**Section 734.630 Ineligible Corrective Action Costs**

Costs ineligible for payment from the Fund include, but are not limited to:

a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Appendix C of this Part, during early action activities conducted pursuant to Section 734.210(f) of this Part, and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Appendix C of this Part during early action activities conducted pursuant to Section 734.210(f) of this Part;

b) Costs or losses resulting from business interruption;

c) Costs incurred as a result of vandalism, theft, or fraudulent activity by the owner or operator or agent of an owner or operator, including the creation of spills, leaks, or releases;

d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies, including but not limited, to those structures destroyed or damaged during corrective action activities;

e) *Costs of corrective action incurred by an owner or operator prior to July 28, 1989* [415 ILCS 5/57.8(j)];

f) Costs associated with the procurement of a generator identification number;

g) 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;

h) Purchase costs of non-expendable materials, supplies, equipment, or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools;

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

j) Costs 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 734.125 of this Part and Section 57.12 of the Act;

k) Costs for removal, disposal, or abandonment of a UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;

l) Costs associated with the installation of new USTs, the repair of existing USTs, and removal and disposal of USTs determined to be ineligible by the OSFM;

m) Costs exceeding those contained in a budget or amended budget approved by the Agency;

n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;

o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

p) Costs associated with improperly installed sampling or monitoring wells;

q) Costs associated with improperly collected, transported, or analyzed laboratory samples;

r) Costs associated with the analysis of laboratory samples not approved by the Agency;

s) Costs for any corrective action activities, services, or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;

t) Interest or finance costs charged as direct costs;

u) Insurance costs charged as direct costs;

v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;

w) Costs associated with the compaction and density testing of backfill material;

x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;

y) Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations;

z) Costs of alternative technology that exceed the costs of conventional technology;

aa) Costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;

bb) Costs requested that are based on mathematical errors;

cc) Costs that lack supporting documentation;

dd) Costs proposed as part of a budget that are unreasonable;

ee) Costs incurred during early action that are unreasonable;

ff) Costs 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;

gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (gg) does not apply to the following:

1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;

2) Monitoring well abandonment costs;

3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;

4) Costs associated with seeking payment from the Fund;

5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release; and

6) Costs associated with activities conducted under Section 734.632 of this Part;

hh) Handling charges for subcontractor costs that have been billed directly to the owner or operator;

ii) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;

jj) Costs associated with standby and demurrage;

kk) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 734.355(b) of this Part, that a revised corrective action plan is required, provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment if they meet the requirements of this Part;

ll) Costs incurred prior to the effective date of an owner's or operator's election to proceed in accordance with this Part, unless such costs were incurred for activities approved as corrective action under this Part;

mm) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 734.215(a)(5) of this Part;

nn) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. This subsection (nn) does not apply to costs associated with activities conducted under Section 734.632 of this Part;

oo) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 734.625(a)(16) of this Part;

pp) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Sections 734.625(a)(16) or (17) of this Part;

qq) Costs associated with oversight by an owner or operator;

rr) Handling charges charged by persons other than the owner's or operator's primary contractor;

ss) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 734.625(a)(16) of this Part;

tt) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;

uu) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 734.625(a)(19) of this Part;

vv) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 734.625(a)(20) of this Part;

ww) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 734.625(a)(19) or (20) of this Part;

xx) (Reserved)

yy) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget;

zz) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;

aaa) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (aaa) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release;

bbb) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated;

ccc) Costs associated with on-site corrective action to achieve Tier 2 remediation objectives that are more stringent than Tier 1 remediation objectives;

ddd) Costs associated with corrective action to achieve remediation objectives other than industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property. This subsection (ddd) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(c) or (d) of this Part to remediate or prevent groundwater contamination at off-site property;

eee) Costs associated with groundwater remediation if a groundwater ordinance must be used as an institutional control under Section 734.360(c) of this Part. This subsection (eee) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(c) to remediate or prevent groundwater contamination at off-site property;

fff) Costs associated with on-site groundwater remediation if an institutional control is required to address on-site groundwater remediation under Section 734.360(d) of this Part. This subsection (fff) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(d) to remediate or prevent groundwater contamination at off-site property.

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