. Exh. 75 at 2-3. Five laboratories responded to the survey and were included in the spreadsheet. Exh. 75 at 3. The five laboratories that responded to the survey perform an estimated seventy percent of the UST analyses in the State. *Id*.

After the development of the data, Mr. Thomas forwarded the information to the Agency with a recommendation that the Agency propose the maximum rate. Exh. 75 at 3. The Agency's proposal instead used the average and Mr. Thomas disagrees with those rates. Exh. 75 at 3-4. Mr. Thomas opined that assuming a natural distribution, use of the average will result in 50 % of the rates falling above the reimbursement limit. Exh. 75 at 4. Mr. Thomas recommended using either the maximum rate established by the data or the average plus one standard of deviation, whichever is greater. *Id*.

Mr. Thomas offered several specific suggestions for language changes in the proposal as well. Exh. 75 at 4-5. The changes he recommended included addressing how to handle potential tests requested by the Agency, and addressing costs for approve methods not specified in the Appendix of the rule. *Id*. Mr. Thomas also recommends adding analyses, sample containers, and collection devices as eligible costs. Exh. 75 at 5.

CW^{3}M Company

Mr. Vince Smith, Ms. Carol Rowe, and Mr. Jeff Wienhoff all testified on behalf of CW^{3}M Company (CW^{3}M) at the June 21, 2004 hearing. Tr.4 at 6. In addition, on September 23, 2004, CW^{3}M filed a public comment (PC 9). Mr. Smith summarized the general comments of CW^{3}M, while Ms. Rowe and Mr. Wienhoff presented additional information.

Vince Smith

Mr. Smith testified that the prefiled testimony was prepared with the assistance of both Ms. Rowe and Mr. Wienhoff. Tr.4 at 7. Specifically Mr. Smith indicated that CW^{3}M has worked with remediation of UST sites since the founding of the company in 1991. Tr.4 at 8. Many of CW^{3}M's clients own a single facility located in remote parts of the State. *Id*. In the prefiled testimony CW^{3}M offers comments on the proposed technical modifications and extensive comment on Subpart H. Tr.4 at 8; Exh. 29.

Mr. Smith testified that the basis for CW^{3}M's testimony in opposition to Subpart H is CW^{3}M's "serious concerns regarding the collection and evaluation of data utilized to support the rates." Tr.4 at 8. Mr. Smith stated that the spreadsheets, made available by the Agency, have "revealed" serious flaws in the selection and age of the data as well as input into statistical formulas. *Id*. Furthermore, errors have been carried forward in rate calculations and even when rates from other states have been reviewed, factors were left out which skewed the results. Tr.4 at 9.

CW^{3}M also takes issue with lump sum payments. Mr. Smith stated that the lump sum values are "arbitrary, lack understanding and consideration of site variations, and actual cleanup costs based upon severely flawed methods with no supporting evidence." Tr.4 at 9-10. Mr. Smith stated that the lump sum value evaluation exacerbated the already flawed maximum rates. Tr.4 at 10.

CW^{3}M agrees that efforts to streamline the program are beneficial to the UST Fund; however, the means of streamlining the fund have not been well thought out. Tr.4 at 11. Mr. Smith stated that in the long term, the efforts will negatively impact the UST Fund. *Id*. Mr. Smith opined that smaller owners who must rely on the UST Fund to afford corrective action will no longer be able to cleanup their sites because too many costs will not be reimbursable. *Id*. Mr. Smith stated that the rules have been proposed to protect the UST Fund and not the environment, contrary to the real purpose of the fund which is to protect the environment. Tr.4 at 14.

Mr. Smith pointed out CW^{3}M's concern with the proposed auditing procedures by the Agency. Tr.4 at 13. Mr. Smith testified that the auditing procedures in the proposed rule are more comprehensive than the Act allows. Tr.4 at 13. Ms. Rowe reiterated this concern. Tr.4 at 35-36.

In addition to the general testimony, Mr. Smith specifically explained the reasoning by CW^{3}M for including Appendix C, D, J, and K. Tr.4 at 56-60. CW^{3}M included Appendix C as a demonstration of what can happen if you improperly apply statistics. Tr.4 at 57. Appendix D was provided to support CW^{3}M's contention that a conversion factor of 1.68 is more accurate.

Tr.4 at 58. Appendix J is a summary of information obtained from the IDOT which indicates the costs to IDOT for tank removal and for disposal on competitively bid projects. Tr.4 at 58. Finally, Appendix K contains excerpts from *National Construction Estimator* and CW^{3}M's interpretation on what the rates should be. Tr.4 at 59.

Carol Rowe

Ms. Rowe offered testimony concerning the higher expenditures from the UST Fund and the fewer number of NFR letters being issued. Tr.4 at 25-28. Ms. Rowe opined that the higher costs were not a result of new releases but rather of releases reported in 1998, 1999, and 2000 reaching the corrective action stage. Tr.4 at 25, 27. CW^{3}M provided Exhibit 30 to support Ms. Rowe's contentions.

Ms. Rowe noted that under the current UST regulations, all sites are essentially "high priority sites" which could be the reason for increased expenditures from the UST Fund. Tr.4 at 27. Ms. Rowe explained the decreasing number of NFR letters as resulting from the fact that the easier sites from 1998, 1999, and 2000 have already been closed. Tr. 4 at 27.

Ms. Rowe highlighted several specific concerns of CW^{3}M with the proposed regulations. Regarding the one-year timeframe for submittal of applications for payment after issuance of a NFR, CW^{3}M believes that certain exceptions should be created. Tr.4 at 27-28. Ms. Rowe stated that CW^{3}M understands the Agency's desire to close files on sites which have completed remediation; however, there are specific instances where additional time may be warranted. Tr.4 at 28.

Next, Ms. Rowe suggested that the Agency reconsider the amount of personnel that may be present on site during drilling activities. Tr.4 at 29. CW^{3}M has concerns regarding the limits on time and personnel for site oversight. Tr.4 at 31-33. Ms. Rowe also suggested that the Agency reconsider the proposed language declaring permit fees to be ineligible for reimbursement. Tr.4 at33. CW^{3}M believes that permit fees are necessary corrective action costs and disallowing reimbursement could be the end of groundwater remediation systems. *Id*.

Ms. Rowe recommended that Section 732.855 and 734.855 be carefully evaluated in light of the Agency's history. Tr.4 at 35. Ms. Rowe noted that the Agency has been reluctant in the past to reimburse higher costs associated with a site-specific unusual circumstances. Tr.4 at 34. CW^{3}M predicts that these two provisions may result in more appeals than the current system. *Id*.

Ms. Rowe expressed CW^{3}M's unease with the Agency proposal to deny handling charges until proof of payment is supplied. Ms. Rowe noted that requiring proof of payment results in higher handling costs for the contractor and the higher costs will not be reimbursable. Tr.4 at 36-37.

CW^{3}M asks that the Agency include more specificity in denial letters. Tr.4 at 38. Ms. Rowe testified that PIPE's suggestion for the Agency to provide a draft denial or modification, if adopted, could improve the relationship between the Agency and the regulated community. *Id*.

Jeff Wienhoff

ETD. Mr. Wienhoff discussed CW^{3}M's responses to the Agency's statistical analysis performed to establish the excavation, transportation, disposal, and backfill rates. Tr.4 at 40-46; 50-52. Mr. Wienhoff reviewed the Agency's submission regarding other States (Exh. 23), and summarized CW^{3}M's impressions of the materials. Tr.4 at 46-49. Mr. Wienhoff explained Appendix I, included with the prefiled testimony, and CW^{3}M's position on the Agency's proposed half-day rates. Exh. 29 at App. I; Tr.4 at 52-56.

Mr. Wienhoff pointed to specific problems with the Agency's data used to establish rates for ETD and backfill. Tr.4 at 41-46. Mr. Wienhoff reviewed the data used by the Agency to develop Exh. 27 and found that the data was skewed for several reasons. First, the spreadsheet relied on too many sites in the metro Chicago area. Tr.4 at 41. Mr. Wienhoff stated that 80% of the sites reviewed on the spreadsheet were in the four-county Chicago metro area, while only 40% of the currently opened UST sites are in that same area. Tr. 4 at 41. A second issue with the Agency's data is that the actual reporting period was earlier than indicated by the Agency, thus, the data is older, according to Mr. Wienhoff. Tr.4 at 42-44, Exh. 31, 32, 33. In addition to the data being older, Mr. Wienhoff pointed to information that establishes that the data included was not from conventional technologies, was for material only, and was adjusted by the Agency. *Id*. Based on Mr. Wienhoff's review of the Agency materials, CW^{3}M does not believe that Exh. 27 should be relied upon by the Board. Tr.4 at 45.

In reviewing the materials submitted by the Agency regarding UST programs in other states, Mr. Wienhoff stated that only three of the states included ETD and backfill as one lump sum rate similar to that proposed by the Agency. Tr.4 at 46. Mr. Wienhoff used the average rates prepared by the Agency in Exh. 23 and developed Exh. 34. Tr.4 at 47-48. CW^{3}M's average number was higher than the Agency's average number. Tr.4 at 48. Also, the Agency's proposal included 39 personnel rates while the average for the other states was 95, and CW^{3}M feels this is a further indication of the oversimplification of the Agency's proposal. Tr.4 at 49.

Early Action. CW^{3}M, in Appendix I, provided information from several sites where CW^{3}M has performed early action. Tr.4 at 52. Mr. Wienhoff stated that these examples were presented to demonstrate that for the same type of report, depending on site-specific conditions, costs can vary. Tr.4 at 52-53. CW^{3}M believes that Subpart H is oversimplified. Tr.4 at 53. As examples of the over-simplified nature of Subpart H, Mr. Wienhoff explained that some sites may require additional activities at a site. Those activities could include early action excavation at sites while other sites would not require early action excavation. Tr.4 at 53. Mr. Wienhoff noted that the same amount of reimbursement dollars is available for placement of monitoring wells, even though certain sites may require more wells. Tr.4 at 54. In sum, Subpart H does not allow for variations from site to site and more variables need to be a part of Subpart H, according to Mr. Wienhoff. Tr.4 at 54.

Half-Day Rate. CW^{3}M agrees with the Agency's proposed half-day rate for field activities. Tr.4 at 56. However, CW3M recommends that travel should be separate from the rate for field activities. *Id*.

Prefiled Testimony

CW^3M expressed concerns with the Agency's proposal for Stage 3 Site Investigations. Exh. 29 at 16-17, 69-71. CW^3M offered two primary areas of concern: first, with the proposed language at Section 734.325, and second, with the language at Section 734.845(b)(5) and (6). In Section 734.325, CW3M suggested the addition of a provision allowing for additional off-site investigation to define the extent of soil and groundwater contamination. Exh. 29 at 16. The additional language should also allow for collection of all data required for submittal of the site investigation completion report. *Id*. CW^3M acknowledges that the Agency has suggested that the proposal include contingencies; however, there are no criteria for how much additional drilling should be proposed. Exh. 29 at 17. Furthermore, CW^3M pointed out that if the Agency modifies or reduces the drilling plan and later more drilling is required, there is no mechanism for the owner or operator to be reimbursed. *Id*.

In Section 734.845(b)(5) and (6), CW^3M asserted that the Agency's "attempt to simplify and quantify a lump sum rate for Stage 3" site investigation plans fails to recognize three factors. Exh. 29 at 69. Those three factors are: (1) the extent of field work which was conducted during Stage 2; (2) the amount of field work proposed to be conducted during Stage 3 or potentially conducted; and (3) the extent or number of potentially affected off-site properties. *Id*.

CW^3M maintained that in order to prepare a plan for Stage 3 investigation, the plan should include the results of the Stage 2 investigation and the extensiveness of that investigation will determine the cost of preparing a Stage 3 plan. Exh. 29 at 69. CW^3M opined that the extent of field work is dictated by the findings of Stage 1 and 2 investigations and the costs for performing Stage 3 correlate to the amount of work to be conducted. Exh. 29 at 70

CW^3M noted that factors which affect the cost of conducting off-site investigations include the number of potentially affected properties, the number of owners, and the number of requests. Exh. 29 at 70. Additional off-site investigations would be required if the results of the first round of off-site investigations did not define the extent of the contamination. *Id*.

CW^3M stated that because site-specific variables have not been included in the Agency's proposed rate, Section 734.845(b)(5) and (6) should be stricken. Exh. 29 at 70-71. CW^3M believes that the reasonable costs for Stage 3 investigations should be determined on a time and material basis. *Id*.

Public Comment

CW^3M indicated that in preparing the comment, CW^3M believed that a reassessment of the purpose of the proposed regulations was necessary. PC 9 at 1. Clearly, the technical changes being proposed are in response to statutory changes; however, CW^3M feels that the purpose for fiscal changes is more difficult to ascertain. *Id*. CW^3M stated that if solvency of the UST Fund is not a factor for proposing the rulemaking, then CW^3M suggests that the perhaps the fiscal portion should be tabled. PC 9 at 2.

CW^{3}M noted that the Agency has indicated that the purpose for fiscal changes proposed in this rulemaking was to streamline the budget and reimbursement processes. PC 9 at 2. CW^{3}M supports streamlining the process. *Id.* CW^{3}M opined that components of the proposal "created additional bureaucratic roadblocks" that undermine the streamlining. *Id.*

CW^{3}M takes issue with the Agency's contention that the establishment of "reasonable costs" in regulations will result in significant cost savings. PC 9 at 3. CW^{3}M's prefiled testimony disagrees with the Agency that the proposal will result in cost savings because CW^{3}M does not agree with the data used by the Agency to develop reimbursement rates. PC 9 at 3. CW^{3}M asks how there can be a cost savings if the rates proposed by the Agency are consistent with those historically approved and deemed reasonable by the Agency. *Id.*

CW^{3}M believes that the Agency should reconsider many of the proposed rates because the reimbursement rates are lower than the actual costs for performing the work. PC 9 at 3. CW^{3}M pointed out that one of the stated purposes of the UST Fund is to pay "costs of corrective action" (415 ILCS 5/57.11(a)(5) (2002)). PC 9 at 3. And although the Agency may review the costs for reasonableness, the Act still requires that corrective action cost be paid by the UST Fund. *Id.* For these reasons, CW^{3}M supports the rates presented in PIPE's alternative proposal.

CW^{3}M believes that the Agency is attempting to turn professional services and remediation activities into a commodity-based system rather than time and materials basis. PC 9 at 4. CW^{3}M feels that the system proposed by the Agency is oversimplified. *Id.* CW^{3}M noted that consultants are not entirely opposed to commodity-based systems, but a clear scope of work must be included for each item. *Id.* Absent a clear scope of work, one variable that is not accounted for could lead to a substantial profit or loss. *Id.*

In PC 9, CW^{3}M also clarified earlier testimony. CW^{3}M clarified that the IDOT information was presented as an indication of current pricing activities and to demonstrate that the Agency's proposed rates are unreasonably low in comparison to IDOT's real work experiences. PC 9 at 4-5. A second point that CW^{3}M sought to clarify is that while 48 landfills in Illinois are permitted to accept soils from leaking UST sites, not all actually accept the waste. PC 9 at 5. Also while 668 haulers are available to transport soils from leaking UST sites, not all are actually available. *Id.*

Section-by-Section Comments

CW^{3}M provided specific comments on several section of the proposal in both the prefiled testimony (Exh. 29 at 9-84) and the public comment (PC 9 at 6-26). The following discussion will summarize only the comments which question or oppose the language proposed by the Agency.

Sections 732.103 and 734.115, Definitions. CW^{3}M proposed that the definition for "financial interest" and all references to "financial interest" be removed from the proposal. PC 9 at 6. CW^{3}M recommended the deletion of this definition because of CW^{3}M's concern that the Agency is attempting "to reduce or eliminate handling charges." PC 9 at 6. CW^{3}M maintained that when a contractor secures the work of a subcontractor, even where there is an ownership

interest, the contractor incurs similar expenses for the subcontractor as those incurred where there is no ownership interest. *Id*. CW^{3}M asserted that the Agency is attempting to limit a consultant's profits by eliminating handling charges when "the Agency does not clearly understand the costs associated with conducting work in the private sector." PC 9 at 6-7.

Sections 732.112 and 734.145, Notification of Field Activities. CW^{3}M supports the premise of having Agency personnel visit sites to observe field activities. PC 9 at 7. However, CW^{3}M recommended that Subpart H be modified to allow for the additional expenses incurred to prepare and provide the notification of field activities. *Id*. CW^{3}M conceded that the costs are generally minimal. CW^{3}M argued that the expense represents "an example of additional tasks imposed by the Agency to comply with regulations without corresponding consideration to the costs." *Id*.

Sections 732.407(b) and 734.340(b), Alternative Technologies. CW^{3}M takes issue with the Agency's requirement that at least two alternative technologies be compared with the proposed alternative technology. PC 9 at 7. CW^{3}M indicated that in some instances, other alternative technologies may not be technically feasible as a result of site conditions. *Id*. For this reason, CW^{3}M proposed that language be added to address such an instance by proceeding under Sections 732.855 or 732.855. *Id*. Specifically, CW^{3}M recommended that the following be added to each section:

If two other technologies are unavailable or are not technically feasible corrective action measure, the owner or operator must proceed in accordance with [Section] 734.855 (or 732.855). PC 9 at 8.

CW^{3}M noted that in some cases, the use of alternative technology is preferable for technical reasons or because the costs for using conventional technology are high. PC 9 at 8. CW^{3}M suggested that for cases where conventional technology exceeds the amounts in Subpart H, procedures should be crafted to allow for comparison of costs between conventional and alternative technologies. *Id*. CW^{3}M stated that "preparation of bids for a technology which has already been ruled out as unfeasible is not ethical and a waste of resources." *Id*. CW^{3}M recommended that following language also be added to Sections 732.407(b) and 734.340(b):

If the estimated costs for conventional technology exceed the maximum payment amounts set forth in Subpart H, the owner or operator shall prepare a cost estimate of the conventional technology for comparison to the alternative technology in accordance with the requirements of [Section] 732.860 (734.860) and [Section] 732.850 (734.850). *Id*

Sections 732.408 and 734.410, Remediation Objectives (Board Notice), and 732.606 (ggg), (hhh) and 735.630 (ggg) and (hhh), Ineligible Corrective Action Costs. CW^{3}M argued that the fundamental purpose of these regulations is to protect human health and the environment. PC 9 at 11. The long term effect of the Agency's proposal to limit reimbursement to Tier 2 TACO cleanup levels and limit reimbursement for groundwater remediation have not been researched to determine the impact of the proposal on human health and the environment, according to CW^{3}M. *Id*. CW^{3}M also expressed concern that these limits could lead to additional litigation by off-site owners whose property values could be impacted by the Agency's proposal.

PC 9 at 10-11. The following paragraphs summarize the specific concerns of CW^{3}M regarding both Tier 2 cleanup and groundwater remediation.

Cleanup to Tier 2. CW^{3}M protested the Agency's decision to eliminate reimbursement for cleanup costs above Tier 2 levels. PC 9 at 8. CW^{3}M's protest is not only that the Agency would make such a "sweeping" change to the proposal at this point in the process, but also CW^{3}M has two primary concerns regarding the change. PC 9 at 8-9. The first concern is that CW^{3}M believes that the property owner should determine the level of remediation, which is not always the same as the tank owner or operator. PC 9 at 9. Second, CW^{3}M expressed concern that off-site properties and their owners may insist on Tier 1 cleanup levels. *Id*. CW^{3}M opined that if the Agency cannot force Tier 2 objectives on off-site property owners, than Tier 2 objectives should not apply in situations where the property owner is different than the tank owner. *Id*.

CW^{3}M noted that Mr. Clay testified that most owners and operators already utilize alternatives afforded by TACO. PC 9 at 9. CW^{3}M asked that if this is so, why force owners and operators to use components of TACO that may be detrimental to the site or adjoining properties. *Id*. Further, CW^{3}M argued that if the Agency does not allow owners or operators back into the UST Fund if a problem later arises from the use of TACO, then the Agency should not consider requiring the use of TACO. *Id*.

CW^{3}M stated that current Agency policy and the proposed regulatory language require site owners or operators to define the extent of contamination to Tier 1 residential objectives. PC 9 at 9. In order to perform this task, a consultant contacts potentially affected neighboring or adjoining property owners and requests access and notifies the property owner that the UST owner is responsible for remediation, according to CW^{3}M. PC 9 at 9-10. CW^{3}M stated that to notify off-site owners that they may experience loss of property value absent remediation, but also to notify them remediation may not occur is "unconscionable". PC 9 at 10. CW^{3}M maintained that in such cases, the off-site property owners should have the discretion of remediating their property to address whatever levels of contamination that may be present and the UST Fund should cover the remediation costs. *Id*.

CW^{3}M asserted that the Agency proposed limiting of reimbursement to Tier 2 levels is in conflict with regulatory language. PC 9 at 10. CW^{3}M pointed out that Sections 732.411(f), 734.350(f) and 734.710(d)(3), as proposed, state that the owner or operator "is not relieved of responsibility to cleanup portions of the release that may have migrated off-site." *Id*.

Groundwater Cleanup. CW^{3}M takes issue with the Agency's proposal to declare ineligible for reimbursement costs for groundwater remediation if a groundwater ordinance is in place. PC 9 at 10. CW^{3}M asserted that remediation may still be required in certain instances including where free product needs to be removed and modeling must be performed to determine if there would be an issue related to vapor intrusion into buildings. PC 9 at 10. Further, CW^{3}M pointed out that current Board regulations at 35 Ill. Adm. Code 742.1015 require scaled maps delineating the boundaries of all properties under which groundwater is located which exceeds the applicable groundwater remediation objectives and scaled maps delineating the area and extent of groundwater contamination. PC 9 at 11.

Sections 732.606 (ll), (mm), (ss) and 734.630 (hh), (ii), (oo), Ineligible Corrective Action Costs. These proposed subsection deal with handling charges. CW^{3}M reiterates that there is no need for proof of payment to subcontractors. PC 9 at 12. CW^{3}M also believes that requiring such proof is beyond the scope of the Agency's authority. *Id.*

CW^{3}M renewed the request to strike the Agency's proposed ineligible cost for handling charges to a subcontractor where the contractor has a financial interest in the subcontractor's business. PC 9 at 13. CW^{3}M suggested that if the Board decides to keep this as an ineligible cost, the words "direct or indirect" be stricken because the words are redundant. *Id.*

Sections 732.606 (rr) and 734.630 (nn), Ineligible Corrective Action Costs. CW^{3}M does not oppose this language, if the Agency agrees that the provisions do not apply to sites being remediated under Part 731. PC 9 at 14. CW^{3}M believes that if an appeal is pending before the Board and settlement negotiations are under way, final disposition may take more than one year. *Id.* Thus, a NFR letter may be issued while the appeal is pending and the one-year timeframe could expire. PC 9 at 14-15.

Sections 732.606 (ddd) and 734.630 (aaa), Ineligible Corrective Action Costs. CW^{3}M renewed the objection to the Agency's proposal to disallow reimbursement for "governmental fees". PC 9 at 15. CW^{3}M also asked if the Agency intended to include sales tax as an ineligible cost for reimbursement. *Id.*

Sections 732.605 and 734.625, Eligible Corrective Action Costs. CW^{3}M suggested the addition of the following language as a new subsection (a)(21): "Handling charges for any subcontractor cost or field purchase cost incurred by the owner or operator's primary contractor." PC 9 at 13.

Sections 732.614 and 734.665, Audits and Access to Records; Records Retention. CW^{3}M stated that the Agency's modified language "still suffers from most of the same problems that was contained in the previous draft language." PC 9 at 15. CW^{3}M maintained that the Agency's proposal continues to "overstep the Agency's statutory authority." *Id.* CW^{3}M argued that the plain language of the statute limits the Agency's authority to auditing only the data, reports, plans, documents, or budgets submitted pursuant to the Act and thus the Board should not adopt Section 732.614 and 734.665. PC 9 at 16-17.

Sections 732.825 and 734.825, Soil Removal and Disposal. CW^{3}M believes that the proposed rate of $57 per cubic yard rate for soil removal, excavation and transport is out of date and unreliably calculated. PC 9 at 17. CW^{3}M suggest that the Board consider a rate more applicable to current and realistic rates which take into account site-specific factors. *Id.*

Sections 732.845 and 734.845, Professional Consulting Services. CW^{3}M supports the PIPE proposal for reimbursement of travel expenses. PC 9 at 18.

Sections 732.845(a)(2)(A) and 734.845(a)(2)(A), Professional Consulting Services. CW^{3}M noted that the Agency has modified the oversight rate of 250 cubic yards to 225 cubic

yards as a result of the proposed changes to the number of hours considered for a half-day rate. PC 9 at 19. CW^{3}M recommended revising the yardage rate to reflect actual field conditions during an excavation. PC 9 at 20. CW^{3}M believes that the Agency's rate fails to account for all activities underway which will affect the overall time on the job. *Id*. CW^{3}M indicated that the $57 rate assumes no activity except excavation; however, in reality backfill operations are often conducted concurrently with excavation. *Id*. Also, field oversight does not begin with the first shovel of dirt excavated; rather personnel overseeing excavation must arrive before heavy equipment to prepare the day's activities. PC 9 at 20-21. CW^{3}M estimates that additional activities account for 20% of the professional's time during excavation oversight. PC 9 at 21. CW^{3}M recommends the rate of 160 cubic yard to calculate excavation oversight. *Id*.

Sections 732.845(g) and 734.845(g), Professional Consulting Services. CW^{3}M disagrees with the Agency's allotment of $160 per task bid. PC 9 at 22. CW^{3}M maintained that the allotment fails to take into account the extent of work associated with preparing a bid proposal. *Id*. The $80 hourly rate is insufficient, as is the number of hours allotted. *Id*.

CW^{3}M believes that handling charges should also be allowed for a contractor even if the owner or operator directly pays the subcontractor. PC 9 at 22. CW^{3}M argued that whether or not the contactor pays the subcontractor, the contractor will still incur expenses preparing the bids, screening the subcontractors and evaluating bids. *Id*. CW^{3}M asserted that the Agency is "attempting to force the bidding process, yet denying the consultant payment of legitimately earned costs." *Id*.

Section 732.855 and 734.855, Bidding. CW^{3}M suggested modifying the bidding process to remove the prohibition for bidding by entities with a financial or related interest in either the owner or operator or the primary contractor. PC 9 at 23. CW^{3}M argued that for consultants who can provide additional services, obtaining three external bids will be difficult. PC 9 at 24. CW^{3}M maintained that there is no incentive for an external contractor to bid and they would be at a competitive disadvantage from the outset. *Id*.

CW^{3}M recommended that the bidding procedures be further developed to define "best efforts" to include that certified letters be sent to a minimum of three contractors containing a specific scope of work, required qualifications, and allowing for a 14-day response time. PC 9 at 25.

Russ Goodiel

Mr. Goodiel is the owner of Applied Environmental Solutions in Centralia, Illinois and he has worked in the environmental area since 1989. Tr.5 at 124. Mr. Goodiel's firm is a small firm and has clients who own 70 to 80 sites in Illinois. Tr.5 at 125. Mr. Goodiel raises four issues in his testimony. Those issues will be summarized below.

Mr. Goodiel urged the Agency to reconsider the method by which reimbursement for site investigation is done. Tr.5 at 125-26. Mr. Goodiel stated that the process can take anywhere from one to three years and this places a substantial financial burden on owners or operators. *Id*.

Mr. Goodiel suggested that the Agency consider reimbursement after each stage of the site investigation to lessen this burden on the owner or operator. *Id*.

A second concern revolves around the method for appeal of an Agency decision. Tr.5 at 127. Mr. Goodiel recommended that an informal process but adopted to save both State and private resources. *Id*.

Mr. Goodiel takes issue with the Agency's proposal to allow for reimbursement for only one professional on-site under certain circumstances. Tr.5 at 127. Mr. Goodiel stated that a consultant must have a geologist at the site to log soils and identify boring and well locations. *Id*. A second professional is required to assist in the preservation of samples, according to Mr. Goodiel. *Id*.

Finally, Mr. Goodiel disagrees with the limits placed on reimbursement for travel time in the proposal. Tr.5 at 127. Mr. Goodiel noted that many of his clients are more than 30 minutes away and he urges the Agency to reconsider that proposal. *Id*.

Michael Rapps, Illinois Society of Professional Engineers

Mr. Rapps testified at the third group of hearings on June 21, 2004 (Tr.4 at 139-47) and submitted a public comment on September 23, 2004 (PC 7). In addition to the Illinois Society of Professional Engineers (ISPE), Mr. Rapps is a member of several professional organizations including the IPMA. Tr.4 at 139; Exh. 50 at 1. Mr. Rapps has been involved in underground storage tanks going back to the 1980s and has testified before the Board in prior rulemakings regarding the UST program. Tr.4 at 139-40; Exh. 50 at 1. Mr. Rapps' testimony includes observations concerning the UST program and Board appeals as well as comments on the Agency's proposal.

Mr. Rapps observed that in the early years, inadequate funding and a lack of formal cleanup standards plagued the UST program; however, those issues have been resolved. Exh. 50 at 2. Mr. Rapps believes that on balance the UST program is functioning smoothly. *Id*. Mr. Rapps noted that appeals to the Board have become common and apparently a steadily increasing disagreement between the Agency and the participants in cleanups. Exh. 50 at 3. Mr. Rapps stated that to the extent that this rulemaking may expedite environmental cleanups and reduce disputes, ISPE supports the proposal. *Id*.

As to the proposal, Mr. Rapps noted that the Agency has not articulated a clear statement of the problems this rulemaking is intended to address. Exh. 50 at 5. Mr. Rapps offered theories on what the basis for this rulemaking may be, which includes a potential concern by the Agency that the UST fund will be over-taxed by claims. *Id*. Mr. Rapps also put forth the theories that the Agency may be suspicious that contractors may be removing excessive dirt in "dig and haul" cleanups or that tank owners are engaged in endless "pump and treat" groundwater controls. *Id*.

Mr. Rapps questioned the Agency's use of audits as required by Section 57.8(a)(1) of the Act (415 ILCS 5/57.8(a)(1) (2002)). Exh. 50 at 6. Mr. Rapps indicated that he believes that the audits were introduced to be used in a random manner similar to the audits performed by the

Internal Revenue Service. *Id*. Specifically, Mr. Rapps believes that if a reimbursement request is for an amount less than or equal to the amount budgeted, the quest should be summarily approved for payment and only occasionally audited. *Id*. Mr. Rapps suggested language be added to the proposal to clarify that the Agency would perform audits pursuant to the statutory intent. *Id*.

Mr. Rapps suggested that using a published maximum cost may have the unintended result of actually costing the UST fund more money. Exh. 50 at 7. Mr. Rapps evaluated the Agency's lump sum reimbursement for excavation, transportation and disposal. Mr. Rapps noted that if every contractor charges the maximum, and they could, the costs to the UST fund would actually increase. *Id*.

Mr. Rapps is concerned that a by-product of this rulemaking could be the enactment of arbitrary constraints that would discourage professional engineers from engaging in legitimate problem solving. Exh. 50 at 8. His concern arises because although some of the activities involved with USTs are homogeneous, others including intellectual work products devoted to sight investigation and remedial design are not homogeneous. *Id*.

Mr. Rapps opined that while maximum costs is one way to determine the reasonableness of budget or reimbursement requests, there are other alternatives. Exh. 50 at 8. One example is a statistical approach to determine reasonableness. *Id*. A second example would be a bidding process. Tr.4 at 147.

In his public comment, Mr. Rapps discussed the need for additional hearings and noted that the issue of what will be discussed is not clear. PC 7 at 1. Mr. Rapps pointed out that the rationale for the proposal has not been clarified by the hearings and the Agency's suspicions have not been corroborated. *Id*. Furthermore, Mr. Rapps feels that while "sound inquiry was made into the proposed regulations, the loose ends that continue to dangle do not foster a great deal of confidence in the regulations." PC 7 at 2.

Mr. Rapps opined that the proposal represents a process which is in essence the process the Agency currently utilizes in reviewing application under the UST program. PC 7 at 3. Mr. Rapps suggested that the current system is labor intensive, expensive, controversial and requires high maintenance. *Id*. Mr. Rapps therefore contended that the proposal is conceptually flawed and he believes the Board should ask the Agency to withdraw the proposal and to begin anew. PC 7 at 4.

Bill Fleischli, Executive Director Illinois Petroleum Marketer's Association

Mr. Fleischli provided testimony at the third group of hearings on June 22, 2004 (Tr.5 at 77-92), the last hearing on August 9, 2004 (Tr.7 at 7-11), and submitted a public comment on August 16, 2004 (PC 1), on behalf of IPMA. IPMA represents two-thirds to seventy percent of the distributors of gasoline in the State. Tr.5 at 78. IPMA had a large role in the creation of the UST Fund, which was established by P.A. 86-25 in July 1989. Exh. 71 at 1. P.A. 86-25 provided for a tax of $.003 per gallon on the sale of certain petroleum products to be collected by distributors and deposited with the Department of Revenue. *Id*. In 1995, an environmental

impact fee was assessed "for a total revenue stream into the fund on an average of over $6 million per month, or about $70,000,000 a year." *Id*.

Mr. Fleischli testified that if the UST program fails, it is IPMA members who will suffer, because they will need to seek private insurance. Tr.5 at 78. Mr. Fleischli indicated that IPMA members pay over $72 million into the UST Fund each year, then pay for the remediation at the sites and wait for reimbursement. *Id*. Mr. Fleischli stated that IPMA does not feel the rates proposed by the Agency are competitive (Tr.5 at 78) and the IPMA would support some sort of bidding process as long as the reimbursement process was not slowed down. Tr.5 at 89. Mr. Fleischli testified that some of the IPMA members may already do some type of bidding when selecting contractors for the remediation work. Tr.5 at 88-89.

Mr. Fleischli expressed concern that the UST Fund has been accessed by the administrations by removing funds to the general revenue fund (GRF). Tr.5 at 80; Exh. 71 at 1. Mr. Fleischli stated that the Agency "cannot simply expect to realize those lost dollars by ratcheting down the costs of legitimate businesses doing remediation for reasonable rates. Exh. 71 at 2.

Mr. Fleischli also testified at the August 9, 1004 hearing regarding the Agency's third *errata* sheet (Exh. 87). Tr.7 at 7-11. Mr. Fleischli expressed "real concerns" regarding the changes suggested in Exhibit 87. Mr. Fleischli stated that the changes would require the use of less stringent cleanup objectives for IPMA members' property while requiring that off-site impacts be addressed using the most stringent regulatory requirements. Tr.7 at 8. Mr. Fleischli's concern is that if an owner chooses to cleanup a site to a higher standard, the owner would be required to pay out of pocket for that cleanup. *Id*. Mr. Fleischli indicated that the current rules allow the owner and their engineers to decide how stringent of cleanup objectives should be applied based on land use. Tr.7 at 8-9.

The Agency determining cleanup objectives at a less stringent level is also a concern because after a NFR letter is issued to the property, the owner can no longer access the UST Fund, according to Mr. Fleischli. Tr.7 at 9. Mr. Fleischli opined that if the IDOT or a future law change requires a study of the property and contamination is found, the property will not be eligible for reimbursement. *Id*. While generally supporting a tiered approach to cleanup, IPMA opposes not allowing an owner to make the decision as to what cleanup is correct for their property. Tr.7 at 9-10.

Mr. Fleischli asked that the hearings be left open and that lender and real estate people testify on the effect of this change. Tr.7 at 10. If UST Fund shortage is the reasoning for the proposal, Mr. Fleischli asked the Agency to join IPMA in passing legislation that would prohibit any further removal of moneys from the UST Fund to GRF. *Id*.

Harold Primack, BP Products North America, Inc.

Mr. Primack is the environmental business manager for BP Products North America, Inc. (BP) and he testified at the third group of hearings on June 22, 2004. His responsibilities include managing environmental incidents at BP's retail sites in Illinois. Exh. 72 at 1. Currently there

are over 240 Illinois sites that BP is remediating due to leaking underground storage tanks. Tr.4 at 93.

Mr. Primack testified that BP believes that maximum payment amounts and unit pricing as proposed by the Agency are concepts with value to the consumers of environmental products. Exh. 72 at 1; Tr.4 at 94. Mr. Primack stated that unit pricing and maximum payments will provide predictability, stability and will allow for more informed consumer decisions. *Id*. Mr. Primack opined that maximum payment amounts and unit pricing, if reasonable and applied correctly, would improve the Agency's efficiency in administering the UST fund. Exh. 72 at 2; Tr.4 at 94.

However, Mr. Primack enunciated three concerns with the proposal. Exh. 72 at 2; Tr.4 at 94. First, Mr. Primack stated that the process for arriving at the costs should be transparent to allow the consumers to see the usual pricing and better price evaluation. *Id*. Transparency would also allow better stakeholder acceptance, as the Agency's numbers would be documented. *Id*.

A second concern is that the maximum payment amounts be reasonable. Exh. 72 at 2; Tr.4 at 94. If maximum payments are too low, good consultants may be driven out of the marketplace and the costs of remediation could be shifted to the owner, opined Mr. Primack. Exh. 72 at 2; Tr.4 at 95.

Finally, Mr. Primack testified that flexibility must be built into the process. Exh. 72 at 2; Tr.4 at 95. Mr. Primack testified that much of UST work is a "commodity activity which can generally be priced in advance." *Id*. However, Mr. Primack noted that the maximum costs and rates must account for regional differences and complex sites which present unique challenges. *Id*. Mr. Primack suggested that the Board look to the TACO rules for guidance in this matter. *Id*.

Daniel J. Goodwin, American Consulting Engineers Council Of Illinois

Mr. Goodwin testified at the July 6, 2004 hearing Tr.6 at 7-9), the August 9, 2004 hearing (Tr.7 at 219-28), and submitted a public comment on September 23, 2004 (PC 3). Mr. Goodwin testified on behalf of the ACECI and he offered his own personal observations as well. ACECI represents approximately 231 members and in response to an Agency request ACECI participated in an *ad hoc* workgroup to develop the proposal. Exh. 74 at 1-2. In his first appearance in this proceeding, Mr. Goodwin stated that the Agency's proposal is consistent with the basic structure of the *ad hoc* workgroup's suggestions; however there are five significant differences. Exh. 74 at 2. Mr. Goodwin delineated those differences in his testimony and also offered testimony concerning the problem of updating rates and the Agency's practice for issuing denials. Exh. 74 at 6-8. .

The first difference is in the area of Stage 1 site investigations. Exh. 74 at 3. Mr. Goodwin stated that there was a feeling that the Agency's proposal is overly prescriptive. *Id*. Mr. Goodwin indicated that the *ad hoc* workgroup feels that the Agency should leave more of

the details of boring and monitoring well location to the licensed professional engineer or geologist responsible for the work. *Id.*

The second difference is the lack of a clear delineation of the scope of activities to be included in each of the phases of the project for which reimbursement limits are set forth in Subpart H of the proposal. Exh. 74 at 3-4. The *ad hoc* workgroup provided the Agency with detailed lists of individual tasks, and Mr. Goodwin attached that document to his testimony. Exh. 74 at 4, Attach. B. Mr. Goodwin testified that ACECI recommends that the detailed lists be incorporated into the regulation. Exh. 74 at 4.

The third difference arises from the Agency's proposal for maximum reimbursement amounts for various phases of a project. Exh. 74 at 4. Mr. Goodwin noted that the proposal implies that the individual expenditures on a time and materials basis in the budget and reimbursement claim musts still be detailed. *Id*. This approach defeats the Agency's stated purpose of streamlining the review of budgets and claims, according to Mr. Goodwin. *Id*. Mr. Goodwin recommended rewriting the language to clarify that if the reimbursement amount is to be on a lump sum basis, then no detailed costs justification is required. Exh. 74 at 5.

The fourth difference can be found in the proposed Sections 732.855 and 734.855 relating to unusual or extraordinary expenses. Exh. 74 at 5. Mr. Goodwin testified that the proposed language offers little guidance and recommends that additional guidance be made a part of the rule language. *Id*. Mr. Goodwin provided the *ad hoc* workgroup's suggested guidance to the Board as a part of his testimony. Exh. 74 at Attach. D.

The fifth difference is the personnel titles and rates included in the Agency's Appendix E. Exh. 74 at 5. The *ad hoc* workgroup had provided the Agency with a list and the most notable difference is the omission of a "Principal" classification, according to Mr. Goodwin. Exh. 74 at 6. Mr. Goodwin testified that a classification for "Principal" should be included because project oversight and quality assurance by a firm's "Principal" is an important management practice for many of ACECI's firms. *Id*. Mr. Goodwin stated that a reasonable number of hours charged to a project by a "Principal" should be reimbursable at a higher hourly rate. *Id*.

Regarding the updating of rates, Mr. Goodwin pointed out that the age of the data on which lump sums and maximum allowable rates was determined will be as much as seven years old by the time the rules are adopted. Exh. 74 at 6. A mechanism for updating the rates should be included in the rules, according to Mr. Goodwin. Exh. 74 at 6-7.

Concerning the Agency's practice for issuing denials, Mr. Goodwin stated that the Agency's practice has been to disallow costs with only the vaguest of explanations of the reason for disallowance. Exh. 74 at 7. Mr. Goodwin suggested that the Agency issue a "proposed disallowance" with specific explanations as to why the Agency is denying reimbursement. *Id*. This would allow the owner or operator to provide additional justification for the expenditure. *Id*.

In his second appearance, Mr. Goodwin offered testimony on the Agency's changes made in the third *errata* sheet. Mr. Goodwin indicated that the latest changes "are generally moving in

the right directions, but I must say there are significant problems that remain." Tr.7 at 219. The Agency's suggested changes to the Stage 1 site investigations do alleviate the concerns initially held by ACECI. Tr.7 at 220. However, the review and updating of reimbursement limits remains a concern and the Agency's flat rejection of creating a database is shortsighted, according to Mr. Goodwin. Tr.7 at 222. Further, Mr. Goodwin is "not optimistic that the proposed advisory committee will be a very successful mechanism for accomplishing the updating" of reimbursements limits. *Id*.

Mr. Goodwin noted that Subpart H still lacks clear delineation of the scope of work associated with several of the lump sum payment provisions. Tr.7 at 220. Mr. Goodwin emphasized that this issue must be addressed as the movement to lump sum payment entails a shift in the element of risk from the UST Fund to the owner/operator. *Id*. Mr. Goodwin testified that if that risk is significant, the risk can be minimized by making clear what is or is not covered in the scope of a given phase of work. Tr.7 at 220-21.

The introduction of competitive bidding in the third *errata* sheet is another area of concern, although Mr. Goodwin does believe that the idea is a constructive one. Tr.7 at 221. Mr. Goodwin feels that more consideration and discussion should be given to the concept. *Id*

Mr. Goodwin also reviewed the alternative proposal offered by PIPE. Tr.7 at 223. Mr. Goodwin believes the alternative proposal provides "a good vehicle for resolving some of the issues" in this proceeding. Tr.7 at 223-24.

On his own behalf, Mr. Goodwin believes that three issues raised in the third *errata* sheet need additional discussion. Tr. at 224-25. Those issues are competitive bidding, limiting reimbursement to Tier 2 objectives, and requiring cost estimates for alternative technologies. *Id*.

In his final comment, Mr. Goodwin expressed ACECI's continuing concern with the lack of clear delineation of the scope of services covered under the various lump sum payments. PC 3 at 5. ACECI is also disappointed that the Agency rejected the proposal for a formal procedure for notifying owners and operators in advance of an Agency denial. *Id*. On the three new areas proposed in the third *errata* sheet, Mr. Goodwin expressed ACECI's support for allowing reimbursement to Tier 2 objectives, while suggesting changes to the competitive bidding and alternative technologies changes. PC 3 at 2-5.

ACECI agrees that competitive bidding may be a good solution to determining fair reimbursement amounts in atypical situations. PC 3 at 2. However, ACECI sees two problems. First, securing three bids prior to submittal and approval of the budget may not be practical. ACECI suggested that the owner/operator be allowed to bid the project while the Agency reviews the budget. *Id*. Once the budget is approved, the owner or operator would be entitled to reimbursement in the amount of the lowest qualified bid. *Id*. Second, ACECI feels that the reimbursement rate proposed by the Agency for the bidding process is too low. PC 3 at 2. A suggested resolution to this problem is to allow reimbursement for the bidding process on a time and materials basis. PC 3 at 3.

ACECI believes that the requirement for three cost estimates for alternative technologies is flawed because there may not be three alternative technologies. PC 3 at 3-4. ACECI commented that the proposal assumes that feasibility and estimated costs for three technologies can be determined with enough sufficiency to make a meaningful comparison. PC 3 at 4. The proposal also does not take into consideration differences in the anticipated length of remediation, according to ACECI. *Id*. ACECI suggested the addition of appropriate exemption language to the proposal. *Id*.

Maurer-Stutz, Inc.

Maurer-Stutz, Inc. (Maurer-Stutz) filed a comment on September 23, 2004 (PC 5). In the comment, Maurer-Stutz expressed concern regarding the manner in which the Agency issues denial letters. PC 5 at 1. Specifically, Maurer-Stutz believes that it would be beneficial if the Agency would issue a pre-decision letter when a denial is anticipated. *Id*. Maurer-Stutz feels this would increase the efficiency of the process. *Id*.

Maurer-Stutz is also concerned about the "scope of work" versus the "fixed fee" process. PC 5 at 2. Maurer-Stutz does not believe that any two projects can be done in the same manner. Maurer-Stutz suggested that pre-defining the "scope of work" prior to any on-site investigation is a more realistic approach than fixing fees for certain tasks. *Id*.

Maurer-Stutz noted that in situations where the contamination plume extends beyond two or more properties, delineating the plume during a Stage 1 or 2 investigation is sometimes impossible. PC 5 at 2. Maurer-Stutz stated that as the investigation continues discoveries can often change the scope of work and thus effect the budget and extent of Tier 2 calculations. *Id*.

Maurer-Stutz next commented on the off-site cleanup procedures and objectives. PC 5 at 2. Maurer-Stutz has found that required engineering controls, institutional controls, and environmental land use controls (ELUC) often take more time and effort than anticipated. *Id*. Maurer-Stutz stated that developing and implementing ELUCs has become an "extremely tedious part of the Tier 2 process." *Id*. Maurer-Stutz commented that the proposed regulations are unreasonable for this part of a Tier 2 process and suggest that the Agency establish a better system for setting the budget for implementing ELUCs. *Id*.

Maurer-Stutz takes issue with the subcontractor costs for transportation, manifesting, and disposal of liquid and solid wastes. PC 5 at 3. Maurer-Stutz often pays more than the reimbursement maximum for completion of the required work even though Maurer-Stutz contacts several contractors for estimates for this work. *Id*.

ISSUES

After carefully reviewing the testimony, comments, and exhibits presented by the participants in this rulemaking, the Board is faced with numerous issues. The issues range from minor differences to disagreement on the basis for a large section of the proposal. The issues are as follows:

1. What is the relationship of the four Public Acts amending Title XVI of the Act (415 ILCS 5/57.1 *et seq*. (2002))?

2. Should additional hearings be held prior to proceeding to first notice?

3. Does the applicability language ensure that the rulemaking does not have a retroactive effect (Section 732.100/734.100)?

4. Should the proposal include the concept of a UST Remediation Applicant (Section 732.103/734.115)?

5. What is the appropriate language to address the removal of free product (Section 732.203/734.215)?

6. Should the proposal include a requirement that alternative methods be compared with either conventional technology or other alternative methods (Section 732.407(b)/734.340(b))?

7. Is the Agency's proposed language for audits, record retention, and review consistent with the requirements of the Act (Section 732.614/734.665)?

8. Is the Agency's language requiring submission of all reimbursement requests within one year of receipt of a NFR letter sufficient time for submittals (Sections 732.601(j)/734.605(j) and 732.606(rr)/734.630(nn))?

9. Should the Board adopt a bidding process (Section 732.855/734.855)?

10. Should the Agency be required to develop a database?

11. Should the Agency rely on the technical decisions performed by professional engineers or geologists?

12 Should the proposal include requirements that shorten the Agency's review time and require pre-denial denial letter?

13 When a primary contractor has a financial interest in a subcontractor, should the contractor be ineligible for handling charges (Section 732.606(ss)/734.630(oo)) and should the subcontractor be excluded from bidding (Sections732.103/734.115 and 732.855/734.855)?

14. Should the proposed rule require proof of payment to a subcontractor before allowing reimbursement for handling charges (Section 732.601(b)(10)/734.605(b)(10))?

15. Should the proposed rule delineate "atypical" situations in Section 732.855/734.855?

16. Does the Agency's proposed conversion factor and "swell factor" address ETD (Section 732.825/734.825)?

17. Should permit fees and other government fees be included as an eligible corrective action cost (Section 732.606(ddd)/734.630(aaa))?

18. Should the proposal limit reimbursement based on TACO clean up objectives (Sections 732.408/734.410 and 732.606(hhh)/734.630(eee))?

19. Should the lump sum maximum payment amounts be raised and include a standard scope of work (Subpart H)? and

20. Miscellaneous issues raised.

DISCUSSION

In the following paragraphs the Board will discuss each issue in turn. After the Board has discussed each issue, the Board will summarize the rulemaking language which the Board will adopt for first notice.

1. What is the Relationship of the Four Public Acts Amending Title XVI of the Act (415 ILCS 5/57.1 *et seq.* (2002))?

During the 92nd General Assembly, the Illinois legislature passed four separate Public Acts amending the provisions of the UST program. *See* P.A.92-554, *eff*. 6/24/02; P.A. 92-574, *eff*. 6/28/02; P.A. 92-651, *eff*. 7/11/02; and P.A. 92-735, *eff*. 7/25/02. PIPE suggested that the Board should take this opportunity to determine the relationship of the four Public Acts and determine which applies. Exh. 91 at 13. The Agency, in response, argued that the Public Acts can and should be read together. PC 4 at 7. The Board declines to make a finding concerning the relationship between the four Public Acts. The Board does not see the urgency for such a decision and further does not find that this is the correct forum for such a decision. The Board will make findings on the relationship of the four Public Acts, if necessary, in the context of specific cases that may be brought before the Board.

2. Should Additional Hearings be Held Prior to Proceeding to First Notice?

The participants have expressed mixed feelings as to whether additional hearings should be held. Mr. Fleischli specifically asked that the hearings be left open for additional input from lenders and real estate people. Tr.7 at 10. ACECI, however, believes that the Board should move forward with a first-notice proposal on the record. PC 3 at 6. The Agency also suggested that the Board proceed to first notice based on the record before the Board. Tr.7 at 229-31. PIPE notes that the members are divided on the need for an additional hearing; but then stated that if the Board is not ready to address the concerns expressed by the participants, PIPE would suggest another hearing. PC 6 at 2.

The Board finds that the record is sufficient for the Board to identify areas of disagreement and develop a first-notice proposal that addresses the participants' concerns. Therefore, the Board will proceed to first notice today without additional hearings. If necessary, the hearing officer will schedule additional hearings after publication of the first-notice proposal. The Board requests comment from the participants on whether additional hearings are necessary, and if so, specifying what additional information will be brought into the record.

3. Does the Applicability Language Ensure that the Rulemaking Does Not Have a Retroactive Effect (Section 732.100/734.100)?

Section 732.100/734.100 specifies when the rules of each Part apply. Part 734 applies to sites where a release is reported after the effective date of the rules. Part 734 also applies to sites where a release occurred before the effective date of the rules, but after the effective date of P.A. 92-0554. Part 732 applies to sites where the release was reported prior to the effective date of P.A. 92-0554.

PIPE expressed concern that the Agency's proposed language, even as amended in the third *errata* sheet, would allow for retroactive application of the rules. The Board has carefully examined the proposed language. While cognizant of PIPE's concern, the Board believes that with minor changes, the applicability language can be clarified to ensure that the rules do not apply retroactively. The Board will propose for first notice the Agency's language with minor changes.

4. Should the Proposal Include the Concept of a UST Remediation Applicant (Section 732.103/734.115)?

PIPE has suggested the inclusion of the concept of UST Remediation Applicant because an owner or operator may often contract out responsibility for site cleanup to a consultant. Exh. 90 at 9. PIPE used the definition for site "remediation applicant" at 35 Ill. Adm. Code 740.120 as a model for the proposed definition. *Id.* PIPE is not suggesting that the site remediation program equates with the UST program; rather the language is proposed to reflect the reality that the person who deals with the Agency may not be the owner or operator. PC 6 at 7.

The Agency is opposed to including the concept because only the owner or operator may seek reimbursement from the UST program. PC 4 at 20. The site remediation program includes the concept of a site remediation applicant because anyone with potential liability for contamination can enter the program. *Id.* The Agency also has some concerns that the inclusion of the concept of a UST remediation applicant could impact consistency with the federal UST program. *Id.*

The Board has carefully reviewed the definition suggested by PIPE. The Board agrees with the concerns expressed by the Agency and, therefore, the Board finds that PIPE's suggested concept of UST Remediation Applicant is not necessary. Therefore, the Board declines to add the concept of a UST remediation applicant to the proposed rule.

5. What is the Appropriate Language to Address the Removal of Free Product (Section 732.203/734.215)?

In the original proposal, the Agency proposed language to specify that free product "exceeding one-eight of an inch in depth . . ." be removed. R04-22 at 10. In addressing concerns raised at hearing, the Agency suggested requiring removal of free product to the "maximum extent practicable". Exh. 88 at 23. The Agency noted that this language is the standard used in the federal regulations at 40 C.F.R. 280.64 (2004). PC 4 at 21. PIPE had suggested that the language be amended to allow for free product removal "as required to address the health and safety of the site." Exh. 90 at 13. The Agency feels that PIPE's language would create an inconsistency between the State and Federal programs. PC 4 a 21.

The Board will accept the Agency's suggested language from the third *errata* sheet. The Board finds that the Agency's language will address the concern from PIPE (Exh. 90 at 13) as well as others that the language resulted in an overly prescriptive approach. The Agency's language adopts the standard used in the federal regulations and removes the originally proposed one-eighth of an inch level.

6. Should the Proposal Include a Requirement that Alternative Methods be Compared with Either Conventional Technology or Other Alternative Methods (Section 732.407(b)/734.340(b))?

Section 732.407(b)/734.340(b) as proposed required that the cost of an alternative technology not be substantially higher than other alternative technologies which may be available. At hearing, questions were raised concerning the number of alternative technologies which must be compared. Exh. 87 at 15. In response, the Agency proposed language in the third *errata* sheet that requires comparison of at least two other alternative methods. *Id*.

CW^3M took issue with the Agency's requirement that at least two alternative technologies be compared with the proposed alternative technology. PC 9 at 7. CW^3M pointed out that in some instances, other alternative technologies may not be technically feasible as a result of site conditions. *Id*. CW^3M suggested amendments to address the possibility that there may not be other methods available. *Id*.

CW^3M also noted that in some cases, the use of alternative technology is preferable for technical reasons or because the costs for using conventional technology are high. PC 9 at 8. CW^3M suggested that for cases where conventional technology exceeds the amounts in Subpart H, procedures should be crafted to allow for comparison of costs between conventional and alternative technologies. *Id*. CW^3M suggested language to allow for such a comparison. *Id*.

Mr. Goodwin testified that ACECI also believes that the requirement for three cost estimates for alternative technologies is flawed because there may not be three alternative technologies. PC 3 at 3-4. ACECI commented that the proposal assumes that feasibility and estimated costs for three technologies can be determined with enough sufficiency to make a meaningful comparison. PC 3 at 4.

The Board appreciates the concerns put forth by both CW^{3}M and ACECI. However, the Board is not convinced that the language suggested by CW^{3}M is necessary. For example, additional language to compare costs between conventional and alternative technologies is not necessary because existing Section 732.407(b) already provides that alternative technology not exceed the cost of conventional technology. Regarding alternative technology comparisons, the Agency has proposed language that requires comparison of two other *available* alternative technologies. CW^{3}M proposed language to allow the owner or operator to proceed under the rule's extraordinary circumstance provisions if two alternative technologies were *unavailable* or not technically feasible. CW^{3}M's suggested language seems at least partially redundant. Therefore, the Board will not proceed with the language as suggested by CW^{3}M; however, the Board will propose language which will address the concerns of CW^{3}M and ACECI. The Board will propose in Sections 732.407(b) and 734.340(b) the following:

> An owner or operator intending to seek payment for costs associated with the use of an alternative technology shall submit a corresponding budget plan in accordance with Section 732.405 of this Part. In addition to the requirements for corrective action budget plans at Section 732.404 of this Part, the budget plan must demonstrate that the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies. The budget plan shall compare the costs of at least two other alternative technologies to the costs of the proposed alternative technology, if other alternative technologies are available and are technically feasible.

The Board invites the participants to comment on this proposed language.

7. Is the Agency's Proposed Language for Audits, Record Retention, and Review Consistent with the Requirements of the Act (Section 732.614/734.665)?

Section 732.614/734.665 in Agency's proposal is titled "Audits and Access to Records; Records Retention". The Agency proposal requires retention of records for a specified period of time and allows the Agency to access those records for auditing. Exh. 3 at 9. Although, the language is similar to other Board and Agency rules (*Id*.), participants expressed concerns that the Agency language was beyond the Agency's statutory authority.

Specifically, Mr. Rapps and CW^{3}M questioned the Agency's use of audits as required by both Sections 57.8(a)(1) and 57.15 of the Act (415 ILCS 5/57.8(a)(1) and 57.15 (2002)). Exh. 50 at 6; PC 9 at 15. Mr. Rapps, discussing Section 57.8(a)(1) of the Act (415 ILCS 5/57.8(a)(1) (2002)), believes that audits were to be used in a random manner similar to audits performed by the Internal Revenue Service, and suggested amending the proposal to indicate the Agency would use the audit as intended by the statute. *Id*. CW^{3}M argued that the plain language of the Section 57.15 of the Act (415 ILCS 5/57.15) limits the Agency's authority to audit only the data, reports, plans, documents, or budgets submitted pursuant to the Act and thus the Board should not adopt Section 732.614 and 734.665. PC 9 at 16-17.

The Board respectfully disagrees with the comments and does not believe that the Agency's proposal is beyond the statutory intent. The word "audit" is defined in Section 57.2 of the Act (415 ILCS 5/57.2 (2002)) as "a systematic inspection or examination of plans, reports, records, or documents to determine the completeness and accuracy of the data and conclusions contained therein." 415 ILCS 5/57.2 (2002). Pursuant to Section 57.15 of the Act (415 ILCS 5/57.15 (2002)), the Agency has the authority to "audit all data, reports, plans, documents and budgets submitted pursuant to this Title." 415 ILCS 5/57.15 (2002). Thus, the Agency is given broad authority by the Illinois legislature to review all data, reports, plans, documents, and budgets submitted to the Agency.

8. Is the Agency's Language Requiring Submission of All Reimbursement Requests Within One Year of Receipt of a NFR Letter Sufficient Time for Submittals (Sections 732.601(j)/734.605(j) and 732.606(rr)/734.630(nn))?

In Section 732.601(j)/734.605(j), the Agency proposed language requiring submittal of all applications for payment for corrective action within one year of the issuance of a NFR letter. The proposal goes on to specifically provide that costs submitted later than one year after issuance of a NFR letter are ineligible costs. Section 732.606(rr)/734.630(nn).

CW^3M takes issue with the Agency's proposed requirement that all reimbursement requests must be submitted within one year of receipt of a NFR letter. CW^3M believes that certain exceptions should be created. Tr.4 at 27-28. CW^3M understands the Agency's desire to close files on sites which have completed remediation; however, there are specific instances where additional time after issuance of a NFR letter may be warranted. Tr.4 at 28. CW^3M believes that one example is that if an appeal is pending before the Board and settlement negotiations are under way, final disposition may take more than one year, particularly with Part 731 sites. PC 9 at 14-15; Exh. 29 at 29-30. Thus, a NFR letter may be issued while the appeal is pending and the one-year timeframe could expire. *Id.*

The Agency does not believe the deadline creates an undue hardship on the owners and operators. Exh. 88 at 18. The Agency believes that one year is sufficient to submit an application for final costs and the Agency has no evidence to support an exception to the one-year requirement. *Id.*

After careful consideration of the comments by CW^3M and the Agency, the Board will propose for first-notice the language proposed by the Agency. The Board agrees with the Agency that one year is sufficient to submit reimbursement applications for final costs. However, the Board invites additional comment on this issue, particularly regarding the Part 731 sites and other potential exceptions.

9. Should the Board Adopt a Bidding Process (Section 732.855/734.855)?

In the third *errata* sheet, the Agency introduced language, which was discussed in earlier hearings, that would allow owners or operators to receive bids for any of the tasks involved in remediating a site. PIPE, Mr. Goodwin, IPMA, and CW^3M were all supportive of the concept. However, both PIPE and CW^3M had specific issues with the bidding process as proposed.

PIPE and CW^{3}M both believe that the prohibition for bidding by entities where the primary contractor holds a financial interest is unnecessary. Also CW^{3}M recommended that the bidding procedures be further developed to include that certified letters be sent to a minimum of three contractors containing a specific scope of work, required qualifications, and allowing for a 14-day response time. PC 9 at 25. PIPE indicated that the Agency has "seriously underestimated the amount of time and effort" that will be necessary to conduct bidding. PC 6 at 17. PIPE recommends that the reimbursement for the bidding process should be based on time and materials and not a lump sum payment. *Id*. PIPE suggested that as an alternative to accepting three bids, the proposal should allow a contractor to justify costs by utilizing published industry data. PC 6 at 18.

At this time the Board finds that the record supports proceeding to first notice with a proposal which includes a bidding process. Many of the participants approve of the concept of bidding projects where costs may exceed the lump sums proposed in Subpart H. Also, the inclusion of bidding will address some of the concerns raised by the participants over the specific proposed lump sums (*see supra* at 78). Finally, the Board finds that the inclusion of bidding in the proposal will assist in achieving the Agency's goals to streamline the UST remediation process, clarify remediation requirements, determine market rates for costs, and "most notably, reform the budget and reimbursement process". Exh. 3 at 2.

As discussed below, the Board will not strike the prohibition from bidding by entities that have a financial interest with the primary consultant (*see supra* at 71). However, the Board will accept CW^{3}M's comment and strike "direct or indirect" from Section 732.855/734.855(a). In that same section, the Board will also change "consultant" to "contractor" as the Board believes that is the more appropriate term. Concerning the other specific suggestions from PIPE and CW^{3}M on the bidding process, the Board is not convinced that the changes suggested are necessary for the proposal. The Board invites additional comments on these issues.

Lastly, the Board reviewed the Agency's proposal in Section 732.845/734.845(g) to limit the reimbursement for preparation of a request for bids and the review of the bids. The Board shares the concerns of PIPE that the Agency's proposal underestimates the time and effort that the preparation of a request for bids and the review of the bids will require. The Board is especially concerned given that bidding is an alternative to any of the lump sum payments in Subpart H and the Board is not convinced that the maximum rate of $160 would be sufficient for the preparation of a request for bids and review of bids for all the tasks in Subpart H. Therefore, the Board will propose the rule to allow for reimbursement on a time and materials basis by eliminating subsection (g) from the Agency's proposed language.

10. Should the Agency be Required to Develop a Database?

PIPE has suggested that the Board include in this proposal a provision requiring the Agency to develop an electronic database to be used to develop maximum payment rates. The database would include information on reimbursement requests including the amount sought for reimbursement. PIPE argued that electronic filing and data collection could reduce work and such a goal is in accordance with the Agency's stated goals for this rulemaking proposal. Exh.

91 at 15. The Agency however believes that the development of a database would greatly complicate and lengthen the preparation of budgets by consultants and result in increased costs. Exh. 88 at 12.

Mr. Goodwin also suggested that creating a database would be beneficial. Mr. Goodwin noted that reviewing and updating reimbursement limits remains a concern, and the Agency's flat rejection of creating a database is shortsighted. Tr.7 at 222. Mr. Goodwin does not believe that the Agency's agreement to include an advisory committee is sufficient to address the need to update reimbursement rates.

The Board acknowledges that many participants have made meaningful comments about the value of an electronic database to track reimbursement rates. However, the Board will not require the Agency to develop an electronic database of reimbursement information. The Board is not convinced that an electronic database is necessary to administer either these specific rules or the UST program. The inclusion of competitive bidding in these new rules will allow the Agency to determine market rates based on the bids. Furthermore, the Agency proposed in the third *errata* sheet Sections 732.870/74.870 and 732.875/734.875, which specifically allow an increase in the maximum rate based on an inflation factor and require the Agency to triennially review the maximum payment amounts and propose changes where necessary. Therefore, the Board declines to follow the suggestion that the Agency be required to develop an electronic database.

11. Should the Agency Rely on the Technical Decisions Performed by Professional Engineers or Geologists?

PIPE suggested that if technical expertise is required, the Agency should rely on the certification of the licensed professional engineer or geologist necessary for submittals under the UST program. Exh. 91 at 13. PIPE asserted that the certification of a licensed professional engineer or geologist is required to justify whether or not the work was necessary for site remediation. Exh. 91 at 13. The Agency disagrees with PIPE's suggestion and noted that Section 57.7 of the Act (415 ILCS 5/57.7 (2002)) requires that all investigations, plans and reports be conducted or prepared "under the supervision of" a licensed professional engineer or geologist. Exh. 88 at 11. The Agency asserted that neither Section 57.7 of the Act (415 ILCS 5/57.7 (2002)) or the regulations "are intended to grant" licensed professional engineers or geologists "with a final decision making authority that supercedes the Agency." Exh. 88 at 11.

The Board agrees with the Agency that under the Act (415 ILCS 5/57.7 (2002)), the Agency has the responsibility to review all submittals for consistency with the Act and Board regulations. If the Agency denies approval for any reason, the applicant may appeal to the Board for review of the Agency's decision. The Board finds nothing in the statue that convinces the Board that the Agency should rely on the certification of an applicant's licensed professional engineer or geologist on any issue. The Board finds no merit in PIPE's suggestion.

12. Should the Proposal Include Requirements that Shorten the Agency's Review Time and Require Pre-Denial Denial Letter?

The record includes substantial comment from the participants regarding Agency procedures for reviewing and deciding on submittals in the UST program. The participants in this proceeding suggested "process" changes to the Agency's review of submittals. The suggestions are numerous and include: a shortened review time to allow for changes in the submittals before the statutory 120-day decision deadline expires; a pre-denial letter similar to a Wells letter in a permit process; placing the burden of proof on the Agency as to why the application violated the Act or Board rules; and requiring more specific reasons for denial in the denial letter.

PIPE stated that the "process issues are at the very heart of this proposal" and the very workability of these rules depends on the Board recognizing and dealing with these issues. PC 6 at 21. PIPE noted that the UST process has followed closely the permit review process, but the traditional permit review process does not provide a proper procedural overlay for the UST reimbursement process. Exh. 90 at 16.

The Agency believes that both the shortened review time (45-day review) and the draft denial letters proposed by PIPE are inconsistent with the Act. PC 4 at 21-23. The Agency argued that the Act grants the Agency 120 days to make a decision on submittals. PC 4 at 21. The suggestion that the review time be shortened to 45 days would be extremely difficult for the Agency to meet for review of all submittals. PC 4 at 22. The Agency stated that additional alternative language proposed by PIPE is inconsistent with the Board regulations and the Act. PC 4 at 26-28. Specifically, inconsistent language is proposed for Section 734.505(b) that would shift the burden of proof to the Agency (PC 4 at 26), and in Section 734.505(f) that allows the Agency to deem submittal rejected after 120 days. PC 4 at 27.

The Board has reviewed appeals of Agency decisions in the UST program under Section 40 of the Act (415 ILCS 5/40 (2002)) and the Board has adopted procedural rules at 35 Ill. Adm. Code 105.Subpart D. As both the Agency and PIPE have pointed out there are some similarities in the Board's review of Agency decisions on UST reimbursements and permits. However, the two reviews are not identical and as such, the Board does not believe the Wells case requires a pre-denial denial letter in the UST program. The Board also does not believe the remaining differences between the permit review process and the UST program are conducive to requiring a pre-denial denial letter. The timeframes are just too tight.

The Board also will not shorten the Agency's review time. Although the record demonstrates that the Agency does review submittals in less than 120 days, the record also reflects that at times the Agency needs the entire review time. The Board also acknowledges that the Act (415 ILCS 5/57.7 (2002)) clearly gives the Agency 120 days to make decisions on UST reimbursement cases. For these reasons, the Board declines to propose rules that shorten the Agency's review time.

As to the concerns that the Agency's denial letters lack specificity, the Board is cognizant of that concern. However, Section 57.7(c)(4) (or (c)(4)(D)) (415 ILCS 5/57.7(c)(4) (or

(c)(4)(D)) (2002))[4] sets forth the requirements for the Agency's denial letter. Section 57.7(c)(4) of the Act (415 ILCS 5/57.7(c)(4) (2002)) provides that any Agency action to disapprove or modify a plan submitted pursuant to this Title shall be accompanied by:

> (A) an explanation of the Sections of this Act which may be violated if the plans were approved;
>
> (B) an explanation of the provisions of the regulations, promulgated under this Act which may be violated if the plans were approved;
>
> (C) an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and
>
> (D) a statement of specific reasons why the Act and the regulations might not be met if the plan were approved. (415 ILCS 5/57.7(c)(4) (2002))

The Board notes that the language of Section 57.7(c)(4) (415 ILCS 5/57.7(c)(4) (2002)) clearly outlines the required content of a plan disapproval or modification by the Agency. The Board is not convinced that additional language is necessary to effectuate the legislative intent of Section 57.7(c)(4) (415 ILCS 5/57.7(c)(4) (2002)). Therefore, the Board will not include additional requirements for denial letters in the first-notice proposal.

Finally, regarding the language proposed by PIPE that would shift the burden of proof to the Agency, the Board will not propose the language. The Board will not consider such a change. The Act is clear that the burden of proof in any appeal to the Board from an Agency determination under the UST program is on the petitioner. *See* 415 ILCS 5/40(a)(1) and 57.7(c)(4) 2002.

13. When a Primary Contractor has a Financial Interest in a Subcontractor, Should the Contractor be Ineligible for Handling Charges (732.606(ss)/734.660(oo)) and Should the Subcontractor be Excluded from Bidding (Sections 732.103/734.115 and 732.588/734.855)?

The Agency proposed a definition for "Financial Interest" to address the situation where a contractor owns or owns some part of a subcontracting business. This definition is used for handling charges and for bidding. The Agency believes that a contractor should not be eligible to add handling charges when the contractor has a financial interest in the subcontractor and proposes language in Section 732.606(ss)/734.660(oo) which makes the cost ineligible for reimbursement. Tr.1 at 37-38. The Agency's proposal would also exclude a firm that has a direct or indirect financial interest with the primary consultant from the bidding process in Section 732.855/734.855. Exh. 87 at 36-37.

Handling Charges

[4] The language in the Act concerning the contents of the Agency's denial letter is identical in all four Public Acts; except that, the numbering and lettering differs from Public Act to Public Act.

The definition of "handling charges" in existing Section 732.103 is:

> "Handling Charges" means administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases. 35 Ill. Adm. Code 732.103.

CW^3M proposed that the definition for "financial interest" and all references to "financial interest" be removed from the proposal because of CW^3M's concern that the Agency is attempting "to reduce or eliminate handling charges." PC 9 at 6. CW^3M maintained that when a contractor secures the work of a subcontractor, even where there is an ownership interest, the contractor incurs similar expenses for the subcontractor as those incurred where there is no ownership interest. *Id*. CW^3M asserted that the Agency is attempting to limit a consultant's profits by eliminating handling charges when "the Agency does not clearly understand the costs associated with conducting work in the private sector." PC 9 at 6-7.

PIPE believes that the financial interest of a prime contractor in the subcontractor's business also has no effect on the cost incurred by the prime contractor. Exh. 91 at 17.

The Board is not convinced by the record to date that a primary contractor or consultant who has a financial interest in a business which subcontracts part of the work associated with remediation of a site incurs the same costs as a primary contractor without the financial interest. As stated by Mr. Oakley, there is no prohibition over hiring one's own company to do the work and be paid a fair price including a profit. Therefore, the Board will propose for first notice the Agency's language, which excludes handling charges for subcontractors where the primary contractor has a financial interest in the subcontractor. However, the Board invites comment on this issue and if sufficient information is added to the record, the Board will revisit this issue during the first-notice period.

Bidding

As discussed above, CW^3M believes that the definition of "financial interest" should be removed from the proposal. PIPE opined that the record does not support excluding a subcontractor from the bidding process where the primary consultant has a financial interest in that subcontractor. PC 6 at 18. PIPE argues that nothing in the record establishes that the costs are higher where a prime contractor has a business interest in the subcontractor. *Id*.

While the Board appreciates the concerns of PIPE and CW^3M, the Board is not convinced that the record is sufficient to delete the definition of financial interest. Therefore the Board will proceed to first notice with the definition of "financial interest" in the rule. Further, the Board finds that the record at this juncture does not support the deletion of the Agency's language that prohibits bidding by subcontractor if the primary contractor has a financial interest in the subcontractors. Thus, the Board will propose for first notice the prohibition. However, the Board invites additional comment from the participants on the issue and if sufficient information is added to the record, the Board will revisit this issue during the first-notice period.

14. Should the Proposed Rule Require Proof of Payment to a Sub-Contractor Before Allowing Reimbursement for Handling Charges (Section 732.601(b)(10)/734.605(b)(10))?

Section 732.601(b)(10)/734.605(b)(10) as proposed requires that the application for reimbursement include proof of payment to a subcontractor when handling charges are being sought. The participants question the Agency's proposal. CW^{3}M noted that requiring proof of payment results in higher handling costs for the contractor and the higher costs will not be reimbursable. Tr.4 at 36-37. PIPE asserted that by definition handling charges are due to the contractor whether or not the subcontractor is paid by the contractor. Exh. 91 at 17. Furthermore, PIPE noted that even if the subcontractor has agreed to await payment until the Agency reimburses the owner or operator, the prime contractor has incurred the costs of insurance and administration of the subcontract. *Id*.

Because "of an alarming number of phone calls" to the Agency from subcontractors claiming they have not been paid, the Agency added Section 732.601(b)(10), according to Mr. Oakley. Exh. 7 at 2. Mr. Clay pointed out that cancelled checks are not the only mechanism for providing proof of payment to a subcontractor, lien waivers or affidavits from the subcontractor would be acceptable. Exh. 88 at 18. Mr. Clay testified that such proof is necessary to show that the subcontractor was actually paid and the owner or operator is therefore entitled to reimbursement for handling charges. *Id*.

The existing language in Section 732.606(ll) includes as an ineligible cost "Handling charges for subcontractor's costs when the contractor has not paid the subcontractor." The language proposed by the Agency is asking for proof that the contractor has paid the subcontractor before allowing reimbursement. The existing language provides that handling charges are only eligible reimbursement costs if the contractor *paid* the subcontractor. To the Board, it would appear that the Agency is merely requiring proof of a prerequisite which already exists. However, to allay the concerns of the participants, the Board will propose language in Sections 732.601(b)(10) and 734.605(b)(10) which reflects the Agency's position that cancelled checks are not the only mechanism for providing proof of payment to a subcontractor; lien waivers or affidavits from the subcontractor would be acceptable. Sections 732.601(b)(10) and 734.605(b)(10) will read:

> Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.

The Board invites additional comment on this language.

15. Should the Proposed Rule Delineate "Atypical" Situations in Section 732.855/734.855?

The Agency's original proposal at Section 732.855/734.855 included a provision that allowed an owner or operator to seek payment for costs which exceeded the maximum rates in Subpart H. The proposal allows for reimbursement costs which exceed the maximum if unusual or extraordinary circumstances occur. The language as originally proposed in Section 732.855/734.855 has been moved to Section 732.860/734.860.

Ms. Davis expressed concern that the "atypical" situation is not defined and pointed out that the *ad hoc* workgroup proposed the use of an "atypical site form" to be used when a consultant determines that the site warrants extra expense. Exh. 49 at 10-11. Mr. Goodwin testified that the proposed language offers little guidance and recommends that additional guidance be made a part of the rule language. *Id*. Mr. Goodwin provided the *ad hoc* workgroup's suggested guidance to the Board as a part of his testimony. Exh. 74 at Attach. D.

Mr. Kelly expressed concern that the provisions will need to be invoked on too many projects. Exh. 54a at 3. Ms. Rowe recommended that Section 732.855 and 734.855 be carefully evaluated in light of the Agency's history. Tr.4 at 35. Ms. Rowe noted that the Agency has been reluctant in the past to reimburse higher costs associated with a site-specific unusual circumstances. Tr.4 at 34. CW^3M predicts that these two provisions may result in more appeals than the current system. *Id*.

The Board is not convinced that the proposal would benefit from specification of "atypical" situations. As proposed in the third *errata* sheet, the proposal allows for bidding of tasks if the owner or operator believes the costs will exceed the lump sum payments. The addition of bidding to the proposal along with the general "extraordinary circumstances" language in Sections 732.860/734.860 should sufficiently address the "atypical" situations.

16. Does the Agency's Proposed Conversion Factor and "Swell Factor" Address ETD (Section 732.825/734.825)?

Section 732.825/734.825 of the proposal sets forth the maximum rates for reimbursement for soil removal and disposal. The maximum rate is $57 per cubic yard. To calculate the volume of soil to be disposed, the proposed formula is "Excavation Length x Excavation Width x Excavation Depth) x 1.05", where "1.05" represents a five percent "swell factor" to account for the larger volume occupied by the excavated soil as compared to in-situ soil. In addition, a conversion factor of "1.5 tons per cubic yard of soil" is proposed for converting soil quantity measured on weight basis to cubic yards.

Several participants took issue with the Agency's proposal concerning the "swell factor" and "weight/volume" conversion factor as proposed by the Agency. For the swell factor, the concerns ranged from Mr. Truesdale's comment that given the variability of swell for various geologic materials, the Agency's use of a single value for percentage of swell is unreasonable (Exh. 73 at 4) to Mr. Doty's concern that the Agency's calculations for ETD do not take into consideration either small amounts of soil or remote locations (Exh. 53 at 7-8). On the conversion factor, Mr. Kelly, a representative of USI, stated that a factor of 1.5 tons per cubic yard is too high and does not represent the less compact excavated material. Exh. 54 at 9. He asserted that a more appropriate conversion factor for loose sands, clays, silts, or silty clay ranges between 1.15 to 1.2 tons per cubic yard. *Id*. Mr. Smith of CW^3M testified that the conversion factor of 1.68 in the current regulations under Part 732 more accurately reflects the conversion factor for glacial till, which is the predominant soil type in Illinois. Tr.4 at 58.

The Agency explained that the five percent "swell factor" proposed at Section 732.825 is actually equivalent to twenty percent for estimating cost of transportation because the proposed swell factor is applied to the cost of excavation, transportation and disposal, and not just to the transportation cost. Exh. 88 at 9. Regarding the conversion factor, the Agency believes that a conversion factor of 1.5 tons per cubic yard is reasonable for Illinois soils. Further, the Agency also proposes to change the conversion factor in Part 732.Appendix C to 1.5 tons per cubic yard.

The Board has reviewed the comments and testimony regarding the swell factor and conversion factor. First, the Board does not see a significant disparity between the Agency's proposed swell factor and the swell factor recommended by the other participants. The Board is convinced that a swell factor of five percent applied to the total for ETD is equivalent to a twenty percent swell factor and twenty percent is appropriate. Regarding the conversion factor, the Board recognizes that the factor ranges from one to two tons per cubic yard for different types of geologic material. The conversion factor proposed by the Agency takes into consideration various types of geologic material that occur at Illinois UST sites and the Board finds that the record supports a 1.5 tons per cubic yard conversion factor. The Board will proceed to first notice with the swell factor and conversion factor as proposed by the Agency.

17. Should Permit Fees and Other Government Fees be Included as an Eligible Corrective Action Cost (Section 732.606(ddd)/734.630(aaa))?

The Agency proposed as ineligible costs payments 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." Section 732.606(ddd)/734.630(aaa). Ms. Rowe suggested that the Agency reconsider the proposed language. Tr.4 at 33. CW^3M believes that permit fees are necessary corrective action costs and disallowing reimbursement could be the end of groundwater remediation systems. *Id*.

The Agency proposal included language in Sections 732.606(ddd) and 734.630(aaa) to specify that fees or payments to government entities or other persons for corrective action related activities is not an eligible cost. Exh. 3 at 9. Mr. Clay stated that the Agency has approved fees in the past; however the Agency proposes to declare all such fees ineligible for reimbursement. Mr. Clay testified that the Agency has approved reimbursement of some reasonable fees and payments for state, county or local permits; however, these costs are more variable and "have become hard to justify as reasonable." *Id*.

The Board is not convinced that such a blanket exemption is appropriate. Government fees are a necessary cost of doing business, and therefore could be a necessary corrective action cost. The Agency testimony did not specify examples of "fees or payments … to other persons", so the Board is not certain what type of fees the Agency would disallow by this proposed language. Therefore, the Board finds that based on the testimony in this record, the more appropriate approach is to decide if the fees are reasonable on a case-by-case basis. The Board will delete Section 732.606(ddd) and 734.630(aaa) of the Agency's proposal from the first-notice rules, and renumber the remaining subsections.

18. Should the Proposal Limit Reimbursement Based on TACO Cleanup Objectives (Sections 732.408/734.410 and 732.606(hhh)/734.630(eee))?

In the third *errata* sheet, the Agency proposed language which would limit reimbursement for cleanup to Tier 2 TACO objectives and require the use of a groundwater ordinance where an ordinance already exists. Exh. 87 at 19-20. The participants opposed both of these changes. TACO is the "Tiered Approach to Corrective Action Objectives" found at 35 Ill. Adm. Code 742. TACO establishes procedures for developing remediation objectives for soil and groundwater at remediation sites based on risks to human health, taking into account the existing pathways for human exposure and current and future use of the remediation site. Tiered Approach to Corrective Action Objectives; 35 Ill. Adm. Code 742, R97-12 slip op. at 3 (June 5, 1997). TACO sets forth a three tiered approach for establishing remediation objectives for remediation of a site.

A Tier 1 analysis involves the comparison of levels of contaminants of concern at a remediation site to pre-determined remediation objectives set forth in the rule. A Tier 2 analysis requires the use of mathematical models (equations) set forth in the rules to develop alternative remediation objectives for contaminants of concern using site-specific information. Finally, a Tier 3 analysis provides for developing remediation objectives using alternative parameters not found in Tiers 1 or 2. In addition to the three tiers, TACO allows for addressing contamination at a site by means of exclusion of pathways and reliance on area background. The approaches in TACO allow for "institutional controls" such as ordinances, environmental land use controls, and agreements between landowners and highway authorities. 35 Ill. Adm. Code 742.1000.

Tier 2 Objectives

The Agency's proposal to limit reimbursement to Tier 2 cleanup objectives and not allow an owner or operator to seek reimbursement for Tier 1 cleanup objectives concerns IPMA. Tr.7 at 8. Part of IPMA's concern is that while the Agency proposal only allows reimbursement for Tier 2 cleanup objectives on IPMA members' properties, the proposal requires that off-site impacts be addressed using the most stringent regulatory requirements. Tr.7 at 8. IPMA is also concerned that if an owner chooses to cleanup a site to the higher Tier 1 standards; the owner would be required to pay out of pocket for that cleanup. *Id*. In contrast, the current rules allow the owner and the owner's engineer to decide how stringent the cleanup objectives should be based on land use. Tr.7 at 8-9.

PIPE agrees with IPMA's concerns regarding the use of Tier 2 TACO cleanup objectives. PC 6 at 20. PIPE believes that reimbursing costs only to TACO Tier 2 cleanup objectives affects the choices available to owners and operators who hire PIPE members. Exh. 91 at 11. PIPE deferred to the IPMA on this issue specifically; however, PIPE also has concerns regarding the Agency's position not to allow reentry into the UST Fund. *Id*. PIPE maintained that owners and operators will not accept TACO as a mandate unless they can access the UST Fund after a NFR letter. Exh. 91 at 11-12.

CW^3M also expressed opposition to limiting reimbursement to the Tier 2 cleanup objectives. CW^3M believes that the property owner should determine the level of remediation,

which is not always the same as the tank owner or operator. PC 9 at 9. Second, CW^{3}M expressed concern that off-site properties and their owners may insist on Tier 1 cleanup levels. *Id*. CW^{3}M opined that if the Agency cannot force Tier 2 cleanup objectives on off-site property owners, then Tier 2 cleanup objectives should not apply in situations where the property owner is different than the tank owner. *Id*. CW^{3}M further opined that the limitation to Tier 2 cleanup objectives was contrary to regulatory language. PC 9 at 10.

The Agency believes that limiting reimbursement to Tier 2 remediation objectives and requiring use of groundwater ordinances "will significantly reduce" the cost of cleanup. Exh. 88 at 4-5, 24-25. The Agency stated that the limitation will ensure cost-effective cleanup which results in the same protection of human health and the environment. PC 4 at 10-11. The Agency insisted that the Tier 2 remediation objectives are as equally protective of human health and the environment as Tier 1, but Tier 2 is generally less costly. PC 4 at 11.

The Agency also opposes allowing owners or operators back into the UST program after issuance of a NFR letter. Exh. 88 at 10. The Agency argues that concentrating on sites which have not yet been remediated and not on sites that have actually received a NFR letter should be the Agency's focus. *Id.*

The Board has reviewed the comments of the participants and the Agency on the issue of limiting reimbursement to Tier 2 cleanup objectives. The Board is convinced that limiting cleanup cost reimbursement to Tier 2 TACO objectives is appropriate. As noted above, Tier 2 objectives are derived by using site-specific data rather than the conservative default values used in determining Tier 1 objectives. Thus, in most cases cleanup to Tier 2 objectives would be less expensive, but equally protective of human health and the environment as cleanup to Tier 1 objectives. The UST Fund is designed to reimburse reasonable costs for remediation that mitigates "any threat to human health, human safety, or the environment resulting from the underground storage tank release." 415 ILCS 5/57.7(b)(2) and (c)(3) (2002). Furthermore, the Board does not find a contradiction between the regulatory language and this limitation. The Agency's proposed language is consistent with existing language and does not create inconsistencies with the existing regulatory language or language proposed in this proceeding.

The Board is not convinced that owners or operators should be allowed back into the UST Fund after a NFR letter has been issued for a site. The NFR letter concept is predicated on finality. Participants have expressed concerns that if reimbursement is limited to Tier 2 objectives and some future event occurs, the owner or operator may be liable for additional cleanup. The Board finds that these hypothetical problems are not sufficient to warrant a change in the UST program to this extent. The Board invites additional comment on this issue.

Groundwater Ordinance

CW^{3}M disagrees with the Agency's proposal that groundwater remediation costs are ineligible for reimbursement if a groundwater ordinance is in place. PC 9 at 10. CW^{3}M asserted that remediation may still be required in certain instances including where free product needs to be removed and modeling must be performed to determine if there would be an issue related to

vapor intrusion into buildings. PC 9 at 10. PIPE also expressed opposition to the Agency requiring the use of groundwater ordinances where a community already has one. PC 6 at 20.

The Agency explained that an ordinance must be used as an institutional control if the ordinance is already established. Exh. 88 at 25. The Agency would not require an owner or operator to *obtain* a groundwater ordinance, but merely to use an ordinance if already established. *Id*. Further, the Agency believes that the use of groundwater ordinances "will significantly reduce" the cost of cleanup. Exh. 88 at 4-5

The Board appreciates the concerns of CW^3M; however, the Board finds that using an established groundwater ordinance as an institutional control is appropriate. The Board notes that the actual language the Agency has proposed declares that groundwater remediation costs are ineligible if a groundwater ordinance is in place that "can be used" as an institutional control. The Board believes that removal of free product, which is generally an eligible cost, would not be affected by the proposed limitation on reimbursement of groundwater remediation costs.

19. Should the Lump Sum Maximum Payment Amounts be Raised and Include a Standard Scope of Work (Subpart H)?

Subpart H of the Agency's proposal establishes maximum reimbursement amounts for numerous tasks performed when remediating a leaking UST site. The Agency proposed several changes to the language in Subpart H in the *errata* sheets in response to questions and comments at the hearings. Those changes include adding sections to allow for bidding projects, provide for an increase in the amounts set forth in Subpart H, and require Agency review of the payment amounts. The Agency also added a provision at Section 732.114/734.145 creating an advisory committee to meet and discuss the implementation of Parts 732 and 734.

Subpart H generated significant discussion at each of the hearings. The comments and testimony established two main issues with Subpart H. The first issue is scope of work for each lump sum payment. The second issue is the reasonableness of the maximum payment amounts. The following discussion will be divided based on each of the issues.

Scope of Work

The participants adamantly seek the addition of a defined scope of work for projects where a lump sum maximum payment rate has been established by the Agency in the proposal. A scope of work would delineate the activities involved with a task being reimbursed as a lump sum. More specifically, PIPE suggested that a defined scope of work is needed for any service where a lump sum payment has been proposed. Exh. 91 at 10. PIPE drafted suggested language defining the scope of work for services that PIPE believes are appropriate for lump sum payment. Exh. 91 at 10; PC 6. CW^3M believes that the Agency is attempting to turn professional services and remediation activities into a commodity-based system rather than time and materials basis. PC 9 at 4. Absent a clear scope of work, one variable that is not accounted for could lead to a substantial profit or loss, according to CW^3M. *Id*.

The Agency does not believe that a defined scope of work for every aspect of UST cleanup is necessary. Exh. 88 at 8. Mr. Clay testified that a defined scope of work should not be included in the rules. *Id*. Mr. Clay conceded that there is some variability from site to site, but that has been taken into account in the amount proposed in the rules. *Id*.

The Board is cognizant of the concerns expressed by the participants; however, the Board does not believe a defined scope of work is required for the lump sum maximum payment rates. The Board agrees with the Agency that the variability from site to site is accounted for in the rates. Furthermore, the proposal, as adopted for first notice, will include a bidding process for projects that cannot be undertaken for the maximum rate in Subpart H. The Board also feels that including a scope of work for every project would result in a cumbersome rule and a rule that could define almost all tasks out of the lump sum category. Therefore, the Board finds that defining the scope of work for lump sum payments is unnecessary and the Board will not propose such language.

Maximum Payment Amounts

Section 57.7(b)(2) of the Act allows reimbursement for corrective action that mitigates "any threat to human health, human safety, or the environment resulting from the underground storage tank release." 415 ILCS 5/57.7(b)(2) (2002). Section 57.7(c) requires the Agency to determine that costs associated with any plan "are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation of corrective action activities in excess of those required to meet the minimum requirements of this Title." 415 ILCS 5/57.7(c) (2002). Therefore, the Board must determine whether the maximum rates proposed meet the requirements of the Act and have been supported by the Agency in this proceeding.

The following discussion will begin by discussing the Agency's methods for developing the rates. Next the Board will generally discuss the maximum payment amounts. Finally, the Board will address specific payment amounts.

Agency Methods for Developing Rates. The Agency's direct testimony described in detail how the Agency developed the maximum payment amounts proposed in Subpart H. Essentially, the Agency used applications for reimbursement that the Agency had received to collect the data. After collecting the data, the Agency determined the average, or in some cases the average plus one standard deviation, to determine the maximum payment amounts.

The Agency used as few as nine sites as a data source (*see* Exh. 9 at 6.) Under questioning, the Agency admitted that there was no statistical random sampling and the information may be a year or two old. Tr.2 at 131-32. Thus, the Agency's research and collection of data was not performed using a scientific or statistically recognized method.

The participants questioned the Agency extensively on the procedures used to develop the rates. The comments and testimony before the Board demonstrated real concerns with how the rates were developed. However, other than certain specific areas, alternative rates were not offered.

Although the Agency's methodology for determining the maximum rates is not statistically defensible, the Agency's data is from actual applications for reimbursement for sites in Illinois. The Agency's testimony is that the rates as developed will be inclusive of ninety percent of the sites remediated in Illinois (*see* Tr.3 at 52) and based on the Agency's experience the rates are reasonable (*see* Tr.3 at 54-56). Therefore, the Board finds that the Agency's method for developing the maximum payment amounts is primarily based on the Agency's experience administering the UST program in Illinois. The Board further finds that the rates are reasonable. Any deficiencies in the maximum rates are obviated by the language dealing with extraordinary circumstances and the addition of the bidding process.

General Discussion of Maximum Payment Amounts. The Board will not discuss each and every proposed lump sum maximum payment amount; however, the Board has carefully reviewed all the rates proposed by the Agency. Other than the rates discussed in more detail in this opinion, the Board finds the rates are reasonable and supported by the record. Furthermore, given the Agency's inclusion in the third *errata* sheet of a bidding process, provisions for triennial review of the maximum payment amounts, and provisions for the annual adjustment of the maximum payment amounts based on inflation, the Board finds that the proposal will allow for reimbursement of reasonable costs for remediation of UST sites in Illinois. Therefore, the Board will proceed to first notice with the rates proposed by the Agency unless the Board specifically indicates a different rate in this opinion.

Maximum Rates for Lab Analysis. According to Mr. Chappel, the Agency sought input on the maximum rates for analyses performed by laboratories under the UST program from Illinois laboratories. Specifically, the Agency contacted the Illinois Association of Environmental Laboratories, Inc. (IAEL) for assistance. Exh. 11 at 4. IAEL provided a survey of laboratories and recommended that the Agency use the highest rate reported. *Id*. Mr. Chappel testified that the Agency instead "opted to use the average amounts" provided by IAEL. Exh. 11 at 4-5.

Mr. Thomas, a member of PIPE and IAEL, testified that he and IAEL surveyed members to develop a spreadsheet of rates charges by the laboratories in Illinois who do work with USTs. Exh. 75 at 2-3. After the development of the data, Mr. Thomas forwarded the information to the Agency with a recommendation that the Agency propose the maximum rate. Exh. 75 at 3. The Agency's proposal instead used the average and Mr. Thomas disagrees with those rates. Exh. 75 at 3-4. Mr. Thomas opined that assuming a natural distribution, use of the average will result in fifty percent of the rates falling above the reimbursement limit. Exh. 75 at 4. Mr. Thomas recommended using either the maximum rate established by the data or the average plus one standard of deviation. *Id*.

The Board has reviewed the information provided by Mr. Thomas, including the proposed rates. However, the Board is not persuaded that using either the maximum amount as determined by the survey or the average plus one standard deviation is appropriate. As Mr. Clay testified, 89 laboratories are certified to perform UST analyses (Exh. 88 at 7-8), yet only five responded to the survey (Exh. 75 at 2-3). Furthermore, the information from Mr. Thomas (Exh.

75 at Attach. B) demonstrates a fluctuation in prices which the Board cannot explain from this record.

Therefore, based on this record, the Board will propose for first notice the rates for laboratory analysis as suggested by the Agency. The Board understands Mr. Thomas' concern about using the average cost as a maximum, but with the inclusion of a bidding process, and the unusual circumstances contingency, the Board is comfortable that the Agency's proposed rates will balance the need to control costs with the ability of market rates to prevail in laboratory services. The Board invites additional comment on this issue.

Travel. The Agency's proposal at Section 732.845/734.845(e) sets forth travel costs as a part of the professional consulting service maximum payment rates. PIPE suggested that the Agency proposal should be modified: (1) to allow for two people traveling when workload or OSHA would require; (2) to use a personnel rate not "weighted" with office/clerical staff rates; (3) to revise the 60+ mile limitation because that limitation is not reasonable. PC 6 at Attach. C.

The Board will not modify the Agency's proposed language. The Board finds that the costs for travel reimbursement as proposed by the Agency are reasonable based on the record before the Board.

Stage 3. In Section 734.845(b)(5) and (6), the Agency proposed lump sum payments for the preparation and submission of Stage 3 site investigation plans and the costs for field work and field oversight. In response to concerns, Mr. Clay indicated that that Stage 3 investigations should be contingent in nature and additional rounds of borings should be proposed to be conducted if necessary. Exh. 88 at 19. Mr. Clay testified that once a plan has been approved, additional borings will be reimbursed based on the rates in the proposed rules. *Id.*

CW^3M and PIPE argued that Stage 3 site investigation should be reimbursed on a time and material basis. CW^3M and PIPE point out that particularly with off-site investigations, planning for costs associated with the Stage 3 investigation is difficult. Exh. 29 at 69-71; PC 6 at 16.

The Board agrees with CW^3M and PIPE. The Agency's own testimony acknowledges that the Stage 3 investigations are contingent in nature. Because of the contingency of the plans and the reality that planning for all contingencies would be difficult, the Board will delete Section 734.845(b)(5) and (6) from the proposal. The Board will propose a new Section 734-845(b)(5) which will provide:

Payment for costs associated with Stage 3 site investigations will be reimbursed pursuant to Section 734.850.

UST Removal (Section 732.810/734.810). The Agency evaluated twenty leaking UST sites, nine of which had tanks removed or abandoned. Exh. 9 at 2. The evaluation established that the average cost to remove the USTs was $3,152.71. *Id.* Mr. Bauer stated that "based on the Agency's experience, this average cost is consistent with the amounts the Agency has seen

historically for the removal of USTs within the typical range of 6,000-gallons to 10,000-gallons in size." Exh. 9 at 2-3.

PIPE proposed alternative rates for UST removal and abandonment. PC 6 at 11. PIPE based the alternative rates on the 2004 *RS Means Environmental Cost Handling Options and Solutions* (*RS Means*). *Id.* PIPE believes that the alternative rates are "eminently more justifiable as 'reasonable'" rates than those proposed by the Agency. *Id.*

The Board is not convinced that basing rates on *RS Means* in and of itself is appropriate. Although as indicated above, the Agency's method for developing the maximum payment amounts had statistical limitations, the Agency's rates were based on real data from actual sites in Illinois. Therefore, the Board rejects alternative rates, such as *RS Means,* and the Board will propose the rates as developed by the Agency for first notice.

Free Product or Groundwater Removal (Section 732.815/734.815). PIPE indicated that the rates proposed by the Agency were acceptable; however, PIPE suggested a change in language. Specifically, PIPE asks the Board to change the phrase "costs . . . shall not exceed" to "the following costs . . . shall be considered reasonable" throughout Subpart H. The Board declines to make this change. Subpart H sets forth maximum payment amounts and the language "costs . . . shall not exceed" is appropriate. The Board will however amend the language to provide that "costs . . . must not exceed" consistent with Board practice of replacing the word shall with must.

Drilling, Well Installation, and Well Abandonment (Section 732.820/734.820). PIPE did not propose specific rates for this category except that PIPE suggests adding language under subsection (b) of $57 per foot. The Board declines to make this change because PIPE has not justified the change.

Drum Disposal (Section 732.830/734.830), Sample Handling and Analysis (Section 732.835/734.835), Concrete, Asphalt and Paving (Section 732.845/734.845). PIPE suggested several changes to the language proposed by the Agency. The Board has reviewed those suggested changes and finds that the changes are not necessary to clarify the language of the rule. Therefore, the Board declines to make the changes.

20. Miscellaneous Issues Raised

In addition to the issues discussed above, several issues were raised which require less discussion. Those issues will be addressed in this section.

Merger of Part 732 with Part 734

PIPE suggests that with a "certain degree of wordsmithing" on the part of the Board, the rules could be merged into one set of requirements. Exh. 90 at 6. PIPE acknowledged that this issue had not been raised with the Agency. The Board is disinclined to merge the two Parts. The Board finds that the use of two separate Parts does not create confusion. Therefore, the Board will not merge the two Parts.

Use of Phrase "Maximum Payment Amounts"

PIPE argues that the Agency's use of the phrase "maximum payment amount" is inconsistent with Section 732.860/734.860 and Section 734.800(b). PC 6 at 9. PIPE notes that those sections of the proposal indicate that the amount in Subpart H may be exceeded and are not exclusive. *Id*. PIPE suggests that the phrase "reasonable costs" or "usual and customary costs" as alternatives. PC 6 at 10.

The Board agrees that "maximum payment amount" is a phrase which denotes the highest amount payable for a task. However, the Board believes that in the context of the rules, the phrase is appropriate and the Board declines to make a change.

Compaction (Section 732.606/734.630(w))

PIPE raised the issue of compaction and backfill in PIPE's public comment. PIPE suggests that compaction of backfill material should be an eligible cost. The Board disagrees with PIPE. Section 732.606(w), which is identical to Section 734.630(w), is existing language. The Board is not convinced that this record supports removing compaction of backfill material from the list of costs which are currently ineligible for reimbursement.

CONCLUSION

The Agency originally proposed amendments to the regulations concerning the leaking UST program in January 2004. The Board has held seven days of hearings and received substantial comments on the proposal. The Board has evaluated the comments in this proceeding and the additional language changes suggested by both the Agency and the participants. The first-notice proposal adopted by the Board today reflects the Board's consideration of all the comments and testimony the Board has received.

Based on the record of this proceeding, the Board proposes for first notice a rule that includes lump sum maximum payments for certain tasks, but not a defined scope of work for those tasks. The Board is proposing the maximum payment amounts proposed by the Agency in most cases. The Board is cognizant that the methods used to develop the rates by the Agency were not scientifically or statistically recognized methods. However, the Agency's experience in the UST program is also an element to be considered. In addition, the first-notice proposal will include provisions for bidding, extraordinary circumstances, and an annual inflation adjustment. The Board is convinced that the first-notice proposal, as a whole, will allow for reimbursement of reasonable remediation costs.

As noted above the proposal includes a provision for bidding, and further, the proposal allows for the preparation of a request for bids and the review of the bids to be reimbursed on a time and materials basis. The Board is also proposing that Stage 3 investigations be reimbursed based on time and materials. The Board will also propose for first notice a definition for "financial interest" and language prohibiting reimbursement for handling charges when the primary contractor has a financial interest in the subcontractor. The Board will also retain the

prohibition for a subcontractor to bid on a project where the primary contractor has a financial interest in the subcontractor.

The Board has made additional changes to the rule, including those necessary to comport with the requirements of the APA. The Board will not summarize or delineate the entirety of the rule or the changes made by the Board. The Board's order reflects the Board's changes.

The Board finds that the proposal is technically feasible and economically reasonable. The Board will proceed to first notice with the proposal and will accept additional comments on the proposal. If the participants believe additional hearings should be scheduled, the participants are invited to comment on the number and scope of hearings.

ORDER

The Board directs the Clerk to cause the publication of the following rule for first notice in the *Illinois Register*.

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
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732.104	Incorporations by Reference
732.105	Agency Authority to Initiate Investigative, Preventive or Corrective Action
732.106	Laboratory Certification
732.108	Licensed Professional Engineer or Licensed Professional Geologist Supervision
732.110	Form and Delivery of Plans, Budget Plans, and Reports; Signatures and Certifications
732.112	Notification of Field Activities
732.114	LUST Advisory Committee

SUBPART B: EARLY ACTION

Section

SUBPART C: SITE EVALUATION AND CLASSIFICATION

SUBPART D: CORRECTIVE ACTION

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

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

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

SUBPART H: MAXIMUM PAYMENT AMOUNTS

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 Illinois Emergency Management Agency (IEMA) on or after September 23, 1994, but prior to June 24, 2002, in accordance with regulations adopted by the Office of State Fire Marshal (OSFM). It also applies to owners or operators that, prior to June 24, 2002, elected to proceed in accordance with this Part pursuant to Section 732.101 of this Part. ~~This Part 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, 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 four hours, or a fraction thereof, of billable work time. Half-days must be based upon the total number of hours worked in one calendar day. The total number of half-days per calendar day may exceed two.

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

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

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

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

"IEMA" means the Illinois Emergency Management Agency.

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

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

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

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

"Licensed Professional Engineer" ~~*"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 µm) Sieve, approved November 15, 1992.

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

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

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

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

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

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

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

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

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

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

~~“Methods for 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 (September1986), 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)~~c)~~ 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, must be conducted or prepared under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist. High Priority Corrective Action

Completion Reports submitted pursuant to Sections 732.300(b) or 732.409 of this Part must be prepared under the supervision of a Licensed Professional Engineer.

(Source: Added at _____ Ill. Reg._____, effective _____)

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

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

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

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

3) The maps must show the following:

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

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

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

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

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

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

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

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

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

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

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.112 Notification of Field Activities

The Agency may require owners and operators to notify the Agency of field activities prior to the date the field activities take place. The notice must include information prescribed by the

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

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.114 LUST Advisory Committee

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

(Source: Added at _____ Ill. Reg._____, effective _____)

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.

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

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. The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.

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

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

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

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

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

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

A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for each 20 feet of side length, or fraction thereof, and the borings must be evenly spaced along the side. The borings must be drilled in the native soil surrounding the UST(s) and as

close practicable to, but not more than five feet from, the backfill material surrounding the UST(s). Each boring must be drilled to a depth of 30 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 30 feet below grade.

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

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

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

3)~~1)~~ 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 must include, but not be limited to, the following:

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

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

i) A site map meeting the requirements of Section 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, to the maximum extent practicable, free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water, ~~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 as measured in a groundwater monitoring well, or still present as a sheen on groundwater in the tank removal excavation or on surface water. The schedule must include, but not be limited to, the submission of plans and budgets required pursuant to subsections (c) and (d) of this Section; and

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

b) For purposes of payment from the Fund ~~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 must submit to the Agency for review a free product removal plan. The plan must be submitted with the free product removal report required under subsection (a)(4) of this Section. Free product removal activities conducted more than 45 days after the

confirmation of the presence of free product must not be considered early action activities.

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

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

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

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

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

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all free product removal plans and associated budget plans submitted

by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

(Source: 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 must include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the remediation and the procedures used for the collection and analysis of samples, soil boring logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of

the Act and regulations have been satisfied and that no further remediation is required at the site. ~~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 of the water supply well survey conducted pursuant to subsection (b)(3) of this Section must 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 Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and the modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

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

iii) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to

subsection (b)(3) of this Section, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

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

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

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

A) If there is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants ~~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 must conduct a water supply well survey in accordance with this subsection (b)(3).

A) At a minimum, the owner or operator must identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells must include, but 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) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and

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

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

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

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

C) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but 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 Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to subsections (b)(3)(A) or (b)(3)(b) of this Section. The additional investigation may include, but 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 (e) 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 must 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 must submit elections to defer site classification activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The forms must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

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

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

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

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

4) Groundwater contamination does not exceed Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling in accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a

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

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but 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 must 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 µm) Sieve,” incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

B) A soil moisture content analysis using the test methods specified in ASTM Standard D 2216-92 or D 4643-93, “Standard Test Method for Laboratory Determination of Water (Moisture) Content of Soil and Rock,” or “Standard Test Method for Determination of Water (Moisture) Content of

Soil by the Microwave Oven Method," incorporated by reference in Section 732.104 of this Part, or other Agency approved method;

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

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

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

3) Hydraulic Conductivity

A) If a water bearing unit is encountered while performing soil boring(s) for the physical soil classification, an in-situ hydraulic conductivity test shall be performed in the first fully saturated layer below the water table. If multiple water bearing units are encountered, an 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 1×10^{-3} cm/sec will fail the minimum geologic conditions for "No Further Action", i.e., rating of D, E, F, or G as described in the Berg Circular, and therefore, no physical tests need to be run on the soils.

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

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

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

d) Method Two for Physical Soil Classification:

1) Soil Borings

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

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

2) Soil Properties

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

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

B) Either:

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

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

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

accordance with the requirements of Section 732.308(a) of this Part.

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

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

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

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

D) Is not capable of hydraulic conductivity of 1×10^{-4} cm/sec or greater.

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

f) Survey of Water Supply Wells. At a minimum, the owner or operator must conduct a water supply well survey to identify all potable water supply wells located at the site and within 200 feet of the site, all community water supply wells located at the site and within 2,500 feet of the site, and all regulated

recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells must include, but 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) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and

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

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

ii) The methodology must be consistent with the methodologies contained in ~~"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 must 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 Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

D) The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The information required under this subsection (D) is not required to be shown

in the site classification completion report if modeling is not performed as part of site investigation;

2) One or more tables listing the setback zones for each community water supply well and other 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 must be collected from the walls and floor of the used oil UST excavation if the UST is removed, or from borings drilled along each side of the used oil UST if the UST remains in place. The sample that appears to be the most contaminated as a result of a release from the used oil UST must then be analyzed for the following parameters. If none of the samples appear to be contaminated a soil sample must be collected from the floor of the used oil UST excavation below the former location of the UST if the UST is removed, or from soil located at the same elevation as the bottom of the used oil UST if the UST remains in place, and analyzed for the following parameters: ~~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 must be made by submitting to the Agency a written notification of such election signed by the owner or operator. The election must be effective upon the Agency's receipt of the notification and cannot be withdrawn once made. Owners or operators electing to include MTBE as an indicator contaminant must remediate MTBE contamination in accordance with the requirements of this Part.

1) If the Agency has not issued a No Further Remediation Letter for the release ~~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) ~~(c)~~ 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, must elect pursuant to 35 Ill. Adm. Code 734.105 to proceed in accordance with 35 Ill. Adm. Code 734 and conduct site investigation and corrective action in accordance with that Part instead of meeting the requirements of this Section.

2) An owner or operator who chooses to revoke an election submitted under subsection (b) ~~(c)~~ 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 (c) of this Section.~~

b)~~c)~~ 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) ~~(c)~~ of this Section.

e)~~f)~~ In addition to the plan required in subsection (b) ~~(c)~~ 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 of all costs associated with the development, implementation and completion of the site evaluation activities required under subsection (b) ~~(c)~~ 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) ~~(c)~~ 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, must elect pursuant to 35 Ill. Adm. Code 734.105 to proceed in accordance with 35 Ill. Adm. Code 734 and conduct site investigation and corrective action in accordance with that Part instead of meeting the requirements of this Section. ~~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 must 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 Fund ~~or 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 must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route

remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:

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

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

2) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but 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 Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to Section 732.307(f)(1) of this Part or subsection (e)(1) of this Section. The additional investigation may include, but 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 must 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 must submit elections to defer low priority groundwater monitoring or high priority corrective action activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

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

A) The Agency must mail notices of final action on an election to defer by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action must be deemed to

have taken place on the post marked date that such notice is mailed.

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

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

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

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but 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 must 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. The budget plan must compare the costs of at least two other alternative technologies to the costs of the proposed alternative technology, if other alternative technologies are available and are technically feasible.

c) If an owner or operator has received approval of a corrective action plan and associated budget plan from the Agency prior to implementing the plan and the alternative technology fails to satisfy the requirements of subsection (a)(1) or (a)(2) of this Section, such failure shall not make the owner or operator ineligible to seek payment ~~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 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 732.408 Remediation Objectives

For sites requiring High Priority corrective action or for which the owner or operator has elected to conduct corrective action pursuant to Section 732.300(b), 732.400(b) or 732.400(c) of this Part, the owner or operator shall propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 must determine the following parameters on a site-specific basis:

Hydraulic conductivity (K)
Soil bulk density (ρ_b)
Soil particle density (ρ_s)
Moisture content (w)
Organic carbon content (f_{oc})

Board Note: Failure to use site-specific remediation objectives on-site and to utilize available groundwater ordinances as institutional controls may result in certain corrective action costs being ineligible for payment from the Fund. See Sections 732.606(eee) and (fff) of this Part.

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 must 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 Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

iv) The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

B) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to Section 732.404(e) of this Part;

C) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to Section 732.404(e) of this Part, the name and title of each person contacted at each entity, and field observations associated with the identification of potable water supply wells; and

D) A certification from a Licensed Professional Engineer or Licensed Professional Geologist that the water supply well survey was conducted in accordance with the requirements of Section 732.404(e) of this Part and that the documentation submitted

pursuant to this Section includes the information obtained as a result of the survey.

3) A High Priority corrective action completion report shall demonstrate the following:

A) For sites submitting a site classification report under Section 732.309 of this Part:

i) Applicable indicator contaminant groundwater objectives are not exceeded at the property boundary line or 200 feet from the UST system, whichever is less, as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

ii) Class III resource groundwater quality standards for Class III special use resource groundwater within 200 feet of the UST system are not exceeded as a result of the release of petroleum for any indicator contaminant identified during the groundwater investigation;

iii) The release of petroleum does not threaten human health or human safety due to the presence or migration, through natural or manmade pathways, of petroleum in concentration sufficient to harm human health or human safety or to cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;

iv) The release of petroleum does not threaten any surface water body; and

v) The release of petroleum does not threaten any potable water supply.

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

b) The applicable report shall be ~~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(c)~~ 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 form 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.~~

~~c) 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 must 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; and

10) Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.

c) The address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change in address.

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

e) Applications for partial or final payment may be submitted no more frequently than once every 90 days.

f) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part, other than costs associated with free product removal activities conducted more than 45 days after confirmation of the presence of free product, ~~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 applications for payment of corrective action costs must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. For releases for which the Agency issued a No Further Remediation Letter prior to the effective date of this subsection (j), all applications for payment must 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 must review each application for payment submitted pursuant to this Part to determine the following:

1) whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part;

2) for costs incurred pursuant to Subpart B of this Part, other than free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought are reasonable, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part;

3) for costs incurred pursuant to Subpart C of this Part and free product removal activities conducted more than 45 days after confirmation of the presence of free product, whether the amounts sought exceed the amounts approved in the corresponding budget plan, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part and a plan approved by the Agency; and

4) Whether the amounts sought are eligible for payment.

~~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)~~c)~~ 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 must 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 must 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 must not approve payment to an owner or operator from the Fund for costs of corrective action or indemnification incurred during a calendar year in excess of the following amounts based on the number of petroleum underground storage tanks owned or operated by such owner or operator in Illinois:

Amount	Number of Tanks
$1,000,000	fewer than 101
$2,000,000	101 or more

~~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 must 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 as measured in a groundwater monitoring well, 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. The costs for destruction and replacement of concrete, asphalt, and paving must not be paid more than once. Costs associated with the replacement of concrete, asphalt, or paving must not be paid in excess of the cost to install, in the same area and to the same depth, the same material that was destroyed (e.g., replacing four inches of concrete with four inches of concrete);

17)~~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 must not be paid in excess of a total $10,000 per occurrence. 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)~~19~~) 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. This subsection (kk) does not apply to the following:

1) Costs~~, except costs~~ incurred for MTBE remediation pursuant to Section 732.310(i)(2) of this Part;

2) Monitoring well abandonment costs;

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

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

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

orders the owner or operator to achieve Tier 1 remediation objectives in response to the release;

ll) Handling charges for subcontractor ~~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 the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget plan;

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

eee) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (fff) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.

fff) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

(Source: Amended at 29 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:

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

~~*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):~~

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

(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* [415 ILCS 5/57.8(m)]. ~~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) 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 must submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

1) A complete application for payment must contain the following:

A) A certified statement by the owner or operator of the amount sought for payment;

B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof must include, but 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 must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

b)~~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 must review each application for payment to determine the following:

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

2) Whether there is sufficient documentation of a legally enforceable judgment entered against the owner or operator in a court of law, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator;

3) Whether there is sufficient documentation that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; and

4) Whether the amounts sought for indemnification are eligible for payment.

c)~~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

a) Owners or operators that submit a report, plan, budget, application for payment, or any other data or document under this Part, and Licensed Professional Engineers and Licensed Professional Geologists that certify such report, plan, budget, application for payment, data, or document, must maintain all books, records, documents, and other evidence directly pertinent to the report, plan, budget, application for payment, data, or document, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.

b) The Agency or any of its duly authorized representatives must have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists must provide proper facilities for such access and inspection.

c) Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists must maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:

1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter 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 repeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.

d) The Agency shall mail the No Further Remediation Letter by registered or certified mail, postmarked with a date stamp and with return receipt requested.

Final action shall be deemed to have taken place on the postmarked date that the letter is mailed.

e) The Agency at any time may correct errors in No Further Remediation Letters that arise from oversight, omission or clerical mistake. Upon correction of the No Further Remediation Letter, the Agency shall mail the corrected letter to the owner or operator as set forth in subsection (d) ~~(c)~~ 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* [415 ILCS 5/57.10(c)(1)-(3)], 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.

e) The prohibition under Section 732.703(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;

f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;

g) The recording obligations pursuant to Section 732.703 of this Part;

h) The opportunity to request a change in the recorded land use pursuant to Section 732.703(e) ~~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 provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. All costs associated with conducting corrective action are grouped into the tasks set forth in Sections 732.810 through 732.850 of this Part. The first method for determining the maximum amount that can be paid for each task is to use the maximum amounts for each task set forth in those Sections, and in Section 732.870. In some cases the maximum amounts are specific dollar amounts, and in other cases the maximum amounts are determined on a site-specific basis.

As an alternative to using the amounts set forth in Sections 732.810 through 732.850 of this Part, the second method for determining the maximum amounts that can be paid for one or more tasks is bidding in accordance with Section 732.855 of this Part. As stated in that Section, when bidding is used, if the lowest bid for a particular task is less than the amount set forth in Sections 732.810 through 732.850, the amount in Sections 732.810 through 732.850 of this Part may be used instead of the lowest bid. Finally, the third method for determining maximum amounts that can be paid from the Fund applies to unusual or extraordinary circumstances. The maximum amounts for such circumstances can be determined in accordance with Section 732.860 of this Part.

b) The costs listed under each task set forth in Sections 732.810 through 732.850 of this Part identify only some of the costs associated with each task. They are not intended as an exclusive list of all costs associated with each task for the purposes of payment from the Fund.

c) This Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. Whether a particular cost is eligible for payment must be determined in accordance with Subpart F of this Part.

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.810 UST Removal or Abandonment Costs

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

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

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.815 Free Product or Groundwater Removal and Disposal

Payment for costs associated with the removal and disposal of free product or groundwater must not exceed the amounts set forth in this Section. Such costs must include, but 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 must 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 must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part. Such costs must include, but not be limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product and groundwater removal systems.

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.820 Drilling, Well Installation, and Well Abandonment

Payment for costs associated with drilling, well installation, and well abandonment must not exceed the amounts set forth in this Section.

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

Type of Drilling	Maximum Total Amount
Hollow-stem auger	greater of $23.00 per foot or $1,500.00
Direct-push platform	
- for sampling or other non-injection purposes	greater of $18.00 per foot or $1,200.00
- for injection purposes	greater of $15.00 per foot or $1,200.00

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

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

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

Well Diameter	Maximum Total Amount
4 or 6 inches	$25.00/foot (well length)
8 inches or greater	$41.00/foot (well length)

d) Payment for costs associated with the abandonment of monitoring wells must not exceed $10.00 per foot of well length.

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.825 Soil Removal and Disposal

Payment for costs associated with soil removal, transportation, and disposal must not exceed the amounts set forth in this Section. Such costs must include, but 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 must 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 must be determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x

Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 732.202(f) of this Part must be determined in accordance with Section 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 must 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 must be determined by the following equation using the dimensions of the backfilled excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of backfill material used to replace soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 732.202(f) of this Part must be determined in accordance with Section 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 must not exceed a total of $6.50 per cubic yard. The volume of soil removed and returned must be determined by the following equation using the dimensions of the excavation resulting from the removal of the soil: (Excavation Length x Excavation Width x Excavation Depth). A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

(Source: Added at _____ Ill. Reg._____, effective _____)

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) must not exceed the following amounts or a total of $500.00, whichever is greater.

Drum Contents	Maximum Total Amount per Drum
Solid waste	$250.00
Liquid waste	$150.00

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.835 Sample Handling and Analysis

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

(Source: Added at _____ Ill. Reg._____, effective _____)

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

a) Payment for costs associated with concrete, asphalt, and paving installed as an engineered barrier, other than replacement concrete, asphalt, and paving, must not exceed the following amounts. Costs associated with the replacement of concrete, asphalt, and paving used as an engineered barrier are subject to the maximum amounts set forth in subsection (b) of this Section instead of this subsection (a).

Depth of Material		Maximum Total Amount per Square Foot
Asphalt and paving –	2 inches	$1.65
	3 inches	$1.86
	4 inches	$2.38
Concrete –	any depth	$2.38

b) Payment for costs associated with the replacement of concrete, asphalt, and paving must not exceed the following amounts:

Depth of Material		Maximum Total Amount per Square Foot
Asphalt and paving –	2 inches	$1.65
	3 inches	$1.86
	4 inches	$2.38
	6 inches	$3.08
Concrete –	2 inches	$2.45
	3 inches	$2.93
	4 inches	$3.41
	5 inches	$3.89
	6 inches	$4.36
	8 inches	$5.31

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

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

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.845 Professional Consulting Services

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

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 must not exceed the following amounts:

1) Payment for costs associated with preparation for the abandonment or removal of USTs must not exceed a total of $960.00.

2) Payment for costs associated with early action field work and field oversight must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) If one or more USTs are removed, one half-day for each leaking UST that is removed, not to exceed a total of ten half-days, plus one half-day for each 225 cubic yards, or fraction thereof, of visibly contaminated fill material removed and disposed of in accordance with Section 732.202(f) of this Part;

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, must 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 must be determined on a time and materials basis and must 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 must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The Agency must 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 must 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 must 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 must 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 must 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 must be determined on a time and materials basis and must 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 must 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 must not exceed the following amounts:

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

2) Payment for costs associated with low priority groundwater monitoring field work and field oversight must not exceed a total of $390.00 per half-day, up to a maximum of seven half-days, plus travel costs in accordance with subsection (e) of this Section.

3) Payment for costs associated with the preparation and submission of the first year groundwater monitoring report must 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 must 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 must 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 must not exceed the following amounts:

1) Payment for costs associated with the preparation and submission of investigation plans for sites classified pursuant to Section 732.307 of this Part must not exceed the following:

A) A total of $3,200.00 for plans to investigate on-site contamination.

B) A total of $3,200.00 for plans to investigate off-site contamination.

2) Payment for costs associated with field work and field oversight to define the extent of contamination resulting from the release must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled as part of the investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed must be included in subsection (d)(2)(B) of this Section instead of this subsection (d)(2)(A); and

B) One half-day for each monitoring well installed as part of the investigation.

3) Payment for costs associated with well surveys conducted pursuant to Section 732.404(e)(1) of this Part must not exceed a total of $160.00. Payment for costs associated with well surveys conducted pursuant to Section 732.404(e)(2) of this Part must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part.

4) For conventional technology, payment for costs associated with the preparation and submission of corrective action plans must not exceed a total of $5,120.00. For alternative technologies, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part.

5) Payment for costs associated with high priority corrective action field work and field oversight must not exceed the following amounts:

A) For conventional technology, a total of $390.00 per half-day, not to exceed one half-day for each 225 cubic yards, or fraction thereof, of soil removed and disposed, plus travel costs in accordance with subsection (e) of this Section.

B) For alternative technologies, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 732.850 of this Part.

6) Development of Tier 2 and Tier 3 Remediation Objectives. Payment of costs for professional consulting services associated with the development of Tier 2 and Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742 must not exceed the following amounts:

A) Payment for costs associated with field work and field oversight for the development of remediation objectives must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

i) One half-day for every four soil borings, or fraction thereof, drilled solely for the purpose of developing remediation objectives. Borings in which monitoring wells are installed must be included in subsection (d)(6)(A)(ii) of this Section instead of this subsection (d)(6)(A)(i); and

ii) One half-day for each monitoring well installed solely for the purpose of developing remediation objectives.

B) Excluding costs set forth in subsection (d)(6)(A) of this Section, payment for costs associated with the development of Tier 2 or Tier 3 remediation objectives must not exceed a total of $800.00.

7) Payment for costs associated with Environmental Land Use Controls and Highway Authority Agreements used as institutional controls pursuant to 35 Ill. Adm. Code 742 must not exceed a total of $800.00 per Environmental Land Use Control or Highway Authority Agreement.

8) Payment for costs associated with the preparation and submission of high priority corrective action completion reports must not exceed a total of $5,120.00.

e) Payment for costs associated with travel, including, but not limited to, travel time, per diem, mileage, transportation, vehicle charges, lodging, and meals, must not exceed the following amounts. Costs for travel must be allowed only when specified elsewhere in this Part.

Distance to site (land miles)	Maximum total amount per calendar day
0 to 29	$140.00
30 to 59	$220.00
60 or more	$300.00

Distances must be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site must be measured from the consultant's office that is closest to the site.

f) If a plan must be amended due to unforeseen circumstances, costs associated with the amendment of the plan and its associated budget plan must not exceed a total of $640.00.

(Source: Added at _____ Ill. Reg._____, effective _____)

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) must not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 732. 860 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 must be determined by the Agency on a site-specific basis, provided, however, that personnel costs must not exceed the amounts set forth in Section 732.Appendix E of this Part. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work. Owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

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

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing.

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

b) The bids must be summarized on forms prescribed and provided by the Agency. The bid summary form, along with copies of the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.

c) The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the

owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.860 Unusual or Extraordinary Circumstances

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payments amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. Examples of unusual or extraordinary circumstances may include, but not be limited to, an inability to obtain a minimum of three bids pursuant to Section 732.855 of this Part due to a limited number of persons providing the service needed.

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.865 Handling Charges

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

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.870 Increase in Maximum Payment Amounts

The maximum payment amounts set forth in this Subpart H must be adjusted annually by an inflation factor determined by the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business.

a) The inflation factor must be calculated each year by dividing the latest published annual Implicit Price Deflator for Gross National Product by the annual Implicit Price Deflator for Gross National Product for the previous year. The inflation factor must be rounded to the nearest 1/100th. In no case must the inflation factor be more than five percent in a single year.

b) Adjusted maximum payment amounts must become effective on July 1 of each year and must remain in effect through June 30 of the following year. The first adjustment must be made on July 1, 2006, by multiplying the maximum payment amounts set forth in this Subpart H by the applicable inflation factor. Subsequent

adjustments must be made by multiplying the latest adjusted maximum payment amounts by the latest inflation factor.

c) The Agency must post the inflation factors on its website no later than the date they become effective. The inflation factors must remain posted on the website in subsequent years to aid in the calculation of adjusted maximum payment amounts.

d) Adjusted maximum payment amounts must be applied as follows:

1) For costs approved by the Agency in writing prior to the date the costs are incurred, the applicable maximum payments amounts must be the amounts in effect on the date the Agency received the budget in which the costs were proposed. Once the Agency approves a cost, the applicable maximum payment amount for the cost must not be increased (e.g, by proposing the cost in a subsequent budget).

2) For costs not approved by the Agency in writing prior to the date the costs are incurred, including but not limited to early action costs, the applicable maximum payments amounts must be the amounts in effect on the date the costs were incurred.

3) Owners and operators must have the burden of requesting the appropriate adjusted maximum payment amounts in budgets and applications for payment.

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.875 Agency Review of Payment Amounts

No less than every three years the Agency must review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report must identify amounts that are not consistent with the prevailing market rates and suggest changes needed to make the amounts consistent with the prevailing market rates.

(Source: Added at _____ Ill. Reg._____, effective _____)

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 toluene xylene
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)	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 <u>Naphthalene</u> ~~Napthalene~~ Pyrene <u>Acenaphthylene</u> <u>Benzo(g,h,i)perylene</u> 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 ~~in~~:		Maximum amount of backfill material to be replaced ~~in~~:	
	Cubic yards	~~tons~~	Cubic yards	~~tons~~
<285	54	~~91~~	56	~~94~~
285 to 299	55	~~92~~	57	~~96~~
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 must 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^3 for sand and a moisture content of 10 percent, which equals 1.98 g/cm^3. The Board has rounded the removed backfill density to 2.0 g/cm^3. The weight of backfill material to be replaced is based on a dry bulk density value of 2.0 g/cm^3 for gravel.~~

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

Section 732.APPENDIX D Sample Handling and Analysis

	Max. Total Amount per Sample
Chemical	
BETX Soil with MTBE	$85.00
BETX Water with MTBE	$81.00
COD (Chemical Oxygen Demand)	$30.00
Corrosivity	$15.00
Flash Point or Ignitability Analysis EPA 1010	$33.00
FOC (Fraction Organic Carbon)	$38.00
Fat, Oil, & Grease (FOG)	$60.00
LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 732.AppendixB of this Part	$693.00
Organic Carbon (ASTM-D 2974-87)	$33.00
Dissolved Oxygen (DO)	$24.00
Paint Filter (Free Liquids)	$14.00
PCB / Pesticides (combination)	$222.00
PCBs	$111.00
Pesticides	$140.00
PH	$14.00
Phenol	$34.00
Polynuclear Aromatics PNA, or PAH SOIL	$152.00
Polynuclear Aromatics PNA, or PAH WATER	$152.00
Reactivity	$68.00
SVOC - Soil (Semi-volatile Organic Compounds)	$313.00
SVOC - Water (Semi-volatile Organic Compounds)	$313.00
TKN (Total Kjeldahl) "nitrogen"	$44.00
TOC (Total Organic Carbon) EPA 9060A	$31.00
TPH (Total Petroleum Hydrocarbons)	$122.00
VOC (Volatile Organic Compound) - Soil (Non-Aqueous)	$175.00
VOC (Volatile Organic Compound) - Water	$169.00
Geo-Technical	
Bulk Density ASTM D4292 / D2937	$22.00
Ex-Situ Hydraulic Conductivity / Permeability	$255.00
Moisture Content ASTM D2216-90 / D4643-87	$12.00
Porosity	$30.00
Rock Hydraulic Conductivity Ex-Situ	$350.00
Sieve / Particle Size Analysis ASTM D422-63 / D1140-54	$145.00
Soil Classification ASTM D2488-90 / D2487-90	$68.00

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

(Source: Added at _____ Ill. Reg._____, effective _____)

Section 732.APPENDIX E Personnel Titles and Rates

Title	Degree Required	Ill. License Req'd.	Min. Yrs. Experience	Max. Hourly Rate
Engineer I	Bachelor's in Engineering	None	0	$75.00
Engineer II	Bachelor's in Engineering	None	2	$85.00
Engineer III	Bachelor's in Engineering	None	4	$100.00
Professional Engineer	Bachelor's in Engineering	P.E.	4	$110.00
Senior Prof. Engineer	Bachelor's in Engineering	P.E.	8	$130.00
Geologist I	Bachelor's in Geology or Hydrogeology	None	0	$70.00
Geologist II	Bachelor's in Geology or Hydrogeology	None	2	$75.00
Geologist III	Bachelor's in Geology or Hydrogeology	None	4	$88.00
Professional Geologist	Bachelor's in Geology or Hydrogeology	P.G.	4	$92.00
Senior Prof. Geologist	Bachelor's in Geology or Hydrogeology	P.G.	8	$110.00
Scientist I	Bachelor's in a Natural or Physical Science	None	0	$60.00
Scientist II	Bachelor's in a Natural or Physical Science	None	2	$65.00
Scientist III	Bachelor's in a Natural or Physical Science	None	4	$70.00
Scientist IV	Bachelor's in a Natural or Physical Science	None	6	$75.00
Senior Scientist	Bachelor's in a Natural or Physical Science	None	8	$85.00
Project Manager	None	None	8[1]	$90.00
Senior Project Manager	None	None	12[1]	$100.00
Technician I	None	None	0	$45.00
Technician II	None	None	2[1]	$50.00
Technician III	None	None	4[1]	$55.00
Technician IV	None	None	6[1]	$60.00
Senior Technician	None	None	8[1]	$65.00
Account Technician I	None	None	0	$35.00
Account Technician II	None	None	2[2]	$40.00
Account Technician III	None	None	4[2]	$45.00
Account Technician IV	None	None	6[2]	$50.00
Senior Acct. Technician	None	None	8[2]	$55.00
Administrative Assistant I	None	None	0	$25.00
Administrative Assistant II	None	None	2[3]	$30.00
Administrative Assistant III	None	None	4[3]	$35.00
Administrative Assistant IV	None	None	6[3]	$40.00
Senior Admin. Assistant	None	None	8[3]	$45.00
Draftperson/CAD I	None	None	0	$40.00
Draftperson/CAD II	None	None	2[4]	$45.00
Draftperson/CAD III	None	None	4[4]	$50.00
Draftperson/CAD IV	None	None	6[4]	$55.00
Senior Draftperson/CAD	None	None	8[4]	$60.00

[1] Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.
[2] Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.
[3] Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.
[4] Equivalent work-related or college level education with significant coursework in drafting or computer aided design ("CAD") can be substituted for all or part of the specified experience requirements.

(Source: Added at _____ Ill. Reg._____, effective _____)

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

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

SUBPART A: GENERAL

Section

SUBPART B: EARLY ACTION

Section

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

SUBPART D: MISCELLANEOUS PROVISIONS

SUBPART E: REVIEW OF PLANS, BUDGETS, AND REPORTS

SUBPART F: PAYMENT FROM THE FUND

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

SUBPART H: MAXIMUM PAYMENT AMOUNTS

AUTHORITY: Implementing Sections 22.12 and 57 - 57.17 and authorized by Sections 5, 22, 27, and 57.14A of the Environmental Protection Act [415 ILCS 5/5, 22, 22.12, 27, and 57 - 57.17]

SOURCE: Adopted in R_____ at ___ Ill. Reg. _____, effective _____ _____.

NOTE: Italics denotes statutory language.

SUBPART A: GENERAL

Section 734.100 Applicability

a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to Illinois Emergency Management Agency (IEMA) on or after the effective date of these rules in accordance with Office of State Fire Marshal (OSFM) regulations. 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 [415 ILCS 5/57.5].

1) For releases reported on or after June 24, 2002, but prior to the effective date of these rules, and for owners and operators electing prior to the effective date of these rules to proceed in accordance with Title XVI of the Act as amended by P.A. 92-0554, the Agency may deem that one or more requirements of this Part have been satisfied, based upon activities conducted prior to the effective date of these rules, even though the activities were not conducted in strict accordance with the requirements of this Part. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the effective date of these rules may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

2) Costs incurred pursuant to a budget approved prior to the effective date of these rules must be reimbursed in accordance with the amounts approved in the budget and must not be subject to the maximum payment amounts set forth in Subpart H of this Part.

b) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part pursuant to Section 734.105 of this Part.

c) Upon the receipt of a corrective action order issued by the OSFM on or after June 24, 2002, and pursuant to Section 57.5(g) of the Act [415 ILCS 5/57.5(g)], where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit, must conduct corrective action in accordance with this Part.

d) Owners or operators subject to this Part by law or by election must proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 734.125 of this Part to expedite investigative, preventive, or corrective action by an owner or operator or to initiate such action.

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

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

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

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

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

5) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act [33 USC 1251 *et seq*. (1972)].

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

Section 734.105 Election to Proceed under Part 734

a) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or

operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.

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

c) Owners and operators electing pursuant to this Section to proceed in accordance with this Part must submit with their election a summary of the activities conducted to date and a proposed starting point for compliance with this Part. The Agency must review and approve, reject, or modify the submission in accordance with the procedures contained in Subpart E of this Part. The Agency may deem a requirement of this Part to have been met, based upon activities conducted prior to an owner's or operator's election, even though the activities were not conducted in strict accordance with the requirement. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the election may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

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

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

Section 734.110 Severability

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

Section 734.115 Definitions

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

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

"Agency" means the Illinois Environmental Protection Agency.

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

"Board" means the Illinois Pollution Control Board.

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

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

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

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

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

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

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

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

“Environmental Land Use Control” means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200.

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

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

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

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

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

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

“Fund” means the Underground Storage Tank Fund [415 ILCS 5/57.2].

“GIS” means Geographic Information System.

“GPS” means Global Positioning System.

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

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

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

“Heating oil” means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy,

No. 5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker c [415 ILCS 5/57.2].

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

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

"IEMA" means the Illinois Emergency Management Agency.

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

“Indicator contaminants” means the indicator contaminants set forth in Section 734.405 of this Part.

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

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

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

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

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

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

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

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

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

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

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

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

"Owner" means:

> In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;
>
> In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use. (Derived from 42 USC 6991)

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

"Person" means, for the purposes of interpreting the definitions of the terms "owner" or "operator," an individual, trust, firm, joint stock company, joint

venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and must include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 USC 6991)

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

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

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

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

"Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons

at least 60 days per year. A public water supply is either a "community water supply" or a "non-community water supply" [415 ILCS 5/3.365].

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

"Regulated recharge area" means a compact geographic area, as determined by the Board, [35 Ill. Adm. Code Subtitle F] *the geology of which renders a potable resource groundwater particularly susceptible to contamination* [415 ILCS 5/3.390].

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

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

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

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

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

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

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

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

"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.

“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.

Section 734.120 Incorporations by Reference

a) The Board incorporates the following material by reference:

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

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

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

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

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

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

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

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

"Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition (September 1986), as amended by Updates I, IIA, III, and IIIA (Final Update IIIA dated April 1998), Doc. No. 955-001-00000-1.

b) This Section incorporates no later editions or amendments.

Section 734.125 Agency Authority to Initiate Investigative, Preventive, or Corrective Action

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

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

2) *Undertake investigative, preventive or corrective action whenever there is a release or a substantial threat of a release of petroleum from an underground storage tank* [415 ILCS 5/57.12(c)].

b) *If notice has been provided under this Section, the Agency has the authority to require the owner or operator, or both, of an underground storage tank to undertake preventive or corrective action whenever there is a release or substantial threat of a release of petroleum from such tank* [415 ILCS 5/57.12(d)].

Section 734.130 Licensed Professional Engineer or Licensed Professional Geologist Supervision

All investigations, plans, budgets, and reports conducted or prepared under this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part, must be conducted or prepared under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist. Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part must be prepared under the supervision of a Licensed Professional Engineer.

Section 734.135 Form and Delivery of Plans, Budgets, and Reports; Signatures and Certifications

a) All plans, budgets, and reports must be submitted to the Agency on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format.

b) All plans, budgets, and reports must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt must be

deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

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

d) All plans, budgets, and reports submitted pursuant to this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part, must contain the following certification from a Licensed Professional Engineer or Licensed Professional Geologist. Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part must contain the following certification from a Licensed Professional Engineer.

> I certify under penalty of law that all activities that are the subject of this plan, budget, 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, 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, or report has been completed in accordance with the Environmental Protection Act [415 ILCS 5], 35 Ill. Adm. Code 734, and generally accepted standards and practices of my profession; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or representations to the Agency, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

e) Except in the case of sites subject to Section 734.715(c) or (d) of this Part, reports documenting the completion of corrective action at a site must contain a form addressing site ownership. At a minimum, the form must identify the land use limitations proposed for the site, if land use limitations are proposed; the site's common address, legal description, and real estate tax/parcel index number; and the names and addresses of all title holders of record of the site or any portion of the site. The form must also contain the following certification, by original signature, of all title holders of record of the site or any portion of the site, or the agent(s) of such person(s):

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

Section 734.140 Development of Remediation Objectives

The owner or operator must propose remediation objectives for the applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742.

BOARD NOTE: Several provisions of this Part require the owner or operator to determine whether contamination exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742. Please note that these requirements do not limit the owner's or operator's ability to use Tier 2 or Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742.

a) The owner or operator may develop remediation objectives at any time during site investigation or corrective action. Prior to developing Tier 2 or Tier 3 remediation objectives the owner or operator must propose the development of remediation objectives in the appropriate site investigation plan or corrective action plan. Documentation of the development of remediation objectives must be included as a part of the appropriate plan or report.

b) Any owner or operator intending to seek payment from the Fund shall, prior to the development of Tier 2 or Tier 3 remediation objectives, propose the costs for such activities in the appropriate budget. The costs should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part.

c) Upon the Agency's approval of a plan that includes the development of remediation objectives, the owner or operator must proceed to develop remediation objectives in accordance with the plan.

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

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

BOARD NOTE: Owners or operators proceeding under subsection (e) of this Section are advised that they may not be entitled to full payment. 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.

Section 734.145 Notification of Field Activities

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

Section 734.150 LUST Advisory Committee

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

SUBPART B: EARLY ACTION

Section 734.200 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(a)]. No work plan or corresponding budget must 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 734.205 Agency Authority to Initiate

Pursuant to Sections 734.100 or 734.125 of this Part, the Agency must have the authority to require or initiate early action activities in accordance with the remainder of this Subpart B.

Section 734.210 Early Action

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

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

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

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

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

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

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

3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

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

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

6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.

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

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

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

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

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

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

e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.

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

g) For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The

owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.

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

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

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

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

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

C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must

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

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

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

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

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

B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the

length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 734.215 Free Product Removal

a) Under any circumstance in which conditions at a site indicate the presence of free product, owners or operators must remove, to the maximum extent practicable, free product exceeding one-eighth of an inch in depth as measured in a

groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water, while initiating or continuing any actions required pursuant to this Part or other applicable laws or regulations. In meeting the requirements of this Section, owners or operators must:

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

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

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

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

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

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

    C) The type of free product recovery system used;

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

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

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

    G) The disposition of the recovered free product;

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

    I) A schedule of future activities necessary to complete the recovery of free product still exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or still present as a

sheen on groundwater in the tank removal excavation or on surface water. The schedule must include, but not be limited to, the submission of plans and budgets required pursuant to subsections (c) and (d) of this Section; and

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

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

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

d) Any owner or operator intending to seek payment from the Fund must, prior to conducting free product removal activities more than 45 days after the confirmation of the presence of free product, submit to the Agency a free product removal budget with the corresponding free product removal plan. The budget must include, but not be limited to, an estimate of all costs associated with the development, implementation, and completion of the free product removal plan, excluding handling charges. The budget should be consistent with the eligible and ineligible costs listed in Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget the Agency may require a comparison between the costs of the proposed method of free product removal and other methods of free product removal.

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

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

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

g) If, following approval of any free product removal plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to complete free product removal, the owner or operator must submit, as applicable, an amended free product removal plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget 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 budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part.

Section 734.220 Application for Payment of Early Action Costs

Owners or operators intending to seek payment for early action activities, excluding free product removal activities conducted more than 45 days after confirmation of the presence of free product, are not required to submit a corresponding budget. 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.

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

Section 734.300 General

Unless the owner or operator submits a report pursuant to Section 734.210(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 must investigate the site, conduct corrective action, and prepare plans, budgets, and reports in accordance with the requirements of this Subpart C.

Section 734.305 Agency Authority to Initiate

Pursuant to Sections 734.100 or 734.125 of this Part, the Agency must have the authority to require or initiate site investigation and corrective action activities in accordance with the remainder of this Subpart C.

Section 734.310 Site Investigation – General

The investigation of the release must proceed in three stages as set forth in this Part. If, after the completion of any stage, the extent of the soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release has been defined, the owner or operator must cease investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part.

a) Prior to conducting site investigation activities pursuant to Section 734.315, 734.320, or 734.325 of this Part, the owner or operator must submit to the Agency for review a site investigation plan. The plan must be designed to satisfy the minimum requirements set forth in the applicable section and to collect the information required to be reported in the site investigation plan for the next stage of the site investigation, or in the site investigation completion report, whichever is applicable.

b) Any owner or operator intending to seek payment from the Fund must, prior to conducting any site investigation activities, submit to the Agency a site investigation budget with the corresponding site investigation plan. The budget must include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the site investigation plan, excluding handling charges and costs associated with monitoring well abandonment. Costs associated with monitoring well abandonment must be included in the corrective action budget. Site investigation budgets should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. A budget for a Stage 1 site investigation must consist of a certification signed by the owner or operator, and by a Licensed Professional Engineer or Licensed Professional Geologist, that the costs of the Stage 1 site investigation will not exceed the amounts set forth in Subpart H of this Part.

c) *Upon the Agency's approval of a site investigation plan, or as otherwise directed by the Agency, the owner or operator shall conduct a site investigation in accordance with the plan* [415 ILCS 5/57.7(a)(4)].

d) If, following the approval of any site investigation plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to determine, within the area addressed in the applicable stage of the investigation, the nature, concentration, direction of movement, rate of movement, and extent of the contamination, or the significant physical features of the site and surrounding area that may affect contaminant transport and risk to human health and safety and the environment, the owner or operator must submit, as applicable, an amended site investigation plan or associated budget to the Agency for review.

The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

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

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

BOARD NOTE: Owners or operators proceeding under subsection (e) of this Section are advised that they may not be entitled to full payment. 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.

Section 734.315 Stage 1 Site Investigation

The Stage 1 site investigation must be designed to gather initial information regarding the extent of on-site soil and groundwater contamination that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

a) The Stage 1 site investigation must consist of the following:

1) Soil investigation.

A) Up to four borings must be drilled around each independent UST field where one or more UST excavation samples collected pursuant to 734.210(h), excluding backfill samples, exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. One additional boring must be drilled as close as practicable to each UST field if a groundwater investigation is not required under subsection (a)(2) of this Section. The borings must be advanced through the entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings must be drilled below the groundwater table only if site- specific conditions warrant.

B) Up to two borings must be drilled around each UST piping run where one or more piping run samples collected pursuant to 734.210(h) exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. One additional boring must be drilled a close as practicable to each UST piping run if a groundwater investigation is not required under subsection (a)(2) of this Section. The borings must be advanced through the entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings must be drilled below the groundwater table only if site-specific conditions warrant.

C) One soil sample must be collected from each five-foot interval of each boring drilled pursuant to subsections (a)(1)(A) and (B) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval. All samples must be analyzed for the applicable indicator contaminants.

2) Groundwater investigation.

A) A groundwater investigation is required under the following circumstances:

i) 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;

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

iii) 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.

B) If a groundwater investigation is required, the owner or operator must install five groundwater monitoring wells. One monitoring well must be installed in the location where groundwater contamination is most likely to be present. The four remaining wells must be installed at the property boundary line or 200 feet from the UST system, whichever is less, in opposite directions from each other. The wells must be installed in locations where they are most likely to detect groundwater contamination resulting from the release and provide information regarding the groundwater gradient and direction of flow.

C) One soil sample must be collected from each five-foot interval of each monitoring well installation boring drilled pursuant to subsection (a)(2)(B) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval. All soil samples exhibiting signs of contamination must be analyzed for the applicable indicator contaminants. For borings that do not exhibit any signs of soil contamination, samples from the following intervals must be analyzed for the applicable indicator contaminants, provided that the samples must not be analyzed if other soil sampling conducted to date indicates that soil contamination does not extend to the location of the monitoring well installation boring:

i) The five-foot intervals intersecting the elevations of soil samples collected pursuant to Section 734.210(h), excluding backfill samples, that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

ii) The five-foot interval immediately above each five-foot interval identified in subsection (a)(2)(C)(i) of this Section; and

iii) The five-foot interval immediately below each five-foot interval identified in subsection (a)(2)(C)(i) of this Section.

D) Following the installation of the groundwater monitoring wells, groundwater samples must be collected from each well and analyzed for the applicable indicator contaminants.

E) As a part of the groundwater investigation an in-situ hydraulic conductivity test must 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 must be performed on each such unit.

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

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

3) An initial water supply well survey in accordance with Section 734.445(a) of this Part.

b) The Stage 1 site investigation plan must consist of a certification signed by the owner or operator, and by a Licensed Professional Engineer or Licensed Professional Geologist, that the Stage 1 site investigation will be conducted in accordance with this Section.

c) If none of the samples collected as part of the Stage 1 site investigation exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If one or more of the samples collected as part of the Stage 1 site investigation exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, within 30 days after completing the Stage 1 site investigation the owner or operator must submit to the Agency for review a Stage 2 site investigation plan in accordance with Section 734.320 of this Part.

Section 734.320 Stage 2 Site Investigation

The Stage 2 site investigation must be designed to complete the identification of the extent of soil and groundwater contamination at the site that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The investigation of any off-site contamination must be conducted as part of the Stage 3 site investigation.

a) The Stage 2 site investigation must consist of the following:

1) The additional drilling of soil borings and collection of soil samples necessary to identify the extent of soil contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. Soil samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below

the groundwater table. All samples must be analyzed for the applicable indicator contaminants; and

2) The additional installation of groundwater monitoring wells and collection of groundwater samples necessary to identify the extent of groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. If soil samples are collected from a monitoring well boring, the samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

b) The Stage 2 site investigation plan must include, but not be limited to, the following:

1) An executive summary of Stage 1 site investigation activities and actions proposed in the Stage 2 site investigation plan to complete the identification of the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

2) A characterization of the site and surrounding area, including, but not limited to, the following:

A) The current and post-remediation uses of the site and surrounding properties; and

B) The physical setting of the site and surrounding area including, but not limited to, features relevant to environmental, geographic, geologic, hydrologic, hydrogeologic, and topographic conditions;

3) The results of the Stage 1 site investigation, including but not limited to the following:

A) One or more site maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater monitoring wells completed to date, and the groundwater flow direction;

B) One or more site maps meeting the requirements of Section 734.440 that show the locations of all samples collected to date and analyzed for the applicable indicator contaminants;

C) One or more site maps meeting the requirements of Section 734.440 that show the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

D) One or more cross-sections of the site that show the geology of the site and the horizontal and vertical extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

E) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of the Stage 1 site investigation;

F) One or more tables comparing the analytical results of the samples collected to date to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

G) Water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of the Stage 1 site investigation; and

H) For soil borings and groundwater monitoring wells installed as part of the Stage 1 site investigation, soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part; and

4) A Stage 2 sampling plan that includes, but not be limited to, the following:

A) A narrative justifying the activities proposed as part of the Stage 2 site investigation;

B) A map depicting the location of additional soil borings and groundwater monitoring wells proposed to complete the identification of the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

C) The depth and construction details of the proposed soil borings and groundwater monitoring wells.

c) If the owner or operator proposes no site investigation activities in the Stage 2 site investigation plan and none of the applicable indicator contaminants that exceed

the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, upon submission of the Stage 2 site investigation plan the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If the owner or operator proposes no site investigation activities in the Stage 2 site investigation plan and applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, within 30 days after the submission of the Stage 2 site investigation plan the owner or operator must submit to the Agency for review a Stage 3 site investigation plan in accordance with Section 734.325 of this Part.

d) If the results of a Stage 2 site investigation indicate that none of the applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, upon completion of the Stage 2 site investigation the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with Section 734.330 of this Part. If the results of the Stage 2 site investigation indicate that applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, within 30 days after the completion of the Stage 2 site investigation the owner or operator must submit to the Agency for review a Stage 3 site investigation plan in accordance with Section 734.325 of this Part.

Section 734.325 Stage 3 Site Investigation

The Stage 3 site investigation must be designed to identify the extent of off-site soil and groundwater contamination that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

a) The Stage 3 site investigation must consist of the following:

1) The drilling of soil borings and collection of soil samples necessary to identify the extent of soil contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. Soil samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants; and

2) The installation of groundwater monitoring wells and collection of groundwater samples necessary to identify the extent of groundwater

contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. If soil samples are collected from a monitoring well boring, the samples must be collected in appropriate locations and at appropriate depths, based upon the results of the soil sampling and other investigation activities conducted to date, provided, however, that soil samples must not be collected below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

b) The Stage 3 site investigation plan must include, but not be limited to, the following:

1) An executive summary of Stage 2 site investigation activities and actions proposed in the Stage 3 site investigation plan to identify the extent of soil and groundwater contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

2) The results of the Stage 2 site investigation, including but not limited to the following:

A) One or more site maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater monitoring wells completed as part of the Stage 2 site investigation;

B) One or more site maps meeting the requirements of Section 734.440 that show the locations of all groundwater monitoring wells completed to date, and the groundwater flow direction;

C) One or more site maps meeting the requirements of Section 734.440 that show the extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

D) One or more cross-sections of the site that show the geology of the site and the horizontal and vertical extent of soil and groundwater contamination at the site that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

E) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of the Stage 2 site investigation;

F) One or more tables comparing the analytical results of the samples collected to date to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

G) For soil borings and groundwater monitoring wells installed as part of the Stage 2 site investigation, soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part; and

3) A Stage 3 sampling plan that includes, but not be limited to, the following:

A) A narrative justifying the activities proposed as part of the Stage 3 site investigation;

B) A map depicting the location of soil borings and groundwater monitoring wells proposed to identify the extent of soil and groundwater contamination beyond the site's property boundaries that exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

C) The depth and construction details of the proposed soil borings and groundwater monitoring wells.

c) Upon completion of the Stage 3 site investigation the owner or operator must proceed with the submission of a site investigation completion report that meets the requirements of Section 734.330 of this Part.

Section 734.330 Site Investigation Completion Report

Within 30 days after completing the site investigation, the owner or operator shall submit to the Agency for approval a site investigation completion report [415 ILCS 5/57.7(a)(5)]. At a minimum, a site investigation completion report must contain the following:

a) A history of the site with respect to the release;

b) A description of the site, including but not limited to the following:

1) General site information, including but not limited to the site's and surrounding area's regional location; geography, hydrology, geology, hydrogeology, and topography; existing and potential migration pathways and exposure routes; and current and post-remediation uses;

2) One or more maps meeting the requirements of Section 734.440 that show the locations of all borings and groundwater monitoring wells completed as part of site investigation, and the groundwater flow direction;

3) One or more maps showing the horizontal extent of soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

4) One or more map cross-sections showing the horizontal and vertical extent of soil and groundwater contamination exceeding the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

5) Soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part for all borings drilled and all groundwater monitoring wells installed as part of site investigation;

6) Analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of site investigation;

7) A table comparing the analytical results of samples collected as part of site investigation to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

8) The water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of site investigation; and

c) A conclusion that includes, but is not limited to, an assessment of the sufficiency of the data in the report.

Section 734.335 Corrective Action Plan

a) *If any of the applicable indicator contaminants exceed the* most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants, *within 30 days after the Agency approves the site investigation completion report, the owner or operator shall submit to the Agency for approval a corrective action plan designed to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release.* [415 ILCS 5/57.7(b)(2)]. The corrective action plan must address all media impacted by the UST release and must contain, at a minimum, the following information:

1) An executive summary that identifies the objectives of the corrective action plan and the technical approach to be utilized to meet such objectives. At a minimum, the summary must include the following information:

   A) The major components (e.g., treatment, containment, removal) of the corrective action plan;

   B) The scope of the problems to be addressed by the proposed corrective action, including but not limited to the specific indicator contaminants and the physical area; and

   C) A schedule for implementation and completion of the plan;

2) A statement of the remediation objectives proposed for the site;

3) A description of the remedial technologies selected and how each fits into the overall corrective action strategy, including but not limited to the following:

   A) The feasibility of implementing the remedial technologies;

   B) Whether the remedial technologies will perform satisfactorily and reliably until the remediation objectives are achieved;

   C) A schedule of when the remedial technologies are expected to achieve the applicable remediation objectives and a rationale for the schedule; and

   D) For alternative technologies, the information required under Section 734.340 of this Part;

4) A confirmation sampling plan that describes how the effectiveness of the corrective action activities will be monitored or measured during their implementation and after their completion;

5) A description of the current and projected future uses of the site;

6) A description of any engineered barriers or institutional controls proposed for the site that will be relied upon to achieve remediation objectives. The description must include, but not be limited to, an assessment of their long-term reliability and operating and maintenance plans;

7) A description of water supply well survey activities required pursuant to Sections 734.445(b) and (c) of this Part that were conducted as part of site investigation; and

8) Appendices containing references and data sources relied upon in the report that are organized and presented logically, including but not limited to field logs, well logs, and reports of laboratory analyses.

b) Any owner or operator intending to seek payment from the Fund must, prior to conducting any corrective action activities beyond site investigation, submit to the Agency a corrective action budget with the corresponding corrective action plan. The budget must include, but not be limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the corrective action plan, excluding handling charges. The budget should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget the Agency may require a comparison between the costs of the proposed method of remediation and other methods of remediation.

c) *Upon the Agency's approval of a corrective action plan, or as otherwise directed by the Agency, the owner or operator shall proceed with corrective action in accordance with the plan* [415 ILCS 5/57.7(b)(4)].

d) Notwithstanding any requirement under this Part for the submission of a corrective action plan or corrective action budget, except as provided at Section 734.340 of this Part, an owner or operator may proceed to conduct corrective action activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required corrective action plan or budget. However, any such plan and budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

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

e) If, following approval of any corrective action plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release, the owner or operator must submit, as applicable, an amended corrective action plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

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

Section 734.340 Alternative Technologies

a) An owner or operator may choose to use an alternative technology for corrective action in response to a release. Corrective action plans proposing the use of alternative technologies must be submitted to the Agency in accordance with Section 734.335 of this Part. In addition to the requirements for corrective action plans contained in Section 734.335, the owner or operator who seeks approval of an alternative technology must 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 remediation objectives necessary to comply with the Act and regulations and to protect human health and safety and the environment;

2) The proposed alternative technology will not adversely affect human health and safety 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 must be submitted to the Agency.

b) An owner or operator intending to seek payment for costs associated with the use of an alternative technology must submit a corresponding budget in accordance with Section 734.335 of this Part. In addition to the requirements for a corrective action budget at Section 734.335 of this Part, the budget must demonstrate that the cost of the alternative technology will not exceed the cost of conventional technology and is not substantially higher than other available alternative technologies. The budget plan must compare the costs of at least two other available alternative technologies to the costs of the proposed alternative technology.

c) If an owner or operator has received approval of a corrective action plan and associated budget 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 must not make the owner or operator ineligible to seek payment for the activities associated with the subsequent performance of a corrective action using conventional technology. However, in no case must the total payment for the site exceed the statutory maximums. Owners or operators implementing alternative technologies without obtaining pre-approval must be ineligible to seek payment for the subsequent performance of a corrective action using conventional technology.

d) The Agency may require remote monitoring of an alternative technology. The monitoring may include, but not be limited to, monitoring the alternative technology's operation and progress in achieving the applicable remediation objectives.

Section 734.345 Corrective Action Completion Report

a) *Within 30 days after the completion of a corrective action plan that achieves applicable remediation objectives the owner or operator shall submit to the Agency for approval a corrective action completion report. The report shall demonstrate whether corrective action was completed in accordance with the approved corrective action plan and whether the remediation objectives approved for the site, as well as any other requirements of the plan, have been achieved* [415 ILCS 57.7(b)(5)]. At a minimum, the report must contain the following information:

1) An executive summary that identifies the overall objectives of the corrective action and the technical approach utilized to meet those objectives. At a minimum, the summary must contain the following information:

A) A brief description of the site, including but not limited to a description of the release, the applicable indicator contaminants, the contaminated media, and the extent of soil and groundwater contamination that exceeded the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

B) The major components (e.g., treatment, containment, removal) of the corrective action;

C) The scope of the problems corrected or mitigated by the corrective action; and

D) The anticipated post-corrective action uses of the site and areas immediately adjacent to the site;

2) A description of the corrective action activities conducted, including but not limited to the following:

A) A narrative description of the field activities conducted as part of corrective action;

B) A narrative description of the remedial actions implemented at the site and the performance of each remedial technology utilized;

C) Documentation of sampling activities conducted as part of corrective action, including but not limited to the following:

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

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

iii) Analytical procedure information, including but not limited to the method detection limits and the practical quantitation limits;

iv) Chain of custody and control; and

v) Field and lab blanks; and

D) Soil boring logs and monitoring well construction diagrams meeting the requirements of Sections 734.425 and 734.430 of this Part for all borings drilled and all groundwater monitoring wells installed as part of corrective action;

3) A narrative description of any special conditions relied upon as part of corrective action, including but not limited to information regarding the following:

A) Engineered barriers utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives;

B) Institutional controls utilized in accordance with 35 Ill. Adm. Code 742 to achieve the approved remediation objectives, including but not limited to a legible copy of any such controls;

C) Other conditions, if any, necessary for protection of human health and safety and the environment that are related to the issuance of a No Further Remediation Letter; and

D) Any information required pursuant to Section 734.350 of this Part regarding off-site access;

4) An analysis of the effectiveness of the corrective action that compares the confirmation sampling results to the remediation objectives approved for the site. The analysis must present the remediation objectives in an appropriate format (e.g., tabular and graphical displays) such that the information is organized and presented logically and the relationships between the different investigations for each medium are apparent;

5) A conclusion that identifies the success in meeting the remediation objectives approved for the site, including but not limited to an assessment of the accuracy and completeness of the data in the report;

6) Appendices containing references and data sources relied upon in the report that are organized and presented logically, including but not limited to field logs, well logs, and reports of laboratory analyses;

7) The water supply well survey documentation required pursuant to Section 734.445(d) of this Part for water supply well survey activities conducted as part of corrective action; and

8) A site map containing only the information required under Section 734.440 of this Part. The site map must also show any engineered barriers utilized to achieve remediation objectives.

b) The owner or operator is not required to perform remedial action on an off-site property, even where complete performance of a corrective action plan 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 734.350 of this Part.

Section 734.350 Off-site Access

a) An owner or operator seeking to comply with the best efforts requirements of Section 734.345(b) of this Part must demonstrate compliance with the requirements of this Section.

b) In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:

1) Citation to Title XVI of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;

2) That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c of the Act;

3) That, in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by the investigation;

4) If contamination results from a release by the owner or operator, the owner or operator will conduct all associated remediation at its own expense;

5) That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release; and

6) A reasonable time to respond to the letter, not less than 30 days.

c) An owner or operator, in demonstrating that the requirements of this Section have been met, must provide to the Agency, as part of the corrective action completion report, the following documentation:

1) A sworn affidavit, signed by the owner or operator, identifying the specific off-site property involved by address, the measures proposed in the corrective action plan that require off-site access, and the efforts taken to obtain access, and stating that the owner or operator has been unable to obtain access despite the use of best efforts; and

2) A copy of the certified letter sent to the owner of the off-site property pursuant to subsection (b) of this Section.

d) In determining whether the efforts an owner or operator has made constitute best efforts to obtain access, the Agency must consider the following factors:

1) The physical and chemical characteristics, including toxicity, persistence and potential for migration, of applicable indicator contaminants at the property boundary line;

2) The hydrogeological characteristics of the site and the surrounding area, including the attenuation capacity and saturation limits of the soil at the property boundary line;

3) The nature and extent of known contamination at the site, including the levels of applicable indicator contaminants at the property boundary line;

4) The potential effects of residual contamination on nearby surface water and groundwater;

5) The proximity, quality and current and future uses of nearby surface water and groundwater, including regulated recharge areas, wellhead protection areas, and setback zones of a 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 must 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.

Section 734.355 Status Report

a) *If within 4 years after the approval of any corrective action plan the applicable remediation objectives have not been achieved and the owner or operator has not submitted a corrective action completion report, the owner or operator shall submit a status report for Agency review. The status report shall include, but is not limited to, a description of the remediation activities taken to date, the effectiveness of the method of remediation being used, the likelihood of meeting the applicable remediation objectives using the current method of remediation, and the date the applicable remediation objectives are expected to be achieved* [415 ILCS 5/57.7(b)(6)].

b) *If the Agency determines any approved corrective action plan will not achieve 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 to the Agency for approval a revised corrective action plan. If the owner or operator intends to seek payment from the Fund, the owner or operator shall also submit a revised budget [415 ILCS 5/57.7(b)(7)]. The revised corrective action plan and any associated budget must be submitted in accordance with Section 734.335 of this Part.

c) Any action by the Agency to require a revised corrective action plan pursuant to subsection (b) of this Section must 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.

SUBPART D: MISCELLANEOUS PROVISIONS

Section 734.400 General

This Subpart D applies to all activities conducted under this Part and all plans, budgets, reports, and other documents submitted under this Part.

Section 734.405 Indicator Contaminants

a) For purposes of this Part, the term "indicator contaminants" must 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 must 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 must 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 must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Section 734.Appendix B of this Part. For leaded aviation turbine fuels, lead must also be an indicator contaminant.

d) For transformer oils the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics and the polychlorinated biphenyl parameters listed in Section 734.Appendix B of this Part.

e) For hydraulic fluids the indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, the polynuclear aromatics listed in Section 734.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 must be the volatile, base/neutral and polynuclear aromatic parameters listed in Section 734.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 must be determined by the results of a used oil soil sample analysis. In accordance with Section 734.210(h) of this Part, soil samples must be collected from the walls and floor of the used oil UST excavation if the UST is removed, or from borings drilled along each side of the used oil UST if the UST remains in place. The sample that appears to be the most contaminated as a result of a release from the used oil UST must then be analyzed for the following parameters. If none of the samples appear to be contaminated a soil sample must be collected from the floor of the used oil UST excavation below the former location of the UST if the UST is removed, or from soil located at the same elevation as the bottom of the used oil UST if the UST remains in place, and analyzed for the following parameters:

1) All volatile, base/neutral, polynuclear aromatic, and metal parameters listed at Section 734.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 must be those volatile, base/neutral, and metal parameters listed at Section 734.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 734.Appendix B of this Part.

3) If none of the parameters exceed their remediation objective, the used oil indicator contaminants must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Section 734.Appendix B of this Part.

h) Unless an owner or operator elects otherwise pursuant to subsection (i) of this Section, the term “indicator contaminants” must not include MTBE for any release reported to the Illinois Emergency Management Agency prior to June 1, 2002 (the effective date of amendments establishing MTBE as an indicator contaminant).

i) An owner or operator exempt from having to address MTBE as an indicator contaminant pursuant to subsection (h) of this Section may elect to include MTBE as an indicator contaminant under the circumstances listed in subsections (1) or (2) of this subsection (i). Elections to include MTBE as an indicator contaminant

must be made by submitting to the Agency a written notification of such election signed by the owner or operator. The election must be effective upon the Agency's receipt of the notification and cannot be withdrawn once made. Owners or operators electing to include MTBE as an indicator contaminant must remediate MTBE contamination in accordance with the requirements of this Part.

1) If the Agency has not issued a No Further Remediation Letter for the release; or

2) If the Agency has issued a No Further Remediation Letter for the release and the release has caused off-site groundwater contamination exceeding the remediation objective for MTBE set forth in 35 Ill. Adm. Code 742.

Section 734.410 Remediation Objectives

The owner or operator must propose remediation objectives for applicable indicator contaminants in accordance with 35 Ill. Adm. Code 742. Owners and operators seeking payment from the Fund that perform on-site corrective action in accordance with Tier 2 remediation objectives of 35 Ill. Adm. Code 742 must determine the following parameters on a site-specific basis:

Hydraulic conductivity (K)
Soil bulk density ($?_b$)
Soil particle density ($?_s$)
Moisture content (w)
Organic carbon content (f_{oc})

Board Note: Failure to use site-specific remediation objectives on-site and to utilize available groundwater ordinances as institutional controls may result in certain corrective action costs being ineligible for payment from the Fund. See Sections 734.630(bbb) and (ccc) of this Part.

Section 734.415 Data Quality

a) The following activities must be conducted in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 734.120 of this Part, or other procedures as approved by the Agency:

1) All field sampling activities, including but not limited to activities relative to sample collection, documentation, preparation, labeling, storage and shipment, security, quality assurance and quality control, acceptance criteria, corrective action, and decontamination procedures;

2) All field measurement activities, including but not limited to activities relative to equipment and instrument operation, calibration and maintenance, corrective action, and data handling; and

3) All quantitative analysis of samples to determine concentrations of indicator contaminants, including but not limited to activities relative to facilities, equipment and instrumentation, operating procedures, sample management, test methods, equipment calibration and maintenance, quality assurance and quality control, corrective action, data reduction and validation, reporting, and records management. Analyses of samples that require more exacting detection limits than, or that cannot be analyzed by standard methods identified in, "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, must be conducted in accordance with analytical protocols developed in consultation with and approved by the Agency.

b) The analytical methodology used for the analysis of indicator contaminants must have a practical quantitation limit at or below the most stringent objectives or detection levels set forth in 35 Ill. Adm. Code 742 or determined by the Agency pursuant to Section 734.140 of this Part.

c) All field or laboratory measurements of samples to determine physical or geophysical characteristics must be conducted in accordance with applicable ASTM standards incorporated by reference at 35 Ill. Adm. Code 742.210, or other procedures as approved by the Agency.

Section 734.420 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 must 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 must 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 must be deemed invalid.

Section 734.425 Soil Borings

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

b) Any water bearing unit encountered must be protected as necessary to prevent cross-contamination during drilling.

c) Soil boring logs must be kept for all soil borings. The logs must be submitted in the corresponding site investigation plan, site investigation completion report, or corrective action completion report on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. At a minimum, soil boring logs must contain the following information:

1) Sampling device, sample number, and amount of recovery;

2) Total depth of boring to the nearest 6 inches;

3) Detailed field observations describing materials encountered in boring, including but not limited to 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;

4) Petroleum hydrocarbon vapor readings (as determined by continuous screening of borings with field instruments capable of detecting such vapors);

5) Locations of sample(s) used for physical or chemical analysis;

6) Groundwater levels while boring and at completion; and

7) 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 734.120 of this Part, or other Agency approved method.

Section 734.430 Monitoring Well Construction and Sampling

a) At a minimum, all monitoring well construction must satisfy the following requirements:

1) Wells must be constructed in a manner that will enable the collection of representative groundwater samples;

2) Wells must be cased in a manner that maintains the integrity of the borehole. Casing material must be inert so as not to affect the water sample. Casing requiring solvent-cement type couplings must not be used;

3) Wells must be screened to allow sampling only at the desired interval. Annular space between the borehole wall and well screen section must 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 must be designed to minimize clogging. Screens must be fabricated from material that is inert with respect to the constituents of the groundwater to be sampled;

4) Annular space above the well screen section must 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 must extend to the highest known seasonal groundwater level;

5) The annular space must 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;

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

7) Wells must be developed to allow free entry of groundwater, minimize turbidity of the sample, and minimize clogging.

b) Monitoring well construction diagrams must be completed for each monitoring well. The well construction diagrams must be submitted in the corresponding site investigation plan, site investigation completion report, or corrective action completion report on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format.

c) Static groundwater elevations in each well must be determined and recorded following well construction and prior to each sample collection to determine the gradient of the groundwater table, and must be reported in the corresponding site investigation plan, site investigation completion report or corrective action completion report.

Section 734.435 Sealing of Soil Borings and Groundwater Monitoring Wells

Boreholes and monitoring wells must be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health at 77 Ill. Adm. Code 920.120.

Section 734.440 Site Map Requirements

At a minimum, all site maps submitted to the Agency must meet the following requirements:

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

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

c) The maps must show the following:

1) 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;

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

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

4) 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.

Section 734.445 Water Supply Well Survey

a) At a minimum, the owner or operator must conduct a water supply well survey to identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells must include, but 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) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells other than community water supply wells; and

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

b) In addition to the potable water supply wells identified pursuant to subsection (a) of this Section, the owner or operator must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or

groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:

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

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

c) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but 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 Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to subsections (a) or (b) of this Section. The additional investigation may include, but 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.).

d) Documentation of the water supply well survey conducted pursuant to this Section must 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 this Section, and the setback zone for each well;

B) The location and extent of regulated recharge areas and wellhead protection areas identified pursuant to this Section;

C) The current extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation

objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

D) The modeled extent of groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants. The information required under this subsection (D) is not required to be shown in a site investigation report if modeling is not performed as part of site investigation;

2) One or more tables listing the setback zones for each community water supply well and other potable water supply wells identified pursuant to this Section;

3) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells pursuant to 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

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 this Section and that the documentation submitted pursuant to subsection (d) of this Section includes the information obtained as a result of the survey.

Section 734.450 Deferred Site Investigation or Corrective Action; Priority List for Payment

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

1) Approvals of budgets must be pursuant to Agency review in accordance with Subpart E of this Part.

2) The Agency must monitor the availability of funds and must provide notice of insufficient funds to owners or operators in accordance with Section 734.505(g) of this Part.

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

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

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

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

5) Upon approval of an election to defer site investigation or corrective action activities until funds are available, the Agency must place the site on a priority list for payment and notification of availability of sufficient funds. Sites must enter the priority list for payment based solely on the date the Agency receives a complete written election of deferral, with the earliest dates having the highest priority.

6) As funds become available the Agency must encumber funds for each site in the order of priority in an amount equal to the total of the approved budget for which deferral was sought. The Agency must 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 must commence site investigation or corrective action activities.

7) Authorization of payment of encumbered funds for deferred site investigation or corrective action activities must be approved in accordance with the requirements of Subpart F of this Part.

b) An owner or operator who elects to defer site investigation or corrective action activities under subsection (a) of this Section must 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 investigation budget or corrective action budget;

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

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

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

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 734.445 of this Part.

c) An owner or operator may, at any time, withdraw the election to defer site investigation or corrective action activities. The Agency must be notified in writing of the withdrawal. Upon such withdrawal, the owner or operator must proceed with site investigation or corrective action, as applicable, in accordance with the requirements of this Part.

SUBPART E: REVIEW OF PLANS, BUDGETS, AND REPORTS

Section 734.500 General

The Agency must have the authority to review any plan, budget, or report, including any amended plan, budget, or report, submitted pursuant to this Part. All such reviews must be subject to the procedures set forth in the Act and this Subpart E.

Section 734.505 Review of Plans, Budgets, or Reports

a) The Agency may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Agency may also review any other plans, budgets, or reports submitted in conjunction with the site.

b) The Agency must have the authority to approve, reject, or require modification of any plan, budget, or report it reviews. The Agency must notify the owner or

operator in writing of its final action on any such plan, budget, or report, except in the case of 20 day, 45 day, or free product removal reports, in which case no notification is necessary. Except as provided in subsections (c) and (d) of this Section, if the Agency fails to notify the owner or operator of its final action on a plan, budget, or report within 120 days after the receipt of a plan, budget, or report, the owner or operator may deem the plan, budget, or report rejected by operation of law. If the Agency rejects a plan, budget, or report or requires modifications, the written notification must contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete its review;

2) An explanation of the Sections of the Act or regulations that may be violated if the plan, budget, 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, or report is approved.

c) For corrective action plans submitted by owners or operators not seeking payment from the Fund, the Agency may delay final action on such plans until 120 days after it receives the corrective action completion report required pursuant to Section 734.345 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, or report by submitting written notice to the Agency prior to the applicable deadline. Any waiver must be for a minimum of 60 days.

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

f) Any action by the Agency to reject or require modifications, or rejection by failure to act, of a plan, budget, or report must be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

g) In accordance with Section 734.450 of this Part, upon the approval of any budget by the Agency, the Agency must 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.

Section 734.510 Standards for Review of Plans, Budgets, or Reports

a) A technical review must 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, must 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 must 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 must 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) A financial review must 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 must include, but not be limited to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H of this Part.

SUBPART F: PAYMENT FROM THE FUND

Section 734.600 General

The Agency must have the authority to review any application for payment or reimbursement and to authorize payment or reimbursement from the Fund or such other funds as the legislature directs for corrective action activities conducted pursuant to the Act and this Part. For purposes of this Part and unless otherwise provided, the use of the word "payment" must include reimbursement. The submittal and review of applications for payment and the authorization for payment must be in accordance with the procedures set forth in the Act and this Subpart F.

Section 734.605 Applications for Payment

a) An owner or operator seeking payment from the Fund must submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. The owner or operator may submit an application for partial payment or final payment. Costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to

Subpart B of this Part other than free product removal activities conducted more than 45 days after confirmation of the presence of free product.

b) A complete application for payment must 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 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 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 734.620 of this Part;

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

6) Private insurance coverage form(s);

7) A minority/women's business form;

8) Designation of the address to which payment and notice of final action on the application for payment are to be sent;

9) An accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed; and

10) Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.

c) The address designated on the application for payment may be changed only by subsequent notification to the Agency, on a form provided by the Agency, of a change in address.

d) Applications for payment and change of address forms must be mailed or delivered to the address designated by the Agency. The Agency's record of the

date of receipt must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

e) Applications for partial or final payment may be submitted no more frequently than once every 90 days.

f) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part, other than costs associated with free product removal activities conducted more than 45 days after confirmation of the presence of free product, in no case must the Agency review an application for payment unless there is an approved budget on file corresponding to the application for payment.

g) In no case must the Agency authorize payment to an owner or operator in amounts greater than the amounts approved by the Agency in a corresponding budget. 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 budgets as required under this Part.

h) Applications for payment of costs associated with a Stage 1, Stage 2, or Stage 3 site investigation may not be submitted prior to the approval or modification of a site investigation plan for the next stage of the site investigation or the site investigation completion report, whichever is applicable.

i) Applications for payment of costs associated with site investigation or corrective action that was deferred pursuant to Section 734.450 of this Part may not be submitted prior to approval or modification of the corresponding site investigation plan, site investigation completion report, or corrective action completion report.

j) All applications for payment of corrective action costs must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. For releases for which the Agency issued a No Further Remediation Letter prior to the effective date of this subsection (j), all applications for payment must be submitted no later than one year after the effective date of this subsection (j).

Section 734.610 Review of Applications for Payment

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

1) Whether the application contains all of the elements and supporting documentation required by Section 734.605(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, and whether there is sufficient documentation to demonstrate that the work was completed in accordance with the requirements of this Part and a plan approved by the Agency; and

4) Whether the amounts sought are eligible for payment.

b) When conducting a review of any application for payment, the Agency may require the owner or operator to submit a full accounting supporting all claims as provided in subsection (c) of this Section.

c) The Agency's review may include a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. The review also may include the review of any plans, budgets, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed and actually performed in conjunction with the site.

d) Following a review, the Agency must have the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency must notify the owner or operator in writing of its final action on any such application for payment. Except as provided in subsection (e) of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law. If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification must contain the following information, as applicable:

1) An explanation of the specific type of information, if any, that the Agency needs to complete the review;

2) An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and

3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.

e) An owner or operator may waive the right to a final decision within 120 days after the submittal of a complete application for payment by submitting written notice to the Agency prior to the applicable deadline. Any waiver must be for a minimum of 30 days.

f) The Agency must 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 must be deemed to have taken place on the post marked date that such notice is mailed. The Agency must mail notices of final action on applications for payment, and direct the Comptroller to mail payments to the owner or operator, at the address designated for receipt of payment in the application for payment or on a change of address form, provided by the Agency, submitted subsequent to submittal of the application for payment.

g) Any action by the Agency to deny payment for an application for payment or portion thereof or to require modification must 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.

Section 734.615 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 must 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 must 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 must not forward vouchers to the Office of the State Comptroller until sufficient funds are available to issue payment.

b) The following rules must apply regarding deductibles:

1) Any deductible, as determined by the OSFM or the Agency, must 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 must apply per occurrence;

3) If multiple incident numbers are issued for a single site in the same calendar year, only one deductible must 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 must apply.

c) The Agency must instruct the Office of the State Comptroller to issue payment to the owner or operator at the address designated in accordance with Sections 734.605(b)(8) or (c) of this Part. In no case must the Agency authorize the Office of the State Comptroller to issue payment to an agent, designee, or entity that has conducted corrective action activities for the owner or operator.

d) For owners or operators who have deferred site classification or corrective action in accordance with Section 734.450 of this Part, payment must be authorized from funds encumbered pursuant to Section 734.450(a)(6) of this Part upon approval of the application for payment by the Agency or by operation of law.

e) For owners or operators not electing to defer site investigation or corrective action in accordance with Section 734.450 of this Part, the Agency must form a priority list for payment for the issuance of vouchers pursuant to subsection (a) of this Section.

1) All such applications for payment must 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 must determine the owner's or operator's priority for payment in accordance with subsection (e)(2) of this Section, with the earliest dates receiving the highest priority.

2) Once payment is approved by the Agency or by operation of law or ordered by the Board or courts, the application for payment must be assigned priority in accordance with subsection (e)(1) of this Section. The assigned date must be the only factor determining the priority for payment for those applications approved for payment.

Section 734.620 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 $1,500,000 per occurrence* [415 ILCS 5/57.8(g)(1)]; and

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 $1,500,000 per occurrence* [415 ILCS 5/57.8(g)(2)].

b) Aggregate limitations:

1) *Notwithstanding any other provision of this* Part, *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:*

A) For calendar years prior to 2002:

Amount	Number of Tanks
$1,000,000	fewer than 101
$2,000,000	101 or more

B) For calendar years 2002 and later:

Amount	*Number of Tanks*
$2,000,000	*fewer than 101*
$3,000,000	*101 or more*

[415 ILCS 5/57.8(d)].

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* [415 ILCS 5/57.8(d)(1)].

c) *For purposes of* subsection (b) of this Section, *requests submitted by any of the agencies, departments, boards, committees or commissions of the State of Illinois shall be acted upon as claims from a single owner or operator* [415 ILCS 5/57.8(d)(2)].

d) *For purposes of* subsection (b) of this Section, *owner or operator includes*;

1) *any subsidiary, parent, or joint stock company of the owner or operator*; *and*

2) *any company owned by any parent, subsidiary, or joint stock company of the owner or operator* [415 ILCS 5/57.8(d)(3)].

Section 734.625 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 oversight services;

3) Remedial investigation and design;

4) Laboratory services necessary to determine site investigation and whether the established remediation objectives have been met;

5) The installation and operation of groundwater investigation and groundwater monitoring wells;

6) The removal, treatment, transportation, and disposal of soil contaminated by petroleum at levels in excess of the established remediation objectives;

7) The removal, treatment, transportation, and disposal of water contaminated by petroleum at levels in excess of the established remediation objectives;

8) The placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established remediation objectives;

9) Groundwater corrective action systems;

10) Alternative technology, including but not limited to feasibility studies approved by the Agency;

11) Recovery of free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well, or present as a sheen on groundwater in the tank removal excavation or on surface water;

12) The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed ineligible by the OSFM;

13) Costs incurred as a result of a release of petroleum because of vandalism, theft, or fraudulent activity by a party other than an owner or operator or agent of an owner or operator;

14) Engineer or geologist costs associated with seeking payment from the Fund including but not limited to completion of an application for partial or final payment;

15) Costs associated with obtaining an Eligibility and Deductibility Determination from the OSFM or the Agency;

16) Costs for destruction and replacement of concrete, asphalt, or paving to the extent necessary to conduct corrective action if the concrete, asphalt, or paving was installed prior to the initiation of corrective action activities, the destruction and replacement has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer, and the destruction and replacement and its costs are approved by the Agency in writing prior to the destruction and replacement. The destruction and replacement of concrete, asphalt, and paving must not be paid more than once. Costs associated with the replacement of concrete, asphalt, or paving must not be paid in excess of the cost to install, in the same area and to the same depth, the same material that was destroyed (e.g., replacing four inches of concrete with four inches of concrete);

17) The destruction or dismantling and reassembly of above grade structures in response to a release of petroleum if such activity has been certified as necessary to the performance of corrective action by a Licensed Professional Engineer and such activity and its costs are approved by the Agency in writing prior to the destruction or dismantling and re-assembly. Such costs must not be paid in excess of a total of $10,000 per occurrence. For purposes of this subsection (a)(17), destruction, dismantling, or reassembly of above grade structures does not include costs associated with replacement of pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies;

18) Preparation of reports submitted pursuant to Section 734.210(h)(3) of this Part, free product removal plans and associated budgets, free product removal reports, site investigation plans and associated budgets, site investigation completion reports, corrective action plans and associated budgets, and 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 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.

Section 734.630 Ineligible Corrective Action Costs

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

a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Section 734.Appendix C of this Part, during early action activities conducted pursuant to Section 734.210(f) of this Part, and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Section 734.Appendix C of this Part during early action activities conducted pursuant to Section 734.210(f) of this Part;

b) Costs or losses resulting from business interruption;

c) Costs incurred as a result of vandalism, theft, or fraudulent activity by the owner or operator or agent of an owner or operator, including the creation of spills, leaks, or releases;

d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies, including but not limited to those structures destroyed or damaged during corrective action activities;

e) *Costs of corrective action incurred by an owner or operator prior to July 28, 1989* [415 ILCS 5/57.8(j)];

f) Costs associated with the procurement of a generator identification number;

g) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;

h) Purchase costs of non-expendable materials, supplies, equipment, or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools;

i) Costs associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;

j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 734.125 of this Part and Section 57.12 of the Act;

k) Costs for removal, disposal, or abandonment of UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;

l) Costs associated with the installation of new USTs, the repair of existing USTs, and removal and disposal of USTs determined to be ineligible by the OSFM;

m) Costs exceeding those contained in a budget or amended budget approved by the Agency;

n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;

o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

p) Costs associated with improperly installed sampling or monitoring wells;

q) Costs associated with improperly collected, transported, or analyzed laboratory samples;

r) Costs associated with the analysis of laboratory samples not approved by the Agency;

s) Costs for any corrective activities, services, or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;

t) Interest or finance costs charged as direct costs;

u) Insurance costs charged as direct costs;

v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;

w) Costs associated with the compaction and density testing of backfill material;

x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;

y) Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations;

z) Costs of alternative technology that exceed the costs of conventional technology;

aa) Costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;

bb) Costs requested that are based on mathematical errors;

cc) Costs that lack supporting documentation;

dd) Costs proposed as part of a budget that are unreasonable;

ee) Costs incurred during early action that are unreasonable;

ff) Costs incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII and 35 Ill. Adm. Code 740 to address the UST release;

gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (gg) does not apply to the following:

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

2) Monitoring well abandonment costs;

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

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

5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release;

hh) Handling charges for subcontractor costs that have been billed directly to the owner or operator;

ii) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;

jj) Costs associated with standby and demurrage;

kk) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 734.355(b) of this Part, that a revised corrective action plan is required, provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment if they meet the requirements of this Part;

ll) Costs incurred prior to the effective date of an owner's or operator's election to proceed in accordance with this Part, unless such costs were incurred for activities approved as corrective action under this Part;

mm) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 734.215(a)(5) of this Part;

nn) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part;

oo) 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;

pp) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 734.625(a)(16) of this Part;

qq) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Sections 734.625(a)(16) or (17) of this Part;

rr) Costs associated with oversight by an owner or operator;

ss) Handling charges charged by persons other than the owner's or operator's primary contractor;

tt) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 734.625(a)(16) of this Part;

uu) 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;

vv) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 734.625(a)(19) of this Part;

ww) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 734.625(a)(20) of this Part;

xx) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 734.625(a)(19) or (20) of this Part;

yy) For sites electing under Section 734.105 of this Part to proceed in accordance with this Part, costs incurred pursuant to Section 734.210 of this Part;

zz) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget;

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

bbb) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (bbb) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.

ccc) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.

Section 734.635 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:

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

Section 734.640 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*

2) *The owner or operator failed to justify all costs attributable to each underground storage tank at the site*. [415 ILCS 5/57.8(m)]

b) The Agency will determine, based on volume or number of tanks, which method of apportionment will be most favorable to the owner or operator. The Agency will notify the owner or operator of such determination in writing.

Section 734.645 Subrogation of Rights

Payment of any amount from the fund for corrective action or indemnification shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or indemnification for which the fund has compensated such owner, operator, or person from the person responsible or liable for the release [415 ILCS 5/57.8(h)].

Section 734.650 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 must submit to the Agency a request for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

1) A complete application for payment must contain the following:

A) A certified statement by the owner or operator of the amount sought for payment;

B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof must include, but 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 734.620 of this Part;

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

F) A private insurance coverage form; and

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

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

3) Applications for payment must be mailed or delivered to the address designated by the Agency. The Agency's record of the date of receipt

must be deemed conclusive unless a contrary date is proven by a dated, signed receipt from certified or registered mail.

b) The Agency must review applications for payment in accordance with this Subpart F. In addition, the Agency must review each application for payment to determine the following:

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

2) Whether there is sufficient documentation of a legally enforceable judgment entered against the owner or operator in a court of law, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator;

3) Whether there is sufficient documentation that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator; and

4) Whether the amounts sought for indemnification are eligible for payment.

c) If the application for payment of the costs of indemnification is deemed complete and otherwise satisfies all applicable requirements of this Subpart F, the Agency must 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 must 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 must then enter the priority list established at Section 734.615(e)(1) of this Part based on the date the complete application was received by the Agency in accordance with Section 57.8(c) of the Act.

d) Costs ineligible for indemnification from the Fund include, but are not limited to:

1) Amounts an owner or operator is not legally obligated to pay pursuant to a judgment entered against the owner or operator in 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 734.210 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 734.125 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 prior to the effective date of the owner's or operator's election to proceed in accordance with this Part.

Section 734.655 Costs Covered by Insurance, Agreement, or Court Order

Costs of corrective action or indemnification incurred by an owner or operator which have been paid to an owner or operator under a policy of insurance, another written agreement, or a court order are not eligible for payment from the Fund. *An owner or operator who receives payment under a policy of insurance, another written agreement, or a court order shall reimburse the State to the extent such payment covers costs for which payment was received from the Fund* [415 ILCS 5/57.8(e)].

Section 734.660 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 must notify the owner or operator receiving the excess payment by certified or registered mail, return receipt requested.

2) The notification letter must 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 must 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 734.620 and 734.635 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 must 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).

Section 734.665 Audits and Access to Records; Records Retention

a) Owners or operators that submit a report, plan, budget, application for payment, or any other data or document under this Part, and Licensed Professional Engineers and Licensed Professional Geologists that certify such report, plan, budget, application for payment, data, or document, must maintain all books, records, documents, and other evidence directly pertinent to the report, plan, budget, application for payment, data, or document, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.

b) The Agency or any of its duly authorized representatives must have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists must provide proper facilities for such access and inspection.

c) Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists must maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:

1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter 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.

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section 734.700 General

Subpart G provides the procedures for the issuance of No Further Remediation Letters under Title XVI and this Part. Subpart G also sets forth the recording requirements and the circumstances under which the letter may be voidable.

Section 734.705 Issuance of a No Further Remediation Letter

a) Upon approval by the Agency of a report submitted pursuant to Section 734.210(h)(3) of this Part or a corrective action completion report, the Agency must issue to the owner or operator a No Further Remediation Letter. The No Further Remediation Letter must have the legal effect prescribed in Section 57.10 of the Act. The No Further Remediation Letter must be denied if the Agency rejects or requires modification of the applicable report.

b) The Agency must have 120 days after the date of receipt of the applicable 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 report in accordance with Subpart E of this Part. If the Agency fails to send the No Further Remediation Letter within 120 days, it must 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 of the letter must be stated in the notification. The denial must be considered a final determination appealable to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. If any request for a No Further Remediation Letter is denied by operation of law, in lieu of an immediate repeal to the Board the owner or operator may either resubmit the request and applicable report to the Agency or file a joint request for a 90 day extension in the manner provided for extensions of permit decision in Section 40 of the Act.

d) The Agency must mail the No Further Remediation Letter by registered or certified mail, post marked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that 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 must mail the corrected letter to the owner or operator as set forth in subsection (d) of this Section. The corrected letter must be perfected by recording in accordance with the requirements of Section 734.715 of this Part.

Section 734.710 Contents of a No Further Remediation Letter

A No Further Remediation Letter issued pursuant to this Part must 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 the purposes of Section 734.715(d) of this Part, other means sufficient to identify the site location with particularity;

c) A statement that the remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;

d) A statement that the Agency's issuance of the No Further Remediation Letter signifies that:

1) *All statutory and regulatory 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* [415 ILCS 5/57.10(c)(1)-(3)], or, if the No Further Remediation Letter is issued pursuant to Section 734.350(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.

e) The prohibition under Section 734.715(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;

f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;

g) The recording obligations pursuant to Section 734.715 of this Part;

h) The opportunity to request a change in the recorded land use pursuant to Section 734.715(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.

Section 734.715 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 must 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 must be filed in accordance with Illinois law so that they form a permanent part of the chain of title for the site. Upon the lapse of the 45 day period for recording, pursuant to Section 734.720(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 must be perfected upon the date of the official recording of such letter. The owner or operator must obtain and submit to the Agency, within 30 days after the official recording date, a certified or otherwise accurate and official copy of the letter and any attachments as recorded. An unperfected No Further Remediation Letter is effective only as between the Agency and the owner or operator.

c) For sites located in a highway authority right-of-way, the following requirements must apply:

1) In order for the No Further Remediation Letter to be perfected, the highway authority with jurisdiction over the right-of-way must enter into a Memorandum of Agreement (MOA) with the Agency. The MOA must include, but is not limited to:

A) The name of the site, if any, and any highway authority or Agency identifiers (e.g., incident number, Illinois inventory identification number);

B) The address of the site (or other description sufficient to identify the location of the site with certainty);

C) A copy of the No Further Remediation Letter for each site subject to the MOA;

D) Procedures for tracking sites subject to the MOA so that all highway authority offices and personnel whose responsibilities (e.g., land acquisition, maintenance, construction, utility permits) may affect land use limitations will have notice of any environmental concerns and land use limitations applicable to a site;

E) Provisions addressing future conveyances (including title or any lesser form of interest) or jurisdictional transfers of the site to any other agency, private person or entity and the steps that will be taken to ensure the long-term integrity of any land use limitations including, but not limited to, the following:

i) Upon creation of a deed, the recording of the No Further Remediation Letter and any other land use limitations requiring recording under 35 Ill. Adm. Code 742, with copies of the recorded instruments sent to the Agency within 30 days after recording;

ii) Any other arrangements necessary to ensure that property that is conveyed or transferred remains subject to any land use limitations approved and implemented as part of the corrective action plan and the No Further Remediation Letter; and

iii) Notice to the Agency at least 60 days prior to any such intended conveyance or transfer indicating the mechanism(s) to be used to ensure that any land use limitations will be operated or maintained as required in the corrective action plan and No Further Remediation Letter; and

F) Provisions for notifying the Agency if any actions taken by the highway authority or its permittees at the site result in the failure or inability to restore the site to meet the requirements of the corrective action plan and the No Further Remediation Letter.

2) Failure to comply with the requirements of this subsection (c) may result in voidance of the No Further Remediation Letter pursuant to Section 734.720 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 must 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 must 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 must 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 must be filed in accordance with Illinois law so it forms a permanent part of the chain of title. The Federal Landholding Entity must 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 must 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.

Section 734.720 Voidance of a No Further Remediation Letter

a) The No Further Remediation Letter must 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 not be limited to:

1) Any violations of institutional controls or land use restrictions, if applicable;

2) The failure of the owner or operator or any subsequent transferee to operate and maintain preventive, engineering, and institutional controls;

3) Obtaining the No Further Remediation Letter by fraud or misrepresentation;

4) Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based that:

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 failure to meet the remediation objectives established for the site; and

C) pose a threat to human health or the environment;

5) Upon the lapse of the 45 day period for recording the No Further Remediation Letter, the failure to record and thereby perfect the No Further Remediation Letter in a timely manner;

6) The disturbance or removal of contamination left in place under an approved plan;

7) The failure to comply with the requirements of Section 734.715(c) of this Part and the Memorandum of Agreement entered in accordance with Section 734.715(c) of this Part for a site that is located in a highway authority right-of-way;

8) The failure to comply with the requirements of Section 734.715(d) of this Part and the LUC MOA entered in accordance with Section 734.715(d) of this Part 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 734.715(d) of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 734.715(d) of this Part 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 must provide a Notice of Voidance to the current title holder of the site and the owner or operator at his or her last known address.

1) The Notice of Voidance must specify the cause for the voidance and describe the facts in support of the cause.

2) The Agency must 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 must be deemed denied and the petitioner must be entitled to an appellate court order pursuant to subsection (d) of Section 41 of the Act. The Agency must have the burden of proof in such action.

1) If the Agency's action is appealed, the action must 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 must 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 must 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 must 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 must 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 must be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

SUBPART H: MAXIMUM PAYMENT AMOUNTS

Section 734.800 Applicability

a) This Subpart H provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. All costs associated with conducting corrective action are grouped into the tasks set forth in Sections 734.810 through 734.850 of this Part. The first method for determining the maximum amount that can be paid for each task is to use the maximum amounts for each task set forth in those Sections, and Section 734.870. In some cases the maximum amounts are specific dollar amounts, and in other cases the maximum amounts are determined on a site-specific basis.

As an alternative to using the amounts set forth in Sections 734.810 through 734.850 of this Part, the second method for determining the maximum amounts that can be paid for one or more tasks is bidding in accordance with Section 734.855 of this Part. As stated in that Section, when bidding is used, if the lowest bid for a particular task is less than the amount set forth in Sections 734.810 through 734.850, the amount in Sections 734.810 through 734.850 of this Part may be used instead of the lowest bid. Finally, the third method for determining

maximum amounts that can be paid from the Fund applies to unusual or extraordinary circumstances. The maximum amounts for such circumstances can be determined in accordance with Section 734.860 of this Part.

b) The costs listed under each task set forth in Sections 734.810 through 734.850 of this Part identify only some of the costs associated with each task. They are not intended as an exclusive list of all costs associated with each task for the purposes of payment from the Fund.

c) This Subpart H sets forth only the methods that can be used to determine the maximum amounts that can be paid from the Fund for eligible corrective action costs. Whether a particular cost is eligible for payment must be determined in accordance with Subpart F of this Part.

Section 734.810 UST Removal or Abandonment Costs

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

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

Section 734.815 Free Product or Groundwater Removal and Disposal

Payment for costs associated with the removal and disposal of free product or groundwater must not exceed the amounts set forth in this Section. Such costs must include, but 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 must 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 must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part. Such costs must include, but not be limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product and groundwater removal systems.

Section 734.820 Drilling, Well Installation, and Well Abandonment

Payment for costs associated with drilling, well installation, and well abandonment must not exceed the amounts set forth in this Section.

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

Type of Drilling	Maximum Total Amount
Hollow-stem auger	greater of $23.00 per foot or $1,500.00
Direct-push platform	
- for sampling or other non-injection purposes	greater of $18.00 per foot or $1,200.00
- for injection purposes	greater of $15.00 per foot or $1,200.00

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

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

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

Well Diameter	Maximum Total Amount
4 or 6 inches	$25.00/foot (well length)
8 inches or greater	$41.00/foot (well length)

d) Payment for costs associated with the abandonment of monitoring wells must not exceed $10.00 per foot of well length.

Section 734.825 Soil Removal and Disposal

Payment for costs associated with soil removal, transportation, and disposal must not exceed the amounts set forth in this Section. Such costs must include, but 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 734.210(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 734.210(f) of this Part, and

concrete, asphalt, or paving overlying such contaminated soil or fill must 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 must be determined by the following equation using the dimensions of the resulting excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 734.210(f) of this Part must be determined in accordance with Section 734.Appendix C of this Part.

b) Payment for costs associated with the purchase, transportation, and placement of material used to backfill the excavation resulting from the removal and disposal of soil must not exceed a total of $20.00 per cubic yard.

1) Except as provided in subsection (b)(2) of this Section, the volume of backfill material must be determined by the following equation using the dimensions of the backfilled excavation: (Excavation Length x Excavation Width x Excavation Depth) x 1.05. A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

2) The volume of backfill material used to replace soil removed from within four feet of the outside dimension of the UST and disposed of pursuant to Section 734.210(f) of this Part must be determined in accordance with Section 734.Appendix C of this Part.

c) Payment for costs associated with the removal and subsequent return of soil that does not exceed the applicable remediation objectives but whose removal is required in order to conduct corrective action must not exceed a total of $6.50 per cubic yard. The volume of soil removed and returned must be determined by the following equation using the dimensions of the excavation resulting from the removal of the soil: (Excavation Length x Excavation Width x Excavation Depth). A conversion factor of 1.5 tons per cubic yard must be used to convert tons to cubic yards.

Section 734.830 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) must not exceed the following amounts or a total of $500.00, whichever is greater.

Drum Contents	Maximum Total Amount per Drum

Solid waste	$250.00
Liquid waste	$150.00

Section 734.835 Sample Handling and Analysis

Payment for costs associated with sample handling and analysis must not exceed the amounts set forth in Section 734.Appendix D of this Part. Such costs must 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 734.840 Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures

a) Payment for costs associated with concrete, asphalt, and paving installed as an engineered barrier, other than replacement concrete, asphalt, and paving, must not exceed the following amounts. Costs associated with the replacement of concrete, asphalt, and paving used as an engineered barrier are subject to the maximum amounts set forth in subsection (b) of this Section instead of this subsection (a).

Depth of Material		Maximum Total Amount per Square Foot
Asphalt and paving –	2 inches	$1.65
	3 inches	$1.86
	4 inches	$2.38
Concrete –	any depth	$2.38

b) Payment for costs associated with the replacement of concrete, asphalt, and paving must not exceed the following amounts:

Depth of Material		Maximum Total Amount per Square Foot
Asphalt and paving –	2 inches	$1.65
	3 inches	$1.86
	4 inches	$2.38
	6 inches	$3.08
Concrete –	2 inches	$2.45
	3 inches	$2.93
	4 inches	$3.41
	5 inches	$3.89
	6 inches	$4.36
	8 inches	$5.31

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

c) Payment for costs associated with the destruction or the dismantling and reassembly of above grade structures must not exceed the time and material amounts set forth in Section 734.850 of this Part. The total cost for the destruction or the dismantling and reassembly of above grade structures must not exceed $10,000.00 per site.

Section 734.845 Professional Consulting Services

Payment for costs associated with professional consulting services must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; vehicle charges; lodging; meals; and the preparation, review, certification, and submission of all plans, budgets, 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 must not exceed the following amounts:

1) Payment for costs associated with preparation for the abandonment or removal of USTs must not exceed a total of $960.00.

2) Payment for costs associated with early action field work and field oversight must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) If one or more USTs are removed, one half-day for each leaking UST that is removed, not to exceed a total of ten half-days, plus one half-day for each 225 cubic yards, or fraction thereof, of visibly contaminated fill material removed and disposed of in accordance with Section 734.210(f) of this Part;

B) If one or more USTs remain in place, one half-day for every four soil borings, or fraction thereof, drilled pursuant to Section 734.210(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, must 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 must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part.

5) Payment for costs associated with Stage 3 site investigations will be reimbursed pursuant to Section 734.850.

6) Payment for costs associated with the preparation and submission of reports submitted pursuant to Section 734.210(h)(3) of this Part must not exceed a total of $500.00.

b) Site Investigation. Payment of costs for professional consulting services associated with site investigation activities conducted pursuant to Subpart C of this Part must not exceed the following amounts:

1) Payment for costs associated with Stage 1 site investigation preparation must not exceed a total of $1,600.00.

2) Payment for costs associated with Stage 1 field work and field oversight must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 1 site investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed must be included in subsection (b)(2)(B) of this Section instead of this subsection (b)(2)(A); and

B) One half-day for each monitoring well installed as part of the Stage 1 site investigation.

3) Payment for costs associated with the preparation and submission of Stage 2 site investigation plans must not exceed a total of $3,200.00.

4) Payment for costs associated with Stage 2 field work and field oversight must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 2 site investigation but not used for the installation of monitoring wells. Borings in which monitoring

wells are installed must be included in subsection (b)(4)(B) of this Section instead of this subsection (b)(4)(A); and

B) One half-day for each monitoring well installed as part of the Stage 2 site investigation.

5) Payment for costs associated with the preparation and submission of Stage 3 site investigation plans must not exceed a total of $3,200.00.

6) Payment for costs associated with Stage 3 field work and field oversight must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled as part of the Stage 3 site investigation but not used for the installation of monitoring wells. Borings in which monitoring wells are installed must be included in subsection (b)(6)(B) of this Section instead of this subsection (b)(6)(A); and

B) One half-day for each monitoring well installed as part of the Stage 3 site investigation.

7) Payment for costs associated with well surveys conducted pursuant to Section 734.445(b) of this Part must not exceed a total of $160.00. Payment for costs associated with well surveys conducted pursuant to Section 734.445(c) of this Part must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part.

8) Payment for costs associated with the preparation and submission of site investigation completion reports must not exceed a total of $1,600.00.

c) Corrective Action. Payment of costs for professional consulting services associated with corrective action activities conducted pursuant to Subpart C of this Part must not exceed the following amounts:

1) For conventional technology, payment for costs associated with the preparation and submission of corrective action plans must not exceed a total of $5,120.00. For alternative technologies, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part.

2) Payment for costs associated with corrective action field work and field oversight must not exceed the following amounts:

A) For conventional technology, a total of $390.00 per half-day, not to exceed one half-day for each 225 cubic yards, or fraction thereof, of soil removed and disposed, plus travel costs in accordance with subsection (e) of this Section.

B) For alternative technologies, payment for costs must be determined on a time and materials basis and must not exceed the amounts set forth in Section 734.850 of this Part.

3) Payment for costs associated with Environmental Land Use Controls and Highway Authority Agreements used as institutional controls pursuant to 35 Ill. Adm. Code 742 must not exceed a total of $800.00 per Environmental Land Use Control or Highway Authority Agreement.

4) Payment for costs associated with the preparation and submission of corrective action completion reports must not exceed a total of $5,120.00.

d) Development of Tier 2 and Tier 3 Remediation Objectives. Payment of costs for professional consulting services associated with the development of Tier 2 and Tier 3 remediation objectives in accordance with 35 Ill. Adm. Code 742 must not exceed the following amounts:

1) Payment for costs associated with field work and field oversight for the development of remediation objectives must not exceed a total of $390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days must not exceed the following:

A) One half-day for every four soil borings, or fraction thereof, drilled solely for the purpose of developing remediation objectives. Borings in which monitoring wells are installed must be included in subsection (d)(1)(B) of this Section instead of this subsection (d)(1)(A); and

B) One half-day for each monitoring well installed solely for the purpose of developing remediation objectives.

2) Excluding costs set forth in subsection (d)(1) of this Section, payment for costs associated with the development of Tier 2 or Tier 3 remediation objectives must not exceed a total of $800.00.

e) Payment for costs associated with travel, including, but not limited to, travel time, per diem, mileage, transportation, vehicle charges, lodging, and meals, must not exceed the following amounts. Costs for travel must be allowed only when specified elsewhere in this Part.

Distance to site (land miles)	Maximum total amount per calendar day
0 to 29	$140.00
30 to 59	$220.00
60 or more	$300.00

Distances must be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site must be measured from the consultant's office that is closest to the site.

f) If a plan must be amended due to unforeseen circumstances, costs associated with the amendment of the plan and its associated budget must not exceed a total of $640.00.

Section 734.850 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) must not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 734.860 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 must be determined by the Agency on a site-specific basis, provided, however, that personnel costs must not exceed the amounts set forth in Section 734.Appendix E of this Part. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work. Owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

BOARD NOTE: Alternative technology costs in excess of the costs of conventional technology are ineligible for payment from the Fund. See Sections 734.340(b) and 734.630(z) of this Part.

Section 734.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing.

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

b) The bids must be summarized on forms prescribed and provided by the Agency. The bid summary form, along with copies of the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.

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

Section 734.860 Unusual or Extraordinary Circumstances

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

Section 734.865 Handling Charges

Payment of handling charges must not exceed the amounts set forth in Section 734.635 of this Part.

Section 734.870 Increase in Maximum Payment Amounts

The maximum payment amounts set forth in this Subpart H must be adjusted annually by an inflation factor determined by the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business.

a) The inflation factor must be calculated each year by dividing the latest published annual Implicit Price Deflator for Gross National Product by the annual Implicit Price Deflator for Gross National Product for the previous year. The inflation factor must be rounded to the nearest 1/100th. In no case must the inflation factor be more than five percent in a single year.

b) Adjusted maximum payment amounts must become effective on July 1 of each year and must remain in effect through June 30 of the following year. The first adjustment must be made on July 1, 2006, by multiplying the maximum payment amounts set forth in this Subpart H by the applicable inflation factor. Subsequent adjustments must be made by multiplying the latest adjusted maximum payment amounts by the latest inflation factor.

c) The Agency must post the inflation factors on its website no later than the date they become effective. The inflation factors must remain posted on the website in subsequent years to aid in the calculation of adjusted maximum payment amounts.

d) Adjusted maximum payment amounts must be applied as follows:

1) For costs approved by the Agency in writing prior to the date the costs are incurred, the applicable maximum payments amounts must be the amounts in effect on the date the Agency received the budget in which the costs were proposed. Once the Agency approves a cost, the applicable maximum payment amount for the cost must not be increased (e.g, by proposing the cost in a subsequent budget).

2) For costs not approved by the Agency in writing prior to the date the costs are incurred, including, but not limited to, early action costs, the applicable maximum payments amounts must be the amounts in effect on the date the costs were incurred.

3) Owners and operators must have the burden of requesting the appropriate adjusted maximum payment amounts in budgets and applications for payment.

Section 734.875 Agency Review of Payment Amounts

No less than every three years the Agency must review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report must identify amounts that are not consistent with the prevailing market rates and suggest changes needed to make the amounts consistent with the prevailing market rates

Section 734.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 toluene xylene
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)	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 pyrene Acenaphthylene Benzo(g,h,i)perylene Phenanthrene
USED OIL	Screening sample(5)

(1) lead is also an indicator contaminant
(2) the polychlorinated biphenyl parameters listed in Appendix B are also indicator contaminants
(3) barium is also an indicator contaminant

(4) the volatile, base/neutral and polynuclear aromatic parameters listed in Appendix B are also indicator contaminants
(5) used oil indicator contaminants must be based on the results of a used oil soil sample analysis - refer to Section 734.405(g) of this Part

Section 734.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

Metals (total inorganic and organic forms)

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

Polychlorinated Biphenyls

1. Polychlorinated Biphenyls
   (as Decachlorobiphenyl)

Section 734.APPENDIX C Backfill Volumes

Volume of Tank in Gallons	Maximum amount of backfill material to be removed:	Maximum amount of backfill material to be replaced:
	Cubic yards	Cubic yards
<285	54	56
285 to 299	55	57
300 to 559	56	58
560 to 999	67	70
1000 to 1049	81	87
1050 to 1149	89	96
1150 to 1999	94	101
2000 to 2499	112	124
2500 to 2999	128	143
3000 to 3999	143	161
4000 to 4999	175	198
5000 to 5999	189	219
6000 to 7499	198	235
7500 to 8299	206	250
8300 to 9999	219	268
10,000 to 11,999	252	312
12,000 to 14,999	286	357
>15,000	345	420

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

Section 734.APPENDIX D Sample Handling and Analysis

	Max. Total Amount per Sample
Chemical	
BETX Soil with MTBE	$85.00
BETX Water with MTBE	$81.00
COD (Chemical Oxygen Demand)	$30.00
Corrosivity	$15.00
Flash Point or Ignitability Analysis EPA 1010	$33.00
FOC (Fraction Organic Carbon)	$38.00
Fat, Oil, & Grease (FOG)	$60.00
LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic, and metal parameters listed in Section 734.AppendixB of this Part	$693.00
Organic Carbon (ASTM-D 2974-87)	$33.00
Dissolved Oxygen (DO)	$24.00
Paint Filter (Free Liquids)	$14.00

PCB / Pesticides (combination)	$222.00
PCBs	$111.00
Pesticides	$140.00
PH	$14.00
Phenol	$34.00
Polynuclear Aromatics PNA, or PAH SOIL	$152.00
Polynuclear Aromatics PNA, or PAH WATER	$152.00
Reactivity	$68.00
SVOC - Soil (Semi-volatile Organic Compounds)	$313.00
SVOC - Water (Semi-volatile Organic Compounds)	$313.00
TKN (Total Kjeldahl) "nitrogen"	$44.00
TOC (Total Organic Carbon) EPA 9060A	$31.00
TPH (Total Petroleum Hydrocarbons)	$122.00
VOC (Volatile Organic Compound) - Soil (Non-Aqueous)	$175.00
VOC (Volatile Organic Compound) - Water	$169.00
Geo-Technical	
Bulk Density ASTM D4292 / D2937	$22.00
Ex-Situ Hydraulic Conductivity / Permeability	$255.00
Moisture Content ASTM D2216-90 / D4643-87	$12.00
Porosity	$30.00
Rock Hydraulic Conductivity Ex-Situ	$350.00
Sieve / Particle Size Analysis ASTM D422-63 / D1140-54	$145.00
Soil Classification ASTM D2488-90 / D2487-90	$68.00
Metals	
Arsenic TCLP Soil	$16.00
Arsenic Total Soil	$16.00
Arsenic Water	$18.00
Barium TCLP Soil	$10.00
Barium Total Soil	$10.00
Barium Water	$12.00
Cadmium TCLP Soil	$16.00
Cadmium Total Soil	$16.00
Cadmium Water	$18.00
Chromium TCLP Soil	$10.00
Chromium Total Soil	$10.00
Chromium Water	$12.00
Cyanide TCLP Soil	$28.00
Cyanide Total Soil	$34.00
Cyanide Water	$34.00
Iron TCLP Soil	$10.00
Iron Total Soil	$10.00
Iron Water	$12.00

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

Section 734.APPENDIX E Personnel Titles and Rates

Title	Degree Required	Ill. License Req'd.	Min. Yrs. Experience	Max. Hourly Rate
Engineer I	Bachelor's in Engineering	None	0	$75.00
Engineer II	Bachelor's in Engineering	None	2	$85.00
Engineer III	Bachelor's in Engineering	None	4	$100.00
Professional Engineer	Bachelor's in Engineering	P.E.	4	$110.00
Senior Prof. Engineer	Bachelor's in Engineering	P.E.	8	$130.00
Geologist I	Bachelor's in Geology or Hydrogeology	None	0	$70.00
Geologist II	Bachelor's in Geology or Hydrogeology	None	2	$75.00
Geologist III	Bachelor's in Geology or Hydrogeology	None	4	$88.00
Professional Geologist	Bachelor's in Geology or Hydrogeology	P.G.	4	$92.00
Senior Prof. Geologist	Bachelor's in Geology or Hydrogeology	P.G.	8	$110.00
Scientist I	Bachelor's in a Natural or Physical Science	None	0	$60.00
Scientist II	Bachelor's in a Natural or Physical Science	None	2	$65.00
Scientist III	Bachelor's in a Natural or Physical Science	None	4	$70.00
Scientist IV	Bachelor's in a Natural or Physical Science	None	6	$75.00
Senior Scientist	Bachelor's in a Natural or Physical Science	None	8	$85.00

Project Manager	None	None	8[1]	$90.00
Senior Project Manager	None	None	12[1]	$100.00
Technician I	None	None	0	$45.00
Technician II	None	None	2[1]	$50.00
Technician III	None	None	4[1]	$55.00
Technician IV	None	None	6[1]	$60.00
Senior Technician	None	None	8[1]	$65.00
Account Technician I	None	None	0	$35.00
Account Technician II	None	None	2[2]	$40.00
Account Technician III	None	None	4[2]	$45.00
Account Technician IV	None	None	6[2]	$50.00
Senior Acct. Technician	None	None	8[2]	$55.00
Administrative Assistant I	None	None	0	$25.00
Administrative Assistant II	None	None	2[3]	$30.00
Administrative Assistant III	None	None	4[3]	$35.00
Administrative Assistant IV	None	None	6[3]	$40.00
Senior Admin. Assistant	None	None	8[3]	$45.00
Draftperson/CAD I	None	None	0	$40.00
Draftperson/CAD II	None	None	2[4]	$45.00
Draftperson/CAD III	None	None	4[4]	$50.00
Draftperson/CAD IV	None	None	6[4]	$55.00
Senior Draftperson/CAD	None	None	8[4]	$60.00

[1] Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.
[2] Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.
[3] Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.
[4] Equivalent work-related or college level education with significant coursework in drafting or computer aided design ("CAD") can be substituted for all or part of the specified experience requirements.

IT IS SO ORDERED.

Board Member T.E. Johnson concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 17, 2005, by a vote of 4-0.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board