**Section 742.1020 Highway Authority Agreements** **and Highway Authority Agreement Memoranda of Agreement**

a) An agreement with a highway authority may be used as an institutional control where the requirements of this Section are met and the Agency has determined that no further remediation is required as to the property(ies) to which the agreement is to apply. Highway Authority Agreements submitted to the Agency, except for those agreements with the Illinois Department of Transportation, must match the form and contain the same substance, except for variable elements, as the model in Appendix D.

b) As part of the agreement the highway authority shall agree to:

1) Prohibit the use of groundwater under the highway right of way that is contaminated above residential Tier 1 remediation objectives from the release as a potable supply of water; and

2) Limit access to soil contamination under the highway right of way that is contaminated above residential Tier 1 or construction worker remediation objectives, whichever is less, from the release. Access to soil contamination may be allowed if, during and after any access, public health and the environment are protected.

c) The agreement shall provide the following:

1) Fully executed signature blocks by the highway authority and the owner of the property (or, in the case of a petroleum leaking underground storage tank, the owner or operator of the tank) from which the release occurred;

2) A scaled map delineating the area and extent of soil and groundwater contamination above the applicable Tier 1 remediation objectives or a statement that either soil or groundwater is not contaminated above the applicable Tier 1 residential remediation objectives;

3) Information showing the concentration of contaminants of concern within the zone in which the applicable Tier 1 remediation objectives are exceeded;

4) A stipulation of the information required by subsections (c)(2) and (3) of this Section in the agreement if it is not practical to obtain the information by sampling the highway right-of-way; and

5) Information identifying the highway authority having jurisdiction.

d) Highway Authority Agreements must be referenced in the instrument that is to be recorded on the chain of title for the remediation property.

e) Violation of the terms of an Agreement approved by the Agency as an institutional control under this Section shall be grounds for voidance of the Agreement as an institutional control and the instrument memorializing the Agency's no further remediation determination.

f) Failure to provide all of the information required in subsections (b) and (c) of this Section will be grounds for denial of the Highway Authority Agreement as an institutional control.

g) In instances in which the highway authority is also the property owner of the site, a Highway Authority Agreement may not be used. In such cases, the highway authority shall instead enter into a Highway Authority Agreement Memorandum of Agreement (HAA MOA) between the highway authority and the Agency. An HAA MOA may be used as an institutional control where the requirements of this Section are met and the Agency has determined that no further remediation is required as to the property(ies) to which the agreement is to apply. HAA MOAs submitted to the Agency must match the form and contain the same substance, except for variable elements, as the model in Appendix E.

h) As part of the HAA MOA the highway authority shall agree to:

1) Prohibit the use of groundwater under the highway right of way that is contaminated above residential Tier 1 or construction worker remediation objectives, whichever are less, from the release as a potable supply of water; and

2) Limit access to soil contamination under the highway right of way that is contaminated above residential Tier 1 or construction worker remediation objectives, whichever are less, from the release. Access to soil contamination may be allowed if, during and after any access, public health and the environment are protected.

i) The HAA MOA shall provide the following:

1) Information identifying the site by common address or legal description or both;

2) The Illinois Emergency Management Agency's (IEMA) incident number for the site, if one has been assigned;

3) A scaled map delineating the current and estimated future area and extent of soil and groundwater contamination above the applicable Tier 1 or construction worker remediation objectives, whichever are less, or a statement that either soil or groundwater is not contaminated above the applicable Tier 1 residential remediation objectives;

4) Information prepared by the highway authority that lists each contaminant of concern that exceeds its Tier 1 residential or construction worker remediation objective, its Tier 1 residential remediation objective, and its concentrations within the zone where Tier 1 residential or construction worker remediation objectives, whichever is less, are exceeded;

5) A scaled map prepared by the highway authority showing the area of the highway authority's right of way that is governed by the HAA MOA;

6) If samples have not been collected within the right of way because of impracticability, a stipulation by the parties that, based on modeling, soil and groundwater contamination exceeding Tier 1 residential or construction worker remediation objectives, whichever is less, does not and will not extend beyond the boundaries of the right-of-way;

7) A stipulation by the highway authority that it has jurisdiction over the right of way that gives it sole control over the use of the groundwater and access to the soil located within or beneath the right of way;

8) A stipulation by the highway authority that it agrees to limit access by itself and others to soil within the right of way exceeding Tier 1 residential or construction worker remediation objectives, whichever is less. Access may only be allowed if human health (including worker safety) and the environment are protected during and after any access. The highway authority may construct, reconstruct, improve, repair, maintain, and operate a highway upon the right of way, or allow others to do the same by permit. The highway authority and others using or working in the right of way under permit have the right to remove soil or groundwater from the right of way and dispose of the same in accordance with applicable environmental laws and regulations. The highway authority agrees to issue all permits for work in the right of way, and make all existing permits for work in the right of way, subject to the following or substantially similar conditions:

A) As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the right of way where an HAA MOA governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742; and

B) The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil;

9) A stipulation that the HAA MOA shall be referenced in the Agency's no further remediation determination issued for the release(s);

10) A stipulation that the highway authority shall notify the Agency of any transfer of jurisdiction over the right of way at least 30 days prior to the date the transfer takes effect. The HAA MOA shall be null and void upon the transfer unless the transferee agrees to be bound by the agreement as if the transferee were an original party to the agreement. The transferee's agreement to be bound by the terms of the agreement shall be memorialized at the time of transfer as a rider to this agreement that references the HAA MOA and is signed by the highway authority, or subsequent transferor, and the transferee;

11) A stipulation that the HAA MOA will become effective on the date the Agency issues a no further remediation determination for the release(s). It shall remain effective until the right of way is demonstrated to be suitable for unrestricted use and the Agency issues a new no further remediation determination to reflect there is no longer a need for the HAA MOA, or until the agreement is otherwise terminated or voided;

12) A stipulation that in addition to any other remedies that may be available, the Agency may bring suit to enforce the terms of the HAA MOA or may, at its sole discretion, declare the HAA MOA null and void if the highway authority or a transferee violates any term of the HAA MOA. The highway authority or transferee shall be notified in writing of any such declaration; and

13) A fully executed signature block by the highway authority and a block for the Agency's Director.

(Source: Amended at 31 Ill. Reg. 4063, effective February 23, 2007)