

ILLINOIS POLLUTION CONTROL BOARD

June 7, 2001

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO TIERED ) R00-19(B)  
APPROACH TO CORRECTIVE ACTION ) (Rulemaking – Land)  
OBJECTIVES (TACO): 35 ILL. ADM. )  
CODE 742 )

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by E.Z. Kezelis, M. McFawn, N.J. Melas):

On May 15, 2000, the Illinois Environmental Protection Agency (Agency) filed a proposal to amend 35 Ill. Adm. Code 742 of the Board's land regulations, which are commonly referred to as the Tiered Approach to Corrective Action Objectives (TACO) rules. The TACO rules were originally adopted by the Board on June 5, 1997, in Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742, R97-12(A). Part 742 contains procedures for developing remediation objectives based on risks to human health and the environment posed by environmental conditions at sites undergoing remediation in the Site Remediation Program, the Leaking Underground Storage Tank Program, and pursuant to Resource Conservation and Recovery Act (RCRA) Part B permits and closures.

The Board accepted this matter for hearing on May 18, 2000. On July 27, 2000, the Board sent this matter to first notice without commenting on the merits of the proposal. By today's action, the Board sends this proposal to second notice, pursuant to the Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (1998)), for consideration by the Joint Committee on Administrative Rules.

PROCEDURAL HISTORY

Background

On May 15, 2000, the Agency submitted proposed amendments to the TACO regulations. The Board's adoption of these amendments is authorized by Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (1998)).

The Board moved the Agency's proposal to first notice on July 27, 2000. In doing so, the Board divided the proposal into two subdockets based upon subject matter. Subdocket A contained those amendments that the Board was required to adopt pursuant to Public Act 91-909, which was signed and became effective July 7, 2000. Among other things, the amendments in Subdocket A created a new institutional control, known as the Environmental Land Use Control or "ELUC." Since Public Act 91-909 required the adoption of regulations implementing the ELUC by no later than January 6, 2001, the Board decided to create a separate subdocket that could be expedited if necessary. Those amendments contained in Subdocket A were adopted by

the Board on December 21, 2000. See Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742 (December 21, 2000), R00-19(A).

In addition to adopting regulations pertaining to the ELUC, the Board also adopted amendments to 35 Ill. Adm. Code 742, Appendix A, Table G, in Subdocket A. Appendix A, Table G was originally part of Subdocket A, but in response to public comments seeking expedition of the new arsenic background standards contained therein, the Board incorporated the table into Subdocket A. The remainder of proposed amendments are all contained in Subdocket B, which is the subject of this second notice opinion.

### Subdocket (B)

The Agency submitted these proposed amendments to address several aspects of TACO that, with the benefit of time and practical experience, it believed were in need of clarification and correction. Statement of Reasons at 2. The adoption by the Board of these amendments is authorized pursuant to Sections 27 and 28 of the Act (415 ILCS 5/27, 28 (1998)).

When the Board sent this proposal to first notice, it created two subdockets based upon subject matter: Subdockets A and B. The amendments proposed in this Subdocket B include changes and updates to various provisions that the Agency and regulated community agree were in need of revision. In today's action, the Board proceeds to second notice with the entire Subdocket B, but for two notable exceptions. The first exception involves Appendix A, Table G, which was incorporated into Subdocket A, and was adopted by the Board on December 21, 2000.

The second exception deals with the proposed cleanup standards for methyl tertiary-butyl ether (MTBE), which are found in Appendix A, Table A; Appendix B, Table A; Appendix B, Table B; Appendix B, Table E; Appendix B, Table F; and Appendix C, Table E. In order to allow a concurrent examination of the MTBE issues raised in this and other currently pending rulemaking proposals, the Board will not be moving forward at this time with the proposed MTBE cleanup standards. Rather, the MTBE cleanup standards proposed herein will be addressed by the Board in a separate rulemaking subdocket which is opened today and identified as, Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742, R00-19(C).

### Development of the Proposal

Three hearings were held in this matter during the first-notice period. The first hearing was held on August 25, 2000, in Chicago. The second hearing was held on September 11, 2000, in Springfield. The final hearing, held on September 21, 2000, in Chicago, was reserved for the purpose of receiving comments or questions regarding the Board's request of the Department of Commerce and Community Affairs (DCCA) to conduct an economic impact study, and DCCA's declining to perform one.

At the first hearing in Chicago, the Agency presented testimony from a number of witnesses, including: (1) John Sherrill, with the Remedial Project Management Section of the Agency's Bureau of Land, Division of Remediation Management; (2) Gary King, manager of the

Division of Remediation Management within the Agency's Bureau of Land; (3) James Patrick O'Brien, Senior Public Service Administrator and Manager of the Office of Chemical Safety; (4) Lawrence W. Eastep, Manager of the Remedial Project Management Section, Bureau of Land; (5) Christopher Nickell, Project Manager with the Leaking Underground Storage Tank Section, Bureau of Land; (6) Connie Sullinger, Environmental Protection Specialist IV, Office of Chemical Safety; (7) Douglas Clay, Manager of the Leaking Underground Storage Tank Section, Bureau of Land; (8) Tracey Hurley, Environmental Toxicologist, Toxicity Assessment Unit, Office of Chemical Safety; and (9) Thomas Hornshaw, Senior Public Service Administrator and Manager of Toxicity Assessment Unit, Office of Chemical Safety. The content of these witnesses' testimony will be examined in greater detail as the specific proposals are discussed.

At the second hearing, the following persons presented testimony regarding the Subdocket B proposal: King, O'Brien, Eastep, Clay, and Richard Cobb, Manager of the Groundwater Section, Bureau of Water, of the Agency; Randle Schick, Assistant Chief Counsel for the Illinois Department of Transportation; and David Sykuta, Executive Director of the Illinois Petroleum Council.

No one appeared at the third hearing in Chicago and no testimony was given.

The following exhibits were submitted into the record at hearing.<sup>1</sup>

<u>Exhibit No.</u>	<u>Exhibit Name</u>
Agency Ex. 1	Group exhibit consisting of prefiled testimony of Agency witnesses <sup>2</sup>
Agency Ex. 2	"Basis for Proposing a Preventive Notice and Response Level for MTBE in 35 Ill. Adm. Code 620"

In addition to the testimony and exhibits presented at hearing, the Board has also received public comments in this matter. The public comment period expired on October 23, 2000. The following public comments were received regarding Subdocket B:

<u>Public Comment No.</u>	<u>Date</u>	<u>Public Comment Name</u>
PC 1	10/23/00	Illinois Environmental Regulatory Group (IERG)

<sup>1</sup> Only those witnesses, exhibits, and public comments relating to Subdocket B are identified here. All other witnesses, exhibits, and public comments were already addressed in the second notice opinion in Subdocket A. See Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742 (November 16, 2000), R00-19(A).

<sup>2</sup> For purposes of this opinion and order, references to "Agency Ex. 1" will be to the prefiled testimony. For clarification, the references will specify the witness' name, such as, "Agency Ex. 1 (King)" or "Agency Ex. 1 (Sullinger)."

PC 2	10/23/00	Illinois Steel Group (ISG)
PC 3	10/24/00	Mitroff Companies
PC 4	10/25/00	Illinois Petroleum Council
PC 5	10/25/00	Home Builders Association of Illinois
PC 6	10/25/00	The Green Environmental Group, Ltd.
PC 7	10/25/00	Home Builders Association of Greater Chicago
PC 8	10/27/00	Village of Palatine
PC 9	10/23/00	Illinois Environmental Protection Agency (Agency)

#### DISCUSSION OF SUBDOCKET B SECOND NOTICE PROPOSAL

There have been only a few minor changes to the rule from that proposed by the Board in its first-notice opinion and order. There have been no changes to the first notice language in following sections: 742.210, 742.220, 742.300, 742.305, 742.310, 742.315, 742.605, 742.700, 742.715, 742.900, 742.925, 742.1005, 742.1015, 742.1020, and 742.1105. On August 11, 2000, the Agency filed an errata sheet in which changes to the first notice language were proposed. The changes proposed by the Agency in its errata sheet have all been incorporated into this second-notice order and will be discussed, where necessary, below. Some of the amendments proposed by the Agency merely clarify the meaning or impact of a certain section. Unless a specific point of clarification raised concerns, questions, or comments during the first notice period, the Board will not necessarily comment on it specifically in this opinion. Rather, the Board will rely on statements made by both Agency and industry representatives that suggest full support for and agreement with the clarifications proposed.

The Board does note, however, that although no mention was made of it at hearing, an interesting change is being proposed to Section 742.710. Specifically, the proposed amendment would add mercury, a metal, to those substances that must be evaluated in determining a Tier 2 soil remediation objective for the inhalation exposure route. This is noteworthy because although mercury is a metal, it can be inhaled.

However, since the Board did not comment at all on the merits of this rulemaking proposal in its first notice opinion and order, we will now focus on the justification for noteworthy portions of the proposed amendments and any significant changes that have been made subsequent to first notice.

#### Section 742.220 Determination of Soil Saturation Limit

The Agency proposed a change to the soil saturation limits as they relate to a Tier 3 cleanup.<sup>3</sup> Currently, the TACO rules prohibit a person from taking full advantage of a Tier 3 evaluation if the soil saturation limit is exceeded. Agency Ex. 1 (Sherrill) at 2. The proposed amendments strike all references to “Tier 3” in Section 742.220(a) and (b), so that an exceedence of a soil saturation limit does not preclude a person from developing a Tier 3 cleanup proposal. *Id.* Referring to previous testimony given, Sherrill concluded that a person should be able to, “propose a Tier 3 demonstration to show that a site does not pose a risk to human health and the environment.” *Id.*

Sherrill explained that when a soil saturation limit is exceeded, that indicates the presence of free product. Agency Ex. 1 (Sherrill) at 3. The TACO equations used to determine remediation objectives under Tier 1 and Tier 2 are not meant to apply to free product. *Id.* However, since a Tier 3 evaluation is one that allows a person to develop remediation objectives using parameters other than those found in Tier 1 or Tier 2, an exceedence of the soil saturation limit should not necessarily preclude the development of a Tier 3 proposal. *Id.*

No public comments were received on this proposed change. The Board finds merit in the reasoning offered by the Agency in support of the proposed change. The Board therefore adopts this proposal, and expects that it will provide some relief for those persons in the regulated community wishing to develop a Tier 3 proposal.

#### Section 742.225 Demonstration of Compliance with Remediation Objectives

The proposed change to Section 742.225 involved the addition of a new subsection (f), which clarifies that “soil sample concentrations determined by laboratory tests for the purposes of comparison to corrective action objectives should be normalized for moisture content by calculating and reporting the soil concentration of contaminants on a dry soil weight basis.” Agency Ex. 1 (O’Brien) at 2. The Agency supports this amendment because it will result in greater consistency and accuracy in sampling results. *Id.*

Under the current scheme, results of soil samples taken from the same location may vary from day to day depending on the moisture content of the soil at the particular time the sample is collected. Agency Ex. 1 (O’Brien) at 2. At hearing, O’Brien testified that the variability between a dry weight sample and a saturated weight sample could be at least 30%. Tr. (8/25/00) at 95. Furthermore, in some instances, that variability factor may be enough to “tip the scales” between meeting a remediation objective or not. Tr. (8/25/00) at 96.

---

<sup>3</sup> The TACO regulations provide for a three-tiered approach to cleanup objectives. Under a Tier 1 analysis, an applicant compares levels of contaminants of concern at the remediation site to pre-determined remediation objectives. See Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742 (June 5, 1997), R97-12(A). For a Tier 2 analysis, an applicant uses site-specific information and equations set forth in the rules to develop alternative remediation objectives for contaminants of concern. *Id.* Finally, a Tier 3 analysis provides greater flexibility by allowing an applicant to develop site-specific remediation objectives using alternative parameters not found in Tier 1 or Tier 2. *Id.*

According to O'Brien, the proposed dry weight measurement is consistent with the analytical methods directed by the United States Environmental Protection Agency (USEPA). Agency Ex. 1 (O'Brien) at 3. USEPA provided analytical methods in USEPA SW-846, which is incorporated in the TACO rules at Section 742.210. *Id.* O'Brien stated that, "it is, therefore, entirely consistent with the SW-846 procedures for the TACO rules to define circumstances for reporting analytical results on a dry weight basis." *Id.* The Agency does not propose a specific manner in which the dry weight is to be achieved, but rather just that the dry weight of a sample be analyzed. Tr. (8/25/00) at 95.

During the first hearing in Chicago, O'Brien was questioned in some detail regarding this proposed amendment. Additionally, the Illinois Steel Group (ISG), in public comment, urged the Board to reconsider adoption of this proposed amendment. The Board appreciates the questions and views expressed and recognizes their value in helping to develop a clear and complete record on this issue.

Specifically, O'Brien was questioned about, among other things, the need for the proposed amendment; whether the American Society for Testing of Materials (ASTM) requires dry weight sampling; and the effective date of the amendment. In response, O'Brien testified that while he is not aware of any specific sites where the potential variations in sampling results have been a problem, he is aware of instances when the Agency has split a sample with a party and the Agency lab gets one result and the party's lab gets another because one used dry weight and one used wet. Tr. (8/25/00) at 98. O'Brien also testified that he was not able to find any ASTM methodology that addresses the wet weight/dry weight issue in any detail. *Id.* at 101. Finally, O'Brien concluded that the dry weight sampling requirement would become effective upon the adoption of these proposed amendments. *Id.* For sites currently undergoing remediation, all samples collected after the effective date of these amendments would need to be collected and analyzed on a dry weight basis. *Id.* at 101-03.

According to O'Brien, the additional resources necessary to report results on a dry weight basis are minimal. Agency Ex. 1 (O'Brien) at 4. Similarly, Eastep added that the Agency "informally surveyed a number of the consultants that [they] deal with, and most of them are reporting on a dry weight basis now." Tr. (8/25/00) at 106.

Based on the information in the record, the Board concludes that the clarification proposed by the Agency is necessary in order to ensure consistency in sampling procedures and in sampling results. Furthermore, since many of those involved in TACO-related remediations are already using the dry weight standard, the Board finds that this added requirement will not unduly prejudice the regulated community.

#### Section 742.305 Contaminant Source and Free Product Determination

The provisions of Section 742.305 involve requirements that must be met in order to exclude exposure routes from consideration as a source of contamination. A significant change to this Section is the addition of polychlorinated biphenyls (PCBs) as a contaminant of concern that must not be present in levels exceeding 50 parts per million (ppm) for an exposure route to be excluded. Agency Ex. 1 (Eastep) at 3. The Agency chose the 50 ppm threshold because it is

the threshold used under federal regulations (40 C.F.R. 761.3) to define PCB remediation waste. Agency Ex. 1 (Eastepp) at 3.

The Agency also proposed similar PCB-related changes to three other areas of the TACO rules: Section 742.900(f); Part 742, Appendix B, Table A; and Part 742, Appendix B, Table B. These proposed amendments make it clear that under a Tier 1 evaluation, a one ppm PCB limit has been set and that persons preparing a Tier 3 cleanup objective must comply with the federal PCB requirements found at 40 C.F.R. 761. Agency Ex. 1 (Eastepp) at 4. In proposing these additional PCB-related changes, the Agency indicated that it is attempting to set remediation objectives for PCBs that satisfy the federal requirements. *Id.*

The PCB parameters established by these proposed amendments appear to be consistent with federal regulations. The Board therefore includes these parameters in the TACO regulations.

#### Section 742.1020 Highway Authority Agreements

The changes proposed to this section are the result of discussions between the Agency and the Illinois Department of Transportation (IDOT). Highway Authority Agreements are used under the TACO rules as institutional controls. Agency Ex. 1 (King) at 5. The proposed changes include revisions to the required elements of a Highway Authority Agreement and the addition of a requirement that the Highway Authority Agreement be referenced in the chain of title for the remediation property.

Randle Schick, Assistant Chief Counsel for IDOT, testified at the Springfield hearing. Schick testified that IDOT currently has 300 Highway Authority Agreements that are either approved or in the process of being approved. Tr. (9/11/00) at 82. Furthermore, Schick testified that IDOT supports the changes proposed in this rulemaking. *Id.*

No public comments were received regarding these proposals. Since both the Agency and IDOT agree that these changes are necessary to ensure efficient operation of the Highway Authority Agreements, the Board accepts these proposed amendments.

#### Part 742 Appendices

There are a number of proposed changes to various segments of the tables contained in the appendices to Part 742. Rather than go through them item-by-item, we will attempt to summarize the various changes being proposed and the reasons for the changes.

#### Arsenic Remediation Objectives

Previously, in R00-19(A), the Board adopted a revised background level for arsenic in Appendix A, Table G. See Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742 (December 21, 2000), R00-19(A). The increase in the acceptable background level for arsenic was adopted by the Board based on new scientific

knowledge about the existence of naturally occurring arsenic in Illinois and in response to public comment. *Id.*

Still pending are related amendments proposed to Appendix B, Tables A and B. The Agency also proposed amendments to the arsenic remediation objectives for the ingestion exposure routes listed in each of the Appendix B tables. Agency Ex. 1 (Sullinger) at 2. Table A addresses the residential remediation exposure route, while Table B addresses the industrial/commercial remediation exposure route. *Id.* at 3. The Agency proposed a replacement of the current remediation objectives with a reference to the limits set forth in Appendix A, Table G. *Id.*

#### Updates to Acceptable Detection Limits

Agency witness Hurley testified regarding proposed changes to various parts of the appendices to Part 742. The amendments are proposed “to reflect updates to ‘Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,’ USEPA Publication number SW-846.” Agency Ex. 1 (Hurley) at 2.

In Appendix A, Table H consists of chemicals which, under a Tier 1, Class 1 groundwater remediation objective, exceed a 1 in 1,000,000 cancer risk concentration. Agency Ex. 1 (Hurley) at 2. The Agency proposed adding six chemicals to this list because their updated acceptable detection limits (ADLs) now exceed the 1 in 1,000,000 cancer risk concentrations. The newly proposed chemicals are: bis (2-ethylhexyl)phthalate, DDD, DDE, DDT, 2,6-dinitrofluorene, and 2,4,6-trichlorophenol. Changes to the ADLs for 12 other listed chemicals are also proposed. For four of the 18 chemicals added or changed, the Tier I Groundwater Remediation Objectives for the groundwater component of the Groundwater Ingestion Route (35 Ill. Adm. Code 742.Appendix B, Table E) are likewise changed to match the corresponding ADL according to the procedures specified in 35 Ill. Adm. Code 620.

Proposed changes to Appendix B, Tables A, B, E, and F are designed to update and clarify the tables by updating references to the most recent Practical Quantitation Limits, and by clarifying the process used to derive certain specified groundwater remediation objectives. Agency Ex. 1 (Hurley) at 3.

#### Updates to Tier 1 Objectives

Agency witness Hornshaw testified on behalf of the Agency regarding proposed updates to the tables found in Appendix A, Tables A, E and F; Appendix B, Tables A, B, C, D, E, and F; and Appendix C, Tables B, D, E, I, and J. See generally Agency Ex. 1 (Hornshaw). In addition to the updated tables, there are also some corresponding changes proposed for the rules themselves. These proposed changes merely serve to clarify and correct confusing or incorrect information currently in the rules. *Id.*

#### PUBLIC COMMENTS

Throughout this proceeding, the regulated community has repeatedly expressed support for the vast majority of changes proposed in this rulemaking. However, several issues were raised in public comment for which further discussion is appropriate.

#### Potential Conflict with Other Proposed Amendments

First, in PC 1, IERG expressed a concern regarding the fact that many of the proposed amendments in this rulemaking are related to other portions of Title 35, for which amendments will also be needed, and that the TACO amendments should not proceed until the other related amendments are also before the Board. PC 1 at 4-5. Specifically, at the time of IERG's comment, the Board was awaiting proposed amendments from the Agency for Part 732 (Petroleum Underground Storage Tank Program) and Part 740 (Site Remediation Program) of Title 35. IERG's concern was that "the proposed revisions to Part 742 currently before the Board in Subdocket B cannot be fully considered by the Board, by IERG, or by other parties with an interest in the revision, until the Agency's proposed revisions to Parts 732 and 740 are also before the Board for consideration." PC 1 at 4. For that reason, IERG requested that the Board not move forward with Subdocket B until such time as the Agency's proposals for amendment to Parts 732 and 740 were also before the Board. PC 1 at 5. The Board recognizes the interrelation between the provisions of Part 732 and Part 740 and those provisions being amended in this TACO proceeding.

Both of those rulemaking proposals have now been submitted to the Board and hearings have been held. Except for concerns regarding the proposed regulation of MTBE, we are confident that these TACO amendments can proceed forward without creating a conflict with the Part 732 and Part 740 regulations.

#### Applicability of Adopted Amendments to Ongoing Remedial Activities

An important concern was also raised by ISG in its public comments. That concern involves the implementation of these proposed amendments for sites in the midst of ongoing remediation projects. PC 2 at 3. ISG suggested that it would be:

unfair, arbitrary and capricious for the Board and then the [Agency] to simply impose these new requirements on ongoing activities, where the new requirements would substantially change the cost or direction of the activities. It is also unfair for these changes to be adopted without some determination as to when the new standards will apply. PC 2 at 3-4.

During the first hearing in this matter, Agency witness Eastep offered his suggestion as to how the Agency would handle implementation of the new standards with regard to ongoing remedial activities:

I think it would depend on where they [persons undergoing remediation projects] were at in the program. There have been some people that have entered the program four years ago and for whatever reason haven't proceeded in the

program, they have just entered it in effect. Maybe they haven't even done any sampling. Those people would follow the new rules.

I would think, though, if you had a site that had developed remediation objectives and we had approved the plan, that they wouldn't have to go back and do anything.

Or I guess conceivably somebody could have even submitted their report, documenting their completion report, they would not have to go back if it were in that transitional period. So it would probably depend on where they were at in the program.

If they had done an investigation three-and-a-half years ago and not done anything since and then they continued the investigation next year after the rules were passed, then they would be subject to the new rules too. Tr. (8/25/00) at 143-44 (emphasis added).

The Board appreciates the concerns raised by ISG and agrees that further clarification about the applicability of these amendments to ongoing remedial projects is beneficial.

As illustrated by Agency witness Eastep's testimony, the Agency has considered several different scenarios about how it will apply the TACO standards, new and old, to ongoing remediation projects in the various programs which rely upon them. For example, Eastep testified that, "if you had a site that had developed remediation objectives and [the Agency] had approved the plan, [then] they wouldn't have to go back and do anything." Tr. (8/25/00) at 143-44. The Board recognizes that the TACO standards are not self-implementing, and are instead implemented through a variety of cleanup programs, including Site Remediation Program (SRP), Leaking Underground Storage Tank (LUST), and Resource Conservation and Recovery Act (RCRA) closure permits. Within these programs, there are a variety of plans for which Agency approval is required, including, but not limited to, a remedial action plan (SRP), a corrective action plan (LUST), and a RCRA Part B permit. Other Agency approvals are also necessary at various stages of a cleanup under each of these programs. Because the TACO standards are not self-implementing, those standards, old and new, can only be applied to ongoing remediation sites in accordance with the relevant cleanup program. Likewise, any challenges to their applicability must proceed under the procedures established for the particular program.

Accordingly, the Board concludes that the applicability of the TACO amendments, once adopted, must be governed by the relevant program's rules. Should a program participant challenge their applicability to a particular cleanup in the future, the Board will consider the challenge in the context of that particular case and that program's particular rules.

#### MTBE

In its first notice opinion and order, the Board included Agency proposed amendments, which would establish new cleanup standards for MTBE. Proposed Amendments to Tiered

Approach to Corrective Action Objectives (TACO): 35 Ill. Adm. Code 742 (July 27, 2000), R00-19(B). MTBE is not currently regulated under TACO. See 35 Ill. Adm. Code 742. Since first notice, the Agency also filed with the Board a rulemaking in which it proposes a new groundwater quality standard for MTBE. See Proposed MTBE Groundwater Quality Standards Amendments: 35 Ill. Adm. Code 620, R01-14. In the course of the Board's proceedings in the groundwater proposal, the Agency has submitted documentation in support of the proposed MTBE regulations. On June 1, 2001, the Agency also submitted additional comments in the groundwater proceeding which further address MTBE-related issues.

Also subsequent to our first notice opinion and order, there has been action in the State legislature to ban the use of MTBE in Illinois. Specifically, the House and Senate have both passed bills (House Bill 171/Senate Bill 1102) which prohibit the use, sale, distribution, blending, or manufacturing of MTBE as a fuel additive in Illinois. If signed by the Governor, the ban would be effective in three years.

In light of the recent and significant concerns expressed regarding the use and regulation of MTBE, the Board is, by separate order today, opening a new subdocket, R00-19(C), which will be dedicated to addressing the addition of MTBE to the TACO standards as a contaminant for which testing and remediation must be performed. By opening a Subdocket C, the Board intends to provide a focused and well-reasoned examination of the MTBE issues. Because the MTBE TACO standards are so closely related to the proposed groundwater standards, the Board finds it prudent to address these two rulemaking proposals concurrently. The Board will proceed expeditiously in its efforts to adopt a scientifically supportable and environmentally protective MTBE standard.

### ECONOMIC AND TECHNICAL CONSIDERATION

Section 27(a) of the Environmental Protection Act, requires that in promulgating regulations, the Board "shall take into account . . . the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution." 415 ILCS 5/27(a) (1998).

Pursuant to a letter dated August 1, 2000, the Board requested that DCCA conduct an economic impact study related to these proposed amendments. As is the Board's practice, the August 1, 2000 letter contained a provision providing that in the event DCCA failed to respond to the letter within ten days, the Board would rely on a previous letter from DCCA, dated March 10, 2000, in which DCCA expressed its inability to perform the requested economic impact study. DCCA did not respond to the Board's August 1, 2000 letter. A hearing was scheduled to examine the Board's request and DCCA's lack of response, but no one appeared to give testimony.

Considering that the majority of the proposed amendments in this second notice proposal will have little if any actual economic impact on either State agencies or the regulated community, the Board concludes that the proposed amendments are economically reasonable.

The Board also finds that the proposed amendments are technically feasible and are strongly supported by the regulated community.

ORDER

The Board directs the Clerk to cause the filing of the following with the Joint Committee on Administrative Rules.

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER f: RISK BASED CLEANUP OBJECTIVES

PART 742  
TIERED APPROACH TO CORRECTIVE ACTION OBJECTIVES

SUBPART A: INTRODUCTION

Section	
742.100	Intent and Purpose
742.105	Applicability
742.110	Overview of Tiered Approach
742.115	Key Elements
742.120	Site Characterization

SUBPART B: GENERAL

Section	
742.200	Definitions
742.205	Severability
742.210	Incorporations by Reference
742.215	Determination of Soil Attenuation Capacity
742.220	Determination of Soil Saturation Limit
742.225	Demonstration of Compliance with Remediation Objectives
742.230	Agency Review and Approval

SUBPART C: EXPOSURE ROUTE EVALUATIONS

Section	
742.300	Exclusion of Exposure Route
742.305	Contaminant Source and Free Product Determination
742.310	Inhalation Exposure Route
742.315	Soil Ingestion Exposure Route
742.320	Groundwater Ingestion Exposure Route

SUBPART D: DETERMINING AREA BACKGROUND

Section	
742.400	Area Background
742.405	Determination of Area Background for Soil
742.410	Determination of Area Background for Groundwater
742.415	Use of Area Background Concentrations

#### SUBPART E: TIER 1 EVALUATION

Section	
742.500	Tier 1 Evaluation Overview
742.505	Tier 1 Soil and Groundwater Remediation Objectives
742.510	Tier 1 Remediation Objectives Tables

#### SUBPART F: TIER 2 GENERAL EVALUATION

Section	
742.600	Tier 2 Evaluation Overview
742.605	Land Use
742.610	Chemical and Site Properties

#### SUBPART G: TIER 2 SOIL EVALUATION

Section	
742.700	Tier 2 Soil Evaluation Overview
742.705	Parameters for Soil Remediation Objective Equations
742.710	SSL Soil Equations
742.715	RBCA Soil Equations
742.720	Chemicals with Cumulative Noncarcinogenic Effects

#### SUBPART H: TIER 2 GROUNDWATER EVALUATION

Section	
742.800	Tier 2 Groundwater Evaluation Overview
742.805	Tier 2 Groundwater Remediation Objectives
742.810	Calculations to Predict Impacts from Remaining Groundwater Contamination

#### SUBPART I: TIER 3 ~~EVALUATION~~ EVALUATION

Section	
742.900	Tier 3 Evaluation Overview
742.905	Modifications of Parameters
742.910	Alternative Models
742.915	Formal Risk Assessments
742.920	Impractical Remediation
742.925	Exposure Routes

742.930 Derivation of Toxicological Data

### SUBPART J: INSTITUTIONAL CONTROLS

#### Section

742.1000 Institutional Controls  
 742.1005 No Further Remediation Letters  
 742.1010 Environmental Land Use Controls  
 742.1012 Federally Owned Property: Land Use Control Memorandums of Agreement  
 742.1015 Ordinances  
 742.1020 Highway Authority Agreements

### SUBPART K: ENGINEERED BARRIERS

#### Section

742.1100 Engineered Barriers  
 742.1105 Engineered Barrier Requirements

#### APPENDIX A General

ILLUSTRATION A Developing Soil Remediation Objectives Under the Tiered Approach

ILLUSTRATION B Developing Groundwater Remediation Objectives Under the Tiered Approach

TABLE A Soil Saturation Limits ( $C_{sat}$ ) for Chemicals Whose Melting Point is Less than 30°C

TABLE B Tolerance Factor (K)

TABLE C Coefficients  $\{A_{N-I+1}\}$  for W Test of Normality, for  $N=2(1)50$

TABLE D Percentage Points of the W Test for  $N=3(1)50$

TABLE E Similar-Acting Noncarcinogenic Chemicals

TABLE F Similar-Acting Carcinogenic Chemicals

TABLE G Concentrations of Inorganic Chemicals in Background Soils

TABLE H Chemicals Whose Tier 1 Class I Groundwater Remediation Objective Exceeds the 1 in 1,000,000 Cancer Risk Concentration

#### APPENDIX B Tier 1 Tables and Illustrations

ILLUSTRATION A Tier 1 Evaluation

TABLE A Tier 1 Soil Remediation Objectives for Residential Properties

TABLE B Tier 1 Soil Remediation Objectives for Industrial/Commercial Properties

TABLE C pH Specific Soil Remediation Objectives for Inorganics and Ionizing Organics for the Soil Component of the Groundwater Ingestion Route (Class I Groundwater)

TABLE D pH Specific Soil Remediation Objectives for Inorganics and Ionizing Organics for the Soil Component of the Groundwater Ingestion Route (Class II Groundwater)

TABLE E Tier 1 Groundwater Remediation Objectives for the Groundwater Component of the Groundwater Ingestion Route

TABLE F Values Used to Calculate the Tier 1 Soil Remediation Objectives for the Soil Component of the Groundwater Ingestion Route

APPENDIX C Tier 2 Tables and Illustrations

ILLUSTRATION A Tier 2 Evaluation for Soil

ILLUSTRATION B Tier 2 Evaluation for Groundwater

ILLUSTRATION C US Department of Agriculture Soil Texture Classification

TABLE A SSL Equations

TABLE B SSL Parameters

TABLE C RBCA Equations

TABLE D RBCA Parameters

TABLE E Default Physical and Chemical Parameters

TABLE F Methods for Determining Physical Soil Parameters

TABLE G Error Function (erf)

TABLE H Q/C Values By Source Area

TABLE I  $K_{oc}$  Values for Ionizing Organics as a Function of pH ( $\text{cm}^3/\text{g}$  or  $\text{L}/\text{kg}$  or  $\frac{\text{cm}^3\text{water}/\text{g}_{\text{soil}}}{\text{cm}^3\text{water}/\text{g}_{\text{soil}}}$ )

TABLE J Values to be Substituted for  $K_d$  or  $K_s$ ,  $k_d$  or  $k_s$  when Evaluating Inorganics as a Function of pH ( $\text{cm}^3/\text{g}$  or  $\text{L}/\text{kg}$  or  $\frac{\text{cm}^3\text{water}/\text{g}_{\text{soil}}}{\text{cm}^3\text{water}/\text{g}_{\text{soil}}}$ )

TABLE K Parameter Estimates for Calculating Water-Filled Soil Porosity ( $\theta_w$ )

AUTHORITY: Implementing Sections 22.4, 22.12, Title XVI, and Title XVII and authorized by Sections 27, 57.14, and 58.5 of the Environmental Protection Act [415 ILCS 5/22.4, 22.12, 27, 57.14 and 58.5 and Title XVI and Title XVII].

SOURCE: Adopted in R97-12(A) at 21 Ill. Reg. 7942, effective July 1, 1997; amended in R97-12(B) at 21 Ill. Reg. 16391, effective December 8, 1997; amended in R97-12(C) at 22 Ill. Reg. 10847, effective June 8, 1998; amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**NOTE:** Capitalization indicates statutory language.

## SUBPART B: GENERAL

### Section 742.210 Incorporations by Reference

- a) The Board incorporates the following material by reference:

ASTM. American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103 (215) 299-5400.

ASTM D 2974-87, Standard Test Methods for Moisture, Ash and Organic Matter of Peat and Other Organic Soils, approved May 29, 1987 (reapproved 1995).

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

ASTM D 1556-90, Standard Test Method for Density and Unit Weight of Soil in Place by the Sand-Cone Method, approved June 29, 1990.

ASTM D 2167-94, Standard Test Method for Density and Unit Weight of Soil in Place by the Rubber Balloon Method, approved March 15, 1994.

ASTM D 2922-91, Standard Test Methods for Density of Soil and Soil-Aggregate in Place by Nuclear Methods (Shallow Depth), approved December 23, 1991.

ASTM D 2937-94, Standard Test Method for Density of Soil in Place by the Drive-Cylinder Method, approved June 15, 1994.

ASTM D 854-92, Standard Test Method for Specific Gravity of Soils, approved November 15, 1992.

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

ASTM D 4959-89, Standard Test Method for Determination of Water (Moisture) Content of Soil by Direct Heating Method, approved June 30, 1989 (reapproved 1994).

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 5084-90, Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter, approved June 29, 1990.

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

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

ASTM D 3017-88, Standard Test Method for Water Content of Soil and Rock in Place by Nuclear Methods (Shallow Depth), approved May 27, 1988.

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

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

ASTM E 1527-93, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, approved March 15, 1993. Vol. 11.04.

ASTM E 1739-95, Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites, approved September 10, 1995.

Barnes, Donald G. and Dourson, Michael. (1988). Reference Dose (RfD): Description and Use in Health Risk Assessments. Regulatory Toxicology and Pharmacology. 8, 471-486.

GPO. Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401, (202) 783-3238.

USEPA Guidelines for Carcinogenic Risk Assessment, 51 Fed. Reg. 33992-34003 (September 24, 1986).

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication number SW-846 (Third Edition, ~~Final Update III, December 1996~~ Final Update IIIA, April 1998), as amended by Updates I, IIA, ~~and III, and IIIA~~ (Document No. 955-001-00000-1) (~~contact USEPA, Office of Solid Waste, for Update III~~).

"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).

IRIS. Integrated Risk Information System, National Center for Environmental Assessment, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, MS-190, Cincinnati, OH 45268, (513) 569-7254.

"Reference Dose (RfD): Description and Use in Health Risk Assessments", Background Document 1A (March 15, 1993).

"EPA Approach for Assessing the Risks Associated with Chronic Exposures to Carcinogens", Background Document 2 (January 17, 1992).

Nelson, D.W., and L.E. Sommers. (1982). Total carbon, organic carbon, and organic matter. In: A.L. Page (ed.), Methods of Soil Analysis. Part 2. Chemical

and Microbiological Properties. 2nd Edition, pp. 539-579, American Society of Agronomy. Madison, WI.

NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600.

"Dermal Exposure Assessment: Principles and Applications", EPA Publication No. EPA/600/8-91/011B (January 1992).

"Exposure Factors Handbook", EPA Publication No. EPA/600/8-89/043 (July 1989).

"Risk Assessment Guidance for Superfund, Vol. I; Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors", OSWER Directive 9285.6-03 (March 1991).

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

"Risk Assessment Guidance for Superfund, Volume I; Human Health Evaluation Manual (Part A)", Interim Final, EPA Publication No. EPA/540/1-89/002 (December 1989).

"Risk Assessment Guidance for Superfund, Volume I; Human Health Evaluation Manual, Supplemental Guidance, Dermal Risk Assessment Interim Guidance", Draft (August 18, 1992).

"Soil Screening Guidance: Technical Background Document", EPA Publication No. EPA/540/R-95/128, PB\_96-963502 (May 1996).

"Soil Screening Guidance: User's Guide", EPA Publication No. EPA/540/R-96/018, PB\_96-963505 (April 1996).

"Superfund Exposure Assessment Manual", EPA Publication No. EPA/540/1-88/001 (April 1988).

RCRA Facility Investigation Guidance, Interim Final, developed by USEPA (EPA 530/SW-89-031), 4 volumes May 1989.

- 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 761.120 (~~1993~~1998).

- c) This Section incorporates no later editions or amendments.

(Source: Amended in ~~R00-19(B)~~ at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 742.220 Determination of Soil Saturation Limit

- a) For any organic contaminant that has a melting point below 30°C, the remediation objective for the inhalation exposure route developed under Tier 2 ~~or Tier 3~~ shall not exceed the soil saturation limit, as determined under subsection (c) of this Section.
- b) For any organic contaminant, the remediation objective under Tier 2 ~~or Tier 3~~ for the soil component of the groundwater ingestion exposure route shall not exceed the soil saturation limit, as determined under subsection (c) of this Section.
- c) The soil saturation limit shall be:
  - 1) The value listed in Appendix A, Table A for that specific contaminant;
  - 2) A value derived from Equation S29 in Appendix C, Table A; or
  - 3) A value derived from another method approved by the Agency.

(Source: Amended in ~~R00-19(B)~~ at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 742.225 Demonstration of Compliance with Remediation Objectives

Compliance is achieved if each sample result does not exceed that respective remediation objective unless a person elects to proceed under subsections (c), (d) and (e) of this Section.

- a) Compliance with groundwater remediation objectives developed under Subparts D through F and H through I shall be demonstrated by comparing the contaminant concentrations of discrete samples at each sample point to the applicable groundwater remediation objective. Sample points shall be determined by the program under which remediation is performed.
- b) Unless the person elects to composite samples or average sampling results as provided in subsections (c) and (d) of this Section, compliance with soil remediation objectives developed under Subparts D through G and I shall be demonstrated by comparing the contaminant concentrations of discrete samples to the applicable soil remediation objective.
  - 1) Except as provided in subsections (c) and (d) of this Section, compositing of samples is not allowed.
  - 2) Except as provided in subsections (c) and (d) of this Section, averaging of sample results is not allowed.

- 3) Notwithstanding subsections (c) and (d) of this Section, compositing of samples and averaging of sample results is not allowed for the construction worker population.
  - 4) The number of sampling points required to demonstrate compliance is determined by the requirements applicable to the program under which remediation is performed.
- c) If a person chooses to composite soil samples or average soil sample results to demonstrate compliance relative to the soil component of the groundwater ingestion exposure route, the following requirements apply:
- 1) A minimum of two sampling locations for every 0.5 acre of contaminated area is required, with discrete samples at each sample location obtained at every two feet of depth, beginning at six inches below the ground surface and continuing through the zone of contamination. Alternatively, a sampling method may be approved by the Agency based on an appropriately designed site-specific evaluation. Samples obtained at or below the water table shall not be used in compositing or averaging.
  - 2) For contaminants of concern other than volatile organic contaminants:
    - A) Discrete samples from the same boring may be composited.
    - B) Discrete sample results from the same boring may be averaged.
  - 3) For volatile organic contaminants:
    - A) Compositing of samples is not allowed.
    - B) Discrete sample results from the same boring may be averaged.
- d) If a person chooses to composite soil samples or average soil sample results to demonstrate compliance relative to the inhalation exposure route or ingestion exposure route, the following requirements apply:
- 1) A person shall submit a sampling plan for Agency approval, based upon a site-specific evaluation;
  - 2) For volatile organic compounds, compositing of samples is not allowed; and
  - 3) All samples shall be collected within the contaminated area.
- e) When averaging under this Section, if no more than 50% of sample results are reported as "non-detect", "no contamination", "below detection limits", or similar terms, such results shall be included in the averaging calculation as one-half of the reported analytical detection limit for the contaminant. However, when

performing a test for normal or lognormal distribution for the purpose of calculating a 95% Upper Confidence Limit of the mean for a contaminant, a person may substitute for each non-detect value a randomly generated value between, but not including, zero and the reported analytical detection limit. If more than 50% of sample results are "non-detect", another statistically valid procedure approved by the Agency may be used to determine an average.

- f) All soil samples collected after the effective date of this subsection (f) shall be reported on a dry weight basis for the purpose of demonstrating compliance, with the exception of the TCLP and SPLP and the property pH.

(Source: Amended in ~~R00-19(B)~~ at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### SUBPART C: EXPOSURE ROUTE EVALUATIONS

#### Section 742.300 Exclusion of Exposure Route

- a) This Subpart sets forth requirements to demonstrate that an actual or potential impact to a receptor or potential receptor from a contaminant of concern can be excluded from consideration from one or more exposure routes. If an evaluation under this ~~Part~~ Subpart demonstrates the applicable requirements for excluding an exposure route are met, then the exposure route is excluded from consideration and no remediation objective(s) need be developed for that exposure route.
- b) No exposure route may be excluded from consideration until characterization of the extent and concentrations of contaminants of concern at a site has been performed. The actual steps and methods taken to characterize a site shall be determined by the specific program requirements under which the site remediation is being addressed.
- c) As an alternative to the use of the requirements in this ~~Part~~ Subpart, a person may use the procedures for evaluation of exposure routes under Tier 3 as set forth in Section 742.925.

(Source: Amended in ~~R00-19(B)~~ at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 742.305 Contaminant Source and Free Product Determination

No exposure route shall be excluded from consideration relative to a contaminant of concern unless the following requirements are met:

- a) The sum of the concentrations of all organic contaminants of concern shall not exceed the attenuation capacity of the soil as determined under Section 742.215;
- b) The concentrations of any organic contaminants of concern remaining in the soil shall not exceed the soil saturation limit as determined under Section 742.220;

- c) Any soil which contains contaminants of concern shall not exhibit any of the characteristics of reactivity for hazardous waste as determined under 35 Ill. Adm. Code 721.123;
- d) Any soil which contains contaminants of concern shall not exhibit a pH less than or equal to 2.0 or greater than or equal to 12.5, as determined by SW-846 Method 9040B: pH Electrometric for soils with 20% or greater aqueous (moisture) content or by SW-846 Method 9045C: Soil pH for soils with less than 20% aqueous (moisture) content as incorporated by reference in Section 742.210; ~~and~~
- e) Any soil which contains contaminants of concern in the following list of inorganic chemicals or their salts shall not exhibit any of the characteristics of toxicity for hazardous waste as determined by 35 Ill. Adm. Code 721.124, or an alternative method approved by the Agency: arsenic, barium, cadmium, chromium, lead, mercury, selenium or silver; and;
- f) If contaminants of concern include polychlorinated biphenyls (PCBs), the concentration of any PCBs in the soil shall not exceed 50 parts per million as determined by SW-846 Methods.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 742.310 Inhalation Exposure Route

The inhalation exposure route may be excluded from consideration if:

- a) The requirements of Sections 742.300 and 742.305 are met; ~~and~~
- b) ~~An institutional control, in accordance with Subpart J, is in place that meets the following requirements:~~
  - 1) ~~Either:~~
    - A) ~~The concentration of any contaminant of concern within ten feet of the land surface or within ten feet of any man-made pathway shall not exceed the Tier 1 remediation objective under Subpart E for the inhalation exposure route; or~~
    - B) ~~An engineered barrier, as set forth in Subpart K and approved by the Agency, is in place; and~~
  - 2) ~~Requires safety precautions for the construction worker if the Tier 1 construction worker remediation objectives are exceeded.~~
- b) An approved engineered barrier is in place that meets the requirements of Subpart K;

- c) Safety precautions for the construction worker are taken if the Tier 1 construction worker remediation objectives are exceeded; and
- d) An institutional control, in accordance with Subpart J, will be placed on the property.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 742.315 Soil Ingestion Exposure Route

The soil ingestion exposure route may be excluded from consideration if:

- a) The requirements of Sections 742.300 and 742.305 are met; ~~and~~
- b) ~~An institutional control, in accordance with Subpart J, is in place that meets the following requirements:~~
  - 1) ~~Either:~~
    - A) ~~The concentration of any contaminant of concern within three feet of the land surface shall not exceed the Tier 1 remediation objective under Subpart E for the ingestion of soil exposure route;~~  
~~or~~
    - B) ~~An engineered barrier, as set forth in Subpart K and approved by the Agency, is in place; and~~
  - 2) ~~Requires safety precautions for the construction worker if the Tier 1 construction worker remediation objectives are exceeded.~~
- b) An approved engineered barrier is in place that meets the requirements of Subpart K;
- c) Safety precautions for the construction worker are taken if the Tier 1 construction worker remediation objectives are exceeded; and
- d) An institutional control, in accordance with Subpart J, will be placed on the property.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART F: TIER 2 GENERAL EVALUATION

#### Section 742.605 Land Use

- a) Present and post-remediation land use is evaluated in a Tier 2 evaluation. Acceptable exposure factors for the Tier 2 evaluation for residential, industrial/commercial, and construction worker populations are provided in the far right column of ~~both~~ Appendix C, ~~both~~ Tables B and D. Use of exposure

factors different from those in Appendix C, Tables B and D must be approved by the Agency as part of a Tier 3 evaluation.

- b) If a Tier 2 evaluation is based on an industrial/commercial property use, then:
  - 1) Construction worker populations shall also be evaluated; and
  - 2) Institutional controls are required in accordance with Subpart J.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART G: TIER 2 SOIL EVALUATION

##### Section 742.700 Tier 2 Soil Evaluation Overview

- a) Tier 2 remediation objectives are developed through the use of models which allow site-specific data to be considered. Appendix C, Tables A and C list equations that shall be used under a Tier 2 evaluation to calculate soil remediation objectives prescribed by SSL and RBCA models, respectively. (See also Appendix C, Illustration A.)
- b) Appendix C, Table A lists equations that are used under the SSL model. (See also Appendix C, Illustration A.) The SSL model has equations to evaluate the following human exposure routes:
  - 1) Soil ingestion exposure route;
  - 2) Inhalation exposure route for:
    - A) ~~Volatiles~~ Organic contaminants;
    - B) Fugitive dust; and
  - 3) Soil component of the groundwater ingestion exposure route.
- c) Evaluation of the dermal exposure route is not required under the SSL model.
- d) Appendix C, Table C lists equations that are used under the RBCA model. (See also Appendix C, Illustration A.) The RBCA model has equations to evaluate human exposure based on the following:
  - 1) The combined exposure routes of inhalation of vapors and particulates, soil ingestion and dermal contact with soil;
  - 2) The ambient vapor inhalation (outdoor) route from subsurface soils;
  - 3) Soil component of the groundwater ingestion route; and
  - 4) Groundwater ingestion exposure route.

- e) The equations in either Appendix C, Table A or C may be used to calculate remediation objectives for each contaminant of concern under Tier 2, if the following requirements are met:
- 1) The Tier 2 soil remediation objectives for the ingestion and inhalation exposure routes shall use the applicable equations from the same approach (i.e., SSL equations in Appendix C, Table C).
  - 2) The equations used to calculate soil remediation objectives for the soil component of the groundwater ingestion exposure route are not dependent on the approach utilized to calculate soil remediation objectives for the other exposure routes. For example, it is acceptable to use the SSL equations for calculating Tier 2 soil remediation objectives for the ingestion and inhalation exposure routes, and the RBCA equations for calculating Tier 2 soil remediation objectives for the soil component of the groundwater ingestion exposure route.
  - 3) Combining equations from Appendix C, Tables A and C to form a new model is not allowed. In addition, Appendix C, Tables A and C must use their own applicable parameters identified in Appendix C, Tables B and D, respectively.
- f) In calculating soil remediation objectives for industrial/commercial property use, applicable calculations shall be performed twice: once using industrial/commercial population default values and once using construction worker population default values. The more stringent soil remediation objectives derived from these calculations must be used for further Tier 2 evaluations.
- g) Tier 2 data sheets provided by the Agency shall be used to present calculated Tier 2 remediation objectives, if required by the particular program for which remediation is being performed.
- h) The RBCA equations which rely on the parameter Soil Water Sorption Coefficient ( $k_s$ ) can only be used for ionizing organics and inorganics by substituting values for  $k_s$  from Appendix C, Tables I and J, respectively. This will also require the determination of a site-specific value for soil pH.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 742.710      SSL Soil Equations

- a) This Section sets forth the equations and parameters used to develop Tier 2 soil remediation objectives for the three exposure routes using the SSL approach.
- b) Soil Ingestion Exposure Route
  - 1) Equations S1 through S3 form the basis for calculating Tier 2 remediation objectives for the soil ingestion exposure route using the SSL approach.

Equation S1 is used to calculate soil remediation objectives for noncarcinogenic contaminants. Equations S2 and S3 are used to calculate soil remediation objectives for carcinogenic contaminants for residential populations and industrial/commercial and construction worker populations, respectively.

- 2) For Equations S1 through S3, the SSL default values cannot be modified with site-specific information.
- c) Inhalation Exposure Route
- 1) Equations S4 through S16, S26 and S27 are used to calculate Tier 2 soil remediation objectives for the inhalation exposure route using the SSL approach. To address this exposure route, volatiles organic contaminants and mercury must be evaluated separately from fugitive dust using their own equations set forth in subsections (c)(2) and (c)(3) of this Section, respectively.
  - 2) Volatiles Organic Contaminants
    - A) Equations S4 through S10 are used to calculate Tier 2 soil remediation objectives for volatile organic contaminants and mercury based on the inhalation exposure route. Equation S4 is used to calculate soil remediation objectives for noncarcinogenic volatile organic contaminants in soil for residential and industrial/commercial populations. Equation S5 is used to calculate soil remediation objectives for noncarcinogenic volatile organic contaminants and mercury in soil for construction worker populations. Equation S6 is used to calculate soil remediation objectives for carcinogenic volatile organic contaminants in soil for residential and industrial/commercial populations. Equation S7 is used to calculate soil remediation objectives for carcinogenic volatile organic contaminants in soil for construction worker populations. Equations S8 through S10, S27 and S28 are used for calculating numerical values for some of the parameters in Equations S4 through S7.
    - B) For Equation S4, a numerical value for the Volatilization Factor (VF) can be calculated in accordance with subsection (c)(2)(F) of this Section. The remaining parameters in Equation S4 have either SSL default values listed in Appendix C, Table B or toxicological-specific information (i.e., RfC), which can be obtained from IRIS or requested from the program under which the remediation is being performed.
    - C) For Equation S5, a numerical value for the Volatilization Factor adjusted for Agitation (VF') can be calculated in accordance with

subsection (c)(2)(G) of this Section. The remaining parameters in Equation S5 have either SSL default values listed in Appendix C, Table B or toxicological-specific information (i.e., RfC), which can be obtained from IRIS or requested from the program under which the remediation is being performed.

- D) For Equation S6, a numerical value for VF can be calculated in accordance with subsection (c)(2)(F) of this Section. The remaining parameters in Equation S6 have either default values listed in Appendix C, Table B or toxicological-specific information (i.e., URF), which can be obtained from IRIS or requested from the program under which the remediation is being performed.
- E) For Equation S7, a numerical value for VF' can be calculated in accordance with subsection (c)(2)(G) of this Section. The remaining parameters in Equation S7 have either default values listed in Appendix C, Table B or toxicological-specific information (i.e., URF), which can be obtained from IRIS or requested from the program under which the remediation is being performed.
- F) The VF can be calculated for residential and industrial/commercial populations using one of the following equations based on the information known about the contaminant source and receptor population:
  - i) Equation S8, in conjunction with Equation S10, is used to calculate VF assuming an infinite source of contamination; or
  - ii) If the area and depth of the contaminant source are known or can be estimated reliably, mass limit considerations may be used to calculate VF using Equation S26.
- G) The VF' can be calculated for the construction worker populations using one of the following equations based on the information known about the contaminant source:
  - i) Equation S9 is used to calculate VF' assuming an infinite source of contamination; or
  - ii) If the area and depth of the contaminant source are known or can be estimated reliably, mass limit considerations may be used to calculate VF' using Equation S27.

### 3) Fugitive Dust

- A) Equations S11 through S16 are used to calculate Tier 2 soil remediation objectives using the SSL fugitive dust model for the

inhalation exposure route. Equation S11 is used to calculate soil remediation objectives for noncarcinogenic contaminants in fugitive dust for residential and industrial/commercial populations. Equation S12 is used to calculate soil remediation objectives for noncarcinogenic contaminants in fugitive dust for construction worker populations. Equation S13 is used to calculate soil remediation objectives for carcinogenic contaminants in fugitive dust for residential and industrial/commercial populations. Equation S14 is used to calculate soil remediation objectives for carcinogenic contaminants in fugitive dust for construction worker populations. Equations S15 and S16 are used for calculating numerical quantities for some of the parameters in Equations S11 through S14.

- B) For Equation S11, a numerical value can be calculated for the Particulate Emission Factor (PEF) using Equation S15. This equation relies on various input parameters from a variety of sources. The remaining parameters in Equation S11 have either SSL default values listed in Appendix C, Table B or toxicological-specific information (i.e., RfC), which can be obtained from IRIS or requested from the program under which the remediation is being performed.
  - C) For Equation S12, a numerical value for the Particulate Emission Factor for Construction Worker (PEF') can be calculated using Equation S16. The remaining parameters in Equation S12 have either SSL default values listed in Appendix C, Table B or toxicological-specific information (i.e., RfC), which can be obtained from IRIS or requested from the program under which the remediation is being performed.
  - D) For Equation S13, a numerical value for PEF can be calculated using Equation S15. The remaining parameters in Equation S13 have either default values listed in Appendix C, Table B or toxicological-specific information (i.e., URF), which can be obtained from IRIS or requested from the program under which the remediation is being performed.
  - E) For Equation S14, a numerical value for PEF' can be calculated using Equation S16. The remaining parameters in Equation S14 have either default values listed in Appendix C, Table B or toxicological-specific information (i.e., URF), which can be obtained from IRIS or requested from the program under which the remediation is being performed.
- d) Soil Component of the Groundwater Ingestion Exposure Route

The Tier 2 remediation objective for the soil component of the groundwater ingestion exposure route can be calculated using one of the following equations based on the information known about the contaminant source and receptor population:

- 1) Equation S17 is used to calculate the remediation objective assuming an infinite source of contamination.
  - A) The numerical quantities for four parameters in Equation S17, the Target Soil Leachate Concentration ( $C_w$ ), Soil-Water Partition Coefficient ( $K_d$ ) for non-ionizing organics, Water-Filled Soil Porosity ( $\theta_w$ ) and Air-Filled Soil Porosity ( $\theta_a$ ), are calculated using Equations S18, S19, S20 and S21, respectively. Equations S22, S23, S24 and S25 are also needed to calculate numerical values for Equations S18 and S21. The pH-dependent  $K_d$  values for ionizing organics can be calculated using Equation S19 and the pH-dependent  $K_{oc}$  values in Appendix C, Table I.
  - B) The remaining parameters in Equation S17 are Henry's Law Constant ( $H'$ ), a chemical specific value listed in Appendix C, Table E and Dry Soil Bulk Density ( $\rho_b$ ), a site-specific based value listed in Appendix C, Table B.
  - C) The default value for  $GW_{obj}$  is the Tier 1 groundwater objective. For chemicals for which there is no Tier 1 groundwater remediation objective, the value for  $GW_{obj}$  shall be the ~~Health Advisory~~ concentration determined according to the procedures specified in 35 Ill. Adm. Code 620, Subpart F. As an alternative to using Tier 1 groundwater remediation objectives or ~~Health Advisory~~ concentrations determined according to the procedures specified in 35 Ill. Adm. Code 620, Subpart F.,  $GW_{obj}$  may be developed using Equations R25 and R26, if approved institutional controls are in place as required in Subpart J.
- 2) If the area and depth of the contaminant source are known or can be estimated reliably, mass limit considerations may be used to calculate the remediation objective for this exposure route using Equation S28. The parameters in Equation S28 have default values listed in Appendix C, Table B.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 742.715 RBCA Soil Equations

- a) This Section presents the RBCA model and describes the equations and parameters used to develop Tier 2 soil remediation objectives.

- b) Ingestion, Inhalation, and Dermal Contact
- 1) The two sets of equations in subsections (b)(2) and (b)(3) of this Section shall be used to generate Tier 2 soil remediation objectives for the combined ingestion, inhalation, and dermal contact with soil exposure routes.
  - 2) Combined Exposure Routes of Soil Ingestion, Inhalation of Vapors and Particulates, and Dermal Contact with Soil
    - A) Equations R1 and R2 form the basis for deriving Tier 2 remediation objectives for the set of equations that evaluates the combined exposure routes of soil ingestion, inhalation of vapors and particulates, and dermal contact with soil using the RBCA approach. Equation R1 is used to calculate soil remediation objectives for carcinogenic contaminants. Equation R2 is used to calculate soil remediation objectives for noncarcinogenic contaminants. Soil remediation objectives for the ambient vapor inhalation (outdoor) route from subsurface soils must also be calculated in accordance with the procedures outlined in subsection (b)(3) of this Section and compared to the values generated from Equations R1 or R2. The smaller value (i.e., R1 and R2 compared to R7 and R8, respectively) from these calculations is the Tier 2 soil remediation objective for the combined exposure routes of soil ingestion, inhalation, and dermal contact with soil.
    - B) In Equation R1, numerical values are calculated for two parameters:
      - i) The volatilization factor for surficial soils ( $VF_{ss}$ ) using Equations R3 and R4; and
      - ii) The volatilization factor for subsurface soils regarding particulates ( $VF_p$ ) using Equation R5.
    - C)  $VF_{ss}$  uses Equations R3 and R4 to derive a numerical value. Equation R3 requires the use of Equation R6. Both equations must be used to calculate the  $VF_{ss}$ . The lowest calculated value from these equations must be substituted into Equation R1.
    - D) The remaining parameters in Equation R1 have either default values listed in Appendix C, Table D or toxicological-specific information (i.e.,  $SF_o$ ,  $SF_i$ ), which can be obtained from IRIS or requested from the program under which the remediation is being performed.
    - E) For Equation R2, the parameters  $VF_{ss}$  and  $VF_p$  are calculated. The remaining parameters in Equation R2 have either default values

listed in Appendix C, Table D or toxicological-specific information (i.e.,  $RfD_o$ ,  $RfD_i$ ), which can be obtained from IRIS or requested from the program under which the remediation is being performed.

- F) For chemicals other than inorganics which do not have default values for the dermal absorption factor ( $RAF_d$ ) in Appendix C, Table D, a dermal absorption factor of 0.5 shall be used for Equations R1 and R2. For inorganics, dermal absorption may be disregarded (i.e.,  $RAF_d = 0$ ).
- 3) Ambient Vapor Inhalation (outdoor) route from Subsurface Soils (soil below one meter)
- A) Equations R7 and R8 form the basis for deriving Tier 2 remediation objectives for the ambient vapor inhalation (outdoor) route from subsurface soils using the RBCA approach. Equation R7 is used to calculate soil remediation objectives for carcinogenic contaminants. Equation R8 is used to calculate soil remediation objectives for noncarcinogenic contaminants.
- B) For Equation R7, the carcinogenic risk-based screening level for air ( $RBSL_{air}$ ) and the volatilization factor for soils below one meter to ambient air ( $VF_{samb}$ ) have numerical values that are calculated using Equations R9 and R11, respectively. Both equations rely on input parameters from a variety of sources.
- C) The noncarcinogenic risk-based screening level for air ( $RBSL_{air}$ ) and the volatilization factor for soils below one meter to ambient air ( $VF_{samb}$ ) in Equation R8 have numerical values that can be calculated using Equations R10 and R11, respectively.
- c) Soil Component of the Groundwater Ingestion Exposure Route
- 1) Equation R12 forms the basis for deriving Tier 2 remediation objectives for the soil component of the groundwater ingestion exposure route using the RBCA approach. The parameters, groundwater at the source ( $GW_{source}$ ) and Leaching Factor ( $LF_{sw}$ ), have numerical values that are calculated using Equations R13 and R14, respectively.
- 2) Equation R13 requires numerical values that are calculated using Equation R15.
- 3) Equation R14 requires numerical values that are calculated using Equations R21, R22, and R24. For non-ionizing organics, the Soil Water Sorption Coefficient  $k_s$  shall be calculated using Equation R20. For ionizing organics and inorganics, the values for ( $k_s$ ) are listed in Appendix C, Tables I and J, respectively. The pH-dependent  $k_s$  values for ionizing

organics can be calculated using Equation R20 and the pH-dependent  $K_{oc}$  values in Appendix C, Table I. The remaining parameters in Equation R14 are field measurements or default values listed in Appendix C, Table D.

- d) The default value for  $GW_{comp}$  is the Tier 1 groundwater remediation objective. For chemicals for which there is no Tier 1 groundwater remediation objective, the value for  $GW_{comp}$  shall be the ~~Health Advisory~~ concentration determined according to the procedures specified in 35 Ill. Adm. Code 620, Subpart F. As an alternative to using the ~~Tier 1 groundwater remediation objectives or Health Advisory~~ above concentrations,  $GW_{comp}$  may be developed using Equations R25 and R26, if approved institutional controls are in place as may be required in Subpart J.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART H: TIER 2 GROUNDWATER EVALUATION

##### Section 742.805 Tier 2 Groundwater Remediation Objectives

- a) To develop a groundwater remediation objective under this Section that exceeds the applicable Tier 1 groundwater remediation objective, or for which there is no Tier I groundwater remediation objective, a person may request approval from the Agency if the person has performed the following:
- 1) Identified the horizontal and vertical extent of groundwater for which the Tier 2 groundwater remediation objective is sought;
  - 2) Taken corrective action, to the maximum extent practicable to remove any free product;
  - 3) Using Equation R26 in accordance with Section 742.810, demonstrated that the concentration of any contaminant of concern in groundwater will meet:
    - A) The applicable Tier 1 groundwater remediation objective at the point of human exposure; or
    - B) For any contaminant of concern for which there is no Tier 1 groundwater remediation objective, the ~~Health Advisory~~ concentration determined according to the procedures specified in 35 Ill. Adm. Code 620, ~~Subpart F~~ at the point of human exposure. A person may request the Agency to provide these concentrations or may propose these concentrations under Subpart I;
  - 4) Using Equation R26 in accordance with Section 742.810, demonstrated that the concentration of any contaminant of concern in groundwater within the minimum or designated maximum setback zone of an existing

potable water supply well will meet the applicable Tier 1 groundwater remediation objective or, if there is no Tier 1 groundwater remediation objective, the Health Advisory concentration determined according to the procedures specified in 35 Ill. Adm. Code 620. A person may request the Agency to provide these concentrations or may propose these concentrations under Subpart I;

- 5) Using Equation R26 in accordance with Section 742.810, demonstrated that the concentration of any contaminant of concern in groundwater discharging into a surface water will meet the applicable water quality standard under 35 Ill. Adm. Code 302;
  - 6) Demonstrated that the source of the release is not located within the minimum or designated maximum setback zone or within a regulated recharge area of an existing potable water supply well; and
  - 7) If the selected corrective action includes an engineered barrier as set forth in Subpart K to minimize migration of contaminant of concern from the soil to the groundwater, demonstrated that the engineered barrier will remain in place for post-remediation land use through an institutional control as set forth in Subpart J.
- b) A groundwater remediation objective that exceeds the water solubility of that chemical (refer to Appendix C, Table E for solubility values) is not allowed.
- c) The contaminants of concern for which a Tier 1 remediation objective has been developed shall be included in any mixture of similar-acting chemicals under consideration in Tier 2. The evaluation of 35 Ill. Adm. Code 620.615 regarding mixtures of similar-acting chemicals shall be considered satisfied for Class I groundwater at the point of human exposure if either of the following requirements are achieved:

- 1) Calculate the weighted average using the following equations:

$$W_{ave} = \frac{x_1}{CUO_{x_1}} + \frac{x_2}{CUO_{x_2}} + \frac{x_3}{CUO_{x_3}} + \dots + \frac{x_a}{CUO_{x_a}}$$

where:

$W_{ave}$  = Weighted Average

$x_1$  through  $x_a$  = Concentration of each individual contaminant at the location of concern. Note that, depending on the target organ, the actual number of contaminants will range from 2 to 14.

$CUO_{x_a}$  = A Tier 1 or Tier 2 remediation objective must be developed for each  $x_a$ .

- iA) If the value of the weighted average calculated in accordance with the equations above is less than or equal to 1.0, then the remediation objectives are met for those chemicals.
- iiB) If the value of the weighted average calculated in accordance with the equations above is greater than 1.0, then additional remediation must be carried out until the level of contaminants remaining in the remediated area have a weighted average calculated in accordance with the equation above less than or equal to one; or
- 2) Divide each individual chemical's remediation objective by the number of chemicals in that specific target organ group that were detected at the site. Each of the contaminant concentrations at the site is then compared to the remediation objectives that have been adjusted to account for this potential additivity.
- d) The evaluation of 35 Ill. Adm. Code 620.615 regarding mixtures of similar-acting chemicals are considered satisfied if the cumulative risk from any contaminant(s) of concern listed in Appendix A, Table H, plus any other contaminant(s) of concern detected in groundwater and listed in Appendix A, Table F as affecting the same target organ/organ system as the contaminant(s) of concern detected from Appendix A, Table H, does not exceed 1 in 10,000.

(Source: Amended in ~~R00-19(B)~~ at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 742.810      Calculations to Predict Impacts from Remaining Groundwater Contamination

- a) Equation R26 predicts the contaminant concentration along the centerline of a groundwater plume emanating from a vertical planar source in the aquifer (dimensions  $S_w$  wide and  $S_d$  deep). This model accounts for both three-dimensional dispersion ( $x$  is the direction of groundwater flow,  $y$  is the other horizontal direction, and  $z$  is the vertical direction) and biodegradation.
- 1) The parameters in this equation are:
- $X =$                       distance from the planar source to the location of concern, along the centerline of the groundwater plume (i.e.,  $y=0$ ,  $z=0$ )
- $C_x =$                       the concentration of the contaminant at a distance  $X$  from the source, along the centerline of the plume
- $C_{source} =$                 the greatest potential concentration of the contaminant of concern in the groundwater at the source of the contamination, based on the concentrations of contaminants in groundwater due to the release and the projected concentration of the contaminant migrating from the soil to

the groundwater. As indicated above, the model assumes a planar source discharging groundwater at a concentration equal to  $C_{\text{source}}$ .

- $\alpha_x =$  dispersivity in the x direction (i.e., Equation R16)
- $\alpha_y =$  dispersivity in the y direction (i.e., Equation R17)
- $\alpha_z =$  dispersivity in the z direction (i.e., Equation R18)
- $U =$  specific discharge (i.e., actual groundwater flow velocity through a porous medium; takes into account the fact that the groundwater actually flows only through the pores of the subsurface materials) where the aquifer hydraulic conductivity ( $K$ ), the hydraulic gradient ( $I$ ) and the total soil porosity  $\alpha_T$  must be known (i.e., Equation R19)
- $\lambda =$  first order degradation constant obtained from Appendix C, Table E or from measured groundwater data
- $S_w =$  width of planar groundwater source in the y direction
- $S_d =$  depth of planar groundwater source in the z direction

- 2) The following parameters are determined through field measurements:  $U$ ,  $K$ ,  $I$ ,  $\alpha_T$ ,  $S_w$ ,  $S_d$ .
- A) The determination of values for  $U$ ,  $K$ ,  $I$  and  $\alpha_T$  can be obtained through the appropriate laboratory and field techniques;
- B) From the immediate down-gradient edge of the source of the groundwater contamination values for  $S_w$  and  $S_d$  shall be determined.  $S_w$  is defined as the width of groundwater at the source which exceeds the Tier 1 groundwater remediation objective.  $S_d$  is defined as the depth of groundwater at the source which exceeds the Tier 1 groundwater remediation objective; and
- C) Total soil porosity can also be calculated using Equation R23.

- b) Once values are obtained for all the input parameters identified in subsection (a) of this Section, the contaminant concentration  $C_x$  along the centerline of the plume at a distance  $X$  from the source shall be calculated ~~such~~ so that  $X$  is the distance from the down-gradient edge of the source of the contamination at the site to the point where the contaminant concentration is equal to the Tier 1 groundwater remediation objective or Health Advisory concentration determined according to the procedures specified in 35 Ill. Adm. Code 620, Subpart F.

- 1) If there are any potable water supply wells located within the calculated distance X, then the Tier 1 groundwater remediation objective or concentration shall be met at the edge of the minimum or designated maximum setback zone of the nearest potable water supply down-gradient of the source. ~~If there are any potable water supply wells located within the calculated distance X, then the Tier 1 groundwater remediation objective or Health Advisory concentration shall be met at the edge of the minimum or designated maximum setback zone of the nearest potable water supply down gradient of the source. If no potable water supply wells exist within the calculated distance X, then it can be determined that no existing potable water supply wells are adversely impacted. To demonstrate that a minimum or maximum setback zone of a potable water supply well will not be impacted above the applicable Tier 1 groundwater remediation objective or concentration determined according to the procedures specified in 35 Ill. Adm. Code 620, Subpart F, X shall be the distance from the C<sub>source</sub> location to the edge of the setback zone.~~
- 2) To demonstrate that no surface water is adversely impacted, X shall be the distance from the down-gradient edge of the source of the contamination at the site to the nearest surface water body. This calculation must show that the contaminant in the groundwater at this location (C<sub>x</sub>) does not exceed the applicable water quality standard.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART I: TIER 3 EVALUATION

##### Section 742.900 Tier 3 Evaluation Overview

- a) Tier 3 sets forth a flexible framework to develop remediation objectives outside of the requirements of Tiers 1 and 2. Although Tier 1 and Tier 2 evaluations are not prerequisites to conduct Tier 3 evaluations, data from Tier 1 and Tier 2 can assist in developing remediation objectives under a Tier 3 evaluation.
- b) The level of detail required to adequately characterize a site depends on the particular use of Tier 3. Tier 3 can require additional investigative efforts beyond those described in Tier 2 to characterize the physical setting of the site. However, in situations where remedial efforts have simply reached a physical obstruction additional investigation may not be necessary for a Tier 3 submittal.
- c) Situations that can be considered for a Tier 3 evaluation include, but are not limited to:
  - 1) Modification of parameters not allowed under Tier 2;
  - 2) Use of models different from those used in Tier 2;

- 3) Use of additional site data to improve or confirm predictions of exposed receptors to contaminants of concern;
  - 4) Analysis of site-specific risks using formal risk assessment, probabilistic data analysis, and sophisticated fate and transport models (e.g., requesting a target hazard quotient greater than 1 or a target cancer risk greater than 1 in 1,000,000);
  - 5) Requests for site-specific remediation objectives because an assessment indicates further remediation is not practical;
  - 6) Incomplete human exposure pathway(s) not excluded under Subpart C;
  - 7) Use of toxicological-specific information not available from the sources listed in Tier 2;
  - 8) Land uses which are substantially different from the assumed residential or industrial/commercial property uses of a site (e.g., a site will be used for recreation in the future and cannot be evaluated in Tiers 1 or 2); and
  - 9) Requests for site-specific remediation objectives which exceed Tier 1 groundwater remediation objectives so long as the following is demonstrated:
    - A) To the extent practical, the exceedance of the groundwater quality standard has been minimized and beneficial use appropriate to the groundwater that was impacted has been returned; and
    - B) Any threat to human health or the environment has been minimized. [415 ILCS 5/58.5(D)(4)(A)]
- d) For requests of a target cancer risk ranging between 1 in 1,000,000 and 1 in 10,000 at the point of human exposure or a target hazard quotient greater than 1 at the point of human exposure, the requirements of Section 742.915 shall be followed. Requests for a target cancer risk exceeding 1 in 10,000 at the point of human exposure are not allowed.
- e) Requests for approval of a Tier 3 evaluation must be submitted to the Agency for review under the specific program under which remediation is performed. When reviewing a submittal under Tier 3, the Agency shall consider whether the interpretations and conclusions reached are supported by the information gathered. [415 ILCS 58.7(e)(1)]. The Agency shall approve a Tier 3 evaluation if the person submits the information required under this Part and establishes through such information that public health is protected and that specified risks to human health and the environment have been minimized.

- f) If contaminants of concern include polychlorinated biphenyls (PCBs), requests for approval of a Tier 3 evaluation must additionally address the applicability of 40 CFR 761.

(Source: Amended in ~~R00-19(B)~~ at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 742.925 Exposure Routes

Technical information may demonstrate that there is no actual or potential impact of contaminants of concern to receptors from a particular exposure route. In these instances, a demonstration excluding an exposure route shall be submitted to the Agency for review and approval. A submittal under this Section shall include the following information:

- a) A description of the route evaluated;
- b) ~~Technical support including a discussion of the natural or man-made barriers to exposure through that route, and calculations, and modeling results~~ A description of the site and physical site characteristics;
- c) ~~Physical and chemical properties of contaminants of concern~~ A discussion of the result and possibility of the route becoming active in the future; and
- d) ~~Contaminant migration properties;~~ Technical support that may include, but is not limited to, the following:
  - 1) a discussion of the natural or man-made barriers to that exposure route;
  - 2) calculations and modeling;
  - 3) physical and chemical properties of contaminants of concern; and
  - 4) contaminant migration properties.
- e) ~~Description of the site and physical site characteristics; and~~
- f) ~~Discussion of the result and possibility of the route becoming active in the future;~~

(Source: Amended in ~~R00-19(B)~~ at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### SUBPART J: INSTITUTIONAL CONTROLS

#### Section 742.1005 No Further Remediation Letters

- a) A No Further Remediation Letter issued by the Agency under 35 Ill. Adm. Code 732 or ~~742~~ 740 may be used as an institutional control under this Part if the requirements of subsection (b) of this Section are met.

- b) A request for approval of a No Further Remediation Letter as an institutional control shall meet the requirements applicable to the specific program under which the remediation is performed.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 742.1015 Ordinances

- a) An ordinance adopted by a unit of local government that effectively prohibits the installation of potable water supply wells (and the use of such wells) may be used as an institutional control to meet the requirements of Section 742.320(d) or 742.805(a)(3) if the requirements of this Section are met. Ordinances prohibiting the installation of potable water supply wells (and the use of such wells) that do not expressly prohibit the installation of potable water supply wells (and the use of such wells) by units of local government may be acceptable as institutional controls if the requirements of this Section are met and a Memorandum of Understanding (MOU) is entered into under subsection (i) of this Section.
- b) A request for approval of a local ordinance as an institutional control shall provide the following:
- 1) A copy of the ordinance restricting groundwater use certified by an official of the unit of local government in which the site is located that it is ~~the latest, most current~~ a true and accurate copy of the ordinance, unless the Agency and the unit of local government have entered an agreement under subsection (i) of this Section, in which case the request may alternatively reference the MOU. The ordinance must demonstrate that potable use of groundwater from potable water supply wells is prohibited;
  - 2) A scaled map(s) delineating the ~~areal area and~~ extent of groundwater contamination (~~measured or modeled~~) above the applicable remediation objectives including any measured data showing concentrations of contaminants of concern in which the applicable remediation objectives are exceeded;
  - 3) ~~Information showing the concentration of contaminants of concern in which the applicable remediation objectives are exceeded;~~
  - 34) A scaled map delineating the boundaries of all properties under which groundwater is located which exceeds the applicable groundwater remediation objectives;
  - 45) Information identifying the current owner(s) of each property identified in subsection ~~(b)(4)~~ (b)(3) of this Section; and
  - 56) A copy of the proposed submission ~~of the information~~ to the current owners identified in subsection ~~(b)(5)~~ (b)(4) of this Section of the information required in subsections (b)(1) through ~~(b)(5)~~ (b)(4) of this

~~Section and proof that the notification required in subsection (c) of this Section has been submitted. Within 45 days from the date the Agency's~~  
~~No Further Remediation~~ determination is recorded, the person who requested to use the ordinance as an institutional control must submit proof to the Agency of the notice to the property owners identified in subsection (b)(4).

- c) Each of the property owners identified in subsection ~~(b)(5)~~ (b)(4) of this Section and the unit of local government must receive written notification from the party desiring to use the institutional control that groundwater remediation objectives have been approved by the Agency. Written proof of this notification shall be submitted to the Agency within 45 days from the date ~~of the instrument memorializing the Agency's no further remediation determination~~ is recorded. The notification shall include:
- 1) The name and address of the unit of local government;
  - 2) The citation to the ordinance;
  - 3) A description of the property being sent notice by adequate legal description or by reference to a plat showing the boundaries;
  - 4) A statement that the ordinance restricting groundwater use has been used by the Agency in reviewing a request for a groundwater remediation objective;
  - 5) A statement as to the nature of the release and response action with the site name, address, and Agency site number or Illinois inventory identification number; and
  - 6) A statement as to where more information may be obtained regarding the ordinance.
- d) Unless the Agency and the unit of local government have entered into a MOU under subsection (i) of this Section, the current owner or successors in interest of a site who have received approval of use of an ordinance as an institutional control under this Section shall:
- 1) Monitor activities of the unit of local government relative to variance requests or changes in the ordinance relative to the use of potable groundwater at properties identified in subsection ~~(b)(4)~~ (b)(3) of this Section; and
  - 2) Notify the Agency of any approved variance requests or ordinance changes within 30 days after the date such action has been approved.
- e) The information required in subsections (b)(1) through ~~(b)(6)~~ (b)(5) of this Section and the Agency letter approving the groundwater remediation objective

shall be submitted to the unit of local government. Proof that the information has been filed with the unit of local government shall be provided to the Agency.

- f) Any ordinance or MOU used as an institutional control pursuant to this Section shall be recorded in the Office of the Recorder or Registrar of Titles of the county in which the site is located together with the instrument memorializing the Agency's no further remediation determination pursuant to the specific program within 45 days after receipt of the Agency's no further remediation determination.
- g) An institutional control approved under this Section shall not become effective until officially recorded in accordance with subsection (f) of this Section. The person receiving the approval shall obtain and submit to the Agency within 30 days after recording a copy of the institutional control demonstrating that it has been recorded.
- h) The following shall be grounds for voidance of the ordinance as an institutional control and the instrument memorializing the Agency's no further remediation determination:
  - 1) Modification of the ordinance by the unit of local government to allow potable use of groundwater;
  - 2) Approval of a site-specific request, such as a variance, to allow potable use of groundwater at a site identified in subsection ~~(b)(4)~~ (b)(3) of this Section; or
  - 3) Violation of the terms of an institutional control recorded under Section 742.1005 or Section 742.1010.
- i) The Agency and a unit of local government may enter into a MOU under this Section if the unit of local government has adopted an ordinance satisfying subsection (a) of this Section and if the requirements of this subsection are met. The MOU shall include the following:
  - 1) Identification of the authority of the unit of local government to enter the MOU;
  - 2) Identification of the legal boundaries, or equivalent, under which the ordinance is applicable;
  - 3) A certified copy of the ordinance;
  - 4) A commitment by the unit of local government to notify the Agency of any variance requests or proposed ordinance changes at least 30 days prior to the date the local government is scheduled to take action on the request or proposed change;

- 5) A commitment by the unit of local government to maintain a registry of all sites within the unit of local government that have received no further remediation determinations pursuant to specific programs; and
- 6) If the ordinance does not expressly prohibit the installation of potable water supply wells (and the use of such wells) by units of local government, a commitment by the unit of local government:
  - A) To review the registry of sites established under subsection (i)(5) of this Section prior to siting potable water supply wells within the area covered by the ordinance;
  - B) To determine whether the potential source of potable water may be or has been affected by contamination left in place at those sites; and
  - C) To take whatever steps are necessary to ensure that the potential source of potable water is protected from the contamination or treated before it is used as a potable water supply.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 742.1020 Highway Authority Agreements

- a) An agreement with a highway authority may be used as an institutional control where the requirements of this Section are met and the Agency has determined that no further remediation is required as to the property(ies) to which the agreement is to apply.
- b) As part of the agreement the highway authority shall agree to:
  - 1) Prohibit the use of groundwater under the highway right of way that is contaminated above residential Tier 1 remediation objectives from the release as a potable supply of water; and
  - 2) Limit access to soil contamination under the highway right of way that is contaminated above residential Tier 1 remediation objectives from the release. Access to soil contamination may be allowed if, during and after any access, public health and the environment are protected.
- c) The agreement shall provide the following:
  - 1) Fully executed signature blocks by the highway authority and the owner of the property (or, in the case of a petroleum leaking underground storage tank, the owner or operator of the tank) from which the release occurred;
  - 2) A scaled map delineating the area and extent of soil and groundwater contamination above the applicable Tier 1 remediation objectives or a

statement that either soil or groundwater is not contaminated above the applicable Tier 1 residential remediation objectives;

- 3) Information showing the concentration of contaminants of concern within the zone in which the applicable Tier 1 remediation objectives are exceeded;
  - 4) A stipulation of the information required by subsections ~~(b)~~ (c)(2) and (3) of this Section in the agreement if it is not practical to obtain the information by sampling the highway right-of-way; and
  - 5) Information identifying the ~~current fee owner of the highway right-of-way~~ and highway authority having jurisdiction.
- d) Highway Authority Agreements must be referenced in the instrument that is to be recorded on the chain of title for the remediation property.
- ~~e~~d) Violation of the terms of an Agreement approved by the Agency as an institutional control under this Section shall be grounds for voidance of the Agreement as an institutional control and the instrument memorializing the Agency's no further remediation determination.
- f) Failure to provide all of the information required in subsections (b) and (c) of this Section will be grounds for denial of the ~~Highway~~ Authority ~~Agreement~~ as an institutional control.

(Source: Amended in ~~R00-19(B)~~ at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART K: ENGINEERED BARRIERS

##### Section 742.1105 Engineered Barrier Requirements

- a) Natural attenuation, access controls, and point of use treatment shall not be considered engineered barriers. Engineered barriers may not be used to prevent direct human exposure to groundwater without the use of institutional controls.
- b) For purposes of determining remediation objectives under Tier 1, engineered barriers are not recognized.
- c) The following engineered barriers are recognized for purposes of calculating remediation objectives that exceed residential remediation objectives:
  - 1) For the soil component of the groundwater ingestion exposure route, the following engineered barriers are recognized if they prevent completion of the exposure pathway:

- A) ~~Caps, covering the contaminated media, or walls~~ constructed of compacted clay, asphalt, concrete or other material approved by the Agency; and
  - B) Permanent structures such as buildings and highways.
- 2) For the soil ingestion exposure route, the following engineered barriers are recognized if they prevent completion of the exposure pathway:
- A) ~~Caps, covering the contaminated media, or walls~~, constructed of compacted clay, asphalt, concrete, or other material approved by the Agency;
  - B) Permanent structures such as buildings and highways; and
  - ~~C) Clean soil, covering the contaminated media, that is a minimum of three feet in depth.~~
  - C) Soil, sand, gravel, or other geologic materials that:
    - i) Cover the contaminated media;
    - ii) Meet the soil remediation objectives under Subpart E for residential property for contaminants of concern; and
    - iii) Are a minimum of three feet in depth.
- 3) For the inhalation exposure route, the following engineered barriers are recognized if they prevent completion of the exposure pathway:
- A) ~~Caps, covering the contaminated media, or walls~~ constructed of compacted clay, asphalt, concrete, or other material approved by the Agency;
  - B) Permanent structures such as buildings and highways; and
  - ~~C) Clean soil covering the contaminated media, that is a minimum of ten feet in depth and not within ten feet of any manmade pathway.~~
  - C) Soil, sand, gravel, or other geologic materials that:
    - i) Cover the contaminated media;
    - ii) Meet the soil remediation objectives under Subpart E for residential property for contaminants of concern; and
    - iii) Are a minimum of ten feet in depth and not within ten feet of any manmade pathway.

- 4) For the ingestion of groundwater exposure route, the following engineered barriers are recognized if they prevent completion of the exposure pathway:
- A) Slurry walls; and
  - B) Hydraulic control of groundwater.
- d) Unless otherwise prohibited under Section 742.1100, any other type of engineered barrier may be proposed if it will be as effective as the options listed in subsection (c) of this Section.

(Source: Amended in R00-19(B) at 24 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)