

P01-26
MSC.

MEMORANDUM OF AGREEMENT
BETWEEN
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
AND THE
ILLINOIS DEPARTMENT OF TRANSPORTATION

THIS AGREEMENT is entered into this 29 day of Sept., by and between the Illinois Environmental Protection Agency ("Illinois EPA") and the Illinois Department of Transportation ("IDOT"), also referred to herein as "the Parties," for the specific purposes hereinafter set forth.

I. BACKGROUND

Environmental investigative activities being undertaken on IDOT's highway property have revealed and may in the future reveal certain areas of environmental contamination ("sites") on this property. These sites include those where substances regulated by Illinois EPA were or may have been released into the environment as a result of activities conducted over the history of the highway property.

Because the highway property is currently and will likely remain a highway property, IDOT desires future site remedy determinations take land use into account in order to facilitate the use of risk-based remediation criteria. The Parties agree when institutional controls ("IC's") are necessary to assure the reliability of land use assumptions, it is essential that appropriate procedures be put in place to ensure such controls will be maintained for as long as necessary to keep the chosen remedy fully protective of human health and the environment.

In response to negotiations between Illinois EPA and IDOT, IDOT has developed a process, attached hereto as Appendix A, to maintain those IC's the Parties have chosen, or may hereafter agree should be implemented in connection with any site on IDOT's highway property. This Agreement is an integral part of the process.

II. DEFINITION

As used herein, the term "institutional control" or "IC" means any restriction or control arising from the need to protect human health and the environment and limits the use of and/or exposure to environmentally contaminated media (e.g., soils, surface water, groundwater) at any site on IDOT's highway property. The term includes controls on access and encompasses deed restrictions and other non-engineered mechanisms for ensuring compliance with necessary land use limitations.

III. PURPOSE

The Parties intend to accomplish the following specific objectives through execution of this Agreement:

- a. To implement a process to ensure appropriate long term maintenance of those IC's that may have already or may hereafter be selected for implementation as part of remedy selection for any site on IDOT's highway property. It is intended such a process will in turn:

The planned conveyance of any site with IC's may prompt Illinois EPA to re-evaluate the continued appropriateness of any previously agreed upon IC's based upon the level of assurance provided.

VI. CHANGE IN APPLICABLE STANDARDS

Nothing herein should be construed to preclude IDOT from proposing at any time or from the Parties otherwise agreeing to effect the deletion of any site from coverage under the terms of this Agreement on account of either: (i) a post-remedy implementation change to applicable State risk-based cleanup standards, or (ii) a change in previously documented contaminant concentration levels allowing for unrestricted use. No site will be deleted without the written consent of both Parties.

VII. FUTURE COMMUNICATIONS

Within ten days of execution of this Agreement, each Party shall notify the other Parties as to the name(s), address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of their respective representative(s) who should receive all correspondence and communications on behalf of the Party pertaining to all matters falling under the terms of this Agreement. A listing of agency representatives will be attached hereto as Appendix E and will be updated by the Parties as appropriate.

VIII. DISPUTES

All Parties agree to use a good-faith effort to resolve any and all disputes, hereafter arising with regard to the Department's substantial good-faith compliance with the terms of this Agreement relating to the sites addressed hereunder.

IX. RESERVATION OF RIGHTS

It is agreed and understood that Illinois EPA reserves all rights and authorities it may currently have or hereafter acquire by law to require IDOT to comply with those federal or State laws and regulations applicable to the investigation, cleanup and long term maintenance of those sites to be covered by this Agreement. It is also understood that IDOT reserves those rights and authorities granted to it by federal or State law, regulation, or executive order. IDOT further reserves the right to put highway property to those uses deemed necessary in its discretion for mission accomplishment.

X. AMENDMENT

Any amendments to this Agreement must be in writing and will be executed by the undersigned signatories or their duly authorized designees or successors and must be attached to this original Agreement.

XI. TERMINATION

This Agreement will terminate at such time as the undersigned representatives of the Parties or their successors, mutually concur the aforesaid objectives of the Parties have been fulfilled and the need for such an Agreement no longer exists. Alternatively, any Party may unilaterally withdraw from this Agreement upon sixty (60) days written notice to the other Parties but only after reasonable efforts have first been made by all Parties

APPENDIX A

IDOT may need to obtain a No Further Remediation letter ("NFR letter") at non-fixed facilities. In most cases, these facilities are pump stations within our highway system that contain underground storage tanks (USTs) that are removed because they are no longer being used. Occasionally, NFR letters are obtained under the Site Remediation Program for orphan USTs that are removed from our right-of-way (ROW) during construction. In either case, IDOT will remediate the contaminants of concern until they meet the requirement of 35 Illinois Administrative Code 742 (TACO). The following is the procedure to be utilized by IDOT to match NFR letters to property that do not have a legal description, real estate tax index, or parcel index number.

Once IDOT receives an NFR letter from IEPA on a property that does not have a legal description, real estate tax index, or parcel index number, copies of the NFR letter will be sent to the district's Environmental Coordinator, district's Land Acquisition Engineer, Central Office's Land Acquisition Engineer, Chief Counsel's Office, Bureau of Operations, Bureau of Local Roads and Streets, and Illinois State Geological Survey (ISGS). ISGS is recording the location of all IDOT environmental concerns (Preliminary Environmental Site Assessment (PESA), Preliminary Site Investigation (PSI), highway authority agreements, and access permits) using Street Atlas software. ISGS provides the Central Office and the districts with the database and it is updated on a regular basis. The location of the NFR letter will be recorded on this database and the database will be provided to the appropriate IDOT personnel.

Prior to disposing of excess property, IDOT's Central Bureau of Land Acquisition and district's Bureau of Land Acquisition will review ISGS's database to determine if the excess property has any environmental concerns. If an NFR letter is discovered on an excess parcel in that process, it will be recorded with the quick claim deed. Notification of the recording will be sent to IEPA.

Prior to a jurisdictional transfer of property, IDOT's Central Bureau of Local Roads and Streets, Central Bureau of Land acquisition, district's Bureau of Local Roads and Streets, and district's Bureau of Land Acquisition will review ISGS's database to determine if the excess property has any environmental concerns. If an NFR letter is discovered on an excess parcel in that process, it will be noted. The jurisdictional transfer document will provide that the transfer is subject to the NFR letter, and it will be appended to those documents and properly recorded, if a conveyance of title is involved, in the chain of title to the property when the deed is recorded. Notification of the transfer will be sent to IEPA.

Prior to issuing a utility permit, IDOT's Bureau of Operations and district's Bureau of Operations will review ISGS's database to determine if the property has any environmental concerns. If an NFR letter is discovered on the property, then the utility affecting any condition of the NFR letter will be required to restore the property to meet those conditions. IEPA will be notified if the property cannot be restored to meet the conditions in the NFR letter.

Prior to maintenance excavation on the property, IDOT's Central Bureau of Operations and district's Bureau of Operations will review ISGS's database to determine if the property has any environmental concerns. If an NFR letter is discovered on the

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APPENDIX B

INSTITUTIONAL CONTROL
SITE LISTING

Date last updated: March 30, 2000

1. 0310515309 – Cook County
Cicero/IDOT Pump Station #28
Cicero and Ogden
LUST Incident No. 972339

2. 1430655295 – Peoria County
Peoria/Amoco Service Station #9543
3534 Northeast Adams Street
LUST Incident No. 920316