

Chapter Twenty-Seven
ENVIRONMENTAL SURVEYS

BUREAU OF DESIGN AND ENVIRONMENT MANUAL

Chapter Twenty-Seven
ENVIRONMENTAL SURVEYS

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Chapter Twenty-seven

ENVIRONMENTAL SURVEYS

27-1 INTEGRATED SURVEY PROCESS FOR HIGHWAY PROJECTS

27-1.01 Background

Section 27-1 provides guidance on the Department's integrated process for determining the need for and, when necessary, accomplishing environmental surveys, studies, and the associated coordination for those highway projects with potential for adversely affecting sensitive environmental resources including:

- significant archaeological, historical, or architectural resources;
- threatened or endangered species;
- Illinois Natural Areas Inventory sites and Illinois dedicated Nature Preserves; and
- streams, wetlands, floodplains, and sole source aquifers.

27-1.02 Applicability

This guidance applies to all projects that would:

- involve acquisition of additional right-of-way or easements (temporary or permanent);
- require a drainage structure runaround or any in-stream work (i.e., any work or other activity within the stream banks that modifies or otherwise affects the stream bed or stream banks);
- potentially affect a recognized Illinois Natural Areas Inventory (INAI) site or Illinois dedicated Nature Preserve (NP), a wetland, or a location where a State- or Federal-listed species (T/E) is known to occur.
- potentially affect a historic district or historic property listed on the National Register of Historic Places (NRHP)
- involve replacement or rehabilitation of a bridge 50 years old or older; or
- occur within the project review area of a sole source aquifer

27-1.03 Procedures**27-1.03(a) Submittal of Environmental Survey Request**

The district will, as early as practical in the development of proposed projects, determine whether proposed projects or actions meet any of the applicability criteria in Section 27-1.02. To determine those situations where sensitive natural resources (e.g., T/E species, wetland or INAI/NP site) may be affected, districts should check GIS databases (i.e. Direct Impact Review Tool and IDNR's EcoCAT) for these resources in the project area. Nature Preserves Commission meeting minutes, provided by Bureau of Design and Environment (BDE), will provide any new INAI or Nature Preserve sites that have recently approved the IDNR but are not shown on the GIS program. To determine those situations where a sensitive cultural resource (NRHP listed historic districts and properties and high-probability zones for archaeological sites) may be affected, districts should check the GIS database hosted by the Illinois Historic Preservation Agency (IHPA) that can be viewed by the general public: Historic Architectural and Archaeology Resources Geographical Information System (HAARGIS).

For those proposed projects or actions that meet one or more of the above criteria, the district must prepare and submit an Environmental Survey Request (ESR). Some projects or actions that meet the criteria for preparation of an ESR may have limited potential for adverse environmental impacts. When this is the case, the district may request a BDE Environment Section Project Coordinator to make a preliminary determination, on a case-by-case basis, of whether or not the survey request, with all necessary exhibits, etc., must be submitted to BDE for further processing. When the BDE Project Coordinator makes a preliminary determination that submittal to the BDE is not necessary, the Project Coordinator will use the information on the ESR form to confer with the appropriate BDE specialists for verification of the determination. The Project Coordinator will then advise the district of the response from the BDE specialists.

The ESR forms to be used in conjunction with the procedures described herein are electronic documents. For all survey request submittals, use the electronic forms and associated instructions in effect at the time of the submittal.

The Environmental Survey Request (ESR) form may be accessed through the Project Monitoring Application (PMA) by district staff that has obtained rights to use the application. Page 2 of the ESR form is used for Special Waste Screening. Merging the ESR and Special Waste Screening forms has allowed for more accurate monitoring of overall environmental clearances for projects. Instructions for using these forms may be found under the "Help" menu in PMA. Consultants and Local Public Agencies should use the web version of the forms and instructions found at <http://apps.dot.illinois.gov/environment/envsvyrgst.asp>

27-1.03(b) Response to Environmental Survey Request**27-1.03(b)1 *Review of Natural Resources***

BDE will review ESRs to determine if the projects could have an adverse effect on a State- or Federal-listed T/E species, or a site listed on the INAI, which includes Natural Areas, dedicated Illinois Nature Preserves, and registered Land and Water Reserves.

BDE also will review ESRs for potential impacts to wetlands and other natural resource categories, including the following:

- streams;

Note: Coordination with the IDNR on streams is left to the discretion of the BDE Natural Resource Unit per BDE's memorandum to the Secretary dated October 29, 2010. Per the memorandum, the IDNR defers to the federal Clean Water Act and the Wild and Scenic Rivers Protection Act as measures to ensure protection of Illinois streams

- forests/trees,
 - + Alignment bisects or fragments a block of trees greater or equal to 20 acres
 - + New alignment on any stream segment
 - + Existing alignment in a riparian corridor
- prairie/savanna areas; and
- properties owned, leased, or managed by IDNR.

BDE will screen all ESRs against the Natural Heritage Database and also may task the Illinois Natural History Survey (INHS) to perform field surveys, as necessary to gather additional information on biological/natural resources.

No Adverse Effect

For projects that BDE determines will not involve adverse effects on State- or Federal-listed T/E species, INAI sites, wetlands, or any of the other natural resource categories listed above, BDE will provide the district a biological resource clearance for the project. The clearance will be valid for two years unless:

- new information becomes available that was not previously considered;
- the proposed project is modified; or
- additional species, essential habitat, Natural Areas, or wetlands are identified in the project area.

Adverse Effects

For all proposed projects that BDE determines may have an adverse effect on a T/E species, INAI site, or other natural resources as discussed above, BDE will submit the projects to the IDNR EcoCAT website. In response to the EcoCAT submittals, the IDNR Division of Ecosystems and Environment will review the information within 30 days of receipt and provide one of the following responses:

- terminate consultation because adverse effects are unlikely,
- request additional information and/or request a biological survey, or

- recommend methods to minimize potential adverse effects.

BDE will direct the INHS to conduct biological surveys when recommended by IDNR and provide copies of the survey results to IDNR. If surveys recommended by IDNR are not conducted, BDE will provide documentation to IDNR to support that decision.

BDE will evaluate ESR submittals for potential wetland impacts, in accordance with the *Interagency Wetland Policy Act of 1989* and the IDOT Wetlands Action Plan. The evaluation may include coordinating with the INHS to have field surveys performed for identifying, delineating, and classifying wetlands in the project area.

If BDE or IDNR identifies any T/E species, INAI sites, wetlands, or other natural resource categories (i.e., streams, forests/trees, prairie/savanna areas, or properties owned, leased or managed by IDNR) that may be adversely impacted by a proposed project, BDE will coordinate the information with the district for evaluation of alternatives for avoiding or minimizing adverse impacts to the identified resources.

If adverse effects to the resources cannot be avoided, BDE will evaluate whether any further studies of the resources are necessary. If further studies are required, BDE will advise the district and will initiate action to accomplish the studies, considering program priority and project scheduling.

Natural Resource Review (NRR)

After completing further studies, if necessary, BDE will submit a NRR to IDNR that describes the steps to be taken to avoid or minimize adverse impacts to the resources.

The IDNR Division of Ecosystems and Environment will review the NRR and coordinate with other IDNR staff to determine whether further analysis or recommendations are required. Within 90 days of receipt of the NRR, IDNR will provide one of the following responses:

- accept the conclusions/proposals contained in the NRR and terminate consultation,
- recommend that IDOT obtain an incidental take authorization if the proposed action may result in the “take” of an Illinois-listed animal species, or
- recommend additional measures to avoid or minimize adverse effects.

For projects determined to have potential resource involvements, BDE will provide information to the district regarding environmental study findings, results of coordination with outside agencies, and any recommendations for further coordination or actions by the district.

Biological Review Validation

Pursuant to Title 17 Part 1705 of the Illinois Administrative code, IDNR approval of the proposed project is valid for a period of two years. Districts are responsible for ensuring that a valid IDNR review response [i.e. a response that provides closure on applicable issues covered by the

IDOT/IDNR Memorandum of Understanding (See Appendix A)] is in effect prior to when the project is advertised for bid letting.

27-1.03(b)2 *Review of Cultural Resources*

BDE will review the information provided with each ESR to determine if field reconnaissance surveys or detailed studies are needed for identification or evaluation of cultural resources. BDE will consider a variety of factors in making this determination including but not limited to the project setting, results of previous field investigations, likelihood of prior ground disturbance, integrity, and likely age of potentially affected structures (buildings and bridge) based on photographs (photo log) submitted with the ESR.

If BDE determines additional studies are not warranted, it uses the information submitted with the ESR to make a preliminary assessment of whether there are potentially significant cultural resources in the area that the project potentially may affect. In evaluating buildings and bridges, BDE uses the photo log submitted with the ESR to make a preliminary determination of their eligibility for the NRHP. In certain cases, projects can be cleared for cultural resources by BDE provided the projects meet criteria outlined in the Programmatic Agreement for the Delegation of Authority from Minor Projects of the Federal Aid Highway Program. In other cases, BDE will coordinate its preliminary determinations with the Illinois Historic Preservation Agency (IHPA). If IHPA agrees with BDE's preliminary determination regarding whether the cultural resources are or are not eligible for the NRHP, BDE provides the information to the district.

If BDE determines reconnaissance surveys or other studies are warranted or if coordination with IHPA identifies a need for surveys or studies, through an Intergovernmental Agreement BDE will initiate arrangements with the Illinois State Archaeological Survey (ISAS) for archaeological surveys/testing, if needed, and with other qualified entities for surveys and/or studies regarding historic buildings and bridges. BDE will review the survey and/or study results and coordinate the information with IHPA. BDE then provides these results and the results of coordination with IHPA to the district.

The district considers the cultural resource information in further development of the project and, for archaeological sites and historical buildings and bridges eligible for NRHP, the district evaluates options for avoiding and minimizing the project's effects on the resources. When the district has determined the likely effects the project will have on the identified cultural resources, it provides written notification to BDE.

If adverse effects to the resources eligible for the NRHP cannot be avoided, BDE evaluates whether any further studies of the resources are necessary. If further studies are needed, BDE advises the district and will initiate action to accomplish the studies, considering program priority and project scheduling.

BDE will coordinate the results of any further studies and the determination of the project's anticipated impacts with IHPA. BDE provides information to the district regarding study findings, results of coordination with IHPA, and any recommendations for further coordination or actions by the district, as outlined in Chapter 26.

27-1.03(b)3 *Sole Source Aquifers*

The district shall screen for federally-funded projects that occur within the project review area of a sole source aquifer and coordinate these projects with BDE (See Section 26-22).

27-1.03(c) Environmental Survey Request Addenda

When providing the results of reconnaissance surveys conducted on a project, BDE will include information to indicate the extent of the area that was surveyed. Submittal of a survey request addendum will only be necessary when changes in the project will affect areas outside the limits of the surveyed areas or when a change in the scope of work for the project would invoke a different criterion in Section 27-1.02 than shown in the original survey request. If questions arise on the need for submitting addenda to survey requests for specific projects, contact the BDE Project Coordinator for the district involved.

The Addendum Environmental Survey Request (AESR) form may be accessed through PMA by IDOT staff that has obtained rights to use the application. Form instructions may be found under the "Help" menu in PMA. Consultants should use the web version of the form and instructions found at <http://apps.dot.illinois.gov/environment/envsrvyrgstaddm.asp>.

27-1.04 Application of Findings

The district will ensure that the results and recommendations it receives in response to the ESR are fully integrated into the development and implementation of the project or action. The documentation of the Phase I environmental investigations, associated coordination, and any commitments made will become part of the environmental information included in or with the Environmental Impact Statement, Environmental Assessment, or Phase I Engineering Report, as appropriate.

27-2 SURVEY PROCESS FOR CONTRACTOR-SUPPLIED BORROW, USE, AND WASTE SITES

27-2.01 Background

Article 107.22 of the *Standard Specifications for Road and Bridge Construction* requires contractors to seek the Department's approval of borrow, use and waste sites prior to their use in a construction project. The following procedures are intended to establish the appropriate amount of documentation for review and approval of such sites.

27-2.02 Applicability

The procedures that follow apply to contractor-proposed borrow, use, and waste sites located within the State of Illinois for all projects on which IDOT is the awarding authority.

27-2.03 Procedures

27-2.03(a) Definitions

1. BDE 2289. "Cultural & Natural Resources Review of Borrow Areas" Form (BDE 2289) including map(s) and necessary drawings indicating the exact location of the proposed site and ground level photographs. This form includes the Landowner Agreement, which must be filled out and signed by appropriate owner(s).
2. BDE 2290. "Waste/Use Area Review" Form (BDE 2290), including necessary maps and drawings. This form includes the Landowner Agreement, which must be filled out and signed by appropriate owner(s).
3. Borrow Site. A borrow site includes any source of items paid as Borrow Excavation or Furnished Excavation, as well as any source of excavated materials not paid for separately, but included in the costs of other items of work as necessary to complete the work as specified in the contract.
4. Contractor Letter. A signed letter on the contractor's letterhead indicating intended use of the proposed site.
5. IEPA Permit or List. For sites accepting Clean Construction and Demolition Debris (CCDD) under an Illinois Environmental Protection Agency (IEPA) Interim Authorization list or IEPA CCDD Fill Operation Permit and commercial landfills permitted to accept anticipated materials, the site must be on the IEPA approved CCDD or Solid Waste sites lists or possess the appropriate permit prior to its use.
6. Quarry/Mines. Quarry or mines include current and former mines and quarries operating in accordance with the Illinois Environmental Protection Act (ACT).
7. Use Site. A use site is any disturbed location outside of the limits of construction where the contractor intends to receive, stage, or temporarily store material, equipment, or

personnel necessary for the satisfactory completion of the project or subsequent disposition at another location

8. Waste Site. A waste site is any location where excess material from the project is taken without the expressed intent of returning the material either to the project from where it was generated, or to the economic mainstream (recycled). As used by the Department, the term "waste area" is not the same as "waste" defined by the Illinois Environmental Protection Act (415ILCS 5/).

27-2.03(b) Contractor's Site Request

The contractor's site request for borrow, use and waste sites will be submitted to the Resident Engineer/Technician (Resident) who will then forward it to the District environmental staff. The request shall include sufficient documentation for the Department to determine if the site can be approved for the intended use.

If a site has been previously approved by the Department, the request shall include documentation indicating the previous use, limits and approvals.

See Figure 27-2.A for a list of required documentation.

27-2.03(c) Biological and Cultural Clearance Process

1. New borrow sites and new use sites where the depth of disturbance is > six inches

These sites must be cleared by BDE for biological and cultural resource impacts prior to initiating activities at the site. The district should ensure the contractor's site request is complete before forwarding the request to BDE who will then conduct a review and respond back to the district. The district environmental staff will be responsible for preparing a written response notifying the Resident of the results of the review (see *Site Response Letter*).

2. New waste sites, new use sites where the depth of disturbance is ≤ six inches, previously cleared borrow, waste, and use sites, and recycling and permitted facilities

New waste sites and new use sites where the depth of disturbance is ≤ six inches must be cleared by the district for biological resources (i.e. T/E species, wetlands and floodplains) prior to initiating activities at the site. The contractor's site request will be reviewed by the district environmental staff who will also prepare a written response notifying the Resident of the results of the review (see *Site Response Letter*).

For previously cleared borrow, waste, and use sites, the district may determine that further Biological and Cultural reviews are not required where it is documented that the contractor will restrict activities to areas that were previously cleared for such use and it can be documented that the contingencies of the previous approval continue to be met and the biological review is still valid (i.e. the review has been completed in the last two years).

Biological resource clearances for borrow, use and waste sites are valid for two years per the approved Memorandum of Understanding (MOU) between IDOT and IDNR. Sites (except permitted facilities and commercial operations) in use more than two years must be re-evaluated for T/E species, wetlands and floodplains. The Resident is responsible for notifying District staff if a borrow, waste or use site has been in use for more than two years.

For the following types of sites, a Biological and Cultural review is not required:

- currently permitted CCDD facilities
- currently permitted commercial land fill operations
- commercial operations intended to return excess material to the economic mainstream such as recycling facilities

3. Close-out photos

Close-out photos of waste/use sites should be sent to the District. Close-out photos of borrow and discussed use sites are not needed.

4. Site response letter

The district will give written notice to the Resident if the site has been approved, further studies are needed, or the site has been rejected. The Resident will be responsible for ensuring the written notice is forwarded to the contractor.

For borrow, waste or use sites involving sensitive biological and/or cultural resources, the initiation of further studies beyond the initial district or BDE screening will be contingent upon receiving a commitment from the contractor to pay for the further studies. If the contractor agrees to pursue further studies, the contractor will be notified by the district of the cost and the results of the further studies when completed. A determination will be made using the information gained from the further studies regarding the suitability of the site for the contractor's proposed action.

A site approval letter will be sent to the Resident by the district if the district environmental staff or BDE determine sensitive resources will not be harmed by the contractor's proposed activities. BDE will make its determination for sites discussed in #1 above and the district will make its determination for sites discussed in #2 above. The site will be rejected if sensitive resources will be harmed by the contractor's proposed activities. The district is responsible for retaining information concerning site review on file.

	Documentation					Review Authority		Required Reviews			
	Contractor's Letter	IEPA Permit or List	BDE 2289	BDE 2290	Landowner Agreement	BDE	District	T & E Species	Cultural	Wetlands	Floodplains
New Borrow or Furnished Excavation Sites	X		X		X	X		X	X	X	X
New Waste Sites	X			X	X		X	X		X	X
Permitted Disposal Sites											
Quarry or Mine	X	X					X				
Commercial Landfill	X	X					X				
New Use Sites											
Disturbing less than 6" (150 mm)				X	X		X	X		X	X
Disturbing more than 6" (150 mm)			X		X	X		X	X	X	X
Sites intended to return materials to the economic mainstream	X						X				
Previously Cleared Sites	X						X				

**CONTRACTOR PROPOSED BORROW, USE, AND WASTE
AREA SITE REVIEW AND CLEARANCE**

Figure 27-2.A

27-3 SPECIAL WASTE PROCEDURES

The procedures in Section 27-3 are applicable to all State highway projects, local projects on State right-of-way or acquiring right-of-way in the name of the State, and transportation projects, such as IDOT Bureau of Railroad projects and IDOT Division of Aeronautics projects, affecting state right-of-way or roads under state jurisdiction. This section is designed to supplement Departmental Policy D&E-11, "Identifying and Responding to Regulated Substances in Highway Project Development", dated March 1, 2001.

27-3.01 Definitions

1. Adjoining Property. Any property or properties of which the border is contiguous with that of the subject property (project limits), or that would be contiguous with that of the property but for a street, road, or other public thoroughfare separating them.
2. Agriculture Property. Any real property for which the present or post-remediation use is growing agricultural crops for food or feed, either as harvested crops, cover crops, or as pasture. This definition includes but is not limited to, properties used for confinement or grazing of livestock or poultry and for forestry operations. Excluded from this definition are farm residences, farm outbuildings, and agrochemical facilities.
3. All Appropriate Inquiries (AAI). AAI refers to the requirements for assessing the environmental conditions of a property prior to its acquisition. The US Environmental Protection Agency (EPA) published a final rule setting Federal standards for the conduct of AAI. The final rule became effective November 1, 2006. As of November 1, 2006, parties must comply with the requirements of the AAI Final Rule or follow the standards set forth in the American Society for Testing and Materials (ASTM) E1527 Phase I Environmental Site Assessment Process, to satisfy the statutory requirements for conducting AAI. AAI must be conducted in compliance with either of these standards to obtain protection from potential liability under the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA) as an innocent landowner, a contiguous property owner, or a bona fide prospective purchaser.
4. Area Background. Area background refers to concentrations of regulated substances that are consistently present in the environment in the vicinity of a site and are the result of natural conditions or human activities, and not the result solely of releases at the site. (415 ILCS 5/58.2)
5. Bona Fide Prospective Purchaser. The 2002 Brownfield Amendments to the Superfund Law (CERCLA) provide a Superfund liability defense for property owners who qualify as "Bona Fide Prospective Purchasers (BFPP)" of known contaminated property, as long as the property transaction occurred after January 11, 2002. If able to obtain BFPP status, EPA's recourse for unrecovered response cost is limited to a lien on property for the lesser of the unrecovered response costs or increase in fair market value attributable to EPA's response action. A BFPP may purchase property with knowledge of contamination after performing AAI, provided the property owner meets or complies with all of the other statutory requirements set forth in CERCLA Section 101(40).

6. CERCLA. CERCLA stands for the *Comprehensive Environmental Response, Compensation, and Liability Act*.
7. Conservation Property. Any real property for which the present or post-remediation use is primarily for wildlife habitat.
8. Contaminant of Concern. see Regulated Substance of Concern
9. Contamination. The presence of any regulated substance on the land or in the waters of the State in quantities that are, or may be, harmful or injurious to human health or welfare, or animal or plant life.
10. Contiguous Property Owner. The 2002 Brownfield Amendments to the Superfund Law (CERCLA) provide a Superfund liability defense for property owners who qualify as a "Contiguous Property Owner" and excludes from the definition of "owner" or "operator" under CERCLA Section 107(a)(1) and (2) a person who owns property that is "contiguous to, or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from" property owned by someone else. To qualify as a contiguous property owner, a landowner must have no knowledge or reason to know the contamination at the time of acquisition, have conducted AAI, and meet all of the criteria set forth in CERCLA Section 107(q)(1)(A).
11. Design Approval. An environmental approval by the department and the FHWA of the design recommended as a result of a Phase I design study and a design public hearing. Phase I design approval is a necessary step for a project to move to Phase II.
12. Engineered Barrier. A barrier designed or verified using engineering practices that limits exposure to or controls migration of the contaminants of concern.
13. Excavation. For the purposes of this chapter, excavation is the digging or grading of any soil or fill material, including underground utility works such as installation of fiber optic cabling, with the exception of aggregate fills which are not considered a soil or fill material of concern. The following types of maintenance projects are not considered excavation when the excavated material is left on, or incorporated within, the IDOT ROW for that project:
 - bridge maintenance
 - ditch cleaning
 - working within the subbase or pavement
 - removal and replacement of shoulders, curb and gutter, or sidewalk ramps
14. Exposure Route. The transportation mechanism whereby a contaminant of concern reaches or may reach a receptor.
15. Hazard. A set of inherent properties known to be dangerous to the environment.

16. Hazardous Substance. Hazardous substance means:
- any substance designated pursuant to Section 311(b)(2)(A) of the *Federal Water Pollution Control Act* (P.L. 92-500), as amended;
 - any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the *Comprehensive Environmental Response, Compensation, and Liability Act* of 1980 (P.L. 96-510), as amended;
 - any hazardous waste;
 - any toxic pollutant listed under Section 307(a) of the *Federal Water Pollution Control Act* (P.L. 92-500), as amended;
 - any hazardous air pollutant listed under Section 112 of the *Clean Air Act* (P.L. 95-95), as amended; and
 - any imminently hazardous chemical substance or mixture with respect to which the Administrator of the EPA has taken action pursuant to Section 7 of the *Toxic Substances Control Act* (P.L. 94-469), as amended.

The term does not include petroleum, including crude oil or any fraction thereof, that is not otherwise specifically listed or designated as a hazardous substance under the criteria described above, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas. (415 ILCS 5/3.215)

17. Hazardous Waste. A waste, or combination of wastes, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and has been identified by characteristics or listing, as hazardous pursuant to Section 3001 of the *Resource Conservation and Recovery Act* of 1976 (415 ILCS 5/22.4) or pursuant to the Pollution Control Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the *Resource Conservation and Recovery Act* of 1976 (415 ILCS 5/22.4) or pursuant to Board regulations. (415 ILCS 5/3.220)
18. Industrial/Commercial Property. Any real property not meeting the definition of residential property, conservation property, or agriculture property. For the purposes of special waste screening, the term also includes real property used historically or previously for industrial, commercial, or retail purposes.
19. Industrial Process Waste. Any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service. Any such waste that would pose a present or potential threat to human health or the environment or with inherent properties that make the disposal of such waste in a landfill

difficult to manage by normal means is an industrial process waste. Industrial process waste includes, but is not limited to:

- spent pickling liquors,
- cutting oils,
- chemical catalysts,
- distillation bottoms,
- etching acids,
- equipment cleanings,
- paint sludge,
- incinerator ashes (including but not limited to ash resulting from the incineration of potentially infectious medical waste),
- core sands,
- metallic dust sweepings,
- asbestos dust, and
- off-specification, contaminated, or recalled wholesale or retail products.

Specifically excluded are:

- uncontaminated packaging materials,
- uncontaminated machinery components,
- general household waste,
- landscape waste, and
- construction or demolition debris. (415 ILCS 5/3.235)

20. Innocent Landowner. The 1986 *Superfund Amendments and Reauthorization Act* (SARA) provides a Superfund liability defense for property owners who qualify as an "Innocent Landowner". To qualify, the landowner must show "that they did not know and had no reason to know" that prior to the purchase of a property there was a release or threatened release of any hazardous substances. To qualify as an innocent landowner, a person must conduct AAI and meet all of the statutory requirements.
21. Institutional Control. A legal mechanism for imposing a restriction on land use.
22. Leaking Underground Storage Tank (LUST). An underground storage tank where the contents have leaked into the environment.
23. Municipal Waste. Garbage, general household and commercial waste, industrial lunchroom or office waste, landscape waste, and construction or demolition debris.
24. No Further Remediation (NFR) Letter. A letter issued by the IEPA acknowledging that a person is released from further responsibility under the *Illinois Environmental Protection Act* at a site. An NFR letter may have conditions attached to it, including institutional controls.
25. Non-Hazardous Special Waste. Special waste found not to be hazardous (e.g., industrial process waste, pollution control waste).

26. PESA Response form. A form in PMA completed by the district Special Waste Coordinator (SWC) indicating the district's desired response to the PESA.
27. PESA Response / Work Order form. A form in PMA completed by the district Special Waste Coordinator (SWC) indicating the district's desire to complete a Preliminary Site Investigation (PSI).
28. Pollution Control Waste. Any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water, or land, and poses a present or potential threat to human health or to the environment or with inherent properties that make the disposal of such waste in a landfill difficult to manage by normal means. Pollution control waste includes, but is not limited to, water and wastewater treatment plant sludge, bag house dusts, landfill waste, scrubber sludge, and chemical spill cleanings. (415 ILCS 5/3.335)
29. Preliminary Environmental Site Assessment (PESA). A detailed evaluation of available records dealing with site history, including site reconnaissance to visually inspect and investigate conditions.
30. Preliminary Site Investigation (PSI). A preliminary investigation of the site, including sampling, testing, and analysis of soil or groundwater, as necessary, and an estimate of the cost of cleanup by parcel, if possible, for the Department's project.
31. Project Monitoring Application (PMA). The electronic database used by BDE to manage Environmental Survey Requests (ESR). Each project in PMA is assigned a unique BDE sequence number and is also referenced to a construction job number and contract number when available. The database is accessible to designated IDOT Central Office personnel and district environmental personnel.
32. Property. The buildings, fixtures, and improvements within existing or proposed right-of-way that are subject to the site reconnaissance.
33. Property Owner. The individual or legal entity holding the fee title to a parcel or parcels that the Department is seeking to acquire or from whom the Department has acquired title. In the case of multiple individuals or entities jointly holding title, the term will apply to all holders collectively.
34. Recognized Environmental Condition (REC). The presence or likely presence of any regulated substances on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any regulated substances into structures on the property or into the ground, groundwater, or surface water of the property. The term includes regulated substances even under conditions in compliance with laws. The term is not intended to include *de minimis* conditions that generally do not present a material risk of harm to public health or the environment, and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.

35. Regulated Substances. Any hazardous substances as defined under Section 101(14) of the *Comprehensive, Environmental Response, Compensation, and Liability Act* of 1980 (PL 96-510) and petroleum products including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures or natural gas and such synthetic gas. (415 ILCS 5/58.2)
36. Regulated Substance of Concern. Any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the person conducting remediation based upon reasonable inquiry (415 ILCS 5/58.2).
37. Remedial Investigation/Feasibility Study (RI/FS). An investigation/study to assess site conditions and evaluate alternatives to the extent necessary to select a remedy. The RI is designed to assess the nature and extent of releases of regulated substances and determine those areas of a site where releases have created damage or the threat of damage to public health or the environment. The FS develops a range of remedies for the site, taking into account the findings of the RI.
38. Remedial Action. Action consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a regulated substance into the environment to prevent or minimize the release of regulated substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes off-site transport of regulated substances, or the storage, treatment, destruction, or secure disposition off-site of such regulated substances or contaminated material.
39. Removal. The cleanup or removal of released regulated substances from the environment. It includes:
- actions that may be necessary in the event of the threat of release of regulated substances into the environment;
 - actions that may be necessary to monitor, assess, and evaluate the release or threat of release of regulated substances;
 - the disposal of removed material; and
 - other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, that may otherwise result from a release or threat of release.
40. Residential Property. Any real property used for habitation by individuals, or where children have the opportunity for exposure to contaminants through soil ingestion or inhalation at educational facilities, health care facilities, childcare facilities, or outdoor recreational areas.
41. Resource Conservation and Recovery Act (RCRA). This *Act* governs the management of hazardous wastes. The process for identifying a hazardous waste involves many steps. There is no single, comprehensive list of hazardous wastes that is regularly updated. To be considered a hazardous waste, a material first must be classified as a solid waste (40 CFR 261.2 "Definition of Solid Waste"). EPA defines solid waste as

- garbage, refuse, sludge, or other discarded material (including solids, semisolids, liquids and contained gaseous materials). If a waste is considered solid waste, it must then be evaluated to determine if it is a hazardous waste (40 CFR 262.11 "Hazardous Waste Determination"). EPA defines wastes as hazardous if they are specifically named on one of four lists of hazardous wastes included in Subpart D of 40 CFR 261 "Lists of Hazardous Wastes" (see 40 CFR 261.30 through 261.35) or if they exhibit any of the four characteristics discussed in Subpart C of 40 CFR 261 "Characteristics of Hazardous Waste" (see 40 CFR 261.20 through 261.24).
42. Right-of-Way (ROW). Land, or interests therein, acquired for or devoted to highways, waterways, railroads, bicycle paths, and other public or private transportation purposes.
 43. Risk Assessment. A determination of the kind and degree of hazard posed by hazardous and non-hazardous special wastes, the extent to which a particular group of people has been or may be exposed to the contamination and the health risk that exists due to the contamination.
 44. Risk Managed Project (RMP). A project that impacts a property with a REC for which a PSI is not conducted. BDE will provide the district with a special provision for monitoring and/or managing potentially any contaminated soil and/or groundwater that is expected to be encountered during construction.
 45. Site. Any single location, place, tract of land or parcel of property, or portion thereof, including contiguous property separated by a public or private right-of-way. (415 ILCS 5/58.2)
 46. Site Reconnaissance. A visit to the project site and adjoining properties during which observations are made. The objective of site reconnaissance is to obtain information indicating the possible presence of environmental conditions within the minimum search distances listed in Figure 27-3.B. Environmental conditions include situations that may negatively affect the property including the presence of, for example, illegal dumping, unknown containers and vessels, waste associated with 'crack' and methamphetamine houses (e.g. discarded hazardous material on the outside of a property), battery piles, paint spills, abandoned transformers, surface staining, and vegetative damage. This level of inspection generally does not require the investigator to enter onto a property and may be done from the existing ROW. During the site reconnaissance, observations are documented and photographic evidence is obtained to assist in completing the Environmental Survey Request (ESR).
 47. Special Provision for the Removal and Disposal of Regulated Substances. A special provision written by the Geologic and Waste Assessment Unit within BDE and issued to the district for inclusion in the contract documents. In the case of a RMP, the special provision requires the contractor to hire an environmental firm for monitoring a specified area for soil and groundwater contamination and worker protection. In the case of a project where a PSI was conducted, the special provision would require the contractor to hire an environmental firm for monitoring specified areas for soil and groundwater

contamination and worker protection and management of the affected area for off-site disposal as either a hazardous or non-hazardous special waste.

48. Special Waste. Special waste means any of the following:

- a. potentially infectious medical waste;
- b. hazardous waste, as determined in conformance with RCRA hazardous waste determination requirements set forth in 35 Ill. Admin. Code 722.111, including a residue from burning or processing hazardous waste in a boiler or industrial furnace unless the residue has been tested in accordance with 35 Ill. Admin. Code 726.212 and proven to be non-hazardous;
- c. industrial process waste or pollution control waste, except:
 - any such waste certified by its generator, pursuant to Section 22.48 of the *Illinois Environmental Protection Act*, not to be any of the following:
 - + a liquid, as determined using the paint filter test set forth in subdivision (3)(A) of subsection (m) of 35 Ill. Admin. Code 811.107;
 - + regulated asbestos-containing waste materials, as defined in 40 CFR 61.141, under the National Emission Standards for Hazardous Air Pollutants;
 - + polychlorinated biphenyls (PCBs) regulated pursuant to 40 CFR 761;
 - + an industrial process waste or pollution control waste subject to the waste analysis and recordkeeping requirements of 35 Ill. Admin. Code 728.107 under the land disposal restrictions of 35 Ill. Admin. Code 728; and
 - + a waste material generated by processing recyclable metals by shredding and required to be managed as a special waste under Section 22.29 of the *Illinois Environmental Protection Act*.
 - any empty portable device or container, including but not limited to a drum where a special waste has been stored, transported, treated, disposed of, or otherwise handled, provided that the generator has certified that the device or container is empty and does not contain a liquid, as determined using the paint filter test set forth in subdivision (3)(A) of subsection (m) of 35 Ill. Admin. Code 811.107. For purposes of this definition, "empty portable device or container" means a device or container where removal of special waste, except for a residue not to exceed one inch (25 mm) in thickness, has been accomplished by a practice commonly employed to remove materials of that type. An inner

liner used to prevent contact between the special waste and the container shall be removed and managed as a special waste; or

- as may otherwise be determined under Section 2.9 of the *Illinois Environmental Protection Act*.

Special waste does not mean fluorescent and high-intensity discharge lamps as defined in subsection (a) of Section 22.23a of the *Illinois Environmental Protection Act*, waste that is managed in accordance with the universal waste requirements set forth in Title 35 of the *Illinois Administrative Code*, Subtitle G, Chapter I, Subchapter c, Part 733, or waste that is subject to rules adopted pursuant to subsection (c)(2) of Section 22.23a of the *Illinois Environmental Protection Act*. (415 ILCS 5/3.475)

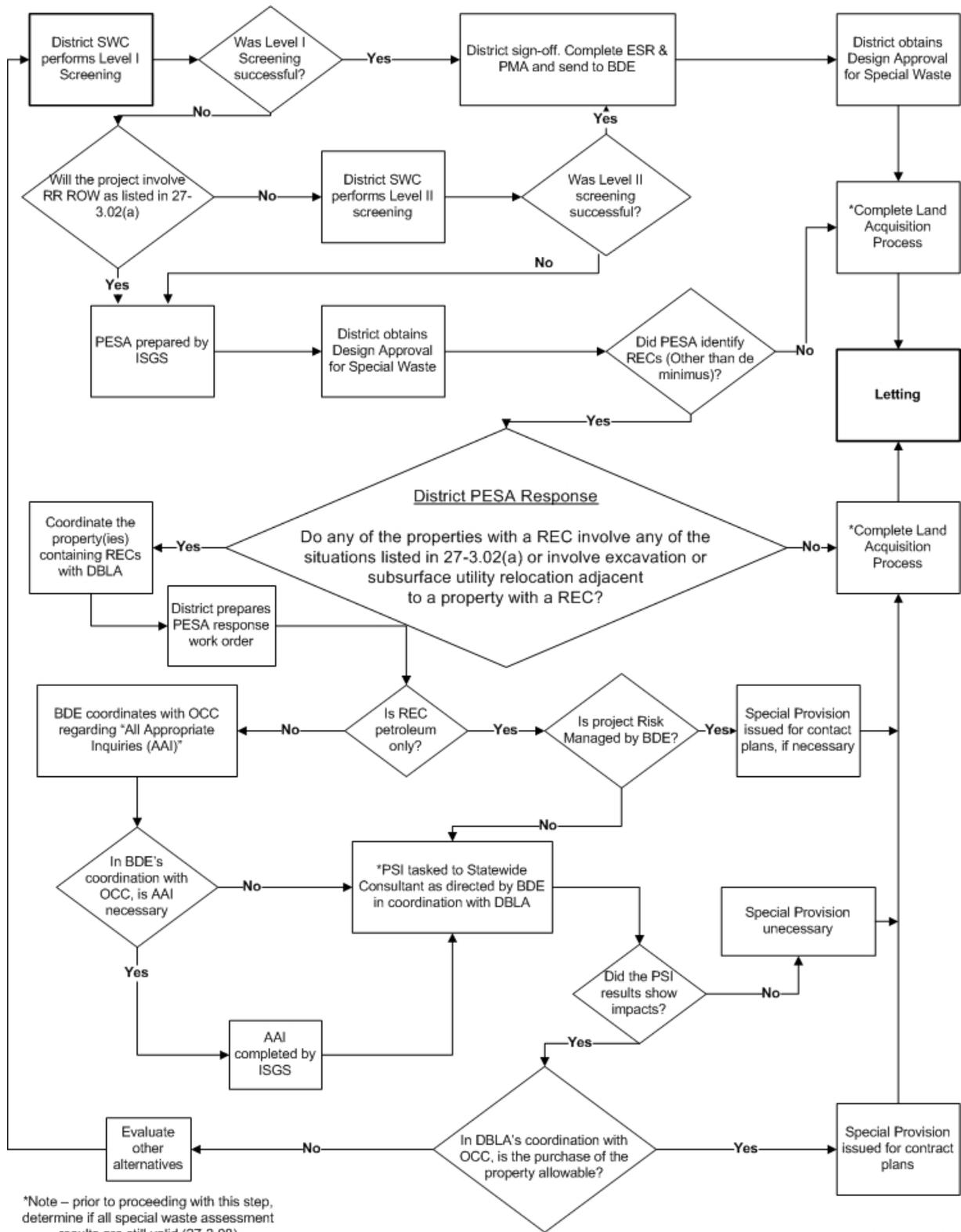
49. Special Waste Coordinator (SWC). The district person primarily responsible for screening projects for the possible presence of waste using the processes described in this chapter. The individual is additionally responsible for coordinating and preparing the Environmental Survey Request (ESR) for DOH projects and local projects involving state right of way or when project plans are prepared by IDOT for the Local Public Agency. Screening of projects for special waste should be conducted by those with environmental experience and expertise, typically the District Environmental Coordinator.
50. Survey Target Date. The date established by the district by which the completed survey report (e.g., the PESA) is desired. This target date is used by BDE for internal scheduling purposes for all the requested environmental surveys and does not necessarily represent the completion date of the respective survey(s). The size, length, and complexity of the proposed project, along with seasonal field conditions and minimum timing required by policy, should be considered when establishing the date.
51. Tiered Approach to Corrective Action Objectives (TACO). A method for developing remediation objectives for contaminated soil and groundwater in accordance with 35 Ill. Adm. Code 742. These remediation objectives protect human health and take into account site conditions and land use. Remediation objectives generated by TACO are risk based and site specific, and can be based on area background, the use of engineered barriers, and elimination of exposure routes.
52. Underground Storage Tank (UST). Any single tank or combination of tanks (including underground pipes connected to the tank(s)) used to contain an accumulation of regulated substances, and that has 10% or more of its volume (including the volume of associated underground pipes) beneath the surface of the ground. The term does not include any of the following facilities or associated pipes:
 - a. farm or residential tank with a capacity of 1100 gallons or less, used for storing motor fuel for noncommercial purposes;
 - b. septic tank;

- c. pipeline facility (including gathering lines) regulated under the *Natural Gas Pipeline Safety Act* of 1968 or the *Hazardous Liquid Pipeline Safety Act* of 1979 (both codified in 49 USC 60101, et seq.), or that is an intrastate pipeline facility regulated under State laws as provided in either of the aforementioned statutes, and that is determined by the Secretary of Energy to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
- d. surface impoundment, pit, pond, or lagoon;
- e. storm water or waste water collection system;
- f. flow-through process tank;
- g. liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- h. storage tank situated in an underground area (e.g., basement, cellar, mine working, drift, shaft, tunnel) if the storage tank is situated upon or above the surface of the floor.

The term also means an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and that serves other than a farm or residential unit (415 ILCS 5/57.2).

27-3.02 Special Waste Screening

Taking title (or lesser interest) to property containing special waste, or moving contaminated soil off-site, exposes the Department to potential liability for associated investigation and cleanup costs. To limit liability, projects must be screened/assessed for special waste or other regulated substances as described in the following sections and as flowcharted in Figure 27-3.A. Successfully following the screening process and documenting the results limit the Department's potential environmental liability and demonstrates adherence to Departmental Policy D&E-11, "Identifying and Responding to Regulated Substances in Highway Project Development", dated March 1, 2001. The D&E-11 policy states, among other items, that "Due care shall be exercised to determine whether regulated substances may be present on or located adjacent to property being considered for use for State highway project purposes. Acquisition of an interest in a site determined to contain regulated substances shall be avoided unless the risks and liabilities of such acquisition can be justified."



SPECIAL WASTE ASSESSMENT PROCESS

FIGURE 27-3.A

27-3.02(a) Level I Screening

The district Special Waste Coordinator (SWC) shall screen projects to determine if special waste investigations are necessary. That is, the SWC may sign-off the project and not undertake further action to identify and assess special wastes or other regulated substance contamination if the project does not:

1. involve acquisition of additional right-of-way or easements (temporary or permanent);
2. cross or otherwise involve a railroad's right-of-way other than a single rail rural right-of-way with no maintenance facilities; or
3. involve excavation (see definition of excavation) or subsurface utility relocation.

The SWC conducting the screening shall complete the applicable portion of the ESR form, sign and date the form, and send an electronic (or paper copy) of the signed and dated form to BDE. The district shall ensure the form is retained in the project file and included in the environmental documentation for the project to support the finding that further investigations are not warranted.

27-3.02(b) Level II Screening

Projects that don't pass Level I screening due to situations #1 and #3 above should be further screened by the SWC to determine if a PESA will be necessary or if the project is still eligible for a district sign-off. Projects that involve situation #2 above are ineligible for district sign-off and must go through the PESA process.

To be eligible for sign-off, the following must be met:

1. there are no conditions or database occurrence within the minimum search distances shown in Figure 27-3.B;
2. a site reconnaissance was conducted and no concerns were identified, and;
3. the ESR form was thoroughly completed and processed through BDE.

	Environmental Condition	Minimum Search Distance (miles)	Database
1	Industrial / commercial property	0.25	Identified during Site Reconnaissance
2	State UST	Property & Adjoining Property	The Office of State Fire Marshall UST database http://webapps.sfm.illinois.gov/ustsearch/
3	State LUST	0.5	IEPA Bureau of Land, LUST Incident Tracking database http://epadata.epa.state.il.us/land/ust/
4	State Voluntary Cleanup	0.5	IEPA Bureau of Land, Site Remediation Program database (includes Voluntary Cleanup sites) http://epadata.epa.state.il.us/land/srp/
5	State Brownfield	0.5	IEPA Bureau of Land, Office of Brownfields database http://epadata.epa.state.il.us/land/brownfields/
6	State Landfills	0.5	IEPA Bureau of Land Inventory database (landfills are included but not flagged separately) http://epadata.epa.state.il.us/land/inventory/
7	Federal NPL site	1.0	U.S. EPA CERCLIS database (includes NPL, Active, and Delisted sites) http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm
8	Federal NPL site - Delisted	0.5	
9	Federal CERCLIS site	0.5	
10	Federal CERCLIS – NFRAP site	0.5	
11	Federal RCRA CORRACTS facilities list	1.0	U.S. EPA RCRA database (includes CORRACTS, TSD RCRA, and other RCRA) http://www.epa.gov/enviro/html/rcris/rcris_query_java.html
12	Federal RCRA non-CORRACTS TSD facilities list	0.5	
13	Federal RCRA generators list	Property & Adjoining Property	
14	Federal Brownfield sites	0.5	U.S. EPA Federal Brownfields & Land Revitalization database http://www.epa.gov/swerosps/bf/plocat.htm#region5
15	Federal ERNS System	Property	The Right-To-Know Network, Spills and Accidents database http://www.rtknet.org/db/erns (covers the years 1982-2008) http://www.nrc.uscg.mil/foia.html (U.S. Coast Guard, National Response Center, covers the years 1990-Present)

ENVIRONMENTAL CONDITIONS AND MINIMUM SEARCH DISTANCE TABLE

FIGURE 27-3.B

Acronyms

- CERCLA = Comprehensive Environmental Response, Compensation and Liability Act
- CERCLIS = Comprehensive Environmental Response, Compensation, and Liability Information System
- CORRACTS = Corrective Action Activity
- ERNS = Emergency Response Notification System
- LUST = Leaking Underground Storage Tank
- NFRAP = No Further Remediation Action Planned
- Non-CORRACTS = Non-Corrective Action Activity
- NPL = National Priorities List.
- RCRA = Resource Conservation and Recovery Act
- RCRIS = Resource Conservation and Recovery Information System
- TSD = Treatment Storage & Disposal
- UST = Underground Storage Tank

ENVIRONMENTAL CONDITIONS AND MINIMUM SEARCH DISTANCE TABLE**FIGURE 27-3.B
(Continued)**

For purposes of the screening process, the project and project area shall include the area encompassing the current right of way or easements (temporary or permanent) plus the outer most limits of the proposed right of way or easements. Furthermore, the minimum search distance when conducting the screening is measured from the outermost edges of the project area.

For successful screens, the SWC shall complete the entire ESR Form, sign and date the form, and send an electronic (or paper) copy to BDE. After receipt of the ESR by BDE, the design approval clearance date can be entered into PMA. The district shall ensure the form is retained in the project file and included in the environmental documentation for the project to support the finding that further investigations were not warranted.

If Level II screening leads to a determination that further assessment of the project for special wastes or other regulated substance contamination is required, a PESA shall be requested by the district.

Note: For projects involving new right-of-way or easements (temporary or permanent), the district shall coordinate the screening of the project with the district's Bureau of Land Acquisition (DBLA). Early coordination with DBLA in the screening process allows for input on the acquisition of parcels with potential for special waste.

27-3.03 Preliminary Environmental Site Assessment

27-3.03(a) PESA Requested Through BDE

To request a PESA, the SWC completes the ESR Form in PMA and forwards it to BDE along with plan sheets, a location map, and other pertinent project details. BDE then tasks the Illinois State Geological Survey (ISGS) with completion of a PESA using information provided in the ESR and associated supporting documents. Districts with more than one PESA under way should advise BDE of their priorities.

It is critical for efficient execution of the PESA for the district to carefully choose a Survey Target Date considering project complexity, seasonal field conditions, and the minimum time frame for completion of the PESA stated in this section.

After receiving a PESA tasking from BDE, ISGS will review file information and conduct appropriate investigations to determine if recognized environmental conditions exist or assess the potential of the project area for involving other natural hazards and concerns. The target¹ for completion of the PESA report for most projects will be within six months from the date ISGS receives the survey request. The target¹ for completion of the PESA report for spot projects, considered to be a single parcel, will generally be within three months from the date ISGS receives the survey request.

ISGS will send the final report to BDE and BDE will forward the report to the district, to IEPA, and to the Office of State Fire Marshal, as appropriate. The transmittal memorandum from BDE will specify conditions for complying with Departmental Policy D&E-11, "Identifying and Responding to Regulated Substances in Highway Project Development".

27-3.03(b) PESA Findings

The following will apply:

1. No "Recognized Environmental Condition" (REC) Finding. If the PESA report indicates that the property(ies) investigated within the project limits have no RECs (other than de minimis), the district shall document this finding in the environmental documentation for the project. The documentation should be a copy of the memorandum from BDE transmitting the PESA report. The PESA report should not be included. The district need not take any further action regarding property(ies) that do not contain any REC unless a re-evaluation for special wastes becomes necessary (see Section 27-3.08) or a previously unidentified property is encountered. If such a property is encountered, work

¹ *The target time frames are the anticipated minimums. Actual times may be greater. Factors contributing to longer time frames could include size, length and complexity of the project, the number and complexity of other project studies in progress, and the number of calls for emergency investigations, which compete for the attention of the special waste survey staff. For larger or more complex projects, ISGS will inform BDE of the estimated target time for the final report when it receives the survey request.*

affecting the property should immediately cease until the district, in consultation with BDE, the Central Bureau of Construction, and the Office of Chief Counsel, has assessed the situation and determined an appropriate course of action.

2. “Recognized Environmental Condition” (REC) Finding. If the PESA results determine the property(ies) investigated within the project limits have a REC, BDE will consult with the Office of Chief Counsel in developing conditions for non-routine situations. BDE will forward the property(ies) with a REC to the district Bureau of Program Development/Environmental Unit and will send a copy of the correspondence to the district Land Acquisition Engineer, the Central Bureau of Land Acquisition, BDE Project Development and Implementation Section, and the Office of Chief Counsel.

The district shall submit to BDE a PESA Response indicating the project will avoid the property(ies) with a REC or the project will not avoid the property(ies) with a REC.

- a. Avoidance Possible. If the district determines the project can avoid the purchase of additional right-of-way/easement from any property containing a REC and any excavation or subsurface utility relocation adjacent to property containing a REC, it shall indicate this on the PESA Response form and send it to BDE. The district also shall provide a copy of the completed PESA Response form to the Central Bureau of Land Acquisition. The district shall retain a copy of the PESA Response form in the project file and includes it in the environmental documentation for the project. The district should not take any further action regarding properties containing a REC that were avoided unless a validation of the special wastes results becomes necessary (see Section 27-3.08).
- b. Avoidance Not Possible. If the district cannot avoid the purchase of additional right-of-way/easement from any property containing a REC, or avoid any excavation or subsurface utility relocation adjacent to property containing a REC, it shall indicate this on a PESA Response / Work Order form and send it to BDE. The PESA Response / Work Order form requests BDE to initiate the services of the Statewide Special Waste Investigation Consultant to perform a PSI to determine the nature and extent of contamination (i.e., above or below the cleanup objectives). Additionally, the district shall provide a copy of the PESA Response / Work Order form to the Central Bureau of Land Acquisition.

Completion of the PESA and issuance by BDE of a PESA transmittal memorandum ends the Phase 1 portion of the project. Submittal of the PESA Response and Work Order request prepared by the District and submitted via PMA begins Phase 2 of the project.

The PESA Response can be sent in anytime after the PESA is reviewed by the district. The PESA Response can stand alone and does not have to include the Work Order. To submit a PESA Response no additional information is necessary beside the information contained in the response.

To submit a PSI request, the district must fill out both the top half (PESA Response) and the bottom half (Work Order) of the PMA form at which time the PSI will be tasked to BDE's

statewide consultant. The district shall include supporting documentation including plan sheets showing the areas requiring investigation, i.e., the sites that are deemed to require a PSI. The plan sheet should show the location of soil excavation and acquisition or easements in the name of the State. The district should also indicate the maximum excavation depth per site location, the type of excavation per site investigated, and the soil excavation volume per site.

For properties containing a REC classified as a hazardous substance (non-petroleum), BDE and the Office of the Chief Counsel will determine if acquisition of the property requires additional liability protection under CERCLA. If additional liability protection is necessary, BDE will task ISGS to conduct an AAI on those particular properties.

27-3.04 All Appropriate Inquiries (AAI)

In some cases, property(ies) with potential impacts other than petroleum, may require the PESA to be re-conducted under the "All Appropriate Inquiry" (AAI) standard in order to give the Department the appropriate CERCLA liability protection. A Preliminary Site Investigation (PSI) may also be necessary, depending upon the results of the PESA and/or AAI. Moreover, BDE will determine the need for AAI in consultation with the Office of Chief Counsel (OCC).

On November 1, 2006, 40 Code of Federal Regulation (CFR) 312 became effective; this rule defined AAI on what is required for due diligence to avoid Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) liability (Superfund liability). The AAI Rule implements the 2002 Small Business Liability Relief and Brownfields Revitalization Act (2002 Brownfield Act), which aimed to clarify and expand the potential defenses to strict liability under CERCLA. To qualify for CERCLA's defenses to strict liability (i.e. as an innocent purchaser, a bona fide prospective purchaser, or a contiguous property owner), a defendant must show it conducted AAI prior to taking title to the property. Following the AAI procedures affords IDOT CERCLA liability protection as an innocent purchaser, bona fide prospective purchaser, or a contiguous property land owner.

27-3.05 Preliminary Site Investigation

27-3.05(a) PSI Requested Through BDE

For property(ies) involving only a petroleum REC, BDE uses the information provided in the PESA Response / Work Order (concerning the volume of material to be excavated and the cost of the excavation) and information from the PESA to determine whether the REC can be addressed during construction without a PSI. If BDE determines, through this "risk management" evaluation procedure, a PSI is not warranted, it will notify the district the project is eligible to be a Risk Managed Project (RMP). Projects involving acquisition of parcels with REC that are full takes or have potential uneconomic remnants are ineligible for "risk management." Depending upon the PESA results concerning the REC involved, BDE will provide the district either:

- a special provision for inclusion in the construction documents to require monitoring for worker protection and contaminated soils, or
- a special provision for inclusion in the construction documents to require the management of contaminated soils and associated monitoring for worker protection.

For actions that do not qualify as RMPs, BDE will contact the Statewide Special Waste Investigation Consultant and request an investigatory work plan and estimated budget for the PSI. BDE will review the work plan and budget and provide the district with an opportunity for review prior to approval.

PSI budgets of up to \$100,000 generally will be paid from funds for the Statewide Special Waste Investigation agreement. If the estimated cost is more than \$100,000 but less than \$200,000, BDE will discuss funding options with the district. If the estimated budget is \$200,000 or more, the district will be required to fund the PSI. Upon receiving approval of the work plan and budget, the Statewide consultant will proceed with the investigations of the property(ies).

After completing the investigations, the consultant will provide a draft PSI report to BDE. BDE, in consultation with the Office of Chief Counsel as appropriate, will review the report for adequacy and provide it to the district for review. Generally, the draft PSI report will be completed within three months of the authorization of the PSI work plan, unless completion is delayed to meet target letting dates for other projects. BDE, in consultation with the Office of Chief Counsel as appropriate, will review the report for adequacy and provide it to the district for review. After all comments on the draft PSI report have been addressed, BDE issues a revised final PSI report.

BDE forwards to the district a final PSI report with the appropriate special provision for management and monitoring of the contaminated areas. BDE also forwards a copy of the report to the Central Bureau of Land Acquisition, if requested, the Office of Chief Counsel (to consider if any legal actions may be necessary), the Illinois State Geological Survey, and the appropriate State agencies (e.g., Office of State Fire Marshal, IEPA), as appropriate. If the district accepts BDE recommendations, it so advises BDE. If the recommendations are accepted prior to design approval, the district should summarize the proposal for management and monitoring of the property(ies) in the environmental documentation for the project. Estimated cleanup costs should be included in project environmental documents and must be included when the costs of property involvement vary for different alternatives under study.

The target for completion of the final PSI report for most projects will be within six months of the authorization of the PSI work plan, unless completion is delayed to meet target letting dates for other projects. The PSI report will identify areas impacted by special waste or regulated substances, recommend actions to be taken, and provide estimated costs for excavating, transporting, and disposing of materials exceeding IEPAs:

- Tiered Approach to Corrective Action Objectives (TACO) Tier 1 Soil Remediation Objectives for Residential Properties (35 Ill. Adm. Code 742), and/or

- Most stringent maximum allowable concentration (MAC) for chemical constituents in uncontaminated soil established pursuant to the proposed Subpart F of 35 Illinois Administrative Code (IAC) 1100.605.

The cost information will include two cleanup estimates for each proposed right-of-ay/temporary easement parcel — one based upon proposed construction excavation and the second based on cleanup of the parcel to be obtained without regard to the proposed construction excavation. The district will review the cost estimates for excavation, transportation, and disposal of the contaminated material and advise whether they are acceptable. If the district determines the costs are unacceptable, the district will further investigate alternatives to avoid involvement with the impacted property(ies).

27-3.05(b) Remedial Investigation/Feasibility Study and Risk Assessment

Following completion of the IDOT internal reviews of the draft PSI and prior to incorporation of any necessary revisions in the PSI report, BDE, in consultation with the Office of Chief Counsel as appropriate and the Statewide Special Waste Investigation Consultant, will evaluate whether sufficient information is available to determine the total extent of special waste/regulated substance contamination for which the Department would be liable relative to the project and the estimated cost and method for cleanup or whether a Remedial Investigation/Feasibility Study (RI/FS) is needed.

If BDE, in consultation with the Office of Chief Counsel as appropriate, determines additional information is needed for determining the extent of contamination and method(s) and cost for cleanup of the property(ies), it will advise the district. The district will be required to fund the additional studies. Accordingly, BDE will not proceed with arrangements until the district has confirmed it will provide the necessary funding. If the district re-examines the project and identifies a strategy to avoid the property(ies), the need for the additional studies may be eliminated. Upon receiving confirmation from the district for funding the additional studies, BDE will initiate a request to the Statewide Special Waste Investigation Consultant for a RI/FS and, if appropriate, a Risk Assessment. The purpose of the RI will be to precisely determine the extent of the soil and/or groundwater contamination exceeding IEPA's TACO Tier 1 Soil Remediation Objectives for Residential Properties (35 Ill. Adm. Code 742). The purpose of an FS will be to identify options for addressing the property(ies) and the estimated costs of each. The purpose of a Risk Assessment will be to determine the potential of the contamination for coming into contact with people (e.g., directly or through water supplies), or otherwise posing a threat during or after construction, if left in place. A Risk Assessment will be prepared only when the Statewide Special Waste Investigation Consultant determines in the FS that the levels of contamination and their location are such that leaving the waste in place may be an option.

Upon its completion, BDE reviews the results of the RI/FS. After incorporation of any necessary changes, BDE forwards the results to the district with a request for the district to advise which option for addressing the property(ies) it wishes to select (normally based on cost). Upon receipt of the district's response, BDE forwards the recommendation to IEPA for acceptance of the selected Remedial Action Plan (in the case of a cleanup option) or Risk Assessment (in the

case of a proposal to leave the contamination in place). If IEPA accepts the recommended course of action, BDE will advise the district. BDE and the Statewide Special Waste Investigation Consultant, as necessary, will continue to be involved to assist the district in the preparation of plans and specifications for implementing the Remedial Action Plan. Also, if IEPA objects to the proposed course of action, BDE will continue to be involved in coordination to assist the district in responding to the objections. As practical, the selected method of addressing the property(ies) and the results of coordination with IEPA should be discussed in project environmental documents.

Note: For properties on the National Priorities List, the nationwide list of hazardous waste sites maintained by the EPA for purposes of assigning priorities for cleanup (National Priorities List sites are identified in the CERCLIS list), the public must be afforded an opportunity to comment on the analysis of alternatives for addressing the property(ies). As practical, the district should address this requirement as a part of the normal public involvement activities for the project. Estimated costs for addressing the sites should be indicated, particularly when the costs of site involvement vary for different alternatives under study.

27-3.06 Relationship of Special Waste Process Results to Design Approval

Design approval is granted by BDE Geologic and Waste Assessment Unit when results of the special waste process support one of the following:

1. The project clears a Level I screening as described in section 27-3.02(a). The request for design approval must include a copy of the Level 1 Screening and Sign-off Form in PMA signed and dated by the SWC. Alternatively, the district can provide its own design approval as a result of Level 1 screening by completing the appropriate section of the PMA ESR screen².
2. The project clears a Level II screening as described in section 27-3.02(b). The request for design approval must include a copy of the Level 2 Screening and Sign-off Form in PMA signed and dated by the SWC.
3. The PESA indicates that the project has no property(ies) with a REC (other than de minimis). The request for design approval must include a copy of the BDE memorandum confirming the no REC determination.
4. The PESA indicates that the project has property(ies) containing a REC(s) and the district has determined that the property(ies) can be avoided. The request for design approval must include a copy of the memorandum from BDE transmitting the PESA report and the district's avoidance determination, documented on the PESA Response form. The information regarding the avoidance determination must be included in the commitment file for the project to ensure follow-through in subsequent stages of project development and implementation.

² As a result of successful Level 1 screening by the district, Design Approval clearance for Special Waste can be completed in PMA on the Environmental Survey Request form, District/CBLRS tab.

5. The PESA indicates that the project has property(ies) containing a REC(s) and the district has determined the property(ies) cannot be avoided. The request for design approval must include a copy of the memorandum from BDE transmitting the PESA report. Design approval can be given subject to the condition that subsequent studies (e.g., a PSI), if needed, will be completed before the district may acquire any additional ROW/easements from any property containing a REC and before project letting.

The district must reflect in the commitment file for the project the requirement for completing the PSI and other related studies, if needed, prior to completing acquisition of any contaminated parcel and/or the project letting date and must ensure follow-through on the commitment. If the district intends to request the PSI, it should initiate arrangements well in advance (a minimum of six months) of the projected date(s) for acquisition of the affected property(ies) to allow sufficient time for completion of the PSI.

27-3.07 Relationship of Special Waste Process Results to Contract Letting

The district will be required to ensure a PSI is completed, when applicable, and to ensure all commitments in the Design Report or environmental document regarding the monitoring and management of regulated substances are included in the contract documents prior to letting. The district will provide BDE with written notification (i.e., Certification Acceptance sheet) that all required special waste studies have been completed.

Letting clearance is achieved when results of the special waste process support one of the following:

1. The project clears a Level I screening as described in section 27-3.02(a);
2. The project clears a Level II screening as described in section 27-3.02(b);
3. The PESA indicates that the project has no property(ies) with a REC (other than de minimis); or
4. A special provision is prepared by BDE for inclusion in the construction documents resulting from successful completion of a PSI or a RMP.

27-3.08 Validity of Special Waste Assessment Results

Standards issued by the American Society for Testing and Materials (ASTM) and AAI indicate property audits for special waste/regulated substance contamination shall only be considered valid for a period of six months. This reflects the realization that special wastes and other regulated substance contamination often may be introduced (through illegal disposal, migration from off-site, or generation from new land uses) into areas previously evaluated for contamination. Before proceeding with arrangements for a PSI, Remedial Investigation/Feasibility Study (RI/FS), or before completing land acquisition, the SWC should re-evaluate the project area to check for new reported releases and determine if land uses have changed within the project area, a process called "validation".

Validation should be conducted in the following scenarios:

- For projects that were signed-off under Level II screening, if six months or more have elapsed since the last Level II screening of the project area, the SWC should validate the project area using the Level II special waste screening criteria methodology.
- For projects that a PESA was conducted, if six months or more have elapsed since the PESA report was completed for the project area (identified by the date of the PESA report), the SWC should validate the project area using the Level II special waste screening criteria methodology. If land use changes or new releases are identified, the entire project should be re-evaluated as a new PESA prior to proceeding with arrangements for further special waste/regulated substances investigations or before finalizing land acquisition. If no land use changes or new releases are identified as a result of the validation process, the district SWC can sign-off the project by checking and dating the "Validation – Level 2" screen in PMA. If three years or more have elapsed since the last PESA report was prepared (identified by the date on the PESA report), then the entire project should be evaluated as a new project and, if necessary, a new PESA should be requested.
- If a PSI was conducted for a project and five years or more have elapsed since it was completed, the entire project should be evaluated for land-uses with a REC and a new PESA must be conducted prior to proceeding with the aforementioned project actions.

When re-evaluation of a PESA or PSI is necessary to verify its validity, the re-evaluation should consider any changes in the proposed action, the affected environment, anticipated special waste/regulated substance involvement, and proposed measures for addressing the special waste(s)/regulated substance(s). Sufficient detail must be provided to support a decision on whether a PESA or PSI addendum is necessary.

27-3.09 Recovery of Costs

For property(ies) involving transportation and disposal costs for special waste, the Department may pursue cost recovery from responsible parties. For all property(ies), BDE will provide a special provision regarding proper record-keeping for the costs associated with the property(ies). Compliance with the special provision will ensure that appropriate expenditure records are available for any cost-recovery action. When the Department pursues cost recovery for property(ies) involving hazardous substances, the Office of Chief Counsel will advise if the public must be afforded an opportunity to comment on the analysis of alternatives for addressing the property(ies).

When the opportunity for public comment must be afforded, the district should address this requirement, as practical, as a part of the normal public involvement activities for the project. An opportunity to comment may be announced through public notice(s) or can be addressed by making information regarding the alternatives for addressing the hazardous substance property(ies) available at public meetings/hearings.

27-3.10 Responding to FOIA Requests for Special Waste Information

The following guidance applies for purposes of responding to *Freedom of Information Act* (FOIA) requests for information concerning special waste investigations conducted for IDOT projects. For purposes of this guidance, "special waste investigations" includes both surface and subsurface studies conducted to determine potential involvement of highway projects with special wastes. This guidance was developed in consultation with the Office of Chief Counsel and supplements guidelines for compliance with the *Freedom of Information Act* set forth in Departmental Order 9-4 and the Department's *Freedom of Information Act Manual*.

The key factor in determining whether special waste investigation information should be released under FOIA requirements is the ownership status of the property on which the investigations were conducted. The basic rule is that if the property involved is not under IDOT control when the district responds to the FOIA request, the district should not release the information regarding the investigations on the property.

All responses to FOIA requests should conform to the time frames established by the *Freedom of Information Act*, as implemented by Departmental Order 9-4 and the IDOT *Freedom of Information Act Manual*. These directives provide that the action on the request should occur within seven working days of receipt unless an extension, not to exceed seven additional working days, is warranted.

The four numbered paragraphs below provide specific guidance addressing typical situations. Districts should determine the ownership status of the property or properties involved and respond to the special waste FOIA request in accordance with the applicable guidance.

2. If investigations were conducted within right-of-way currently under IDOT control (ownership in fee or a dedication of surface rights), the district may release the information on those investigations.
3. If investigations occurred on property in which the Department proposes to acquire an interest, the district may release the information after the Department has acquired the interest in the affected right-of-way.
4. If any investigations occurred on private property not proposed for acquisition, the district should not release the information on those investigations. When special waste reports include information concerning investigations on private property as well as on property under IDOT control, districts may block out the information on the private property investigations and may release the other information in the report.
5. If the exact location in which investigations were conducted is unclear and the district cannot verify that they occurred on private property, the district may release the information on those investigations.

Districts should contact BDE and the Office of Chief Counsel if questions arise regarding application of the preceding guidance.

