

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
THIRD ERRATA SHEET

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney Kyle Rominger, and submits this Third Errata Sheet to its proposal for the amendment of 35 Ill. Adm. Code 732 and the adoption of 35 Ill. Adm. Code 734. During the course of this rulemaking many good comments and suggestions for improving the rules have been provided. After reviewing the hearing transcripts and filed testimony, the Illinois EPA incorporated these comments and suggestions into the rules where appropriate and, as a result, proposes the following changes to its proposal:

X. In response to a request for clarification on the application of Part 734 to releases subject to Public Act 92-0554 but reported prior to the effective date of Part 734, the Illinois EPA proposes to amend Section 734.100(a) by adding subsections (a)(1) and (2) as follows. The changes will allow owners and operators who conducted work prior to the effective date of Part 734 to use that work in satisfying the requirements of Part

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734, and allow costs approved in a budget prior to the effective date of the Part to be reimbursed in accordance with the approved budget. Altered wording, including changes proposed in the Illinois EPA's Second Errata Sheet, is highlighted in bold lettering.

- 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 IEMA on or after [effective date of rules] in accordance with 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.
 - 1) **For releases reported on or after June 24, 2002, but prior to [effective date of rules], and for owners and operators electing prior to [effective date of 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 [effective date of 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 [effective date of 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 [effective date of rules] shall be reimbursed in accordance with the amounts approved in the budget and shall not be subject to the maximum payment amounts set forth in Subpart H of this Part.**

X. In response to recommendations to reduce a "half-day" from five hours to four hours and not to limit the number of half-days that can be worked in one calendar day, the Illinois EPA proposes to amend the definition of "Half-day" in Sections 732.103 and 734.115 to the following. Altered wording is highlighted in bold lettering.

"Half-day" means four hours, or a fraction thereof, of billable work time. Half-days shall 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.

X. To assist the Illinois EPA in the observance and oversight of field activities, the Illinois EPA proposes the following new Sections 732.112 and 734.145 so the Illinois EPA can require notification of when and where field activities will be conducted. The timeframes in the last sentence of the Section mirror the timeframes set forth in Subpart B of each Part, as amended.

Section 732.112/734.145 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 shall 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.

X. In response to concerns regarding the Illinois EPA's administration of the LUST program, the Illinois EPA proposes the following new Sections 732.114 and 734.145.

Section 732.114/734.145 LUST Advisory Committee

Once each calendar quarter the Agency shall 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 shall 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 shall serve without compensation.

X. In response to concerns over whether the language of the Professional Engineer/Professional Geologist certification would require Professional Engineers to certify to geology practices or Professional Geologists to certify to engineering practices, the Illinois EPA proposes to amend the certification language of Sections 732.110(d) and 734.135(d) to the following to clarify that a professional is required to certify only to the standards and practices of his or her own profession. Altered wording is highlighted in bold lettering.

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].

X. In response to concerns about possible situations that would prohibit early action sample collection in the locations specified in Sections 732.202(h)(1) and (2), and Sections 734.210(h)(1) and (2), the Illinois EPA proposes to amend the Sections to the following. Altered wording is highlighted in bold lettering. Please note that additional changes to subsections of Sections 732.202(h)(1) and 734.210(h)(2) are proposed in the Illinois EPA's First and Second Errata Sheets.

Section 732.202(h)(1):

- 1) At a minimum, for each UST that is removed, the owner or operator shall collect and analyze soil samples as follows. The Agency may 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.

Section 732.202(h)(2):

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

Section 734.210(h)(1):

- 1) At a minimum, for each UST that is removed, the owner or operator shall collect and analyze soil samples as follows. **The Agency may 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.**

Section 734.210(h)(2):

- 2) At a minimum, for each UST that remains in place, the owner or operator shall collect and analyze soil samples as follows. **The Agency may 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.**

X. In response to comments regarding the removal of free product, the Illinois EPA proposes to amend Sections 732.203(a) and 734.215(a) to the following to retain the phrase “to the maximum extent practicable,” although in a different location for ease of reading. The following language also includes the changes to Sections 732.203(a) and 734.215(a) proposed in the Illinois EPA’s Second Errata Sheet. Altered wording is highlighted in bold lettering.

Section 732.203(a):

- 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:

Section 734.215(a):

- 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, 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:**

X. As a part of the proposed changes to water supply well survey provisions (see below), the Agency proposes to amend Section 732.300(b)(1)(A)(i) to the following.

Altered wording is highlighted in bold lettering.

- 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.

X. To allow well survey information of the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health to be obtained from sources other than those offices directly, and to narrow the focus of the water supply well surveys, the Agency proposes to amend Section 732.300(b)(3) to the following. The same changes are being proposed to well survey language throughout the rules. Altered wording is highlighted in bold lettering.

3) As part of the remediation conducted under subsection (b) of this Section, owners and operators shall conduct a water supply well survey in accordance with this subsection (b)(3).

A) At a minimum, the owner or operator shall identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells shall include, but not be limited to, the following:

i) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;

ii) 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 shall 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 shall identify the following:

- i) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the 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 shall include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the 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 shall not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.306(b)(4) and (5) to the following. Altered wording is highlighted in bold lettering.

- 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 shall include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Section 732.307(f)(2) to the following. Altered wording is highlighted in bold lettering.

- 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

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.309(a)(1)(C) and (D) to the following.

Altered wording is highlighted in bold lettering.

- 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;

X. In response to concerns about the prescriptive nature of Part 734's Stage 1 site investigation, the Illinois EPA proposes to amend Section 734.315(a) to the following. The following language replaces all changes to Section 734.315(a) proposed in the Illinois EPA's First and Second Errata Sheets. Altered wording is highlighted in bold lettering.

a) The Stage 1 site investigation shall consist of the following:

1) Soil investigation.

- A) **Up to four borings shall 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 shall 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 shall be advanced through the entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings shall be drilled below the groundwater table only if site-specific conditions warrant.**
- B) **Up to two borings shall 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 shall be drilled as close as practicable to each UST piping run if a groundwater investigation is not required under subsection (a)(2) of this Section. The borings shall be advanced through the**

entire vertical extent of contamination, based upon field observations and field screening for organic vapors, provided that borings shall be drilled below the groundwater table only if site-specific conditions warrant.

- C) One soil sample shall be collected from each five-foot interval of each boring drilled pursuant to subsections (a)(1)(A) and (B) of this Section. Each sample shall be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample shall be collected from the center of the five-foot interval. All samples shall 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 shall install five groundwater monitoring wells. One monitoring well shall be installed in the location where groundwater contamination is most likely to be present. The four remaining wells shall 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 shall 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 shall 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 shall be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample shall be collected from the center of the five-foot interval. All soil samples exhibiting signs of contamination shall be analyzed for the applicable indicator contaminants. For borings that do not exhibit any signs of soil contamination, samples from the following intervals shall be analyzed for the applicable indicator contaminants, provided that the samples shall 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 shall 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 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.

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.

3) An initial water supply well survey in accordance with Section 734.445(a) of this Part.

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.404(e)(1) and (2) to the following. Altered wording is highlighted in bold lettering.

1) In addition to the potable water supply wells identified pursuant to Section 732.307(f) of this Part, the owner or operator shall extend the water supply well survey if soil or groundwater contamination exceeding the 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 shall identify the following:

A) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the 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 shall include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the **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 shall not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.406(b)(4) and (5) to the following. Altered wording is highlighted in bold lettering.

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 shall include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

X. In response to questions about the number of alternative technologies that must be compared in a budget when an alternative technology is proposed, the Illinois EPA proposes to amend Sections 732.407(b) and 734.340(b) to the following. Added wording is highlighted in bold lettering.

Section 732.407(b):

- 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 shall compare the costs of at least two other available alternative technologies to the costs of the proposed alternative technology.**

Section 734.407(b):

- b) An owner or operator intending to seek payment for costs associated with the use of an alternative technology shall 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 shall compare the costs of at least two other available alternative technologies to the costs of the proposed alternative technology.**

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 732.409(a)(2)(A)(iii) and (iv) to the following. Altered wording is highlighted in bold lettering.

- 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.

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Section 734.445 to the following. Altered wording is highlighted in bold lettering.

Section 734.445 Water Supply Well Survey

- a) At a minimum, the owner or operator shall conduct a water supply well survey to identify all potable water supply wells located at the site or within 200 feet of the site, all community water supply wells located at the site or within 2,500 feet of the site, and all regulated recharge areas and wellhead protection areas in which the site is located. Actions taken to identify the wells shall include, but not be limited to, the following:
- 1) Contacting the Agency's Division of Public Water Supplies to identify community water supply wells, regulated recharge areas, and wellhead protection areas;
 - 2) **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 shall 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 shall 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 shall include, but not be limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the **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 shall not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).
- d) Documentation of the water supply well survey conducted pursuant to this Section shall include, but not be limited to, the following:
- 1) One or more maps, to an appropriate scale, showing the following:
 - A) The location of the community water supply wells and other potable water supply wells identified

pursuant to 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.

X. As a part of the proposed changes to water supply well survey provisions, the Agency proposes to amend Sections 734.450(b)(4) and (5) to the following. Altered wording is highlighted in bold lettering.

- 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 shall include, but not be limited to, the results of a water supply well survey conducted in accordance with Section 734.445 of this Part.

X. In conjunction with the proposed new Sections 732.606(ggg) and (hhh), and new Sections 734.630(ddd) and (eee) (see below), the Illinois EPA proposes to amend Sections 732.408 and 734.410 as follows. Added wording is highlighted in bold lettering.

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 shall 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: Costs associated with the following are ineligible for payment from the Fund: (1) on-site corrective action to achieve remediation objectives that are more stringent than Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742, and (2) costs associated with

groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control can be used as an institutional control for the incident being remediated. See Sections 732.606(ggg) and (hhh) of this Part.

Section 734.410 Remediation Objectives

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 shall 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: Costs associated with the following are ineligible for payment from the Fund: (1) on-site corrective action to achieve remediation objectives that are more stringent than Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742, and (2) costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control can be used as an institutional control for the incident being remediated. See Sections 734.630(ddd) and (eee) of this Part.

X. In response to objections over requiring the submission of laboratory certifications in applications for payment, the Illinois EPA proposes to delete proposed Sections 732.601(b)(11) and 734.605(b)(11).

X. The Illinois EPA proposes to delete Sections 732.606(ccc) and 734.630(yy) as a result of concern expressed over the effect of the Sections. The Illinois EPA's concern is that the costs associated with sampling and sample analysis be paid only one time in cases where re-sampling or re-analysis is necessary due to improper sample collection, transportation, or analysis. This concern is already addressed by existing Sections 732.606(q) and 734.630(q).

X. In response to concerns about the payment of routine maintenance costs necessary for the operation of equipment leased for long terms, the Illinois EPA proposes to amend Sections 732.606(eee) and 734.630(bbb) to the following. Altered wording is highlighted in bold lettering.

732.606(eee):

eee) 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.**

734.630(bbb):

bbb) 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.**

X. The Agency proposes to add the following Sections 732.606(ggg) and (hhh), and Sections 734.630(ddd) and (eee), to the list of ineligible costs to help ensure that owners and operators seeking payment from the UST Fund utilize the Tiered Approach to Corrective Action Objectives rules of 35 Ill. Adm. Code 742 (“TACO”) in the most cost-effective manner.

Section 732.606(ggg) and (hhh):

(ggg) 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.

(hhh) 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 734.630(ddd) and (eee):

(ddd) 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.

- (eee) 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.

X. In response to concerns over the extent of reviews conducted pursuant to Sections 732.614 and 734.665, the Illinois EPA proposes to amend Sections 732.614 and 734.665 to the following by deleting the prefatory statutory language repeated from Section 57.15 of the Act. The following language includes changes to the Section proposed in the Illinois EPA's Second Errata Sheet.

Section 732.614/734.665 Audits and Access to Records; Records Retention

- a) Owners or operators that submit a **report, plan, budget, application for payment, or other data or documents** under this Part, and Licensed Professional Engineers and Licensed Professional Geologists that certify **such report, plan, budget, application for payment, data, or document**, shall 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 shall be maintained in accordance with accepted business practices and appropriate accounting procedures and practices.
- b) The Agency or any of its duly authorized representatives shall have access to the books, records, documents, and other evidence set forth in subsection (a) of this Section during normal business hours for the purpose of inspection, audit, and copying. Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists shall provide proper facilities for such access and inspection.
- c) Owners, operators, Licensed Professional Engineers, and Licensed Professional Geologists shall maintain the books, records, documents, and other evidence set forth in subsection (a) of this Section and make them available to the Agency or its authorized representative until the latest of the following:

- 1) The expiration of 4 years after the date the Agency issues a No Further Remediation Letter issued pursuant to Subpart G of this Part;
- 2) For books, records, documents, or other evidence relating to an appeal, litigation, or other dispute or claim, the expiration of 3 years after the date of the final disposition of the appeal, litigation, or other dispute or claim; or
- 3) The expiration of any other applicable record retention period.

X. In response to comments set forth in “CW³M Company, Inc.’s Prefiled Testimony and General Comments,” the Illinois EPA proposes to amend Sections 732.815(b) and 734.815(b) to the following by adding a missing reference to groundwater removal systems. Added wording is highlighted in bold lettering.

Section 732.815(b):

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

Section 734.815(b):

- b) Payment for costs associated with the removal of free product or groundwater via a method other than hand bailing or vacuum truck shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 734.850 of this Part. Such costs shall include, but not be limited to, those associated with the design, construction, installation, operation, maintenance, and closure of free product **and groundwater** removal systems.

X. The Illinois EPA proposes to amend Sections 732.845 and 734.845, Professional Consulting Services, as follows:

A. In response to concerns about field work and field oversight costs associated with tank removals, amend Sections 732.845(a)(2)(A) and 734.845(a)(2)(A) to allow one half-day of field work and field oversight for each leaking underground storage tank that is removed, up to a total of ten half-days.

B. In response to concerns about costs associated with site investigation at sites classified as high priority under Part 732, amend Section 732.845(d) by adding a new subsections (d)(1) and (2).

C. Add new Sections 732.845(d)(3) and 734.845(b)(7) to address costs associated with additional well surveys required under 732.404(e)(1) and (2) and 734.445(b) and (c), respectively.

D. In response to concerns about including travel costs in the half-day rate, remove travel costs from the half-day rate by reducing the half-day rate to \$390.00 throughout the Section and set forth the maximum amounts allowed for travel in new Sections 732.845(e) and 734.845(e).

E. In response to concerns about costs associated with plan and budget amendments that are required as a result of unforeseen circumstances, add Sections 732.845(f) and 734.845(f) to address such costs.

F. Add Sections 732.845(g) and 734.845(g) to address costs associated with bidding when the owner or operator pays the subcontractor directly, and therefore the consultant would not be entitled to handling charges.

The following language includes the proposed changes to Sections 732.845 and 734.845 listed above as well as the changes to 734.845 proposed in the Agency's First Errata Sheet. Altered wording is highlighted in bold lettering.

Section 732.845 Professional Consulting Services

Payment for costs associated with professional consulting services shall not exceed the amounts set forth in this Section. Such costs shall include, but not be limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; **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 shall not exceed the following amounts:

1) Payment for costs associated with preparation for the abandonment or removal of USTs shall not exceed a total of \$960.00.

2) Payment for costs associated with early action field work and field oversight shall not exceed a total of \$390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The number of half-days shall 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, shall not exceed a total of \$4,800.00.

4) Payment for costs associated with the preparation and submission of free product removal plans and the installation of free product removal systems shall be

determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part.

- 5) Payment for costs associated with the field work and field oversight for free product removal shall not exceed a total of \$390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section. The Agency shall determine the reasonable number of half-days on a site-specific basis.
- 6) Payment for costs associated with the preparation and submission of free product removal reports shall not exceed a total of \$1,600.00 per report.
- 7) Payment for costs associated with the preparation and submission of reports submitted pursuant to Section 732.202(h)(3) of this Part shall not exceed a total of \$500.00.

b) Site Evaluation and Classification. Payment of costs for professional consulting services associated with site evaluation and classification activities conducted pursuant to Subpart C of this Part shall not exceed the following amounts:

- 1) For site evaluation and classifications conducted pursuant to Section 732.307 of this Part, payment for costs associated with the preparation and submission of site classification plans, site classification preparation, field work, field oversight, and the preparation and submission of the site classification completion report shall not exceed a total of \$9,870.00.
- 2) For site evaluation and classifications conducted pursuant to Section 732.312 of this Part, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part. For owners and operators that elect to proceed in accordance with 35 Ill. Adm. Code 734, costs incurred after the notification of election shall be payable from the Fund in accordance with that Part.

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

- 1) Payment for costs associated with the preparation and submission of low priority groundwater monitoring plans shall not exceed a total of \$3,200.00.
 - 2) Payment for costs associated with low priority groundwater monitoring field work and field oversight shall not exceed a total of \$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 shall not exceed a total of \$2,560.00.
 - 4) Payment for costs associated with the preparation and submission of the second year groundwater monitoring report shall not exceed a total of \$2,560.00.
 - 5) Payment for costs associated with the preparation and submission of low priority groundwater monitoring completion report shall not exceed a total of \$2,560.00.
- d) High Priority Corrective Action. Payment of costs for professional consulting services associated with high priority corrective action activities conducted pursuant to Subpart D of this Part shall not exceed the following amounts:
- 1) Payment for costs associated with the preparation and submission of investigation plans for sites classified pursuant to Section 732.307 of this Part shall 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 shall 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 shall 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 shall 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 shall 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 shall be determined on a time and materials basis and shall 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 shall not exceed a total of \$5,120.00. For alternative technologies, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 732.850 of this Part.
- 5) Payment for costs associated with high priority corrective action field work and field oversight shall not exceed the following amounts:
- A) For conventional technology, a total of \$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 shall be determined on a time and materials basis and shall 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 shall not exceed the following amounts:

A) Payment for costs associated with field work and field oversight for the development of remediation objectives shall 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 shall 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 shall 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 shall 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 shall 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 shall 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, shall not exceed the following amounts. Costs for travel shall be allowed only when specified elsewhere in this Part.

<u>Distance to site (land miles)</u>	<u>Maximum total amount per calendar day</u>
<u>0 to 29</u>	<u>\$140.00</u>

<u>30 to 59</u>	<u>\$220.00</u>
<u>60 or more</u>	<u>\$300.00</u>

Distances shall be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site shall 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 shall not exceed a total of \$640.00.
- g) Costs associated with bidding pursuant to 732.855 of this Part shall not exceed a total of \$160.00 per task bid (e.g., tank removal, drilling, laboratory analysis of samples). For the purposes of this subsection (g), soil excavation, transportation, and disposal shall be considered three separate tasks. Costs for bidding shall be allowed under this subsection (g) only when the person performing the task bid is paid directly by the owner or operator.

Section 734.845 Professional Consulting Services

Payment for costs associated with professional consulting services shall not exceed the amounts set forth in this Section. Such costs shall include, but not be limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; **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 shall not exceed the following amounts:
 - 1) Payment for costs associated with preparation for the abandonment or removal of USTs shall not exceed a total of \$960.00.
 - 2) Payment for costs associated with early action field work and field oversight shall not exceed a total of \$390.00 per half-day, **plus travel costs in accordance with subsection (e) of this Section.** The number of half-days shall 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 732.210(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, shall not exceed a total of \$4,800.00.
 - 4) Payment for costs associated with the preparation and submission of free product removal plans and the installation of free product removal systems shall be determined on a time and materials basis and shall not exceed the amounts set forth in **Section 734.850 of this Part**.
 - 5) Payment for costs associated with the field work and field oversight for free product removal shall not exceed a total of **a total of \$390.00 per half-day, plus travel costs in accordance with subsection (e) of this Section**. The Agency shall determine the reasonable number of half-days on a site-specific basis.
 - 6) Payment for costs associated with the preparation and submission of free product removal reports shall not exceed a total of \$1,600.00 per report.
 - 7) Payment for costs associated with the preparation and submission of reports submitted pursuant to **Section 734.210(h)(3) of this Part** shall 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 shall not exceed the following amounts:

- 1) Payment for costs associated with Stage 1 site investigation preparation shall not exceed a total of \$1,600.00.
- 2) **Payment for costs associated with Stage 1 field work and field oversight shall 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 shall 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 shall 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 shall not exceed a total of \$3,200.00.
- 4) **Payment for costs associated with Stage 2 field work and field oversight shall 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 shall 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 shall 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 shall not exceed a total of \$3,200.00.

- 6) Payment for costs associated with Stage 3 field work and field oversight shall 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 shall 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 shall 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 shall not exceed a total of \$160.00. Payment for costs associated with well surveys conducted pursuant to Section 734.445(c) of this Part shall be determined on a time and materials basis and shall 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 shall 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 shall not exceed the following amounts:
 - 1) For conventional technology, payment for costs associated with the preparation and submission of corrective action plans shall not exceed a total of \$5,120.00. For alternative technologies, payment for costs shall be determined on a time and materials basis and shall not exceed the amounts set forth in Section 734.850 of this Part.
 - 2) Payment for costs associated with corrective action field work and field oversight shall 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 shall be determined on a time and materials basis and shall 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 shall 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 shall 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 shall not exceed the following amounts:
- 1) **Payment for costs associated with field work and field oversight for the development of remediation objectives shall 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 shall 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 shall 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 shall 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, shall not exceed the following amounts. Costs for travel shall be allowed only when specified elsewhere in this Part.

<u>Distance to site (land miles)</u>	<u>Maximum total amount per calendar day</u>
0 to 29	\$140.00
30 to 59	\$220.00
60 or more	\$300.00

Distances shall be measured in ground miles and rounded to the nearest mile. If a consultant maintains more than one office, distance to the site shall 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 shall not exceed a total of \$640.00.
- g) Costs associated with bidding pursuant to 734.855 of this Part shall not exceed a total of \$160.00 per task bid (e.g., tank removal, drilling, laboratory analysis of samples). For the purposes of this subsection (g), soil excavation, transportation, and disposal shall be considered three separate tasks. Costs for bidding shall be allowed under this subsection (g) only when the person performing the task bid is paid directly by the owner or operator.

X. In conjunction with re-numbering of Sections 732.855 and 734.855 to Sections 732.860 and 734.860 (see below), the Illinois EPA proposes to amend Sections 732.850(a) and 734.850(a) to the following. Altered wording is highlighted in bold lettering.

Section 732.850(a):

- a) Payment for costs associated with activities that have a maximum payment amount set forth in other sections of this Subpart H (e.g, sample handling and analysis, drilling, well installation and abandonment, drum disposal, or consulting fees for plans, field work, field oversight, and reports) shall not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 732.860 of this Part.

Section 734.850(a):

- a) Payment for costs associated with activities that have a maximum payment amount set forth in other sections of this Subpart H (e.g, sample handling and analysis, drilling, well installation and abandonment, drum disposal, or consulting fees for plans, field work, field oversight, and reports) shall not exceed the amounts set forth in those Sections, unless payment is made pursuant to Section 734.860 of this Part.

X. The Illinois EPA proposes to add the following new Sections 732.855 and 734.855 to allow bidding as an alternative to the maximum payment amounts set forth in Subpart H.

Section 732.855/734.855 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 shall cover all costs included in the maximum payment amount that the bid is replacing.

- a) A minimum of three written bids shall be obtained. The bids shall be based upon the same scope of work and shall 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 shall be obtained only from persons qualified and able to perform the work being bid. Bids shall not be obtained from persons in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect 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, shall be submitted to the Agency in the associated budget. If more than the minimum three bids are

obtained, summaries and copies of all bids shall be submitted to the Agency.

- c) The maximum payment amount for the work bid shall 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 shall 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.

X. In conjunction with the addition of the bidding provisions above, the Illinois EPA proposes to amend current Sections 732.855 and 734.855 to 732.860 and 734.860, with the following changes to the text of the Sections. Altered wording is highlighted in bold lettering. With this change, Sections 732.860 and 734.860 should be re-numbered to 732.865 and 734.865, and Sections 732.865 and 734.865 should be re-numbered to 732.870 and 734.870.

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 shall 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 shall 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.**

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 shall 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 shall 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.

X. To help ensure that the maximum payment amounts set forth in Subpart H reflect prevailing market rates, the Illinois EPA proposes to add Sections 732.875 and 743.875 as follows. This language is the same as originally proposed in Sections 732.865 and 734.865, except that the minimum time between reviews is changed from two years to three years.

Section 732.875/734.875 Agency Review of Payment Amounts

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

X. In response to recommendations set forth in "Testimony of Jarrett Thomas on Behalf of the Professionals of Illinois for the Protection of the Environment and the Illinois Association of Environmental Laboratories, Inc.," the Illinois EPA proposes to amend Sections 732.APPENDIX D and 734.APPENDIX D to the following by deleting references to specific methods of analyses for the following: BTEX Soil; BTEX Water;

Polynuclear Aromatics PNA, or PAH SOIL; and Polynuclear Aromatics PNA, or PAH WATER. "(EPA 8260)" is deleted after the BTEX analyses and "EPA 8270" is deleted after the Polynuclear Aromatics analyses.

Section 732.APPENDIX D /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*

X. The Illinois EPA proposes to amend Sections 732.APPENDIX E and 734.APPENDIX E to the following by increasing maximum hourly rates for engineers and geologists. Altered rates are highlighted in bold lettering.

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.