**Section 732.610 Indemnification**

a) An owner or operator seeking indemnification from the Fund for payment of costs incurred as a result of a release of petroleum from an underground storage tank must submit to the Agency an application for payment on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format.

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

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

B) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof must include, but is not limited to, the following:

i) A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement certified by the owner or operator as a true and correct copy; and

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

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

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

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

F) A private insurance coverage form; and

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

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

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

b) The Agency shall review applications for payment in accordance with this Subpart F. In addition, the Agency must review each application for payment to determine the following:

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

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

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

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

c) If the application for payment of the costs of indemnification is deemed complete and otherwise satisfies all applicable requirements of this Subpart F, the Agency shall forward the request for indemnification to the Office of the Attorney General for review and approval in accordance with Section 57.8(c) of the Act. The owner or operator's request for indemnification shall not be placed on the priority list for payment until the Agency has received the written approval of the Attorney General. The approved application for payment shall then enter the priority list established at Section 732.603(e)(1) of this Part based on the date the complete application was received by the Agency in accordance with Section 57.8(c) of the Act.

d) Costs ineligible for indemnification from the Fund include, but are not limited to:

1) Amounts an owner or operator is not legally obligated to pay pursuant to a judgment entered against the owner or operator in a court of law, a final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or any settlement entered into by the owner or operator;

2) Amounts of a judgment, final order, determination, or settlement that do not arise out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator;

3) Amounts incurred prior to July 28, 1989;

4) Amounts incurred prior to notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;

5) Amounts arising out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank for which the owner or operator is not eligible to access the Fund;

6) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;

7) Amounts associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;

8) Amounts associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 732.105 of this Part and Section 57.12 of the Act;

9) Amounts associated with a release that has not been reported to IEMA or is not required to be reported to IEMA;

10) Amounts incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release; and

11) Amounts incurred after the effective date of the owner's or operator's election to proceed in accordance with 35 Ill. Adm. Code 734.

(Source: Amended at 30 Ill. Reg. 4928, effective March 1, 2006)