**Section 732.406 Deferred Corrective Action; Priority List for Payment**

a) An owner or operator who has received approval for any budget plan submitted pursuant to this Part and who is eligible for payment from the underground storage tank fund may elect to defer site classification, low priority groundwater monitoring, or remediation activities until funds are available in an amount equal to the amount approved in the budget plan if the requirements of subsection (b) of this Section are met.

1) Approvals of budget plans shall be pursuant to Agency review in accordance with Subpart E of this Part.

2) The Agency shall monitor the availability of funds and shall provide notice of insufficient funds to owners or operators in accordance with Section 732.503(g) of this Part.

3) Owners and operators must submit elections to defer low priority groundwater monitoring or high priority corrective action activities on forms prescribed and provided by the Agency and, if specified by the Agency by written notice, in an electronic format. 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.

4) The Agency must review elections to defer low priority groundwater monitoring or high priority corrective action activities to determine whether the requirements of subsection (b) of this Section are met. The Agency must notify the owner or operator in writing of its final action on any such election. If the Agency fails to notify the owner or operator of its final action within 120 days after its receipt of the election, the owner or operator may deem the election rejected by operation of law.

A) The Agency must mail notices of final action on an election to defer by registered or certified mail, postmarked with a date stamp and with return receipt requested. Final action must be deemed to have taken place on the post marked date that such notice is mailed.

B) Any action by the Agency to reject an election, or the rejection of an election by the Agency's failure to act, is subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act.

5) Upon approval of an election to defer low priority groundwater monitoring or high priority corrective action activities until funds are available, the Agency shall place the site on a priority list for payment and notification of availability of sufficient funds. Sites shall enter the priority list for payment and move up based solely on the date the Agency receives a complete written election of deferral, with the earliest dates having the highest priority.

6) As funds become available, the Agency shall encumber funds for each site in the order of priority in an amount equal to the total of the approved budget plan for which deferral was sought. The Agency shall then notify owners or operators that sufficient funds have been allocated for the owner's or operator's site. After such notification the owner or operator shall commence corrective action.

7) Authorization of payment of encumbered funds for deferred low priority groundwater monitoring or high priority corrective action activities shall be approved in accordance with the requirements of Subpart F of this Part.

8) The priority list for payment and notification of availability of sufficient funds shall be the same as that used for deferred site classification pursuant to Section 732.306 of this Part with both types of deferrals entering the list and moving up solely on the basis of the date the Agency receives written notice of the deferral.

b) An owner or operator who elects to defer low priority groundwater monitoring or high priority corrective action activities under subsection (a) of this Section shall submit a report certified by a Licensed Professional Engineer or Licensed Professional Geologist demonstrating the following:

1) The Agency has approved the owner's or operator's low priority groundwater monitoring or high priority corrective action budget plan;

2) The owner or operator has been determined eligible to seek payment from the Fund;

3) The early action requirements of Subpart B of this Part have been met;

4) Groundwater contamination does not exceed the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants as a result of the release, modeling in accordance with 35 Ill. Adm. Code 742 shows that groundwater contamination will not exceed such Tier 1 remediation objectives as a result of the release, and no potable water supply wells are impacted as a result of the release; and

5) Soil contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants does not extend beyond the site's property boundary and is not located within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well. Documentation to demonstrate that this subsection (b)(5) is satisfied must include, but is not limited to, the results of a water supply well survey conducted in accordance with Section 732.307(f) of this Part.

c) An owner or operator may, at any time, withdraw the election to defer low priority groundwater monitoring or high priority corrective action activities. The owner or operator must notify the Agency in writing of the withdrawal. Upon such withdrawal, the owner or operator shall proceed with corrective action in accordance with the requirements of this Part.

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