

ILLINOIS POLLUTION CONTROL BOARD
March 15, 2012

IN THE MATTER OF:)
)
AMENDMENTS UNDER P.A. 96-908 TO) R11-22
REGULATIONS OF UNDERGROUND) (Rulemaking - Land)
STORAGE TANKS (UST) and PETROLEUM)
LEAKING UST: 35 ILL. ADM. CODE 731,)
732 and 734))

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On February 18, 2011, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposal intended to update the Board's underground storage tank (UST) regulations to reflect Public Act 96-908 (P.A. 96-908), which became effective on June 8, 2010. P.A. 96-908 enacted a number of amendments to Title XVI of the Environmental Protection Act (Act), which addresses USTs. On September 22, 2011, the Board adopted a proposal for first-notice publication in the *Illinois Register*. See 35 Ill. Reg. 16183, 16191, 16338 (Oct. 14, 2011).

In its second-notice opinion and order adopted on January 19, 2012, the Board reviewed a comment filed by the Illinois Petroleum Marketers Association and Illinois Association of Convenience Stores but declined to propose amendments suggested in that comment. The Board effectively submitted its first-notice proposal without substantive amendment to second-notice review by the Joint Committee on Administrative Rules (JCAR). At its meeting on March 6, 2012, JCAR issued its certificate of no objection to the Board's proposal. Today the Board issues its final order adopting amended UST rules.

In the opinion below, the Board first provides the procedural background of this rulemaking before briefly summarizing its first-notice and second-notice opinions and orders. After discussing issues of technical feasibility and economic reasonableness, the Board concludes to adopt amendments to its UST rules. Finally, the Board's order sets forth the adopted amendments.

PROCEDURAL BACKGROUND

On February 18, 2011, the Agency filed a rulemaking proposal to amend Parts 731, 732, and 734 of the Board's UST regulations (Prop. 731, Prop. 732, and Prop. 734, respectively). Among the documents accompanying the proposal was a Statement of Reasons (SR). The Statement of Reasons included a "Statement Regarding Material Incorporated by Reference," which requested that ~~that~~ the Board waive the requirement to submit copies of material sought to be incorporated by reference. See 35 Ill. Adm. Code 102.202(d).

In an order dated March 17, 2011, the Board accepted the Agency's proposal for hearing and granted the Agency's request to waive the requirement to submit copies of material proposed for incorporation by reference. The order also noted 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." See 35 Ill. Adm. Code 102.202(e), (k). The Board requested that the Agency address that requirement in writing before hearing, whether in pre-filed testimony or as otherwise directed by the hearing officer.

In an order filed March 18, 2011, the hearing officer scheduled two hearings: the first on Tuesday, May 10, 2011, in Springfield with pre-filed testimony due by Tuesday, April 26, 2011; and the second on Thursday, June 16, 2011, in Chicago with pre-filed testimony due by Thursday, June 2, 2011.

On April 25, 2011, the Board received from the Agency the pre-filed testimony of Mr. Hernando Albarracin. With its pre-filed testimony, the Agency also filed a statement that it "did not use a published study or report in developing the proposed amendments, and therefore did not submit any information pursuant to 35 Ill. Adm. Code 102.202(e)." Also on April 25, 2011, the Board received from the CW³M Company (CW³M) the pre-filed testimony of Mr. Vince Smith.

The first hearing took place as scheduled on Tuesday, May 10, 2011, and the Board received the transcript (Tr.1) on May 18, 2011. During the first hearing, the hearing officer admitted into the record four exhibits: the pre-filed testimony of Mr. Albarracin (*see* Tr.1 at 10-11); House Joint Resolution 39 of the 96th General Assembly (*see* Tr.1. at 11-12); a list entitled "Underground Storage Tank Task Force - Members' Contact Information -- October 2009" (*see* Tr.1 at 12-13); and the pre-filed testimony of Mr. Smith (*see* Tr.1 at 77-78).

On June 1, 2011, the Board received from CW³M testimony by Mr. Smith pre-filed for the second hearing. On June 2, 2011, the Board received from the Agency its post-hearing comments. In an order dated June 13, 2011, the hearing officer listed specific questions and requested that the Agency address them at the second hearing. On June 16, 2011, the Board received amended testimony from CW³M seeking to respond to the Agency's post-hearing comments.

The second hearing took place as scheduled on June 16, 2011, and the Board received the transcript (Tr.2) on June 22, 2011. During the second hearing, the hearing officer admitted into the record a single exhibit, amended testimony from CW³M.

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2010)), the Board in a letter dated March 17, 2011, requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the Agency's rulemaking proposal. On May 23, 2011, the Board received a response from DCEO. In a letter dated May 5, 2011, DCEO Director Warren Ribley stated that, "[a]t this time, the Department is unable to undertake such an economic impact study. Therefore, I must respectfully decline your request."

In an order dated June 23, 2011, the hearing officer set a deadline of July 22, 2011, to file post-hearing comments. On July 21, 2011, the Board received comments by CW³M. On July 22, 2011, the Board received comments from Chase Environmental Group, Inc. and the Agency.

On September 22, 2011, the Board adopted its first-notice opinion and order. *See* 35 Ill. Reg. 16183, 16191, 16338 (Oct. 14, 2011). On November 29, 2011, the Board received a comment from the Illinois Petroleum Marketers Association and Illinois Association of Convenience Stores (IPMA) (PC 5).

On January 19, 2012, the Board adopted its second-notice opinion and order. At its meeting on March 6, 2012, JCAR issued its certificate of no objection to the Board's proposal.

FIRST-NOTICE AND SECOND-NOTICE OPINIONS AND ORDERS

In proceeding to first notice on September 22, 2011, the Board adopted a 50-page opinion followed by a 162-page order. The Board proposed amendments to its UST rules addressing issues including the application of Tiered Approach to Corrective Action Objectives (TACO) rules, transition of all UST releases to the requirements of Part 734 of the Board's regulations, reimbursement of costs incurred after issuance of an No Further Remediation (NFR) Letter, and determination of maximum payment amounts through bidding.

During the 45-day first-notice comment period, the Board received comment only from IPMA, as noted above under "Procedural History." The Board's second-notice opinion summarized and discussed that comment. Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732, and 734, R11-22, slip op. at 4-6 (Jan. 19, 2012). However, the Board specifically declined to amend its first-notice proposal in response to IPMA's comment. *Id.* at 6. The Board submitted its first-notice proposal without substantive amendment to second-notice review by JCAR. In adopting amended regulations today, the Board has not substantively amended its second-notice proposal.

Accordingly, substantial portions of the Board's first-notice opinion, including the review of the record and conclusions on various issues, support the Board's adoption of the amended UST rules below. Accordingly, the Board has not duplicated various sections of its first-notice opinion and instead refers to reader to that opinion with regard to various issues. Specifically, the Board's first-notice opinion and order reviewed the legislative background of the issues in this rulemaking, including House Joint Resolution 39 of the 96th General Assembly and Public Act 96-908. Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732, and 734, R11-22, slip op. at 3-8 (Sept. 22, 2011). The opinion then reviewed the record on the issues of technical feasibility and economic reasonableness at pages 8-9. *Id.* at 8-9. The Board next provided a section-by-section summary and discussion of the record in support of its first-notice proposal. *Id.* at 10-50.

The full text of both the first notice opinion and order and second-notice opinion and order is available under this docket number R11-22 from the Clerk's Office On-Line, or COOL, through the Board's Web site at www.ipcb.state.il.us.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

Board Request for DCEO Economic Impact Study

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2010)), the Board requested in a letter dated March 17, 2011, that DCEO conduct an economic impact study of the Agency's rulemaking proposal. On May 23, 2011, the Board received a response from DCEO. In a letter dated May 5, 2011, DCEO Director Warren Ribley stated that, "[a]t this time, the Department is unable to undertake such an economic impact study. Therefore, I must respectfully decline your request." During the second hearing, the hearing officer noted the Board's request and DCEO's response to it. Tr.2 at 54-55. Although the hearing officer afforded those present an opportunity to testify regarding the request and response, no participant offered testimony. *See id.* at 55.

Economic Reasonableness

In addressing economic reasonableness, the Agency's Statement of Reasons first indicated that its "proposal updates the Board's LUST rules so they are consistent with Title XVI of the Act as amended by Public Act 96-908 and recent amendment to OSFM rules." SR at 7. The Agency argued that recent amendments to Title XVI intend "to reduce the economic burden on the UST Fund by reducing the costs of UST cleanups." *Id.* The Agency noted that, although it has proposed amendments other than those implementing Public Act 96-908, those additional amendments "have little, if any, economic impact." *Id.* The Agency cited as an exception, however, a proposed amendment to Section 734.810, ~~which that~~ allows abandonment costs to be reimbursed on a time and materials basis. *Id.*; *see* Prop. 734 at 29. The Agency argued that this "change will have a positive impact on UST owners and operators due to their ability to seek recovery of UST abandonment costs in excess of the current lump sum payment amount." SR at 7.

In its first-notice opinion and order, the Board noted that the Agency's proposal stemmed in significant part from amendments to Title XVI enacted by P.A. 96-908. The Agency had argued that P.A. 96-908 sought to control the costs of remediating releases from USTs and to reduce demand on the UST Fund. SR at 7; *see* HJR 39. The General Assembly directed that, for purposes of payment from the UST Fund, corrective action activities must apply specified TACO rules. 415 ILCS 5/57.7(c)(3)(A) (2010). Public Act 96-908 also required that any bidding process established by the Board to determine reasonableness of corrective action costs must be "publicly-noticed, competitive and sealed" and meet seven specified requirements. 415 ILCS 5/57.7(c)(3)(B) (2010).

However, the Board noted that the General Assembly had also authorized reimbursement from the UST Fund of specified costs incurred by an owner or operator after the issuance of an NFR Letter. 415 ILCS 5/57.19 (2010); *see* 35 Ill. Adm. Code 734.630(gg). In addition, although the proposal does not stem from statutory language, the Agency sought to change the terms on which the UST Fund reimburses costs of tank abandonment. Specifically, the Agency proposed to replace maximum total payment amounts with reimbursement on a time and

materials basis. The Agency indicated that the current maximum payment amounts are insufficient to cover these costs. Tr.1 at 22-23, 27-28, 46.

In adopting its first-notice proposal, the Board concluded on the basis of the record before it that the Agency's proposal, as amended in the course of the proceedings, implemented the statutory language of P.A. 96-908 in an economically reasonable manner. Although the Board noted that amending reimbursement of tank abandonment costs was not derived from P.A. 96-908, it concluded that that element of the proposal was well-supported in the record and economically reasonable.

In proceeding to second notice, the Board noted that it had received only a single first-notice comment filed by IPMA. In adopting its second-notice proposal, the Board declined to adopt any language recommended by IPMA. Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732, and 734, R11-22, slip op. at 6 (Jan. 19, 2012). The Board noted that IPMA's comment did not oppose any element of the Board's first-notice proposal or cast doubt on the conclusion that it was economically reasonable. *See* PC 5. The Board concluded that its second-notice proposal was economically reasonable.

As noted above, the Board has not substantively amended its second-notice proposal. Accordingly, the Board finds that the amended rules adopted in the order below are economically reasonable.

Technical Feasibility

In its Statement of Reasons, the Agency indicated that “[a]ny new technical requirements are the result of changes to the LUST Program made by Public Act 96-908, and to a lesser extent changes to OSFM release reporting rules.” SR at 7. The Agency argued that “any new technical requirements are consistent with the historical evolution of the LUST Program, and they do not raise issues of technical feasibility.” *Id.*

In adopting its first-notice opinion and order, the Board noted that the Agency's proposal stemmed in significant part from amendments to Title XVI enacted by P.A. 96-908. These amendments addressed issues including the application of TACO rules, transition of all UST releases to the requirements of Part 734 of the Board's regulations, reimbursement of costs incurred after issuance of an NFR Letter, and determination of maximum payment amounts through bidding. Suggesting that these amendments do not alter the basic framework for remediation under the existing UST program, the Agency argued that its proposal did “not raise issues of technical feasibility.” SR at 7. The Board's opinion concluded that the record included no persuasive argument to the contrary and that its first-notice proposal was technically feasible.

In proceeding to second notice, the Board noted that it had received only a single first-notice comment filed by IPMA. In adopting its second-notice proposal, the Board declined to adopt language recommended by IPMA. Amendments Under P.A. 96-908 to Regulations of Underground Storage Tanks (UST) and Petroleum Leaking UST: 35 Ill. Adm. Code 731, 732, and 734, R11-22, slip op. at 6 (Jan. 19, 2012). The Board noted that IPMA's comment did not

oppose any element of the Board's first-notice proposal or cast doubt on the conclusion that it was technically feasible. *See* PC 5. The Board concluded that its second-notice proposal was also technically feasible.

As noted above, the Board has not substantively amended its second-notice proposal. Accordingly, the Board finds that the amended rules adopted in the order below are technically feasible.

CONCLUSION

The Board today adopts amendments to Parts 731, 732, and 734 of its UST regulations. 35 Ill. Adm. Code 731, 732, 734. ~~Substantively~~Specifically, the Board adopts its second-notice proposal without substantive change.

ORDER

The Board directs the Clerk to file the following adopted rule with the Secretary of State for publication in the *Illinois Register*. Proposed additions are underlined, and proposed deletions appear stricken.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND UNDERGROUND
STORAGE TANK PROGRAMS

PART 731
UNDERGROUND STORAGE TANKS

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

Section	
731.101	Definitions and exemptions (Repealed)
731.102	Interim prohibitions (Repealed)
731.103	Notification Requirements (Repealed)
731.110	Applicability
731.111	Interim Prohibition for Deferred Systems (Repealed)
731.112	Definitions
731.113	Incorporations by Reference
731.114	Implementing Agency (Repealed)

SUBPART B: UST SYSTEMS: DESIGN, CONSTRUCTION,
INSTALLATION AND NOTIFICATION

Section	
731.120	Performance Standards for New Systems (Repealed)

- 731.121 Upgrading of Existing Systems (Repealed)
 731.122 Notification Requirements

SUBPART C: GENERAL OPERATING REQUIREMENTS

- Section
 731.130 Spill and Overfill Control (Repealed)
 731.131 Operation and Maintenance of Corrosion Protection
 731.132 Compatibility (Repealed)
 731.133 Repairs Allowed (Repealed)
 731.134 Reporting and Recordkeeping (Repealed)

SUBPART D: RELEASE DETECTION

- Section
 731.140 General Requirements for all Systems (Repealed)
 731.141 Petroleum Systems (Repealed)
 731.142 Hazardous Substance Systems (Repealed)
 731.143 Tanks (Repealed)
 731.144 Piping (Repealed)
 731.145 Recordkeeping (Repealed)

SUBPART E: RELEASE REPORTING, INVESTIGATION AND CONFIRMATION

- Section
 731.150 Reporting of Suspected Releases (Repealed)
 731.151 Investigation due to Off-site Impacts (Repealed)
 731.152 Release Investigation and Confirmation (Repealed)
 731.153 Reporting and Cleanup of Spills and Overfills (Repealed)

SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

- Section
 731.160 General
 731.161 Initial Response
 731.162 Initial Abatement Measures and Site Check
 731.163 Initial Site Characterization
 731.164 Free Product Removal
 731.165 Investigations for Soil and Groundwater Cleanup
 731.166 Corrective Action Plan
 731.167 Public Participation

SUBPART G: OUT-OF-SERVICE SYSTEMS AND CLOSURE

- Section
 731.170 Temporary Closure (Repealed)
 731.171 Permanent Closure and Changes-in-Service (Repealed)
 731.172 Assessing Site at Closure or Change-in-Service (Repealed)
 731.173 Previously Closed Systems (Repealed)
 731.174 Closure Records (Repealed)

SUBPART H: FINANCIAL RESPONSIBILITY

Section

731.190	Applicability (Repealed)
731.191	Compliance Dates (Repealed)
731.192	Definitions (Repealed)
731.193	Amount and Scope of Required Financial Responsibility (Repealed)
731.194	Allowable Mechanisms and Combinations (Repealed)
731.195	Financial Test of Self-insurance (Repealed)
731.196	Guarantee (Repealed)
731.197	Insurance or Risk Retention Group Coverage (Repealed)
731.198	Surety Bond (Repealed)
731.199	Letter of Credit (Repealed)
731.200	UST State Fund (Repealed)
731.202	Trust Fund (Repealed)
731.203	Standby Trust Fund (Repealed)
731.204	Substitution of Mechanisms (Repealed)
731.205	Cancellation or Nonrenewal by Provider (Repealed)
731.206	Reporting (Repealed)
731.207	Recordkeeping (Repealed)
731.208	Drawing on Financial Assurance (Repealed)
731.209	Release from Financial Assurance Requirement (Repealed)
731.210	Bankruptcy or other Incapacity (Repealed)
731.211	Replenishment (Repealed)
731.900	Incorporation by reference (Repealed)
731.901	Compliance Date (Repealed)

731.APPENDIX A Notification Form

731.APPENDIX C Statement for Shipping Tickets and Invoices

AUTHORITY: Implementing and authorized by ~~Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1022.4, 1022.13 and 1027~~ (Sections 22.4(d), ~~22.13(d)~~ and 27 of the Environmental Protection Act [415 ILCS 5/22.4(d) and 27], as amended by P.A. ~~87-323~~).

SOURCE: Adopted in R86-1 at 10 Ill. Reg. 14175, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6220, effective March 24, 1987; amended in R88-27 at 13 Ill. Reg. 9519, effective June 12, 1989; amended in R89-4 at 13 Ill. Reg. 15010, effective September 12, 1989; amended in R89-10 at 14 Ill. Reg. 5797, effective April 10, 1990; amended in R89-19 at 14 Ill. Reg. 9454, effective June 4, 1990; amended in R90-3 at 14 Ill. Reg. 11964, effective July 10, 1990; amended in R90-12 at 15 Ill. Reg. 6527, effective April 22, 1991; amended in R91-2 at 15 Ill. Reg. 13800, effective September 10, 1991; amended in R91-14 at 16 Ill. Reg. 7407, effective April 24, 1992; amended in R11-22 at 36 Ill. Reg. _____, effective _____.

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

Section 731.110 Applicability

- a) This Part applies to owners and operators of an Underground Storage Tank (UST) system as defined in Section 731.112, except as otherwise provided in ~~subsections~~ subsections (b) or (c).
- b) The following UST systems are excluded from the requirements of this Part:
- 1) Any UST system holding hazardous waste or a mixture of such hazardous waste and other regulated substances.
 - 2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 12(f) of the ~~Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1012(f))~~.
 - 3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
 - 4) Any UST system whose capacity is 110 gallons or less.
 - 5) Any UST system that contains a de minimis concentration of regulated substances.
 - 6) Any emergency spill or overflow containment UST system that is expeditiously emptied after used.
- c) Deferrals.
- 1) Section 731.122 does not apply to any of the following types of UST systems:
 - A) ~~1)~~ Wastewater treatment tank systems;
 - B) ~~2)~~ Any UST systems containing radioactive materials that are regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (42 ~~USC~~ U.S.C. 2011 et seq.);
 - C) ~~3)~~ Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, ~~appendix~~ Appendix A, incorporated by reference in Section 731.113;
 - D) ~~4)~~ Airport hydrant fuel distribution systems; and
 - E) ~~5)~~ UST systems with field-constructed tanks.

2) ~~d)~~ Owners and operators subject to Title XVI of the Act are required to respond to releases in accordance with 35 Ill. Adm. Code Part 734 instead of Subpart F of this Part.

~~d)~~e) Heating Oil ~~and~~ USTs.

1) Definitions. The following definitions apply to this subsection (d) only:

"Beneath the surface of the ground" is as defined in Section 731.112.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Heating Oil" means petroleum that is No. 1, No. 2, No. 4 - light, No. 4 - heavy, No. 5 - light, No. 5 - heavy, or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker Ce. (Section 57.2 22.18(e)(1)(H) of the Act)

"Heating Oil Underground Storage Tank" or "Heating Oil UST: means an underground storage tank ~~servicing other than farms or residential units that is used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit.~~ (Section 57.222.18(e)(1)(I) of the Act)

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Pipe" or "piping" is as defined in Section 731.112.

"Regulated substance" is as defined in Section 731.112.

"Tank" is as defined in Section 731.112.

"Underground storage tank" or ("UST") ~~is~~ means any one or combination of tanks (including underground pipes connected thereto) ~~that~~ which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten per centum or more beneath the surface of the ground.

2) ~~Subsections (a) through (c) notwithstanding, this Part applies to owners and operators of any heating oil UST~~ this Part applies to owners and operators of any heating oil UST. (Section 22.4(d)(45) of the Act)

3) The owner or operator of a heating oil UST shall comply with the same requirements as the owner or operator of a "petroleum UST", as defined in Section 731.112, any other provisions of this Part notwithstanding.

BOARD NOTE: This subsection (d) implements Section 22.4(d)(4)(5) of the Act, which requires that this Part be applicable to “heating oil USTs”, as that term is defined in Section ~~57.222.18(e)~~ of the Act. However, that and related terms are used in a manner ~~that~~ which is inconsistent with the definitions and usage in this Part. The definitions used in this applicability statement are therefore limited to this subsection (d).

BOARD NOTE: Owners and operators of heating oil USTs are subject to Title XVI of the Act and therefore are required to respond to releases in accordance with 35 Ill. Adm. Code 734 instead of Subpart F of this Part.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND UNDERGROUND STORAGE TANK PROGRAMS

PART 732
 PETROLEUM UNDERGROUND STORAGE TANKS(RELEASES REPORTED SEPTEMBER 23, 1994, THROUGH JUNE 23, 2002) (REPEALED)

(Source: Repealed at 36 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE G: WASTE DISPOSAL
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND UNDERGROUND STORAGE TANK PROGRAMS

PART 734
 PETROLEUM UNDERGROUND STORAGE TANKS (~~RELEASES REPORTED ON OR AFTER JUNE 24, 2002~~)

SUBPART A: GENERAL

Section	
734.100	Applicability
734.105	Election to Proceed under Part 734
734.110	Severability
734.115	Definitions
734.120	Incorporations by Reference
734.125	Agency Authority to Initiate Investigative, Preventive, or Corrective

	Action
734.130	Licensed Professional Engineer or Licensed Professional Geologist Supervision
734.135	Form and Delivery of Plans, Budgets, and Reports; Signatures and Certifications
734.140	Development of Remediation Objectives
734.145	Notification <u>to the Agency</u> of Field Activities
734.150	LUST Advisory Committee

SUBPART B: EARLY ACTION

Section	
734.200	General
734.205	Agency Authority to Initiate
734.210	Early Action
734.215	Free Product Removal
734.220	Application for Payment of Early Action Costs

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

Section	
734.300	General
734.305	Agency Authority to Initiate
734.310	Site Investigation – General
734.315	Stage 1 Site Investigation
734.320	Stage 2 Site Investigation
734.325	Stage 3 Site Investigation
734.330	Site Investigation Completion Report
734.335	Corrective Action Plan
734.340	Alternative Technologies
734.345	Corrective Action Completion Report
734.350	Off-site Access
734.355	Status Report
<u>734.360</u>	<u>Application of Certain TACO Provisions</u>

SUBPART D: MISCELLANEOUS PROVISIONS

Section	
734.400	General
734.405	Indicator Contaminants
734.410	Remediation Objectives
734.415	Data Quality
734.420	Laboratory Certification
734.425	Soil Borings
734.430	Monitoring Well Construction and Sampling
734.435	Sealing of Soil Borings and Groundwater Monitoring Wells
734.440	Site Map Requirements
734.445	Water Supply Well Survey
734.450	Deferred Site Investigation or Corrective Action; Priority List for Payment

SUBPART E: REVIEW OF PLANS, BUDGETS, AND REPORTS

Section	
734.500	General
734.505	Review of Plans, Budgets, or Reports
734.510	Standards for Review of Plans, Budgets, or Reports

SUBPART F: PAYMENT FROM THE FUND

Section	
734.600	General
734.605	Applications for Payment
734.610	Review of Applications for Payment
734.615	Authorization for Payment; Priority List
734.620	Limitations on Total Payments
734.625	Eligible Corrective Action Costs
734.630	Ineligible Corrective Action Costs
<u>734.632</u>	<u>Eligible Corrective Action Costs Incurred After NFR Letter</u>
734.635	Payment for Handling Charges
734.640	Apportionment of Costs
734.645	Subrogation of Rights
734.650	Indemnification
734.655	Costs Covered by Insurance, Agreement, or Court Order
734.660	Determination and Collection of Excess Payments
734.665	Audits and Access to Records; Records Retention

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section	
734.700	General
734.705	Issuance of a No Further Remediation Letter
734.710	Contents of a No Further Remediation Letter
734.715	Duty to Record a No Further Remediation Letter
734.720	Voidance of a No Further Remediation Letter

SUBPART H: MAXIMUM PAYMENT AMOUNTS

Section	
734.800	Applicability
734.810	UST Removal or Abandonment Costs
734.815	Free Product or Groundwater Removal and Disposal
734.820	Drilling, Well Installation, and Well Abandonment
734.825	Soil Removal and Disposal
734.830	Drum Disposal
734.835	Sample Handling and Analysis
734.840	Concrete, Asphalt, and Paving; Destruction or Dismantling and Reassembly of Above Grade Structures
734.845	Professional Consulting Services

734.850	Payment on Time and Materials Basis
734.855	Bidding
734.860	Unusual or Extraordinary Circumstances
734.865	Handling Charges
734.870	Increase in Maximum Payment Amounts
734.875	Agency Review of Payment Amounts

734.APPENDIX A	Indicator Contaminants
734.APPENDIX B	Additional Parameters
734.APPENDIX C	Backfill Volumes
734.APPENDIX D	Sample Handling and Analysis
734.APPENDIX E	Personnel Titles and Rates

AUTHORITY: Implementing Sections 22.12 and 57.19 and authorized by Sections 5, 22, 27, 57.14A, and 57.19 of the Environmental Protection Act [415 ILCS 5/5, 22, 22.12, 27, 57.14A, and 57.19]

SOURCE: Adopted in R04-22/23 at 30 Ill. Reg.5090, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. 16150, effective November 21, 2007; amended in R11-22 at 36 Ill. Reg. _____ effective _____.

SUBPART A: GENERAL

Section 734.100 Applicability

- a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to Illinois Emergency Management Agency (IEMA) ~~on or after March 1, 2006~~ in accordance with the Office of State Fire Marshal (OSFM) regulations. This Part does not apply to owners or operators of sites for which the OSFM does not require a report to IEMA or for which the OSFM has issued or intends to issue a certificate of removal or abandonment pursuant to Section 57.5 of the Act [415 ILCS 5/57.5].
 - 1) For releases reported prior to June 8, 2010, ~~on or after June 24, 2002, but prior to March 1, 2006~~, and for owners and operators ~~electing prior to March 1, 2006 to proceed in accordance with Title XVI of the Act as amended by P.A. 92-0554~~, the Agency may deem that one or more requirements of this Part have been satisfied, based upon activities conducted prior to June 8, 2010, ~~March 1, 2006~~, even though the activities were not conducted in strict accordance with the requirements of this Part. For example, an owner or operator that adequately defined the extent of on-site contamination prior to June 8, 2010 ~~March 1, 2006~~ may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

- 2) Costs incurred pursuant to a budget approved prior to March 1, 2006 must be reimbursed in accordance with the amounts approved in the budget and must not be subject to the maximum payment amounts set forth in Subpart H of this Part.
- b) This Part applies to all releases subject to Title XVI of the Act for which a No Further Remediation Letter is issued on or after June 8, 2010, provided that costs incurred prior to June 8, 2010 shall be payable from the UST Fund in the same manner as allowed under the law in effect at the time the costs were incurred and releases for which corrective action was completed prior to June 8, 2010 shall be eligible for a No Further Remediation Letter in the same manner as allowed under the law in effect at the time the corrective action was completed. [415 ILCS 5/57.13] Costs incurred pursuant to a plan approved by the Agency prior to June 8, 2010 must be reviewed in accordance with the law in effect at the time the plan was approved. Any budget associated with such a plan must also be reviewed in accordance with the law in effect at the time the plan was approved. ~~Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part pursuant to Section 734.105 of this Part.~~
- c) Upon the receipt of a corrective action order issued by the OSFM on or after June 24, 2002, and pursuant to Section 57.5(g) of the Act [415 ILCS 5/57.5(g)], where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit, must conduct corrective action in accordance with this Part.
- d) Owners or operators subject to this Part by law or by election must proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 734.125 of this Part to expedite investigative, preventive, or corrective action by an owner or operator or to initiate such action.
- e) The following underground storage tank systems are excluded from the requirements of this Part:
- 1) Equipment or machinery that contains petroleum substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks.
 - 2) Any underground storage tank system whose capacity is 110 gallons or less.

- 3) Any underground storage tank system that contains a de minimis concentration of petroleum substances.
- 4) Any emergency spill or overfill containment underground storage tank system that is expeditiously emptied after use.
- 5) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act (~~{~~33 USC 1251 *et seq.* (1972)~~}~~).
- 6) Any UST system holding hazardous waste listed or identified under Subtitle C of the Solid Waste Disposal Act (~~{~~42 USC 3251 *et seq.*~~}~~) or a mixture of such hazardous waste or other regulated substances.

(Source: Amended at 36 Ill. Reg. _____, effective _____).

Section 734.105 Election to Proceed under Part 734

- ~~a)~~ ~~Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.~~
- ~~a)~~b) Except as provided in Section 734.100(c) of this Part, owners or operators of underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.
- ~~b)~~e) Owners and operators electing pursuant to this Section to proceed in accordance with this Part must submit with their election a summary of the activities conducted to date and a proposed starting point for compliance with this Part. The Agency must review and approve, reject, or modify the submission in accordance with the procedures contained in Subpart E of this Part. The Agency may deem a requirement of this Part to have been

met, based upon activities conducted prior to an owner's or operator's election, even though the activities were not conducted in strict accordance with the requirement. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the election may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.

- d) ~~If the owner or operator elects to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election must be payable from the Underground Storage Tank Fund in the same manner as was allowable under the law applicable to the owner or operator prior to the notification of election. Corrective action costs incurred after the notification of election must be payable from the Fund in accordance with this Part.~~
- c)e) This Section does not apply to any release for which the Agency has issued a No Further Remediation Letter.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 734.115 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part must be the same as those applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

"Alternative Technology" means a process or technique, other than conventional technology, used to perform a corrective action with respect to soils contaminated by releases of petroleum from an underground storage tank.

"Board" means the Illinois Pollution Control Board.

"Bodily Injury" means *bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank* [415 ILCS 5/57.2].

"Community Water Supply" means *a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents* [415 ILCS 5/3.145].

"Confirmation of a release" means the confirmation of a release of petroleum in

accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Confirmed Release" means a release of petroleum that has been confirmed in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Conventional Technology" means a process or technique to perform a corrective action by removal, transportation, and disposal of soils contaminated by a release of petroleum from an underground storage tank in accordance with applicable laws and regulations, but without processing to remove petroleum from the soils.

"Corrective Action" *means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act [415 ILCS 5/57.2].*

"County highway" means county highway as defined in the Illinois Highway Code [605 ILCS 5].

"District road" means district road as defined in the Illinois Highway Code [605 ILCS 5].

"Environmental Land Use Control" means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200.

"Federal Landholding Entity" means that federal department, agency, or instrumentality with the authority to occupy and control the day-to-day use, operation, and management of Federally Owned Property.

"Federally Owned Property" means real property owned in fee simple by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

"Fill Material" *means non-native or disturbed materials used to bed and backfill around an underground storage tank [415 ILCS 5/57.2].*

"Financial interest" means any ownership interest, legal or beneficial, or being in the relationship of director, officer, employee, or other active participant in the affairs of a party. Financial interest does not include ownership of publicly traded stock.

"Free Product" means a contaminant that is present as a non-aqueous phase liquid for chemicals whose melting point is less than 30° C (e.g., liquid not dissolved in water).

"Full Accounting" means a compilation of documentation to establish, substantiate, and justify the nature and extent of the corrective action costs

incurred by an owner or operator.

“Fund” *means the Underground Storage Tank Fund* [415 ILCS 5/57.2].

“GIS” means Geographic Information System.

“GPS” means Global Positioning System.

“Groundwater” *means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure* [415 ILCS 5/3.210].

~~“Half day” means four hours, or a fraction thereof, of billable work time. Half days must be based upon the total number of hours worked in one calendar day. The total number of half days per calendar day may exceed two.~~

"Handling Charges" means administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.

“Heating oil” *means petroleum that is No. 1, No. 2, No. 4 -light, No. 4 -heavy, No. 5 -light, No. 5 -heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker c* [415 ILCS 5/57.2].

“Highway authority” means the Illinois Department of Transportation *with respect to a State highway*; the Illinois State Toll Highway Authority *with respect to a toll highway*; *the county board with respect to a county highway or a county unit district road if a discretionary function is involved and the county superintendent of highways if a ministerial function is involved*; *the highway commissioner with respect to a township or district road not in a county or unit road district*; *or the corporate authorities of a municipality with respect to a municipal street* [605 ILCS 5/2-213].

“Highway Authority Agreement” means an agreement with a highway authority that meets the requirements of 35 Ill. Adm. Code 742.1020.

"IEMA" means the Illinois Emergency Management Agency.

“Indemnification” *means indemnification of an owner or operator for the amount of judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by any agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator* [415 ILCS 5/57.2].

“Indicator contaminants” means the indicator contaminants set forth in Section 734.405 of this Part.

“Institutional Control” means a legal mechanism for imposing a restriction on land use as described in 35 Ill. Adm. Code 742.Subpart J.

“Land Use Control Memorandum of Agreement” means an agreement entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limits or places requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment, or that is used to perfect a No Further Remediation Letter that contains land use restrictions.

“Licensed Professional Engineer” *means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering [415 ILCS 5/57.2].*

“Licensed Professional Geologist” *means a person licensed under the laws of the State of Illinois to practice as a professional geologist [415 ILCS 5/57.2].*

"Man-made Pathway" means a constructed route that may allow for the transport of mobile petroleum free-liquid or petroleum-based vapors including but not limited to sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches, or previously excavated and filled areas.

"Monitoring Well" means a water well intended for the purpose of determining groundwater quality or quantity.

"Natural Pathway" means a natural route for the transport of mobile petroleum free-liquid or petroleum-based vapors including but not limited to soil, groundwater, sand seams and lenses, and gravel seams and lenses.

“Non-community water supply” *means a public water supply that is not a community water supply [415 ILCS 5/3.145].*

“Occurrence” *means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank [415 ILCS 5/57.2].*

"OSFM" means the Office of the State Fire Marshal.

“Operator” means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (Derived from 42 USC 6991)

BOARD NOTE: A person who voluntarily undertakes action to remove an

underground storage tank system from the ground must not be deemed an "operator" merely by the undertaking of such action.

"Owner" means:

In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use; (Derived from 42 USC 6991)

Any person who has submitted to the Agency a written election to proceed under the underground storage tank program and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "No Further Remediation Letter" by the Agency pursuant to the underground storage tank program [415 ILCS 5/57.2].

"Perfect" or "Perfected" means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 734.715(c) and (d) of this Part.

"Person" means, for the purposes of interpreting the definitions of the terms "owner" or "operator," an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and must include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 USC 6991)

"Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). (Derived from 42 USC 6991)

"Potable" *means generally fit for human consumption in accordance with accepted water supply principles and practices [415 ILCS 5/3.340].*

"Practical quantitation limit" or "PQL" means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section

734.120 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 734.120 of this Part.

“Property Damage” means physical injury to, destruction of, or contamination of tangible property owned by a person other than an owner or operator of the UST from which a release of petroleum has occurred and which tangible property is located off the site where the release occurred. Property damage includes all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank. [415 ILCS 5/57.2]-

“Public Water Supply” means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a “community water supply” or a “non-community water supply”. [415 ILCS 5/3.365]-

"Registration" means registration of an underground storage tank with the OSFM in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4].

“Regulated Recharge Area” means a compact geographic area, as determined by the Board, † (35 Ill. Adm. Code Subtitle F)‡, the geology of which renders a potable resource groundwater particularly susceptible to contamination [415 ILCS 5/3.390].

“Regulated Substance” means any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC 9601(14)) (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 USC 6921 et seq.)); and petroleum. (Derived from 42 USC 6991)

“Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils [415 ILCS 5/57.2].

“Residential Property” means residential property as defined in 35 Ill. Adm. Code 742.200.

"Residential Tank" means an underground storage tank located on property used primarily for dwelling purposes.

"Residential Unit" means a structure used primarily for dwelling purposes including multi-unit dwellings such as apartment buildings, condominiums, cooperatives, or dormitories.

“Right-of-way” means *the land, or interest therein, acquired for or devoted to a highway* [605 ILCS 5/2-217].

“Setback Zone” means *a geographic area, designated pursuant to the Act* [415 ILCS 5/14.1, 5/14.2, 5/14.3] *or regulations* [35 Ill. Adm. Code Subtitle F], *containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwater* [415 ILCS 5/3.450].

“Site” means *any single location, place, tract of land or parcel of property, including contiguous property not separated by a public right-of-way* [415 ILCS 5/57.2].

“State highway” means a State highway as defined in the Illinois Highway Code [605 ILCS 5].

“Street” means a street as defined in the Illinois Highway Code [605 ILCS 5].

"Surface Body of Water" or "Surface Water Body" means a natural or man-made body of water on the ground surface including but not limited to lakes, ponds, reservoirs, retention ponds, rivers, streams, creeks, and drainage ditches. Surface body of water does not include puddles or other accumulations of precipitation, run-off, or groundwater in UST excavations.

“Toll highway” means a toll highway as defined in the Toll Highway Act, [605 ILCS 10].

“Township road” means a township road as defined in the Illinois Highway Code [605 ILCS 5].

"Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an

accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected ~~thereto~~ to the following:

Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

Septic tank;

Pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.), or the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.), or which is an intrastate pipeline facility regulated under State laws as provided in either of these provisions of law, 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;

Surface impoundment, pit, pond, or lagoon;

Storm water or waste water collection system;

Flow-through process tank;

Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated on or above the surface of the floor. (Derived from 42 USC § 6991)

The term "underground storage tank" shall also mean an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit [415 ILCS 5/57.2].

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wellhead Protection Area" means the wellhead protection area of a community water supply well as determined under the Agency's wellhead protection program pursuant to 42 USC 300h-7.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 734.120 Incorporations by Reference

- a) The Board incorporates the following material by reference:

ASTM. American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 (610) 832-9585

ASTM D2487-10, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System) (January 1, 2010)

~~ASTM D 2487-93, Standard Test Method for Classification of Soils for Engineering Purposes, approved September 15, 1993.~~

NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 605-6000 or (800) 553-6847

“Methods for the Determination of Metals in Environmental Samples,” EPA Publication No. EPA/600/4-91/010 (June 1991);

“Methods for the Determination of Metals in Environmental Samples, Supplement I,” EPA Publication No. EPA/600/R-94/111 (May 1994);

“Methods for the Determination of Organic Compounds in Drinking Water,” EPA Publication No. EPA/600/4-88/039 (December 1988) (revised July 1991);

“Methods for the Determination of Organic Compounds in Drinking Water, Supplement II,” EPA Publication No. EPA/600/R-92/129 (August 1992);

“Methods for the Determination of Organic Compounds in Drinking Water, Supplement III,” EPA Publication No. EPA/600/R-95/131 (August 1995);

“Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,” EPA Publication No. SW-846, Third Edition (September 1986), as amended by Updates I, IIA, III, and IIIA (Final Update IIIA dated April 1998), Doc. No. 955-001-00000-1.

- b) This Section incorporates no later editions or amendments.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 734.145 Notification to the Agency of Field Activities

The Agency may require owners and operators to notify the Agency of field activities prior to the date the field activities take place. The notice must include information prescribed by the Agency, and may include, but is not ~~be~~-limited to, a description of the field activities to be conducted, the person conducting the activities, and the date, time, and place the activities will be conducted. The Agency may, but is not required to, allow notification by telephone, facsimile, or electronic mail. This Section does not apply to activities conducted within 45 days plus 14 days after initial notification to IEMA of a release, or to free product removal activities conducted within 45 days plus 14 days after the confirmation of the presence of free product.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART B: EARLY ACTION

Section 734.210 Early Action

- a) Upon confirmation of a release of petroleum from ~~an~~ UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions: ~~within 24 hours after the release:~~
- 1) ~~Immediately report~~Report the release to IEMA (e.g., by telephone or electronic mail);
- BOARD NOTE: The OSFM rules for the reporting of UST releases are found at 41 Ill. Adm. Code 176.320(a).
- 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
 - 3) ~~Immediately identify~~ Identify and mitigate fire, explosion and vapor hazards.
- b) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must perform the following initial abatement measures:
- 1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;
 - 2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;
 - 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

- 4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator must comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;
 - 5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and
 - 6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.
- c) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.
 - d) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information must include, but is not limited to, the following:
 - 1) Data on the nature and estimated quantity of release;
 - 2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;
 - 3) Results of the site check required at subsection (b)(5) of this Section; and
 - 4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part.
 - e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in

compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.

- f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal (see 41 Ill. Adm. Code 160, 170, 180, 200): The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment of early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank. [415 ILCS 5/57.6(b)]- Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank.*
- g) For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.

BOARD NOTE: Owners or operators seeking payment from the Fund are to first notify IEMA of a suspected release and then confirm the release within 14 days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and 170.580. The Board is setting the beginning of the payment period at subsection (g) to correspond to the notification and confirmation to IEMA.

- h) The owner or operator must determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.
- 1) At a minimum, for each UST that is removed, the owner or operator must collect and analyze soil samples as indicated in subsections (h)(1)(A) through (E). The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.
- A) One sample must be collected from each UST excavation wall. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified on a wall, the sample must

be collected from the center of the wall length at a point located one-third of the distance from the excavation floor to the ground surface. For walls that exceed 20 feet in length, one sample must be collected for each 20 feet of wall length, or fraction thereof, and the samples must be evenly spaced along the length of the wall.

- B) Two samples must be collected from the excavation floor below each UST with a volume of 1,000 gallons or more. One sample must be collected from the excavation floor below each UST with a volume of less than 1,000 gallons. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If areas of contamination cannot be identified, the samples must be collected from below each end of the UST if its volume is 1,000 gallons or more, and from below the center of the UST if its volume is less than 1,000 gallons.
 - C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must be collected from a location representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a length of piping run excavation being sampled, the sample must be collected from the center of the length being sampled. For UST piping abandoned in place, the samples must be collected in accordance with subsection (h)(2)(B) of this Section.
 - D) If backfill is returned to the excavation, one representative sample of the backfill must be collected for each 100 cubic yards of backfill returned to the excavation.
 - E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.
- 2) At a minimum, for each UST that remains in place, the owner or operator must collect and analyze soil samples as follows. The Agency must allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.

- A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for each 20 feet of side length, or fraction thereof, and the borings must be evenly spaced along the side. The borings must be drilled in the native soil surrounding the USTs~~UST(s)~~ and as close practicable to, but not more than five feet from, the backfill material surrounding the USTs~~UST(s)~~. Each boring must be drilled to a depth of 30 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 30 feet below grade.
- B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close as practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.
- C) If auger refusal occurs during the drilling of a boring required under subsection (h)(2)(A) or (B) of this Section, the boring must be drilled in an alternate location that will allow the boring to be drilled to the required depth. The alternate location must not be more than five feet from the boring's original location. If auger refusal occurs during drilling of the boring in the alternate location, drilling of the boring must cease and the soil samples collected from the location in which the boring was drilled to the greatest depth must be analyzed for the applicable indicator contaminants.
- D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the

groundwater table. All samples must be analyzed for the applicable indicator contaminants.

- 3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) of this Section are met, within 30 days after the completion of early action activities the owner or operator must submit a report demonstrating compliance with those remediation objectives. The report must include, but not be limited to, the following:
 - A) A characterization of the site that demonstrates compliance with the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
 - B) Supporting documentation, including, but not limited to, the following:
 - i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);
 - ii) Analytical results, chain of custody forms, and laboratory certifications for all samples collected pursuant to this subsection (h); and
 - iii) A table comparing the analytical results of all samples collected pursuant to this subsection (h) to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - C) A site map containing only the information required under Section 734.440 of this Part.
- 4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, the owner or operator must continue in accordance with Subpart C of this Part:
 - A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);

- B) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or
- C) There is evidence that contaminated soils may be or may have been in contact with groundwater, unless:
 - i) The owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping; and
 - ii) The Agency determines that further groundwater investigation is not necessary.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

Section 734.360 Application of Certain TACO Provisions

For purposes of payment from the Fund, corrective action activities required to meet the minimum requirements of this Part shall include, but not be limited to, the following use of the Board's Tiered Approach to Corrective Action Objectives rules adopted under Title XVII of the Act: [415 ILCS 5/57.7(c)(3)(A)]:

- a) *For the site where the release occurred, the use of Tier 2 remediation objectives that are no more stringent than Tier 1 remediation objectives. [415 ILCS 5/57.7(c)(3)(A)(i)]*
- b) *The use of industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property. [415 ILCS 5/57.7(c)(3)(A)(ii)]*
- c) *If a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated, the groundwater ordinance must be used as an institutional control, provided that the Agency may approve remediation to the extent necessary to remediate or prevent groundwater contamination of off-site property that is not subject to a groundwater ordinance already approved by the Agency for use as an institutional control.*
- d) *If the use of a groundwater ordinance as an institutional control is not required pursuant to subsection (c) of this Section, another institutional control must be used in accordance with 35 Ill. Adm. Code 742 to address groundwater contamination at the site where the release occurred, provided that the Agency*

may approve remediation to the extent necessary to remediate or prevent groundwater contamination at off-site property that is not subject to a groundwater ordinance or other institutional control that it used to address groundwater contamination. Institutional controls used to comply with this subsection (d) include, but are not limited to, the following:

- 1) Groundwater ordinances that are not required to be used as institutional controls pursuant to subsection (c) of this Section.
- 2) No Further Remediation Letters that prohibit the use and installation of potable water supply wells at the site.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART F: PAYMENT FROM THE FUND

Section 734.630 Ineligible Corrective Action Costs

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

- a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Appendix C of this Part, during early action activities conducted pursuant to Section 734.210(f) of this Part, and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Appendix C of this Part during early action activities conducted pursuant to Section 734.210(f) of this Part;
- b) Costs or losses resulting from business interruption;
- c) Costs incurred as a result of vandalism, theft, or fraudulent activity by the owner or operator or agent of an owner or operator, including the creation of spills, leaks, or releases;
- d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies, including but not limited, to those structures destroyed or damaged during corrective action activities;
- e) *Costs of corrective action incurred by an owner or operator prior to July 28, 1989 [415 ILCS 5/57.8(j)];*
- f) Costs associated with the procurement of a generator identification number;

- g) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;
- h) Purchase costs of non-expendable materials, supplies, equipment, or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools;
- i) Costs associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;
- j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release upon, or in accordance with, a notice issued by the Agency pursuant to Section 734.125 of this Part and Section 57.12 of the Act;
- k) Costs for removal, disposal, or abandonment of a UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;
- l) Costs associated with the installation of new USTs, the repair of existing USTs, and removal and disposal of USTs determined to be ineligible by the OSFM;
- m) Costs exceeding those contained in a budget or amended budget approved by the Agency;
- n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;
- o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;
- p) Costs associated with improperly installed sampling or monitoring wells;
- q) Costs associated with improperly collected, transported, or analyzed laboratory samples;
- r) Costs associated with the analysis of laboratory samples not approved by the Agency;
- s) Costs for any corrective action activities, services, or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;
- t) Interest or finance costs charged as direct costs;

- u) Insurance costs charged as direct costs;
- v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;
- w) Costs associated with the compaction and density testing of backfill material;
- x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;
- y) Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations;
- z) Costs of alternative technology that exceed the costs of conventional technology;
- aa) Costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;
- bb) Costs requested that are based on mathematical errors;
- cc) Costs that lack supporting documentation;
- dd) Costs proposed as part of a budget that are unreasonable;
- ee) Costs incurred during early action that are unreasonable;
- ff) Costs incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release;
- gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (gg) does not apply to the following:
 - 1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;
 - 2) Monitoring well abandonment costs;
 - 3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;

- 4) Costs associated with seeking payment from the Fund; ~~and~~
 - 5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release; and
 - 6) Costs associated with activities conducted under Section 734.632 of this Part;
- hh) Handling charges for subcontractor costs that have been billed directly to the owner or operator;
 - ii) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;
 - jj) Costs associated with standby and demurrage;
 - kk) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 734.355(b) of this Part, that a revised corrective action plan is required, provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment if they meet the requirements of this Part;
 - ll) Costs incurred prior to the effective date of an owner's or operator's election to proceed in accordance with this Part, unless such costs were incurred for activities approved as corrective action under this Part;
 - mm) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 734.215(a)(5) of this Part;
 - nn) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. This subsection (nn) does not apply to costs associated with activities conducted under Section 734.632 of this Part;
 - oo) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 734.625(a)(16) of this Part;
 - pp) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Sections 734.625(a)(16) or (17) of this Part;
 - qq) Costs associated with oversight by an owner or operator;

- rr) Handling charges charged by persons other than the owner's or operator's primary contractor;
- ss) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 734.625(a)(16) of this Part;
- tt) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;
- uu) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 734.625(a)(19) of this Part;
- vv) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 734.625(a)(20) of this Part;
- ww) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 734.625(a)(19) or (20) of this Part;
- xx) ~~(Reserved) For sites electing under Section 734.105 of this Part to proceed in accordance with this Part, costs incurred pursuant to Section 734.210 of this Part;~~
- yy) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget;
- zz) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;
- aaa) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (aaa) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release;-
- bbb) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance

with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated;:-

- ccc) Costs associated with on-site corrective action to achieve Tier 2 remediation objectives that are more stringent than Tier 1 remediation objectives;
- ddd) Costs associated with corrective action to achieve remediation objectives other than industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property. This subsection (ddd) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(c) or (d) of this Part to remediate or prevent groundwater contamination at off-site property;
- eee) Costs associated with groundwater remediation if a groundwater ordinance must be used as an institutional control under Section 734.360(c) of this Part. This subsection (eee) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(c) of this Section to remediate or prevent groundwater contamination at off-site property;
- fff) Costs associated with on-site groundwater remediation if an institutional control is required to address on-site groundwater remediation under Section 734.360(d) of this Part. This subsection (fff) does not prohibit the payment of costs associated with remediation approved by the Agency pursuant to Section 734.360(d) to remediate or prevent groundwater contamination at off-site property.

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 734.632 Eligible Corrective Action Costs Incurred After NFR Letter

Notwithstanding Section 734.360(gg) and (nn) of this Part, the following shall be considered corrective action activities eligible for payment from the Fund even when an owner or operator conducts these activities after the issuance of a No Further Remediation Letter. Corrective action conducted under this Section and costs incurred under this Section must comply with the requirements of Title XVI of the Act and this Part, including, but not limited to, requirements for the submission and Agency approval of corrective action plans and budgets, corrective action completion reports, and applications for payment, provided that no plan, budget, or report is required for activities conducted pursuant to subsection (d) or (e) of this Section.

- a) Corrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial property remediation objectives pursuant to Section 57.7(c)(3)(A)(ii) of the Act and Section 734.360(b) of this Part is being developed into residential property.

- b) Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because a groundwater ordinance used as an institutional control pursuant to Section 57.7(c)(3)(A)(iii) of the Act and Section 734.360(c) of this Part can no longer be used as an institutional control.
- c) Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because an on-site groundwater use restriction used as an institutional control pursuant to Section 57.7(c)(3)(A)(iv) of the Act and Section 734.360(d) of this Part must be lifted in order to allow the installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner or operator.
- d) The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed Tier 1 residential property remediation objectives, if industrial/commercial property remediation objectives were used pursuant to Section 57.7(c)(3)(A)(ii) of the Act and Section 734.360(b) of this Part and the owner or operator demonstrates that the contamination is the result of the release for which the owner or operator is eligible to seek payment from the Fund and disposal of the soil is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement. Costs eligible for payment under this subsection (d) are the costs to transport the soil to a properly permitted disposal site and disposal site fees, and may include, but are not limited to, costs for: disposal site waste characterization sampling; disposal site authorization, scheduling, and coordination; field oversight; disposal fees; and preparation of applications for payment.
- e) The disposal of water exceeding groundwater remediation objectives that is removed from an excavation on the site where the release occurred if a groundwater ordinance is used as an institutional control pursuant to Section 57.7(c)(3)(A)(iii) of the Act and Section 734.360(c) of this Part, or if an on-site groundwater use restriction is used as an institutional control pursuant to Section 57.7(c)(3)(A)(iv) of the Act and Section 734.360(d) of this Part, and the owner or operator demonstrates that the excavation is located within the measured or modeled extent of groundwater contamination resulting from the release for which the owner or operator is eligible to seek payment from the Fund and disposal of the groundwater is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement. [415 ILCS 5/57.19].

- f) Consulting fees for corrective action conducted pursuant to subsections (a), (b), and (c) of this Section. Consulting fees shall be subject to Subpart H of this Part.

(Source: Added at 36 Ill. Reg. _____, effective _____)

SUBPART H: MAXIMUM PAYMENT AMOUNTS

Section 734.810 UST Removal ~~or Abandonment~~ Costs

Payment for costs associated with ~~UST removal or abandonment~~ of each UST must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the excavation, removal, and disposal, ~~and abandonment~~ of UST systems.

UST Volume	Maximum Total Amount per UST
110 – 999 gallons	\$2,100
1,000 – 14,999 gallons	\$3,150
15,000 or more gallons	\$4,100

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 734.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing. Bidding is optional. Bidding is allowed only if the owner or operator demonstrates that corrective action cannot be performed for amounts less than or equal to maximum payment [415 ILCS 5/57.7(c)(3)(C)] set forth in this Part. Once a maximum payment amount is determined via bidding in accordance with this Section, the Agency may approve the maximum payment amount in amended budgets and other subsequent budgets submitted for the same incident.

- a) Bidding must be publicly-noticed, competitive, and sealed bidding that includes, at a minimum, the following:
- 1) The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable.

- A) The invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. Invitations for bids may include, but shall not be limited to, contract terms and conditions, including but not limited to warranty and bonding or other security requirements, and qualification requirements, which may include, but shall not be limited to, factors to be considered in determining whether a bidder is responsible pursuant to subsection (d) of this Section. The time during which bids may be submitted must begin on the date the invitation for bids is issued and must end at the time and date set for opening of the bids. In no case shall the time for bid submission be less than 14 days.
- B) Each bid must be stamped with the date and time of receipt, and stored unopened in a secure place until the time and date set for opening the bids. Bids must not be accepted from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.
- 2) At least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published by the owner or operator in a local paper of general circulation for the area in which the site is located. The owner or operator must also provide a copy of the public notice to the Agency. The notice must be received by the Agency at least 14 days prior to the date set in the invitation for the opening of bids.
- 3) Bids must be opened publicly by the owner or operator in the presence of one or more witnesses at the time and place designated in the invitation for bids.
- A) The name of each bidder, the amount of each bid, and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section.
- B) After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection.
- C) The person opening the bids may not serve as a witness. The names of the persons opening the bids and the names of all witnesses must be recorded and submitted to the Agency on the bid summary form required under subsection (b) of this Section.

- 4) Bids must be unconditionally accepted by the owner or operator without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.
- 5) Correction or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with subsection (c) of this Section. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator.
- 6) The owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section.
- 7) All bidding documentation must be retained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency for inspection and copying during normal business hours. [415 ILCS 5/57.7(c)(3)(B)]
- a) ~~A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.~~
- b) All ~~The~~ bids must be summarized on forms prescribed and provided by the Agency. The bid summary ~~forms~~ form, along with copies of the invitation for bids, the public notice required under subsection (a)(2) of this Section, proof of publication of the notice, and each bid received, ~~the bid requests and the bids~~

~~obtained~~, must be submitted to the Agency in the associated budget. ~~If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.~~

- c) Corrections to bids are allowed only to the extent the corrections are not contrary to the best interest of the owner or operator and the fair treatment of other bidders. If a bid is corrected, copies of both the original bid and the revised bid must be submitted in accordance with subsection (b) of this Section along with an explanation of the corrections made.
- 1) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before the time and date set for opening of bids by withdrawing his or her bid and submitting a revised bid prior to the time and date set for opening of bids.
 - 2) Mistakes Discovered After Opening of a Bid but Before Award of the Winning Bid.
 - A) If the owner or operator knows or has reason to conclude that a mistake has been made, the owner or operator must request the bidder to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted.
 - B) If the mistake and the intended correct information are clearly evident on the face of the bid, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid are typographical errors, errors extending unit prices, transportation errors, and mathematical errors.
 - C) If the mistake and the intended correct information are not clearly evident on the face of the bid, the low bid may be withdrawn if:
 - i) a mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident; or
 - ii) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.
 - 3) Mistakes shall not be corrected after selection of the winning bid unless the Agency determines that it would be unconscionable not to allow the mistake to be corrected (e.g., the mistake would result in a windfall to the owner or operator).

- 4) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the invitation for bid, the correction or waiver of which would not be prejudicial to the owner or operator (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The owner or operator must waive the informalities or allow correction depending on which is in the owner's or operator's best interest.
- d) For purposes of this Section, factors to be considered in determining whether a bidder is responsible include, but are not limited to, the following:
- 1) The bidder has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
 - 2) The bidder is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
 - 3) The bidder has a satisfactory record of performance. Bidders who are or have been deficient in current or recent contract performance in dealing with the owner or operator or other clients may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the bidder; and
 - 4) The bidder has a satisfactory record of integrity and business ethics. Bidders who are under investigation or indictment for criminal or civil actions that bear on the subject of the bid, or that create a reasonable inference or appearance of a lack of integrity on the part of the bidder, may be declared not responsible for the particular subject of the bid.
- e) ~~The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H, in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.~~

(Source: Amended at 36 Ill. Reg. _____, effective _____)

Section 734.860 Unusual or Extraordinary Circumstances

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payment amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. ~~Examples of unusual or extraordinary circumstances include, but are not limited to, an inability to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited number of persons providing the service needed.~~

(Source: Amended at 36 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 15, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board