



OFFICE OF THE SECRETARY OF STATE

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July 22, 2016

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POLLUTION CONTROL BOARD
DON BROWN
100 W RANDOLPH ST
STE 11-500
CHICAGO, IL 60601

STATE OF ILLINOIS
Pollution Control Board

Dear DON BROWN

Your rules Listed below met our codification standards and have been published in Volume 40, Issue 31 of the Illinois Register, dated 7/29/2016.

ADOPTED RULES

Underground Storage Tanks

35 Ill. Adm. Code 731

10312

Point of Contact: Mike McCambridge

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

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NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Underground Storage Tanks
- 2) Code Citation: 35 Ill. Adm. Code 731
- 3)

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
731.110	Amendment
731.112	Amendment
731.113	Amendment
731.122	Repealed
731.161	Amendment
731.162	Amendment
731.163	Amendment
731.164	Amendment
731.165	Amendment
731.166	Amendment
731.167	Amendment
731.250	New Section
731.251	New Section
731.Appendix A	Repealed
731.Appendix C	Repealed
- 4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27.
- 5) Effective date of amendments:
- 6) Does this rulemaking contain an automatic repeal date? No. JUL 13 2016
- 7) Do these Amendments contain incorporations by reference? Yes
- 8) Statement of availability: The adopted amendments, a copy of the Board's opinion and order adopted July 7, 2016 in docket R16-16, and all materials incorporated by reference are on file at the Board's principal office and are available for public inspection and copying.
- 9) Notice of proposal published in the Illinois Register: 40 Ill. Reg. 6991; May 6, 2016
- 10) Has JCAR issued a statement of objections to these rules? No. Section 22.4(a) of the Environmental Protection Act [415 ILCS 5/22.4(a)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

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- 11) Differences between the proposal and the final version: A table that appears in a document entitled “Identical-in–Substance Rulemaking Addendum (Final)” that the Board added to docket R16-16 summarizes the differences between the amendments adopted in the July 7, 2016 opinion and order and those proposed by the Board in an opinion and order dated April 21, 2016, in docket R16-16. Many of the differences are explained in greater detail in the Board’s opinion and order adopting the amendments.

The differences are limited to minor corrections and clarification that are not intended to have a substantive effect on the amendments. The changes are intended to have no substantive effect. The intent is to add clarity to the rules without deviation from the substance of the federal amendments on which this proceeding is based.

- 12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 22.4(d) of the Environmental Protection Act [415 ILCS 5/22.4(d)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

Since the Notices of Proposed Amendments appeared in the May 6, 2016 issue of the *Illinois Register*, the Board received a number of suggestions for revisions from JCAR. The Board evaluated each suggestion and incorporated a number of changes into the text as a result, as detailed in the Identical-in–Substance Rulemaking Addendum (Final) in docket R16-16, as indicated in item 11 above. See the Identical-in–Substance Rulemaking Addendum (Final) in docket R16-16 for additional details on the JCAR suggestions and the Board actions with regard to each. One table in the Identical-in–Substance Rulemaking Addendum (Final) itemizes the changes made in response to various suggestions. Another table indicates JCAR suggestions not incorporated into the text, with a brief explanation for each.

- 13) Will these amendments replace Emergency amendments currently in effect? No.
- 14) Are there any other Amendments pending on this Part? No.
- 15) Summary and Purpose of Amendments: The following briefly describes the subjects and issues involved in the docket R16-16 rulemaking of which the amendments to Part 731 are a single segment. Also affected is 35 Ill. Adm. Code PART, which is covered by a separate notice in this issue of the *Illinois Register*. A comprehensive description is contained in the Board’s opinion and order of July 7, 2016, adopting amendments in docket R16-16, which opinion and order is available from the address below.

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This proceeding updates the Illinois underground storage tank (UST) corrective action rules to correspond with amendments adopted by the United States Environmental Protection Agency (USEPA) that appeared in the Federal Register during the update period July 1, 2015 through December 31, 2015.

The following briefly summarizes the single federal action in the update period:

July 15, 2015 (at 80 Fed. Reg. 41566)

USEPA instituted new requirements relating 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. New requirements that address previously deferred tank systems (field-constructed tanks, airport hydrant fuel distribution systems, and USTs storing fuel solely for emergency power generators) fall within the scope of current Board regulations to the extent that the requirements involve corrective action requirements. USEPA further made editorial and corrective amendments to existing rules.

The Board has included a limited number of corrections and clarifying amendments that are not directly derived from the instant federal amendments. Principally, the Board has repealed notification requirements retained in a previous rulemaking.

Tables appear in a document entitled "Identical-in-Substance Rulemaking Addendum (Final)" that the Board added to docket R16-16 that list the revisions to the text of the corresponding federal rule, the amendments that are not based on current federal amendments, and the revisions to the text since the Board's April 21, 2016 proposal for public comment. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the Identical-in-Substance Rulemaking Addendum (Final) in docket R16-16.

Section 22.4 of the Environmental Protection Act [415 ILCS 5/22.4] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

- 16) Information and questions regarding these adopted amendments shall be directed to:
Please reference consolidated docket R16-16 and direct inquiries to the following person:

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Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
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Chicago, IL 60601

312-814-6924
michael.mccambridge@illinois.gov

Request copies of the Board's opinion and order of July 7, 2016 at 312-814-3620.
Alternatively, you may obtain a copy of the Board's opinion and order from the Internet
at <http://www.ipcb.state.il.us>.

The full text of the Adopted amendments begins on the next page:

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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 Incorporation ~~Incorporations~~ by Reference
- 731.114 Implementing Agency (Repealed)

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

Section

- 731.120 Performance Standards for New Systems (Repealed)
- 731.121 Upgrading of Existing Systems (Repealed)
- 731.122 Notification Requirements (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)

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731.145 Recordkeeping (Repealed)

SUBPART E: RELEASE REPORTING, INVESTIGATION AND
CONFIRMATION

Section

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

SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

Section

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

SUBPART G: OUT-OF-SERVICE SYSTEMS AND CLOSURE

Section

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

SUBPART H: FINANCIAL RESPONSIBILITY

Section

731.190 Applicability (Repealed)
731.191 Compliance Dates (Repealed)
731.192 Definitions (Repealed)
731.193 Amount and Scope of Required Financial Responsibility (Repealed)
731.194 Allowable Mechanisms and Combinations (Repealed)
731.195 Financial Test of Self-insurance (Repealed)
731.196 Guarantee (Repealed)
731.197 Insurance or Risk Retention Group Coverage (Repealed)
731.198 Surety Bond (Repealed)
731.199 Letter of Credit (Repealed)

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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

731.APPENDIX A Notification Form (Repealed)

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

SOURCE: Adopted in R86-1 at 10 Ill. Reg. 14175, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6220, effective March 24, 1987; amended in R88-27 at 13 Ill. Reg. 9519, effective June 12, 1989; amended in R89-4 at 13 Ill. Reg. 15010, effective September 12, 1989; amended in R89-10 at 14 Ill. Reg. 5797, effective April 10, 1990; amended in R89-19 at 14 Ill. Reg. 9454, effective June 4, 1990; amended in R90-3 at 14 Ill. Reg. 11964, effective July 10, 1990; amended in R90-12 at 15 Ill. Reg. 6527, effective April 22, 1991; amended in R91-2 at 15 Ill. Reg. 13800, effective September 10, 1991; amended in R91-14 at 16 Ill. Reg. 7407, effective April 24, 1992; amended in R11-22 at 36 Ill. Reg. 4886, effective March 19, 2012; amended in R16-16 at 40 Ill. Reg. _____, effective _____.

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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)].

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- 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) Partial Exclusions, Deferrals:
- 1) Section 731.122 and Subpart K do ~~does~~ 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; and
 - ii) UST systems with field-constructed tanks regulated under Subpart K;
 - CB) 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
 - DC) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed regulated by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to under 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.~~

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- 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. ~~4—light~~ 4—light, No. ~~4—heavy~~ 4—heavy, No. ~~5—light~~ 5—light, No. ~~5—heavy~~ 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~~ 10 percent or more beneath the surface of the ground.

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- 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 must ~~shall~~ comply with the same requirements as the owner or operator of a petroleum UST, as defined in Section 731.112, any other provisions of this Part notwithstanding.

BOARD NOTE: This subsection (d) implements Section 22.4(d)(4) of the Act [415 ILCS 5/22.4(d)], which requires that this Part be applicable to “heating oil USTs₁”; 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 [415 ILCS 5] (Ill. Rev. Stat. 1989, ch. 111 ½, par. 1001 et seq.).

“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

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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.~~ USC 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.

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

“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 that 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.

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~~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 4—light~~, No. ~~4—heavy 4—heavy~~, No. ~~5—light 5—light~~, No. ~~5—heavy 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.

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“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.

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~~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.

“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.

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“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~~ 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 10 percent ~~ten per centum~~ or more beneath the surface of the ground. ~~Such~~ This 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 through 60140; or

Which ~~That~~ is an intrastate pipeline facility regulated under state laws as provided in 49 USC 60105, and which is determined by the

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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 to any tank ~~which that~~ is described in the ~~above~~ subparagraphs 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 Incorporation ~~Incorporations~~ 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 (2015) and 302.6 (1991)~~

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- 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.~~

- c) ~~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;~~

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- 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 must ~~shall~~ 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 must ~~shall~~ 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;

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- 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 must ~~shall~~ 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 must ~~shall~~ 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 must ~~shall~~ 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 must ~~shall~~ 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:

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- 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 must ~~shall~~ 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 must ~~shall~~ 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:

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- 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~~ Sections 731.160 through ~~Section~~ 731.164); and

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- 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 must ~~shall~~ 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 Sections~~ 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 must ~~shall~~ submit the plan according to a schedule and format established by the Agency. Alternatively, owners and operators may, after fulfilling the requirements of ~~Section Sections~~ 731.161 through ~~Section~~ 731.163, choose to submit a corrective action plan for responding to contaminated soil and groundwater.
- b) The Agency must ~~shall~~ 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 must ~~shall~~ 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.

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- c) Upon approval of the corrective action plan or as directed by the Agency, owners and operators must ~~shall~~ implement the plan, including modifications to the plan made by the Agency. They must ~~shall~~ 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 begin ~~being~~ 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 must provide notice to the public by means designed to reach those members of the ~~shall~~ 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 must ~~shall~~ 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 must ~~shall~~ 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 must ~~shall~~ 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.

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(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” or “airport hydrant system” means a UST system that fuels aircraft and operates under high pressure with large diameter piping which 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. Of these, Board regulations include only the release response requirements. Fire Marshal 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.

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- d) This subsection (d) corresponds with 40 CFR 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 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 _____)