**Section 734.210 Early Action**

a) Upon confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions:

1) Immediately report the release to IEMA (e.g., by telephone or electronic mail);

BOARD NOTE: The OSFM rules for the reporting of UST releases are found at 41 Ill. Adm. Code 176.320(a).

2) Take immediate action to prevent any further release of the regulated substance to the environment; and

3) Immediately identify and mitigate fire, explosion and vapor hazards.

b) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must perform the following initial abatement measures:

1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;

2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator must comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;

5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.

c) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.

d) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information must include, but is not limited to, the following:

1) Data on the nature and estimated quantity of release;

2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;

3) Results of the site check required at subsection (b)(5) of this Section; and

4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part.

e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.

f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal* (see 41 Ill. Adm. Code 160, 170, 180, 200). *The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen*. *For purposes of payment of early action costs, however, fill material shall not be removed* *in an amount in excess of 4 feet from the outside dimensions of the tank.* [415 ILCS 5/57.6(b)] Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank.

g) For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.

BOARD NOTE: Owners or operators seeking payment from the Fund are to first notify IEMA of a suspected release and then confirm the release within 14 days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and 170.580. The Board is setting the beginning of the payment period at subsection (g) to correspond to the notification and confirmation to IEMA.

h) The owner or operator must determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

1) At a minimum, for each UST that is removed, the owner or operator must collect and analyze soil samples as indicated in subsections (h)(1)(A) through (E). The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.

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

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

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

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

E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.

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

A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for each 20 feet of side length, or fraction thereof, and the borings must be evenly spaced along the side. The borings must be drilled in the native soil surrounding the USTs and as close practicable to, but not more than five feet from, the backfill material surrounding the USTs. Each boring must be drilled to a depth of 30 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 30 feet below grade.

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

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

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

3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) of this Section are met, within 30 days after the completion of early action activities the owner or operator must submit a report demonstrating compliance with those remediation objectives. The report must include, but not be limited to, the following:

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

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

i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);

ii) Analytical results, chain of custody forms, and laboratory certifications for all samples collected pursuant to this subsection (h); and

iii) A table comparing the analytical results of all samples collected pursuant to this subsection (h) to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

C) A site map containing only the information required under Section 734.440 of this Part.

4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, the owner or operator must continue in accordance with Subpart C of this Part:

A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);

B) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or

C) There is evidence that contaminated soils may be or may have been in contact with groundwater, unless:

i) The owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping; and

ii) The Agency determines that further groundwater investigation is not necessary.

(Source: Amended at 36 Ill. Reg. 4898, effective March 19, 2012)