

ILLINOIS POLLUTION CONTROL BOARD

April 21, 2016

IN THE MATTER OF:)
UST Update, USEPA AMENDMENTS (July) R16-16
1, 2015 through December 31, 2015) (Identical-in-Substance Rulemaking -
Land)

Proposed Rule. Proposal for Public Comment.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

This Board proposes amendments to the Board's underground storage tank (UST) regulations (35 Ill. Adm. Code 731) to include updates to the UST rules adopted by the United States Environmental Protection Agency (USEPA) pursuant to section 9003 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6991b (2013)).

The Board's proposal amends Illinois UST corrective action regulations to reflect USEPA amendments to 40 C.F.R. 280. The Board intends the proposed amendments to be identical-in-substance with their federal counterparts, as "identical-in-substance" is defined by Section 7.2(a) of the Environmental Protection Act (Act) (415 ILCS 5/7.2(a) (2014)). The Board welcomes public comment on this proposal.

Section 22.4(d) of the Act (415 ILCS 5/22.4(d) (2014) mandates this rulemaking by requiring the Board to adopt standards that are identical-in-substance to rules relating to corrective action at USTs that USEPA has adopted pursuant to section 9003 of RCRA. 415 ILCS 5/22.4(d)(1) (2014). Section 22.4(d) further provides that Title VII of the Act and Section 5-35 of the Administrative Procedure Act (5 ILCS 100/5-35 (2014)) do not apply to this proceeding. 415 ILCS 5/22.4(d)(2) (2014).

The Board opened this docket to accommodate federal UST regulations adopted between July 1 and December 31, 2015. On July 15, 2015, USEPA revised UST requirements and instituted new requirements for secondary containment and operator training.¹ USEPA also added operation and maintenance requirements, addressed deferred systems, and made other changes, including updates to codes of practice, technical and editorial amendments, and updates to state program approval requirements.

Most of USEPA's updates are outside the scope of Board regulations because the Board's identical-in-substance UST regulations are limited to corrective action. To the limited extent that the federal updates relate to corrective action, the Board proposes amendments to its UST rules. In the course of reviewing UST rules, the Board revisited whether requirements for notification of UST activity in 35 Ill. Adm. Code 731.122 and Appendices A and C should be repealed. The Board believes that they should be repealed because they do not relate to corrective action. The

¹ USEPA said that these are similar to key provisions of Title XV, Subtitle B of the Energy Policy Act of 2005, Pub. L. 109-58, 109 Stat. 594, 1092-1105 (Aug. 8, 2005).

Board expressly seeks comment from the Office of the State Fire Marshall (OSFM) and the public on this point.

The Board prefaces this opinion with procedural matters. First, the Board provides information on the public comment period. Second, the Board sets forth the timetable for completing this rulemaking. Third, the Board outlines the scope and history of the identical-in-substance mandate in the UST program area. Fourth, the Board describes the July 15, 2015 USEPA action and necessary changes to Board rules. Finally, the Board briefly describes deviations from the literal text of the federal amendments and corrections and amendments to the text that are not directly derived from USEPA amendments.

PUBLIC COMMENTS

The Board invites OSFM and public comment on the proposed amendments. The Board will receive comments until at least 45 days after a notice of these proposed amendments appears in the *Illinois Register*. All comments relating to this rulemaking must refer to docket number R16-16. Anyone may file a public comment with the Board electronically using the Clerk's Office On-Line (COOL) system, linked on the Board's Webpage, at www.ipcb.state.il.us. Alternatively, an interested person may file a comment in writing at:

Office of the Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

All filings with the Clerk of the Board must be served on the hearing officer and on those persons on the Service List for this rulemaking. The service list is available on the Board's Web page. Before filing any document with the Clerk, please check with the Clerk's Office to confirm that you are using the most recent version of the Service List.

All filings in this rulemaking are available through the COOL system, found on the Board's Webpage at www.ipcb.state.il.us.

Request for Comment on Notification of UST Activity

The Board specifically requests comments on whether the federal notification of UST activity and assumption of ownership requirements are within the scope of the Board's mandate under 415 ILCS 5/22.4(d):

Should the Board repeal 35 Ill. Adm. Code 731.122 and Appendices A and C to 35 Ill. Adm. Code 731 in their entirety and disregard the USEPA addition of 40 C.F.R. 280.251(a) and (b) and appendix II to 40 C.F.R. 280, to remove the notification requirements from Board rules, or should the Board make the USEPA amendments to 35 Ill. Adm. Code 731.122 and Appendices A and C to 35 Ill. Adm. Code 731 and Illinois counterparts to 40 C.F.R. 280.251(a) and (b) and appendix II to 40 C.F.R. 280, to maintain and update the notification requirements in the Board rules?

As discussed below, the Board is proposing to remove the notification requirements.

SCHEDULE FOR COMPLETION

The Board must adopt amendments within one year of the date USEPA revised federal rules. 415 ILCS 5/7.2(b) (2014). Since USEPA adopted its amendments on July 15, 2015, the Board must complete corresponding amendments before July 15, 2016. The Board can meet that due date according to the following schedule:

Due date:	July 15, 2016
Proposal adopted date:	April 21, 2016
Publication submission deadline:	May 2, 2016
<i>Illinois Register</i> publication date:	May 13, 2016
End of 45-day public comment period:	June 27, 2016
Adoption date:	July 7, 2016
Possible filing and effective date:	July 15, 2016
Possible <i>Illinois Register</i> publication date:	July 29, 2016

THE BOARD'S UST IDENTICAL-IN-SUBSTANCE MANDATE

The Board's identical-in-substance mandate originally embraced all of USEPA's substantive regulations applicable to USTs. OSFM has since acquired a role in UST regulation that expanded as the Board's mandate relating to UST rules diminished during the late 1980s and early 1990s. The Board's UST identical-in-substance mandate is now limited to corrective action at USTs. 415 ILCS 5/22.4(d).

The General Assembly instituted the first identical-in-substance mandate for UST rules in 1986. *See* P.A. 84-1072, § 1 (Dec. 2, 1985), eff. July 1, 1986. That original mandate required the Board to adopt regulations identical-in-substance to rules adopted by USEPA pursuant to section 9003 of RCRA (42 U.S.C. § 6991b). *See* Ill. Rev. Stat. 1985, ch.111½, ¶ 1022.4(e). Immediately upon receiving the mandate, the Board adopted the initial Illinois UST standards² based on USEPA's interim UST standards. *See* RCRA Update, USEPA Regulations (July 1, 1985 through January 31, 1986), R86-1 (July 11, 1986), slip op. at 24; *see also* 50 Fed. Reg. 28742 (July 15, 1985) (the underlying USEPA action).

In 1987, the General Assembly imposed an identical-in-substance mandate on OSFM for UST rules. *See* P.A. 85-861, § 2, eff. Sep. 27, 1987 (adding Ill. Rev. Stat. 1987, ch. 127½, ¶ 154(3)(b)(i)); *see also* 430 ILCS 15/2(3)(b)(i) (2016) (as presently codified). The General Assembly retained the identical-in-substance mandate applicable to the Board and further

² The Board prohibited installation of UST systems until final adoption of UST standards by USEPA, unless the system fulfilled specified minimum requirements. *See* 35 Ill. Adm. Code 731.102(a) (1986).

allowed the Board to adopt regulations identical to OSFM rules. *See* P.A. 85-861, § 1, eff. Sep. 27, 1987 (adding Ill. Rev. Stat. 1987, ch. 1117½, ¶ 1022.4(e)). The General Assembly barred OSFM from adopting regulations relating to corrective action. *See* Ill. Rev. Stat. 1987, ch. 127½, ¶ 154(3)(b)(ii); *see also* 430 ILCS 15/2(3)(b)(ii) (2016) (as presently codified).

The Board next updated the UST rules in 1989 to incorporate USEPA's final standards. *See* UST Update, USEPA Regulations (September 23, 1988), R88-27 (Apr. 27, 1989); *see also* 53 Fed. Reg. 37082 (Sep. 23, 1988) (underlying USEPA rules). The Board noted the parallel identical-in-substance UST mandates imposed on OSFM and the Board, and discussed ambiguities created by the two mandates. UST Update, USEPA Regulations (September 23, 1988), R88-27 (Apr. 27, 1989), slip op. at pp. 2-4. The Board updated the UST rules in 35 Ill. Adm. Code 731 periodically during 1989 to 1991 as USEPA revised UST standards.³

The General Assembly again amended the Board's identical-in-substance mandate in 1990 to limit the mandate to corrective action.⁴ *See* P.A. 86-1050, § 2, eff. July 11, 1990. Further limiting the Board's mandate in 1991, the General Assembly defined "corrective action" to exclude "design, construction, installation, general operation, release detection, release reporting, release determination investigation, release confirmation, out-of-service systems and their closure or financial responsibility." *See* P.A. 87-323, § 2 (Sep 6, 1991), eff. Sep 6, 1991; 415 ILCS 5/22.4(d)(3) (2014). The Board's present identical-in-substance mandate for UST regulations is at 415 ILCS 5/22.4(d) (2014).⁵

³ *See* UST Financial Assurance, USEPA Regulations (October 26, 1988), R89-4 (July 27, 1989); UST Update, USEPA Regulations (October 27, 1988 through June 30, 1989), R89-10 (Mar. 1, 1990); UST Update, USEPA Regulations (June 30, 1989 through December 31, 1989), R90-3 (June 7, 1990); UST Update, USEPA Regulations (January 1, 1990 through June 30, 1990), R90-12 (Feb. 28, 1991); UST Update, USEPA Regulations (July 1, 1990 through December 31, 1990), R91-2 (July 25, 1991); UST Update, USEPA Regulations (January 1, 1991 through June 30, 1991), R91-14 (Apr. 9, 1992).

⁴ The 1990 amendments also required the Board to include certain heating oil tanks within the scope of the UST rules.

⁵ The Board here omits limited statutory amendments from this discussion. *See* P.A. 85-1048, § 2 (July 14, 1988), eff. Jan. 1, 1989 (renumbering Section 22.4(e) to 22.4(d) and adding a reference to Section 7.2); P.A. 85-1324, § 1 (Aug. 31, 1988), eff. Jan. 1, 1989 (added "and other regulated substances"); P.A. 87-1088, § 1 (Sep 15, 1992), eff. Sep 15, 1992 (removing the authority to adopt rules identical-in-substance to State Fire Marshall rules); P.A. 88-45, § 3-108. (July 6, 1993), eff. July 6, 1993 (revising citations to the Administrative procedure Act (5 ILCS 100)).

In 1992 the Board responded to the 1990 and 1991 revisions to the statutory mandate. The Board repealed UST rules that did not pertain to corrective action.⁶ See UST Update, USEPA Regulations (January 1, 1991 through June 30, 1991), R91-14 (Apr. 9, 1992), slip op. at pp. 5-7.

As a result of this complex history, the Board's UST identical-in-substance mandate is now limited to the rules that remain in 35 Ill. Adm. Code 731. At present, the only remaining UST requirements are the following: release response and corrective action provisions in Subpart F; notification requirements of Section 731.122; definitions in Section 731.112; and incorporations by reference in Section 731.113.

Does UST Mandate Embrace Notification of UST Activity?

In 1992, when repealing Board rules outside the scope of the identical-in-substance mandate for UST corrective action, the Board questioned whether to retain the provisions for notification of UST activity. The Board decided to retain the notice requirement in 35 Ill. Adm. Code 731.122 (derived from 40 C.F.R. 280.22) because the General Assembly omitted the notice requirement from the list of subject matters that are not defined as corrective action in 415 ILCS 5/22.4(d)(3). The Board retained the notice requirement despite a belief that the General Assembly's omission likely was an error. See UST Update, USEPA Regulations (January 1, 1991 through June 30, 1991), R91-14 (Apr. 9, 1992), slip op. at p. 5. The Board retained Appendices A and C, which also relate to the notice requirement.

Considering this history, the Board now believes the appropriate action is to repeal the existing rule in 35 Ill. Adm. Code 731.122 and Appendices A and C, and not incorporate federal revisions to these provisions. The notification requirements are not an essential segment of the corrective action requirements. Existing Section 731.122(a) requires notification of UST existence directed to OSFM (using designated portions of Appendix A). If added in response to USEPA adding 40 C.F.R. 280.22(b), new Section 731.122(b) would require notification of assumption of ownership of a UST to OSFM (using Appendix B). The notification requires certification of compliance with aspects of tank design and operation, but nothing relating to corrective action. See 35 Ill. Adm. Code 731.122(f) (derived from 40 C.F.R. 280.22(f)). The Board proposes repealing 35 Ill. Adm. Code 731.122 and Appendices A and C for two reasons.

First, these notifications of UST activity and assumption of ownership requirements are not needed under the corrective action provisions. The notification requirements are not used for (1) initial release reporting to the Illinois Emergency Management Agency (*see* 35 Ill. Adm. Code 731.161(a), derived from 40 C.F.R. 280.61(a)); (2) reporting initial abatement steps to the Illinois Environmental Protection Agency (Agency) (*see* 35 Ill. Adm. Code 731.162(b), derived from 40 C.F.R. 280.62(b)); (3) the 45-day site and release assessment submitted to the Agency (*see* 35 Ill. Adm. Code 731.163(b), derived from 40 C.F.R. 280.63(b)); (4) the 45-day free product removal submitted to the Agency (*see* 35 Ill. Adm. Code 731.164(d), derived from 40

⁶ The Board also added heating oil tanks within the scope of the regulations. See UST Update, USEPA Regulations (January 1, 1991 through June 30, 1991), R91-14 (Apr. 9, 1992), slip op. at pp. 7-10 (adding 35 Ill. Adm. Code 731.110(e)).

C.F.R. 280.64(d)); (5) the full site assessment report submitted to the Agency (*see* 35 Ill. Adm. Code 731.165(b), derived from 40 C.F.R. 280.65(a)); (6) for the corrective action plan submitted to the Agency (*see* 35 Ill. Adm. Code 731.166(a), derived from 40 C.F.R. 280.66(a)); or (7) the public notices that the Agency must publish for a confirmed release that requires a corrective action plan (*see* 35 Ill. Adm. Code 731.167, derived from 40 C.F.R. 280.67).

Second, the Board's notification of UST activity requirements duplicate and potentially conflict with OSFM requirements also derived from federal notification requirements. *Compare* 41 Ill Adm. Code 176.440 *with* 35 Ill. Adm. Code 731.122; *compare* OSFM, Division of Petroleum and Chemical Safety, Notification Form for Underground Storage Tanks (available at www.sfm.illinois.gov/Portals/0/docs/Commercial/UndergroundStorageTanks/NotificationForm.pdf) *with* appendix I to 40 C.F.R. 280 (2015) (incorporated by reference in Appendix A to 35 Ill. Adm. Code 731). The OSFM form and the USEPA form differ in format, even though they may not differ in substance. The Board notification requirement could result in duplicative submissions or submissions on a form other than that which OSFM has endorsed. Further, OSFM will ultimately incorporate USEPA changes to the notification requirements into Illinois rules.⁷ During any time between when the Board incorporates USEPA changes and when OSFM does so, opportunity for conflict and/or confusion may result.

For the foregoing reasons, the Board believes that the notification requirements in 35 Ill. Adm. Code 731.122 and new 40 C.F.R. 280.251 are not within the scope of the mandate to adopt rules that are identical-in-substance to USEPA requirements for corrective action for UST sites. The Board believes that repeal of the existing rule in 35 Ill. Adm. Code 731.122 and Appendices A and C, and omitting incorporating counterparts to 40 C.F.R. 280.251 and Appendix II to 40 C.F.R. 280 into the Board's rules, is the appropriate final action in this matter.

The Board has proposed repeal of the notification of UST activity and omitted the new federal notification of assumption of ownership requirements in this proposal. The Board seeks OSFM and public comment on whether to retain the notification requirements with the updates in the Board's order. The Board will repeal 35 Ill. Adm. Code 731.122 and Appendices A and C unless public comments received by the Board justify retaining notification requirements.

FEDERAL AMENDMENTS AND BOARD PROPOSAL

The USEPA amendments dated July 15, 2015 (at 80 Fed. Reg. 41566) revised all segments of the federal UST rules. USEPA instituted new requirements and made editorial and corrective amendments. Nearly all of the new requirements added by USEPA are related to subject matters outside the scope of the Board's UST mandate. These include the new requirements for secondary containment for tanks and piping, operator training, periodic operation and maintenance, release prevention and detection technologies, and updated codes of practice. The new requirements that address tank systems deferred (field-constructed tanks, airport hydrant fuel distribution systems, and USTs storing fuel solely for emergency power

⁷ As of adoption of this opinion and order, the State Fire Marshall has yet to propose amendments to 41 Ill. Adm. Code 176 based on the July 15, 2015 USEPA amendments. *See Illinois Register Cumulative Index*, April 15, 2016.

generators) fall within the scope of current Board regulations to the extent that the requirements involve corrective action requirements.

The Board disregards all USEPA additions and amendments that are outside the scope of the identical-in-substance mandate. The amendments within the identical-in-substance mandate are limited to those that relate to corrective action. The following table lists the provisions amended by USEPA, states the subject matter, and indicates whether USEPA revisions are within the Board's identical-in-substance mandate:

USEPA Rule (USEPA action)	Subject Matter	Illinois Rule (35 Ill. Adm. Code)
40 C.F.R. 280, subpart A	Program scope and installation of partially excluded tanks	Partially outside the scope of the Board's mandate, as follows:
280.10 (amended)	Applicability Statement	731.110
280.11 (amended)	Installation of partially excluded UST systems	Outside scope of the Board's mandate
280.12 (amended)	Definitions	731.112 (many definitions outside the scope of the Board's mandate)
Various provisions that reference federal regulations or industry standards	Incorporations by reference	731.113 (See discussion below)
40 C.F.R. 280, subpart B	Design, construction, installation, and notification	Partially if not totally outside the scope of the Board's mandate, as follows:
280.20 (amended)	Performance standards for new UST systems	Outside scope of the Board's mandate
280.21 (amended)	Upgrading existing UST systems	Outside scope of the Board's mandate
280.22 (amended)	Notification	731.122; proposed for repeal as outside the scope of the Board's mandate
40 C.F.R. 280, subpart C (Sections 280.30 through 280.34 amended; Sections 280.35 and 280.36 added)	General operating requirements	Outside scope of the Board's mandate
40 C.F.R. 280, subpart D (Sections 280.40 through 280.45 amended)	Release detection	Outside scope of the Board's mandate

40 C.F.R. 280, subpart E (Sections 280.50 through 280.53 amended)	Release reporting, investigation and confirmation	Outside scope of the Board's mandate
40 C.F.R. 280, subpart F (Sections 280.60 through 731.167 amended)	Release response and corrective action	731.Subpart F
40 C.F.R. 280, subpart G (Sections 280.70 through 280.74 amended)	Out-of-service systems and closure	Outside the scope of the Board's mandate
40 C.F.R. 280, subpart H (Sections 280.90 through 280.115 amended)	Financial assurance	Outside the scope of the Board's mandate
40 C.F.R. 280, subpart I (Sections 280.200, 280.210, 280.220, and 280.230 amended)	Lender liability	Outside the scope of the Board's mandate
40 C.F.R. 280, subpart J (Sections 280.240 through 280.245 added)	Operator training	Outside the scope of the Board's mandate
40 C.F.R. 280, subpart K	Field-constructed and airport hydrant fuel distribution systems	Partially outside the scope of the Board's mandate, as follows:
40 C.F.R. 280.250 (added)	Definitions	731.250 (only as to release reporting, response, and investigation requirements; likely not as to notification requirements)
40 C.F.R. 280.251 (added)	General requirements	731.251 (only as to release reporting, response, and investigation requirements; likely not as to notification requirements)
40 C.F.R. 280.252 (added)	Additions, exceptions, and alternatives	Outside the scope of the Board's mandate
40 C.F.R. 280, appendix I (amended)	Notification forms	731.Appendix A; likely outside the scope of the Board's mandate
40 C.F.R. 280, appendix II (added)	Ownership notification forms	731.Appendix B; likely outside the scope of the Board's mandate
40 C.F.R. 280, appendix III (amended)	Statement for shipping tickets	731.Appendix C; likely outside the scope of the Board's mandate

Thus, the focus of this proceeding is limited to those USEPA amendments that fall within the scope of the Board's identical-in-substance mandate in section 22.4(d) of the Act (415 ILCS 5/22.4(d)). The Board proposes the following actions.

Amending the following provisions:

- 731.110 Applicability (corresponding with segments of 40 C.F.R. 280.10 that would apply to corrective action)
- 731.112 Definitions (corresponding with segments of 40 C.F.R. 280.12 that would apply to corrective action)
- 731.113 Incorporations by Reference (See the discussion below)
- 731.161 Initial Response (corresponding with 40 C.F.R. 280.61)
- 731.162 Initial Abatement Measures and Site Check (corresponding with 40 C.F.R. 280.62)
- 731.163 Initial Site Characterization (corresponding with 40 C.F.R. 280.63)
- 731.164 Free Product Removal (corresponding with 40 C.F.R. 280.64)
- 731.165 Investigations for Soil and Groundwater Cleanup (corresponding with 40 C.F.R. 280.65)
- 731.166 Corrective Action Plan (corresponding with 40 C.F.R. 280.66)
- 731.167 Public Participation (corresponding with 40 C.F.R. 280.67)

Adding the following provisions:

- 731.250 Definitions (to correspond with segments of 40 C.F.R. 280.250 that would apply to corrective action)
- 731.251 General Requirements (to correspond with segments of 40 C.F.R. 280.251 that would apply to corrective action)

Repealing the following provisions:

- 731.122 Notification Requirements (corresponding with 40 C.F.R. 280.22)
- 731.Appendix A Notification for Underground Storage Tanks (Forms) (corresponding with appendix I to 40 C.F.R. 280)
- 731.Appendix C Statement for Shipping Tickets and Invoices (corresponding with appendix III to 40 C.F.R. 280)

However, for purposes of gathering OSFM and public comment on repealing these provisions, the Board would take the following actions on provisions proposed for repeal or omission from this proceeding:

Amending, rather than repealing, the following provisions:

- 731.122 Notification Requirements (corresponding with 40 C.F.R. 280.22)
- 731.Appendix A Notification for Underground Storage Tanks (Forms) (corresponding with appendix I to 40 C.F.R. 280)
- 731.Appendix C Statement for Shipping Tickets and Invoices (corresponding with appendix III to 40 C.F.R. 280)

Adding, rather than omitting, the following provisions:

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| 731.251 | General Requirements (additional text to correspond with segments of 40 C.F.R. 280.251 that apply to notification) |
| 731.Appendix B | Notification of Ownership for Underground Storage Tanks (Form) (corresponding with appendix II to 40 C.F.R. 280) |

The Volume and Nature of Required Amendments

Overall, the amendments required based on the July 15, 2015 USEPA amendments require little of the Board. The volume and nature of the amendments required to each provision are summarized on a Section-by-Section basis in the following table and topical paragraphs:

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| 731.110 | Moderate revisions to the text, with or without retention of notification requirements. |
| 731.112 | Moderate revisions to the text, with or without retention of notification requirements, mostly Board corrections to the text. |
| 731.113 | Minor revisions to the text, with or without retention of notification requirements, all Board corrections to the text. See discussion below. |
| 731.122 | Complete repeal; or moderate revisions to the text, including a number of Board corrections, with retention of notification requirements. |
| 731.161 | One minor Board correction to the text, with or without retention of notification requirements. |
| 731.162 | Five minor Board corrections to the text, with or without retention of notification requirements. |
| 731.163 | Two minor Board corrections to the text, with or without retention of notification requirements. |
| 731.164 | Two minor Board corrections to the text, with or without retention of notification requirements. |
| 731.165 | Two minor Board corrections to the text, with or without retention of notification requirements. |
| 731.166 | Six minor Board corrections to the text, with or without retention of notification requirements. |
| 731.167 | Four minor Board corrections to the text, with or without retention of notification requirements. |
| 731.250 | Minor addition of text, with or without retention of notification requirements. |
| 731.251 | Minor addition of text, with or without retention of notification requirements, with minor Board additions to the text and omissions of federal language. |
| 731.Appendix A | Complete repeal; or moderate revisions to the text, including a number of Board corrections, with retention of notification requirements. |
| 731.Appendix B | Complete omission without retention of notification requirements; minor addition of text in the form of an incorporation by reference, with retention of notification requirements. |

731.Appendix C Complete repeal; or minor revisions to the text in the form of an updated incorporation by reference, with a single Board correction, with retention of notification requirements.

Amendments to the Applicability Provision. The principal USEPA amendments to the applicability provision of 40 C.F.R. 280.10 relate to inclusion of previously deferred tank systems. The Board has included in 35 Ill. Adm. Code 731.110(a) and (c) those that would impose substantive rules on tank systems. The imposition of substantive provisions in the applicability provision does not directly relate to particular provisions, so applicability statements would relate to both corrective action and notification requirements.

Amendments to Definitions. Most of the USEPA amendments to and additions of definitions in 40 C.F.R. 280.12 are not necessary in corresponding 35 Ill. Adm. Code 731.112. Table 2 also indicates that prior Board actions and differences in format obviated most of the USEPA corrections. Table 1 indicates that many of the new definitions added by USEPA are outside the scope of Board regulation. The definition of “underground storage tank” is the only definition in Section 731.112 amended as a result of the USEPA amendments. The Board has added the new definitions in 40 C.F.R. 280.250 in new Section 731.250. Those definitions of “airport hydrant fuel distribution system” and “field-constructed tank” support regulation of previously deferred facilities under a provision that subjects USTs to both notification and corrective action requirements.

Amendments to or Repeal of Notification Requirements. As discussed above, the Board questions whether notification requirements are within the scope of the identical-in-substance mandate of section 22.4(d) of the Act (415 ILCS 5/22.4(d)). If the Board ultimately determines that notification requirements are outside the scope of the mandate, the Board will delete those amendments from the adopted rules.

USEPA revised the federal notification requirements. USEPA updated the form required for notification in appendix I and added a new form for notification of assumption of ownership as appendix II. USEPA further amended the statement in appendix III about notification required on shipping papers. USEPA imposed the UST notification requirements on airport hydrant fuel distribution systems and field-constructed tanks in 40 C.F.R. 280.251. Finally, USEPA revised the UST notification requirements in 40 C.F.R. 280.22. Principally, USEPA made minor editorial amendments to the notification of UST activity in subsection (a) and added a new requirement for notification of assumption of UST ownership as subsection (b).

Amendments to Incorporations by Reference. It is only necessary for the Board to update one incorporation by reference and remove three incorporations by reference in this proceeding. None of these are prompted by the USEPA amendments of July 15, 2015.

The federal rules do not include an incorporations by reference provisions. Rather, the federal rules simply refer to 48 industry standards in notes appended to 19 provisions and one federal regulation in a note appended to a 20th provision, deeming those standards acceptable guidance or acceptable for use for compliance. Although USEPA’s amendments affected the listings of these standards, none of the provisions for which the federal rules refers to the

industry standards affects or relates to any notification or corrective action requirement. The USEPA references to industry standards are all beyond the scope of the Board's UST mandate.

The Board's existing UST rules in 35 Ill. Adm. Code 731.113 include four incorporations by reference to provisions of the *Code of Federal Regulations*. Only one is a necessary incorporation by reference, which the Board updates in this proceeding. The others are not necessary, and the Board removes them.

Update to Incorporation by Reference to 10 C.F.R. 302.4. The Board must update the incorporation by reference to 40 C.F.R. 302.4. This incorporation by reference is needed to define "regulated substance" by defining one kind of regulated substance: a "hazardous substance."

The federal definition of "regulated substance" in 40 C.F.R. 280.12 relies on a federal statutory provision.⁸ The definition relies in part on section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. §9601(14) (2013)). Reluctant to rely on a federal statutory provision, the Board referred to the list of substances in 40 C.F.R. 302.4 for definition of "hazardous substance," which is one kind of "regulated substance."⁹ The Board incorporated by reference to 40 C.F.R. 302.4 to support the definition of "hazardous substance." UST Update, USEPA Regulations (September 23, 1988), R88-27 (Apr. 27, 1989), slip op. at pp. 7-8.

The list of hazardous substances in 40 C.F.R. 302.4 actually defines the "hazardous substances" that are one of the two types of "regulated substances." Thus, the substance of 40 C.F.R. 302.4 contributes substance to the definition. The incorporation by reference is necessary. The Board updates it.

Removal of Incorporation by Reference to 10 C.F.R. 50. The Board can remove the incorporation by reference to appendix A to 10 C.F.R. 50. This incorporation by reference is for the purpose of 35 Ill. Adm. Code 731.110(c)(1)(C). By the July 15, 2015 amendments, USEPA renumbered corresponding 40 C.F.R. 280.10(c)(1)(iii) to 40 C.F.R. 280.10(c)(1)(iv) and changed the former reference to appendix A to 40 C.F.R. 50 to refer instead to 40 C.F.R. 50 generally. The purpose of the reference to this Nuclear Regulatory Commission (NRC) regulation is for the fact of facility licensing. No substantive requirement of the NRC regulations is incorporated into the UST rules. For this reason, the incorporation by reference is not necessary. The Board removes the incorporation by reference rather than updating it to correspond with the amendments by USEPA.

⁸ The definition of "underground storage tank" in 40 C.F.R. 280.12 (corresponding with 35 Ill. Adm. Code 731.112) also relies on a federal statute, but only for the fact of regulation under that statute, not in a way that relies on substantive requirements of that statute. *See* 40 C.F.R. 280.12 (definition of "underground storage tank" excluding facilities regulated under 49 U.S.C. ch. 601).

⁹ The Board restructured the definition of "regulated substance" to rely on subsidiary definitions of "hazardous substance" and "petroleum." *See* 35 Ill. Adm. Code 731.112 (definition of "regulated substance").

Removal of Incorporations by Reference to 40 C.F.R. 280.3 (1987) and 40 C.F.R.

302.6. The Board can remove the incorporations by reference to 40 C.F.R. 280.3 (1987), which USEPA repealed in 1988 (*see* 53 Fed. Reg. 37082 (Sep. 23, 1988)), and 40 C.F.R. 302.6. The incorporations by reference were for the purpose of the Board note appended to 35 Ill. Adm. Code 731.122(a), the notification requirement.¹⁰ The note explains a past requirement to notify. The Board note does not impose a present duty to notify, and the note does not rely on either 40 C.F.R. 280.3 (1987) or 40 C.F.R. 302.6 to impose any requirement. The incorporations by reference are not necessary, so the Board removes them.

No Action on Statutory Provisions Relating to Pipeline Facilities. The definition of “underground storage tank” in 40 C.F.R. 280.12 (and corresponding 35 Ill. Adm. Code 731.112) includes a reference to chapter 601 of 49 U.S.C., the federal statute under which the U.S. Department of Transportation, Pipeline and Hazardous Materials Transportation Administration regulates pipeline facilities. Pipeline facilities that are regulated by USDOT are excluded from the definition.

The exclusion from the definition of “underground storage tank” relies on the fact of regulation under the referenced federal statutory provision. The definition does not draw meaning or substance from the provision. Although USEPA has added this reference to replace former references to federal statutes,¹¹ incorporation by reference is not necessary. The Board does not add an incorporation by reference to the federal pipeline statutory requirements.

Amendments to Corrective Action Provisions. The amendments relating exclusively to corrective action are predominantly Board corrections and updates to the text. None of the amendments to the corrective action provisions of Subpart F¹² are derived from USEPA amendments. As indicated in Table 2 below, prior Board actions obviated the USEPA amendments to Subpart F provisions.

Restoration of Previously Omitted Text. When adopting the corrective action requirements in 1989, the Board omitted a segment of the text of 40 C.F.R. 280.66(a) from corresponding 35 Ill. Adm. Code 731.166(a). The Board has not now proposed restoring the segment.

The provision that allows the Agency to require additional information or submission of a corrective action plan concludes with the following statement:

¹⁰ The note to corresponding 40 C.F.R. 280.12(a) refers to the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, 98 Stat. 3221 *et seq.*, Nov. 8, 1984) and section 103(c) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9603(c)). *See* UST Update, USEPA Regulations (September 23, 1988), R88-27 (Apr. 27, 1989), slip op. at pp. 7-8, 15-16.

¹¹ The Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App.: 1671 *et seq.* (Pub. L. 90-481, 82 Stat. 720, Aug. 12, 1968), and the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App.: 2001 *et seq.* (Pub. L. 96-129, 93 Stat. 989, Nov. 30, 1979).

¹² Sections 731.161 through 731.167.

In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the implementing agency, and must modify their plan as necessary to meet this standard. 40 C.F.R. 280.66(a) (2015).

When adopting the UST rules in 1989, the Board observed that this statement was a repetition of the standard recited elsewhere in the rules. *See* UST Update, USEPA Regulations (September 23, 1988), R88-27 (Apr. 27, 1989), slip op. at p. 27. In fact, the stated standard for approval of a corrective plan appears in the following subsection of the rules:

The implementing agency will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. 40 C.F.R. 280.66(b) (2015).

Upon further review, the Board now determines that restoration of the previously omitted statement is necessary. The statement omitted from subsection (a) includes two elements that do not appear in the statement in subsection (b): (1) the omitted statement clearly states that a UST owner or operator bears the burden of submitting a compliant corrective action plan; and (2) the owner or operator must modify the plan as necessary to ensure adequate protection of human health and the environment. The Board has restored the omitted statement to subsection (a), substituting “Agency” for “implementing agency,” since it is the Agency that implements corrective action requirements.

Addition of Requirements for Airport Hydrant Fuel Distribution Systems and Field-Constructed Tanks. The provisions that USEPA added for airport hydrant fuel distribution systems and field-constructed tanks in 40 C.F.R. 280.251 include notification requirements and impose the corrective action requirements. Addition of elements from this federal provision as 35 Ill. Adm. Code 731.251 is necessary.

The Board included in proposed Section 731.251 the elements relating to notification and corrective action. The Board omitted those elements of the federal text that are only applicable to design, operational, and other subject matters outside the scope of the Board’s mandate. If the Board determines that notification requirements are outside the scope of the UST mandate, the Board will remove those elements from the text of Section 731.251.

All segments of new 40 C.F.R. 280.252 pertain to design and operation of tanks. None relate to either notification or corrective action. The Board included no counterpart to this provision in the proposal for public comment.

Request for Public Comment. The Board requests comment on the proposed amendments. The Board again directs attention to the above request for comment on whether notification requirements are within the scope of the Board’s UST identical-in-substance mandate. The Board further requests that the Agency, OSFM, and the regulated community carefully examine the proposed amendments and direct the Board’s attention to any corrections or revisions that may be necessary before final adoption of the amendments.

**Deviations from the Literal Text of the Federal Amendments
and Non-Federally Derived Corrections and Clarifications**

The Board routinely examines federal amendments and the base text of rules open for amendments to find any areas that need correction or clarification. JCAR and the Office of the Secretary of State also routinely examine the text and suggest corrections and clarifications. Sometimes suggestions arise from the Agency, USEPA, or members of the regulated community. The Board often makes revisions as a result. The revisions thus made are not directly derived from federal amendments. The Board is ever mindful of the limited discretion authorized in the context of an identical-in-substance proceeding. The Board is limited to “those changes that are necessary for compliance with the Illinois Administrative Code,” “technical changes that in no way change the scope or meaning of any portion of the regulations,” and “apparent typographical and grammatical errors.” *See* 415 ILCS 5/7.2(a) and (a)(7) (2014). Thus, the Board will only make minor, non-substantive corrections and clarifications in this context. These corrections are non-substantive in effect.

**Tabulations of Deviations from the Literal Text of the Federal Amendments
and Miscellaneous Board Housekeeping Amendments**

The tables below list numerous corrections and amendments that are not based on current federal amendments. Table 1 lists a number of federal amendments that the Board has not included in this docket. Table 1 gives a brief explanation why the Board has declined to make each. Table 2 includes deviations made in this proposal for public comment from the verbatim text of the federal amendments. Table 3 contains corrections and clarifications that the Board made in the base text involved in this proposal. The amendments listed in Table 3 are not directly derived from the current federal amendments. Some of the entries in these tables are discussed further in appropriate segments of the general discussion above in this opinion.

**Table 1:
Federal Amendments That Are
Not Necessary in This Docket**

Provision Citations 40 C.F.R./ 35 Ill. Adm. Code	USEPA Amendment/ Explanation Why Not Made in This Docket
280 table of contents, 280.252 heading	Omitted the heading for a provision whose subject matter is beyond the scope of Board regulations.
280.10(d)	The Board previously removed subsection (d) because its subject matter was beyond the scope of Board regulation, obviating removal now.
280.11	The Board previously removed this provision because its subject matter was beyond the scope of Board regulation, obviating amendments now.

280.12, “Class A operator”	This term is used only in the 40 C.F.R. definition of “training program” and subpart J of 40 C.F.R. 280, both of which are beyond the scope of Board regulation.
280.12, “Class B operator”	This term is used only in the 40 C.F.R. definition of “training program” and subpart J of 40 C.F.R. 280, both of which are beyond the scope of Board regulation.
280.12, “Class C operator”	This term is used only in the 40 C.F.R. definition of “training program” and subpart J of 40 C.F.R. 280, both of which are beyond the scope of Board regulation.
280.12, “containment sump”	It was not necessary to add the definition because it is used only in the 40 C.F.R. 280.12 definition of “secondary containment” and 40 C.F.R. 280.32 through 280.36, both of which are beyond the scope of Board regulation.
280.12, “operational life”	The Board previously removed this definition because it is used only in 40 C.F.R. 280.11, 280.20, and 280.42, each of which is beyond the scope of Board regulation.
280.12, “repair”	The Board previously removed this definition because it is used only in 40 C.F.R. 280.20, 280.21, 280.33, 280.34, 280.45, 280.50, 280.52, and 280.71, each of which is beyond the scope of Board regulation.
280.12, “replaced”	This term is used only in 40 C.F.R. 280.20, 280.33, 280.41, 280.50, 280.52, 280.210, and 280.252, each of which is beyond the scope of Board regulation.
280.12, “secondary containment”	This term is used only in 40 C.F.R. 280.20, 280.33, 280.35, 280.40, 280.42, 280.43, 280.50, 280.52, and 280.252, each of which is beyond the scope of Board regulation.
280.12, “training program”	This term is used only in 40 C.F.R. 280.242, 280.244, and 280.245, each of which is beyond the scope of Board regulation.
280.12, “under-dispenser containment”	This term is used only in 40 C.F.R. 280.20 and 280-30, both of which are beyond the scope of Board regulation.
280.20	The Board previously removed this Section because its subject matter was beyond the scope of Board regulation, obviating amendment now.
280.21	The Board previously removed this Section because its subject matter was beyond the scope of Board regulation, obviating amendment now.

280.22	The Board is removing the corresponding Illinois provision and not including the current USEPA amendments because the Board finds that the notification requirements are outside the scope of Board regulation.
280, subpart C	The Board previously removed this Subpart (Sections 731.130 through 731.134) because its subject matter was beyond the scope of Board regulation, obviating amendment now.
280, subpart D	The Board previously removed this Subpart (Sections 731.140 through 731.145) because its subject matter was beyond the scope of Board regulation, obviating amendment now.
280, subpart E	The Board previously removed this Subpart (Sections 731.150 through 731.153) because its subject matter was beyond the scope of Board regulation, obviating amendment now.
280, subpart G	The Board previously removed this Subpart (Sections 731.170 through 731.174) because its subject matter was beyond the scope of Board regulation, obviating amendment now.
280, subpart H	The Board previously removed this Subpart (Sections 731.190 through 731.211) because its subject matter was beyond the scope of Board regulation, obviating amendment now.
280, subpart I	Omitted this subpart (sections 280.200, 280.210, 280.220, and 280.230) because its subject matter was beyond the scope of Board regulation, obviating amendment now.
280.252	Omitted the provision as subject matter was beyond the scope of Board regulation.
280, appendix A	The Board is removing the corresponding Illinois appendix and not including the current USEPA amendments because the Board finds that the notification requirements are outside the scope of Board regulation.
280, appendix B	The Board is not including the current USEPA amendments because the Board finds that the notification requirements are outside the scope of Board regulation.
280, appendix C	The Board is removing the corresponding Illinois appendix and not including the current USEPA amendments because the Board finds that the notification requirements are outside the scope of Board regulation.

281	The federal requirements for authorization of state UST programs are outside the scope of Board regulation.
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**Table 2:
Deviations from the Text of the Federal Amendments**

Illinois Section	40 C.F.R. Section	Revision(s)
731.110(a)(1)(C)	280.10(a)(1)(iii)	Changed “at installation” to “at the time of installation.”
731 table of contents, heading	280 table of contents, heading	Omitted the new words, “Installation Requirements for Partially Excluded UST Systems,” since the described subject matter is beyond the scope of Board regulations.
731.110(a)(1)(B)	280.10(a)(1)(ii)	Replaced the federal text with an explanatory statement that the subject matter is beyond the scope of Board regulations.
731.110(a)(2)	280.10(a)(2)	Replaced the federal text with an explanatory statement that the subject matter is beyond the scope of Board regulations.
731.110(b)(2)	280.10(b)(2)	Capitalization of “Section” in citation to sections 402 and 307(b) of the Clean Water Act was not necessary because the Illinois rule cites to an Illinois statutory provision relating to water pollution control.

731.110(c)(1)	280.10(c)	Retained the federally derived text as subsection (c)(1); retained “Section 731,122” in place of “Subpart B” because it is the only provision remaining in that Subpart; changed “does” to “do” to accommodate the plural; did not restore previously omitted references to Subparts B through E and G because their subject matter is beyond the scope of Board regulation; omitted a reference to Subpart J because its subject matter is beyond the scope of Board regulation; did not remove “any of the following.”
731.110(c)(1)(A)	280.10(c)(1)	Retained the federally derived text as subsection (c)(1)(A).
731.110(c)(1)(B)	280.10(c)(2)	Designated the federal text as subsection (c)(1)(B); added “either of the following.”
731.110(c)(1)(B)(i)	280.10(c)(2)(i)	Designated the federal text as subsection (c)(1)(B)(i).
731.110(c)(1)(B)(ii)	280.10(c)(2)(ii)	Designated the federal text as subsection (c)(1)(B)(ii)
731.112, “belowground release”	280.12, “belowground release”	The Board previously changed “ground water” to “groundwater.”
731.112, “farm tank”	280.12, “farm tank”	The Board previously placed the term “farm” in quotation marks.
731.112, “hazardous substance”	280.12, “hazardous substance”	Did not add quotation marks to the second appearance of the defined term or remove the words “derived from crude oil through processes of separation, conversion, upgrading, and finishing” due to prior restructuring of the definition. ¹³

¹³ The Board changed the definition to rely on the list of hazardous substances in 40 C.F.R. 302.4 and avoid incorporation by reference to the definition of “hazardous substance” in section 101(14) of CERCLA (42 U.S.C. § 9601(14)). See UST Update, USEPA Regulations (September 23, 1988), R88-27 (Apr. 27, 1989), slip op. at pp. 7-9.

731.112, “noncommercial purposes”	280.12, “noncommercial purposes”	Did not remove the quotation marks from the term “existing tank system.”
731.112, “owner”	280.12, “owner”	Did not need to renumber the paragraphs of this definition because subsections in Board definitions are not numbered. See the entry in Table 3 below.
731.112, “release”	280.12, “release”	The Board previously changed “ground water” to “groundwater.”
731.112, “release detection”	280.12, “release detection”	Added quotation marks to the defined term. See the entry in Table 3 below.
731.112, “storm water”	280.12, “storm water”	The Board adopted the term as “storm water or wastewater collection system” without the hyphenation. ¹⁴
731.112, “underground storage tank”	280.12, “underground storage tank”	Did not need to renumber the paragraphs of this definition because subsections in Board definitions are not numbered; changed “which” to “that” for a restrictive relative clause; changed “49 U.S.C. chapter 601” to “49 USC §§ 60101-60140”; changed “Secretary of Transportation” to “U.S. Department of Transportation.” See the entry in Table 3 below.
731.112, “underground storage tank” Board note	280.12, “underground storage tank” note to the definition	Used the usual tag “BOARD NOTE” in place of “Note to the definition of Underground storage tank or UST”; did not need to renumber the paragraphs of this definition because subsections in Board definitions are not numbered; changed “paragraphs . . . of this definition” to “subsections of this definition of “underground storage tank.”
731.162(a)(2)	280.62(a)(2)	The Board previously changed “ground water” to “groundwater.”

¹⁴ See UST Update, USEPA Regulations (September 23, 1988), R88-27 (Apr. 27, 1989), slip or. at p. 13.

731.162(a)(4)	280.62(a)(4)	The use of “35 Ill. Adm. Code 722, 724, 725, and 807 through 815” obviates the change “State and local requirements” to “state and local requirements.”
731.162(a)(5)	280.62(a)(5)	The Board previously changed “ground water” to “groundwater.”
731.163(a)(2)	280.63(a)(2)	Did not change “surrounding” to capitalized “Surrounding.”
731.164(a)	280.64(a)	The Board previously changed capitalized “State” and “Federal” to lower-case “state” and “federal.”
731.165 heading	280.65 heading	The Board previously changed “ground water” to “groundwater.”
731.165(a)	280.65(a)	The Board previously changed “ground water” to “groundwater.” See the entry in Table 3 below.
731.165(a)(3)	280.65(a)(3)	The Board previously changed “ground water” to “groundwater.”
731.165(a)(4)	280.65(a)(4)	The Board previously changed “ground water” to “groundwater” (twice).
731.166(a)	280.66(a)	The Board previously changed “ground water” to “groundwater” (twice); in the restored previously omitted statement, changed “implementing agency” to “Agency” and “their plan” to “the plan.” See the entry in Table 3 below.
731.166(b)(3)	280.66(b)(3)	The Board previously changed “ground water” to “groundwater.”
731.166(b)(4)	280.66(b)(4)	The Board previously changed “ground water” to “groundwater.”
731.166(d)	280.66(d)	The Board previously changed “ground water” to “groundwater.”
731.250, “airport hydrant fuel distribution system”	280.250, “airport hydrant fuel distribution system”	Placed the defined term and the short-form “airport hydrant system” (twice) in quotation marks.

731.250, “field-constructed tank”	280.250, “field-constructed tank”	Placed the defined term in quotation marks.
731.251(a)	280.251(a)	Added “release response” before “requirements”; removed “as follows” and the ending colon; moved “at installation” and the ending period from subsection (a)(2) to the end of subsection (a); removed the rest of subsections (a)(1) and (a)(2) due to the past effective date and the subject matter outside the scope of Board regulation.
731.251(a) Board note	280.251(a)	Added explanation of material omitted.
731.251(b)	280.251(b)	Replaced the entire language of this subsection, as subject matter outside the scope of Board regulation, with an explanatory statement.
731.251(c)	280.251(c)	Omitted “except as provided in § 280.252” and the offsetting comma and the cross-references to Subparts B through E, H, and J as subject matter outside the scope of Board regulation.
731.251(d)	280.251(d)	Replaced the entire language of this subsection, as subject matter outside the scope of Board regulation, with an explanatory statement.

**Table 3:
Board Housekeeping Amendments**

Section	Source	Revision(s)
280.131 heading	Board	Added “(Repealed).”
280 table of contents, 280.Appendix A heading	Board	Changed “Appendix A” to “731.APPENDIX A”; added “(Repealed).”
280 table of contents, 280.Appendix C heading	Board	Changed “Appendix C” to “731.APPENDIX C”; added “(Repealed).”

731 authority note	Board	Changed “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, as amended by P.A. 87-323)” to “Sections 22.4(d), 22.13(d) and 27 of the Environmental Protection Act [415 ILCS 5/22.4(d), 22.13(d), and 27].”
731.110(a)	Board	Added “all” before “owners and operators,” as it appears in the corresponding federal text.
731.110(b)(2)	Board	Added “[415 ILCS 5/12(f)]” after “Section 12(f) of the Act.”
731.110(c)(1)(D)	Board	Removed the unnecessary statement, “incorporated by reference in Section 731.113” and its offsetting comma, because this provision imposes no requirements of 10 C.F.R. 50.
731.110(d)(1), “heating oil”	Board	Added “[415 ILCS 5/57.2]” after “Section 57.2 of the Act.”
731.110(d)(1), “heating oil underground storage tank”	Board	Added “[415 ILCS 5/57.2]” after “Section 57.2 of the Act.”
731.110(d)(2)	Board	Added “[415 ILCS 5/22.4(d)(4)]” after “Section 22.4(d)(4) of the Act.”
731.110(d)(3) ¹⁵	Board	Added “[415 ILCS 5/22.4(d)]” after “Section 22.4(d) of the Act”; changed “shall” to “must” for the imperative; added “[415 ILCS 5/57.2]” after “Section 57.2 of the Act.”
731.110(d) Board note	Board	Moved the comma before “as that term is defined” inside the preceding closing quotation mark.
731.112, “Act”	Board	Changed “(Ill. Rev. Stat. 1989, ch. 111 ½, par. 1001 et seq.)” to “[415 ILCS 5].”

¹⁵ The provision for heating oil USTs is a State-only provision that arose through the statutory mandate of P.A. 87-323, eff. Sep. 6, 1991, in UST Update, USEPA Regulations (January 1, 1991 through June 30, 1991), R91-14 (Apr. 9, 1992), slip op. pp. 8-10.

731.112 Board note re “consumptive use”	Board	Removed the unnecessary Board note about definition of “consumptive use.” The term is used only in the definition of “heating oil underground storage tank” in Section 731.110(d)(1), and that provision includes a definition of “consumptive use.”
731.112 “Gasoline Storage Act”	Board	Changed “Ill. Rev. Stat. 1989, ch. 127 ½, par. 151 et seq., as amended by P.A. 87-323” to “[430 ILCS 15].”
731.112, “hazardous substance” Board note	Board	Removed the line from between the definition and the attached Board note and used the same indent level.
731.112, “hazardous substance UST system”	Board	Moved the comma before “or any mixture” inside the preceding closing quotation mark; added a comma and the conjunction “and” after “or any mixture of . . . and ‘petroleum’” to offset the parenthetical clause and correspond with the punctuation in the corresponding federal provision.
731.112, “hazardous substance UST system” Board note	Board	Removed the line from between the definition and the attached Board note and used the same indent level.
731.112, “heating oil” Board note	Board	Removed the line from between the definition and the attached Board note and used the same indent level; corrected “731.110(e)” to “731.110(d).”
731.112 Board note re “on the premises where stored”	Board	Removed the unnecessary Board note about definition of “on the premises where stored.” The term is used only in the definition of “heating oil underground storage tank” in Section 731.110(d)(1), and that provision includes a definition of “on the premises where stored.”
731.112, “owner”	Board	Removed the unnecessary comma after the defined term “Person,” which separated the subject from the verb of the sentence. See the entry in Table 2 above.
731.112, “petroleum” Board note	Board	Removed the line from between the definition and the attached Board note and used the same indent level.
731.112, “petroleum UST system” Board note	Board	Moved the ending period inside the closing quotation mark after “regulated substances.”

731.112, “petroleum UST system” Board note	Board	Removed the line from between the definition and the attached Board note and used the same indent level.
731.112, “regulated substance” Board note	Board	Moved the ending period inside the closing quotation mark after “petroleum.”
731.112, “regulated substance” Board note	Board	Removed the line from between the definition and the attached Board note and used the same indent level.
731.112, “release detection”	Board	Added the previously-removed definition because the term appears in the notice requirement in 35 Ill. Adm. Code 731.122(e)(4). ¹⁶ See the entry in Table 2 above.
731.112, “underground storage tank”	Board	Corrected “tenper centum” to “ten percent”; added “of the following” after “include any.”
731.113(a), appendix A to 10 C.F.R. 50	Board	Removed the incorporation by reference because the reference is not relied on for imposition of requirements where cited in 35 Ill. Adm. Code 731.110(c)(1)(D).
731.113(a), 40 C.F.R. 280.3 (1987)	Board	Removed the incorporation by reference because 35 Ill. Adm. Code 731.122(a) Board note was not necessary, since only the fact of applicability of the requirements was intended, and not imposition of the requirements.
731.113(a), 40 C.F.R. 302.4	Board	Updated the <i>Code of Federal Regulations</i> citations to the latest version available.
731.113(a), 40 C.F.R. 302.6	Board	Removed the incorporation by reference because 35 Ill. Adm. Code 731.122(a) Board note was not necessary, since only the fact of applicability of the requirements was intended, and not imposition of the requirements.
731.122 heading	Board	Added “(Repealed).”
731.122	Board	Marked the entire text for deletion.

¹⁶ The defined term is used in 40 C.F.R. 280.12 definitions of “repair” and “secondary containment” and in 40 C.F.R. 280.32, 280.34, 280.36, 280.40 through 280.45, 280.50, 280.70, 280.72, 280.210, 280.242, 280.251, and 280.252, in provisions and segments that are outside the scope of Board regulation. However, the term is used in 40 C.F.R. 280.22, the notice provision that the Board retained.

731.161 preamble	Board	Changed “shall” to “must.”
731.162(a)	Board	Changed “shall” to “must.”
731.162(a)(4)	Board	Changed “shall” to “must”; added a comma before “and 807 through 815” to offset the final element of a series.
731.162(a)(5)	Board	Changed “shall” to “must.”
731.162(b)	Board	Changed “shall” to “must.”
731.163(a)	Board	Changed “shall” to “must.”
731.163(b)	Board	Changed “shall” to “must.”
731.164 preamble	Board	Changed “shall” to “must.”
731.165(a)	Board	Changed “shall” to “must.” See the entry in Table 2 above.
731.165(b)	Board	Changed “shall” to “must.”
731.166(a)	Board	Changed “shall” to “must”; restored the previously omitted statement, “In either case, owners or operators are responsible . . . as necessary to meet this standard.” See the entry in Table 2 above.
731.166(b)	Board	Changed “shall” to “must” (twice); added a comma before “and the environment” to offset the final element of a series.
731.166(c)	Board	Changed “shall” to “must” (twice).
731.166(d)(1)	Board	Corrected “being” to “begin.”
731.167(a)	Board	Changed “shall” to “must.”
731.167(b)	Board	Changed “shall” to “must.”
731.167(c)	Board	Changed “shall” to “must.”
731.167(d)	Board	Changed “shall” to “must.”
731.Appendix A heading	Board	Changed “Appendix A” to “731.APPENDIX A”; added “Notification Form (Repealed).”
731.Appendix A	Board	Marked the entire text for deletion.

731.Appendix C heading	Board	Added “(Repealed).”
731.Appendix C	Board	Marked the entire text for deletion.

ORDER

The Board directs the Clerk to provide notice in the *Illinois Register* of the following proposed amendments to the Illinois UST regulations at 35 Ill. Adm. Code 731:

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~~ Incorporation 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 (Repealed)

SUBPART C: GENERAL OPERATING REQUIREMENTS

Section

- 731.130 Spill and Overfill Control (Repealed)
- 731.131 Operation and Maintenance of Corrosion Protection (Repealed)
- 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)
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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)

SUBPART K: UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND
AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

Section

731.250

Definitions

731.251

General Requirements

~~Appendix 731.APPENDIX A~~ Notification Form (Repealed)

~~Appendix 731.APPENDIX C~~ Statement for Shipping Tickets and Invoices (Repealed)

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, as amended by P.A. 87-323) [415 ILCS 5/22.4(d), 22.13(d), and 27].

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. 4886, effective March 19, 2012; amended in R16-16 at 40 Ill. Reg. _____, effective _____.

~~SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION~~

Section 731.110 Applicability

- a) This Part applies to all owners and operators of an Underground Storage Tank (UST) system as defined in Section 731.112, except as otherwise provided in subsection (b) or (c).
 - 1) Previously deferred UST systems. Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that

store fuel solely for use by emergency power generators must meet the requirements of this Part as follows:

- A) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet the requirements in Subpart K of this Part.
 - B) This subsection (a)(1)(B) corresponds with 40 CFR 280.11(a)(1)(ii), which subjects UST systems that store fuel solely for use by emergency power generators installed on or before October 13, 2015 to release detection requirements that are outside the scope of the Board's regulations. This statement maintains structural consistency with the federal regulations.
 - C) UST systems that store fuel solely for use by emergency power generators installed after October 13, 2015 must meet all applicable requirements of this Part at the time of installation.
- 2) This subsection (a)(2) subjects various partially excluded UST systems to specified installation requirements outside the scope of the Board regulations. This statement maintains structural consistency with the federal regulations.
- b) Exclusions. 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 Act [415 ILCS 5/12(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-Partial Exclusions.
- 1) Section 731.122 ~~does~~ and Subpart K of this Part do not apply to any of the following types of UST systems:

- A) Wastewater treatment tank systems not covered under subsection (b)(2);
- B) Aboveground storage tanks associated with either of the following:
- i) Airport hydrant fuel distribution systems regulated under Subpart K of this Part; and
- ii) UST systems with field-constructed tanks regulated under Subpart K of this Part;
- ~~BC)~~ Any UST systems containing radioactive materials that are regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (42 USC 2011 et seq.); and
- ~~CD)~~ Any UST system that is part of an emergency generator system at nuclear power generation facilities ~~regulated~~ licensed by the Nuclear Regulatory Commission ~~under and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR 50, appendix A, incorporated by reference in Section 731.113;~~
- ~~D)~~ ~~Airport hydrant fuel distribution systems; and~~
- ~~E)~~ ~~UST systems with field-constructed tanks.~~
- 2) 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) Heating Oil 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 C. (Section 57.2 of the Act [415 ILCS 5/57.2])
- "Heating Oil Underground Storage Tank" or "Heating Oil UST: means 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. (Section 57.2 of the Act [415 ILCS 5/57.2])

"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" means any one or combination of tanks (including underground pipes connected thereto) that 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 (Section 22.4(d)(4) of the Act [415 ILCS 5/22.4(d)(4)])
- 3) The owner or operator of a heating oil UST ~~shall~~must 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) of the Act [415 ILCS 5/22.4(d)], which requires that this Part be applicable to "heating oil USTs," as that term is defined in Section 57.2 of the Act [415 ILCS 5/57.2]. However, that and related terms are used in a manner that 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 [415 ILCS 5/Title XVI] 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 40 Ill. Reg. _____, effective _____)

Section 731.112 Definitions

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion

of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

“Act” means the Environmental Protection Act (~~Ill. Rev. Stat. 1989, ch. 111 ½, par. 1001 et seq.~~) [415 ILCS 5].

“Agency” means the Illinois Environmental Protection Agency.

“Ancillary equipment” means any devices including, but not limited to, such devices as piping, fittings, flanges, valves and pumps used to distribute, meter or control the flow of regulated substances to and from an UST.

“Belowground release” means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

“Beneath the surface of the ground” means beneath the ground surface or otherwise covered with earthen materials.

“Board” means the Illinois Pollution Control Board.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.)

“Connected piping” means all underground piping including valves, elbows, joints, flanges and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems must be allocated equally between them.

~~BOARD NOTE: For “consumptive use” see Section 731.110(e).~~

“Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

“Electrical equipment” means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

“EMA” means the Illinois Emergency Management Agency.

“Excavation zone” means the volume containing the tank system and backfill material bounded by the ground surface, wall and floor of the pit and trenches into which the UST system is placed at the time of installation.

“Farm tank” is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. “Farm” includes fish hatcheries, rangeland and nurseries with growing operations.

“Fire Marshal” means the Office of the State Fire Marshal.

“Flow-through process tank” is a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

“Free product” refers to a regulated substance that is present as a nonaqueous liquid phase (e.g., liquid not dissolved in water).

“Gasoline Storage Act” means ~~Ill. Rev. Stat. 1989, ch. 127 ½, par. 151 et seq., as amended by P.A. 87-323~~ 415 ILCS 15.

“Gathering lines” means any pipeline, equipment, facility or building used in the transportation of oil or gas during oil or gas production or gathering operations.

“Hazardous substance” means any substance listed in 40 CFR 302.4, incorporated by reference in Section 731.113 (but not including any substance regulated as a hazardous waste under 35 Ill. Adm. Code 721).

BOARD NOTE: This definition is derived from the definition of “hazardous substance UST system” in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, and “hazardous substance” in Section 101(14) of CERCLA. The United States Environmental Protection Agency (USEPA) regulations which implement the statutes cited in CERCLA have been inserted in place of the authorizing statutes.

~~BOARD NOTE: This definition is derived from the definition of “hazardous substance UST system” in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, and “hazardous substance” in Section 101(14) of CERCLA. The United States Environmental Protection Agency (USEPA) regulations which implement the statutes cited in CERCLA have been inserted in place of the authorizing statutes.~~

“Hazardous substance UST system” means an underground storage tank system that contains a “hazardous substances,” or any mixture of “hazardous substances” and “petroleum,” and which is not a “petroleum UST system.”

BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section.

~~BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section.~~

“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; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); or other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers or furnaces.

BOARD NOTE: For the applicability of these rules to heating oil USTs, see Section 731.110(d).

~~BOARD NOTE: For the applicability of these rules to heating oil USTs, see Section 731.110(e).~~

“Hydraulic lift tank” means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevator and other similar devices.

“Liquid trap” means sumps, well cellars and other traps used in association with oil and gas production, gathering and extraction operations (including gas production plants), for the purpose of collecting oil, water and other liquid. These liquid traps may temporarily collect liquids for subsequent disposition for reinjection into a production or pipeline stream, or may collect and separate liquids from gas stream.

“Motor fuel” means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel or any grade of gasohol, and is typically used in the operation of a motor engine.

“New tank system” means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also “Existing Tank System.”)

“Noncommercial purposes” with respect to motor fuel means not for resale.

~~BOARD NOTE: For the definition of “on the premises where stored”, see Section 731.110(e).~~

“Operator” means any person in control of, or having responsibility for, the daily operation of the UST system.

“Overfill release” is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

“Owner” means:

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

In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

“Person” means an individual, trust, firm, joint stock company, federal agency, corporation, state, unit of local government, commission, political subdivision of a state or any interstate body. “Person,” also includes a consortium, a joint venture, a commercial entity and the United States Government.

“Petroleum” means crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term “petroleum” includes, but is not limited to, petroleum and petroleum-based substances comprising a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils.

BOARD NOTE: This definition is derived from the definitions of “petroleum UST system” and “regulated substance” in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988.

~~BOARD NOTE: This definition is derived from the definitions of “petroleum UST system” and “regulated substance” in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988.~~

“Petroleum UST system” means an underground storage tank system that contains petroleum or a mixture of “petroleum” with de minimis quantities of other “regulated substances.”

BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section.

~~BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section.~~

“Pipe” or “Piping” means a hollow cylinder or tabular conduit that is constructed of non-earthen materials.

“Pipeline facilities (including gathering lines)” are new and existing pipe rights-of-way and any associated equipment, facilities or buildings.

“Regulated substance” means any “hazardous substance” or “petroleum.”

BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section.

~~BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section.~~

“Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into groundwater, surface water or subsurface soils.

“Release detection” means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

“Residential tank” is a tank located on property used primarily for dwelling purposes.

“Septic tank” is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

“Storm water or wastewater collection system” means piping, pumps, conduits and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

“Surface impoundment” is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

“Tank” is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

“Underground area” means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

“Underground release” means any below-ground release.

“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 the underground pipes connected thereto) is ~~ten per centum~~ ten percent or more beneath the surface of the ground. Such term does not include any of the following:

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

BOARD NOTE: For the applicability of these rules to heating oil tanks, see Section 731.110(e).

~~BOARD NOTE: For the applicability of these rules to heating oil tanks, see Section 731.110(e).~~

Septic tank;

Pipeline facility (including gathering lines) ~~regulated under:~~

~~The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.A. 1671 et seq. (1987 and 1987 Supp.)), or~~

~~The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C.A. 2001 et seq. (1987)), or~~

~~The Illinois Gas Pipeline Safety Act (Ill. Rev. Stat. 1989, ch. 111 2/3, pars. 551 et seq.).~~

That is regulated under 49 USC §§ 60101-60140; or

Which is an intrastate pipeline facility regulated under state laws as provided in 49 USC §§ 60105, and which is determined by the U.S Department of Transportation 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 wastewater collection system;

Flow-through process tank;

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

Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

BOARD NOTE: The term "underground storage tank" does not include any pipes connected any tank which is described in the above-subparagraphs subsections of this definition of "underground storage tank."

"USEPA" means United States Environmental Protection Agency.

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

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical or biological methods.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.113 ~~Incorporations~~ Incorporation by Reference

- a) CFR (Code of Federal Regulations). Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, (202) 783-3238:

~~10 CFR 50, Appendix A (1991)~~

~~40 CFR 280.3 (1987) (repealed September 23, 1988)~~

~~40 CFR 302.4 and 302.6 (1991) (2015)~~

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

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

Section 731.122 Notification Requirements (Repealed)

- ~~a) Any owner who brings an underground storage tank system into use after May 8, 1986, shall within 30 days of bringing such tank into use, submit, in the form prescribed in Appendix A, below, a notice of existence of such tank system to the Fire Marshal.~~

~~BOARD NOTE: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the Fire Marshal in accordance with RCRA and 40 CFR 280.3 (1987), unless notice was given pursuant to 40 CFR 302.6, incorporated by reference in Section 731.113. Section 4(b)(1) of the Gasoline Act (Ill. Rev. Stat. 1987, ch. 127 1/2, par. 156(b)(1)) required notification by December 31, 1987, for tanks which held regulated substances after January 1,~~

~~1974. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in Appendix A.~~

- ~~e) Owners required to submit notices under subsection (a), above, shall provide notices to the Fire Marshal for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.~~
- ~~d) Notices required to be submitted under subsection (a), above, must provide all of the information in Sections I through VI of the form for each tank for which notice must be given. Notices for tanks installed after December 22, 1988, must also provide all of the information in Section VII of the prescribed form for each tank for which notice must be given.~~
- ~~e) All owners and operators of new UST systems shall certify in the notification form compliance with the following requirements:

 - ~~1) Installation of tanks and piping;~~
 - ~~2) Cathodic protection of steel tanks and piping;~~
 - ~~3) Financial responsibility; and~~
 - ~~4) Release detection.~~~~
- ~~f) All owners and operators of new UST systems shall ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with regulatory requirements.~~
- ~~g) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification obligations under subsection (a), above. The form provided in Appendix C may be used to comply with this requirement.~~

(Source: Repealed at 40 Ill. Reg. _____, effective _____)

SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

Section 731.161 Initial Response

Upon confirmation of a release or after a release from the UST system is identified in any other manner, owners and operators ~~shall~~ must perform the following initial response actions within 24 hours of a release:

- a) Report the release to EMA (e.g., by telephone or electronic mail);

- b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- c) Identify and mitigate fire, explosion and vapor hazards.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.162 Initial Abatement Measures and Site Check

- a) Owners and operators ~~shall~~must perform the following abatement measures:
 - 1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
 - 2) Visually inspect any aboveground releases or exposed belowground 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 substance 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 and operator ~~shall~~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 the site check or the closure site assessment. In selecting sample types, sample locations and measurement methods, the owner and operator ~~shall~~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 free product removal as soon as practicable and in accordance with Section 731.164.
- b) Within 20 days after release confirmation, owners and operators ~~shall~~must submit a report to the Agency, summarizing the initial abatement steps taken under subsection (a), above, and any resulting information or data.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.163 Initial Site Characterization

- a) Owners and operators ~~shall~~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 Section 731.160 and Section 731.161. This information must include, but is not necessarily 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 under Section 731.162(a)(5); and
 - 4) Results of the free product investigations required under Section 731.162(a)(6), to be used by owners and operators to determine whether free product must be recovered under Section 731.164.
- b) Within 45 days after confirmation of the release, owners and operators ~~shall~~must submit the information collected in compliance with subsection (a) to the Agency, in a manner that demonstrates its applicability and technical adequacy.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.164 Free Product Removal

At sites where investigations under Section 731.162(a)(6) indicate the presence of free product, owners and operators ~~shall~~must remove free product to the maximum extent practicable, while continuing, as necessary, any actions initiated under Section 731.161 through Section 731.163, or preparing for actions required under Section 731.165 through Section 731.166. In meeting the requirements of this Section, owners and operators must:

- a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by products in compliance with applicable local, state and federal regulations;
- b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

- d) Prepare and submit to the Agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:
- 1) The name of the persons responsible for implementing the free product removal measures;
 - 2) The estimated quantity, type and thickness of free product observed or measured in wells, boreholes and excavation;
 - 3) The type of free product recovery system used;
 - 4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
 - 5) The type of treatment applied to, and the effluent quality expected from, any discharge;
 - 6) The steps that have been or are being taken to obtain necessary permits for any discharge; and
 - 7) The disposition of the recovered free product.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.165 Investigations for Soil and Groundwater Cleanup

- a) In order to determine the full extent and location of soils contaminated by the release, and the presence and concentrations of dissolved product contamination in the groundwater, owners and operators ~~shall~~ must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:
- 1) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
 - 2) Free product is found to need recovery in compliance with Section 731.164;
 - 3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under Section 731.160 through Section 731.164); and
 - 4) The Agency requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

- b) Owners and operators ~~shall~~must submit the information collected under subsection (a) as soon as practicable or in accordance with a schedule established by the Agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.166 Corrective Action Plan

- a) At any point after reviewing the information submitted in compliance with Section 731.161 through Section 731.163, the Agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators ~~shall~~must submit the plan according to a schedule and format established by the Agency. Alternatively, owners and operators may, after fulfilling the requirements of Section 731.161 through Section 731.163, choose to submit a corrective action plan for responding to contaminated soil and groundwater.
- b) The Agency ~~shall~~must approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety and the environment. In making this determination, the Agency ~~shall~~must consider the following factors as appropriate:
- 1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence and potential for migration;
 - 2) The hydrogeologic characteristics of the facility and the surrounding area;
 - 3) The proximity quality and current and future uses of nearby surface water and groundwater;
 - 4) The potential effects of residual contamination on nearby surface water and groundwater;
 - 5) An exposure assessment; and
 - 6) Any information assembled in compliance with this Subpart.
- c) Upon approval of the corrective action plan or as directed by the Agency, owners and operators ~~shall~~must implement the plan, including modifications to the plan made by the Agency. They ~~shall~~must monitor, evaluate and report the results of implementing the plan in accordance with a schedule and in a format established by the Agency.
- d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved provided that they:

- 1) Notify the Agency of their intention to ~~being~~ begin cleanup;
- 2) Comply with any conditions imposed by the Agency, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- 3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.167 Public Participation

- a) For each confirmed release that requires a corrective action plan, the Agency ~~shall~~ must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice must include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in the Illinois Register, letters to individual household or personal contacts by field staff.
- b) The Agency ~~shall~~ must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.
- c) Before approving a corrective action plan, the Agency ~~shall~~ must hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reasons.
- d) The Agency ~~shall~~ must give public notice that complies with subsection (a) if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART K: UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

Section 731.250 Definitions

For purposes of this Subpart K, the following definitions apply:

“Airport hydrant fuel distribution system” (also called “airport hydrant system”) means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The “airport hydrant system” begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

“Field-constructed tank” means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

(Source: Added at 40 Ill. Reg. _____, effective _____)

Section 731.251 General Requirements

- a) Implementation of requirements. Owners and operators must comply with the release response requirements of this Part for UST systems with field-constructed tanks and airport hydrant systems at installation.

BOARD NOTE: Corresponding 40 CFR 280.251(a) includes compliance deadlines for UST upgrade; general operating; operator training; release detection, release reporting, response, and investigation; closure; financial responsibility, and notification requirements. Board regulations include only the release response requirements among these. Fire Marshall requirements apply to all of the other UST requirements.

- b) This subsection (b) corresponds with 40 CFR 280.251(b), which requires compliance with UST notification requirements, which are outside the scope of Board regulations. This statement maintains structural consistency with the corresponding federal regulations.
- c) Owners and operators must comply with the requirements of subparts A and F of this Part.
- d) This subsection (d) corresponds with 40 FR 280.251(d), which requires compliance with UST performance standards, which are outside the scope of Board regulations. This statement maintains structural consistency with the corresponding federal regulations.

(Source: Added at 40 Ill. Reg. _____, effective _____)

Section ~~731.Appendix~~ 731.APPENDIX A Notification Form (Repealed)

~~The Board incorporates by reference 40 CFR 280, Appendix I (1991). This Section incorporates no future editions or amendments. Persons required to notify shall use forms provided by the Fire Marshal if available. Otherwise, they may prepare forms based on 40 CFR 280, Appendix I.~~

(Source: Repealed at 40 Ill. Reg. _____, effective _____)

Section 731.APPENDIX C Statement for Shipping Tickets and Invoices (Repealed)

~~Note: A Federal law (The Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98-616)) requires owners of certain underground storage tanks to notify designated State or local agencies by May 8, 1986, of the existence of their tanks. Notifications for tanks brought~~

~~into use after May 8, 1986, must be made within 30 days. Consult USEPA's regulations, issued on November 8, 1985 (40 CFR 280) to determine if you are affected by this law.~~

(Source: Repealed at 40 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 21, 2016, by a vote of 5-0.

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

John T. Therriault, Clerk
Illinois Pollution Control Board