**Section 732.704 Voidance of a No Further Remediation Letter**

a) The No Further Remediation Letter shall be voidable if site activities are not carried out in full compliance with the provisions of this Part, and 35 Ill. Adm. Code 742 where applicable, or the remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter include, but shall not be limited to:

1) Any violations of institutional controls or land use restrictions, if applicable;

2) The failure of the owner or operator or any subsequent transferee to operate and maintain preventive, engineering and institutional controls;

3) Obtaining the No Further Remediation Letter by fraud or misrepresentation;

4) Subsequent discovery of indicator contaminants related to the occurrence upon which the No Further Remediation Letter was based which:

A) were not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based;

B) results in the following:

i) the site no longer satisfying the criteria of a No Further Action site classification;

ii) the site no longer satisfying the criteria of a Low Priority site classification;

iii) failing to meet the remediation objectives established for a High Priority site; and

C) pose a threat to human health or the environment;

5) Upon the lapse of the 45 day period for recording the No Further Remediation Letter, the failure to record and thereby perfect the No Further Remediation Letter in a timely manner;

6) The disturbance or removal of contamination left in place under an approved plan;

7) The failure to comply with the requirements of Section 732.703(c) and the Memorandum of Agreement entered in accordance with Section 732.703(c) for a site that is located in a highway authority right-of-way;

8) The failure to comply with the requirements of Section 732.703(d) and the LUC MOA entered in accordance with Section 732.703(d) for a site located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title;

9) The failure to comply with the requirements of Section 732.703(d) of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 732.703(d) within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation Letter to any entity that will not remain or become a Federal Landholding Entity; or

10) The failure to comply with the notice or confirmation requirements of 35 Ill. Adm. Code 742.1015(b)(5) and (c).

b) If the Agency seeks to void a No Further Remediation Letter, it shall provide Notice of Voidance to the current title holder of the site and the owner or operator at his or her last known address.

1) The Notice of Voidance shall specify the cause for the voidance and describe the facts in support of the cause.

2) The Agency shall mail Notices of Voidance by registered or certified mail, date stamped with return receipt requested.

c) Within 35 days after receipt of the Notice of Voidance, the current title holder and owner or operator of the site at the time the No Further Remediation Letter was issued may appeal the Agency's decision to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.

d) If the Board fails to take final action within 120 days, unless such time period is waived by the petitioner, the petition shall be deemed denied and the petitioner shall be entitled to an appellate court order pursuant to subsection (d) of Section 41 of the Act. The Agency shall have the burden of proof in such action.

1) If the Agency's action is appealed, the action shall not become effective until the appeal process has been exhausted and a final decision is reached by the Board or courts.

A) Upon receiving a notice of appeal, the Agency shall file a Notice of lis pendens with the office of the recorder or the registrar of titles for the county in which the site is located. The notice shall be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site.

B) If the Agency's action is not upheld on appeal, the Notice of lis pendens shall be removed in accordance with Illinois law within 45 days after receipt of the final decision of the Board or the courts.

2) If the Agency's action is not appealed or is upheld on appeal, the Agency shall submit the Notice of Voidance to the office of the recorder or the registrar of titles for the county in which the site is located. The Notice shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

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