

ILLINOIS POLLUTION CONTROL BOARD
March 17, 2011

IN THE MATTER OF:)
)
UNDERGROUND STORAGE TANKS (35) R11-22
ILL. ADM. CODE 731) AND PETROLEUM) (Rulemaking - Land)
LEAKING UNDERGROUND STORAGE)
TANKS (35 ILL. ADM. CODE 732 and 734))

ORDER OF THE BOARD (by A.S. Moore):

On February 18, 2011, the Illinois Environmental Protection Agency (Agency) filed a proposal to amend the Board's underground storage tank (UST) regulations. The Agency submitted its proposal pursuant to Public Act 96-908 (P.A. 96-908), which was signed into law and became effective on June 8, 2010. The Agency states that P.A. 96-908 amended and added provisions to Title XVI of the Environmental Protection Act (Act), which addresses USTs.

The Board today accepts the Agency's proposal for hearing and directs the hearing officer to schedule and proceed to hearing.

SUMMARY OF PROPOSAL

In support of its proposal, the Agency submitted documents including a Statement of Reasons (SR) and its proposed amendments to Parts 731, 732, and 734 (Prop. 731, 732, 734, respectively). *See* 35 Ill. Adm. Code 731, 732, 734.

The Agency states that it seek to update Part 731 "to clarify the application of Part 734 to owners and operators subject to Title XVI. . . ." SR at 2; *see* Prop. 731 at 4. The Agency further states that it proposes to repeal Part 732 "because it no longer has any application after the enactment of P.A. 96-908." SR at 2; *see* P.A. 96-908 (amending 415 ILCS 5/57.13 (2008)). In addition, the Agency seeks to amend Part 734 to reflect statutory amendment adopted in P.A. 96-908. SR at 2; *see generally* P.A. 96-908.

INCORPORATION BY REFERENCE

Among its proposed amendments to Part 734, the Agency seeks to incorporate by reference American Society for Testing and Materials (ASTM) standard D2487-10, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System) (January 1, 2010). Prop. 734 at 14 (amending Section 734.120(a)). The Agency states that it has previously provided a copy of this standard to the Board's technical staff. SR at 8. Noting that "ASTM standards are subject to licensing fees," the Agency states that providing an additional copy of the standard with this rulemaking proposal would require payment of additional costs. *Id.* The Agency adds that "[t]he incorporated standard is accessible by interested parties and members of the public through appropriate libraries" and from the ASTM. *Id.* On these grounds, the Agency requests that the Board waive the requirement that it submit a copy of any

material to be incorporated by reference through the proposal. *Id.*, citing 35 Ill. Adm. Code 102.202(d) (Proposal Contents for Regulations of General Applicability).

The Board has confirmed that Agency has provided its technical staff with a copy of ASTM D2487-10, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System) (January 1, 2010). The Board accordingly grants the Agency's request not to be required to submit an additional copy of that material proposed for incorporation by reference in this rulemaking.

CONCLUSION

The Board notes that the Agency has not clearly addressed the inapplicability of or provided the description of a "published study or research report" as required under Sections 102.202(e) of the Board's procedural rules. 35 Ill. Adm. Code 102.202(e); *see* 35 Ill. Adm. Code 102.202(k).

The Board accepts this proposal for hearing and directs the assigned hearing officer to proceed expeditiously under the rulemaking provisions of the Act and the Board's procedural rules. 415 ILCS 5/27, 28 (2004); 35 Ill. Adm. Code 102. After conducting hearings on this proposal, the Board will determine whether to proceed to first notice. The Board requests, however, that the Agency address the "published study or research report" requirement noted above in writing before hearing, whether in pre-filed testimony or as otherwise directed by the hearing officer.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 17, 2011, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board