BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

1441 KINGSHIGHWAY LLC,	)	
	)	
Petitioner,	)	
v.	)	PCB No. 2024-032
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer
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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.610 (k), PETITIONER'S POST-HEARING REPLY BRIEF, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, was today served upon the Hearing Officer and Division of Legal Counsel by electronic-mail, this 20th day of May, 2024. The number of pages of this filing, other than exhibits, is 9 pages.

1441 KINGSHIGHWAY LLC,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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PETITIONER'S POST-HEARING REPLY BRIEF

NOW COMES Petitioner, by its undersigned attorney, pursuant to Section 101.610 (k), of the Board's Procedural Rules, 35 Ill. Adm. Code 101.610(k), for its post-hearing brief states as follows:

I. COMPARTMENT TANKS DO NOT OPERATE IN COMBINATION, NOR CAN THE OSFM'S FINAL DECISION TO REGISTER THE TANKS AS INDIVIDUAL TANKS BE SET ASIDE HEREIN.

The Illinois EPA asserts that compartment tanks are a "combination of tanks." The plain language of the regulatory definition is that a combination of tanks are combined by connecting pipes:

> **"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 10 percent or more beneath the surface of the ground. The term "underground storage tank" shall not include any pipes connected to any tank which is excluded from this definition.** . . .

(41 Ill. Adm. Code § 178.100)

The language of this regulation originates from the 1984 RCRA Amendments that

initiated the regulation of underground storage tanks. (42 U.S.C. 6991(1)(enacted in Public Law 98-616, Nov. 8, 1984)) In 1988, the USEPA promulgated technical requirements for underground storage tanks, which identified a type of tank in which there is "manifold piping . . . connecting the tanks together." 53 Fed. Reg. 37082, 37090 (Sept. 23, 1988) (to be codified at 40 C.F.R. Part 280)(excerpts from this rulemaking are attached hereto as Exhibit A). In some cases "manifolded tanks are filled through the piping connecting the tanks together." Id. "Tanks that are simply manifolded together are considered as one UST system." Id. at 37114.[1]

The unchallenged testimony at the hearing was that compartment tanks do not operate in combination. Compartment tanks are not connected to each other by pipes; they are separate, complete tanks glued together. Hrg. Trans. at p. 10. Compartments have separate fill ports and separate pumps in each (as opposed to a pump in tank A drawing from both tank A and tank B). Id. at 11. They frequently contain different products which can be piped to separate dispensing mechanisms. Id. These compartment tanks do not act in combination in any way different than traditional tanks, and since they only appeared in the late 90s, id. at 11-12, they were unlikely to have been the type of tanks contemplated by the definition.

Ultimately, however, the question of what is a tank is resolved by the Office of the State Fire Marshal registering three tanks. The 1984 RCRA Amendments required owners and operators to give notification of the number of tanks for the national registry. (42 U.S.C. 6991a) The definition of tank included the "combination of tanks" language (42 U.S.C. 6991(a)) and was

[1] An example of manifolded tanks was discussed in a Pennsylvania pollution case: "a 4,000 gallon storage capacity, was 'manifolded' to another 2,000 gallon underground tank. The system operated so that the smaller tank fed into the larger one." Moore v. Mobil Oil Co., 480 A.2d 1012, 1014 (Pa. Super. Ct. 1984); see also id at 1022 (dissenting opinion) ("the 2,000-gallon tank was 'manifolded' by means of a pipe to the 4,000-gallon tank, which caused a vacuum to be created that drew the fuel from the smaller tank into the larger one when gas was being dispensed...") In other words, two tanks shared the same product.

contained on the initial form created by the USEPA to be used by states and UST owner/operators. 53 Fed. Reg. 37082, 37208 (Appendix I) As the form notes, there are penalties for providing false information, but the registration also would become a pre-condition to access Illinois' Underground Storage Tank Fund. (415 ILCS 5/57.9(a)(4) (eligible tanks must be registered) The initial and annual fees for each tank must also be paid. Id.; see Hoing v. OSFM, PCB 98-146, slip op. at 6 (May 17, 2001) (tanks ineligible due to failure to pay "$1,800 for the annual fees and late fees for the three tanks")

In Illinois, the OSFM is the agency charged with tank registration. (430 ILCS 15/4(b)) If the OSFM decides that the owner/operator is seeking to register a non-registerable tank, it will issue an administrative order modifying the registration status. (430 ILCS 15/2(e)) Upon receipt of the administrative order, the owner/operator has ten days to appeal that decision pursuant to the procedural rights guaranteed by the Administrative Procedure Act. (Id.) In turn, that decision can be further appealed to the relevant circuit court under the Administrative Review Law. (Id.) State law gives owner/operators procedural rights to challenge the OSFM's determination of the number of tanks, which is simply being ignored here by the Illinois EPA.

The Pollution Control Board has stated on multiple occasions that OSFM registration decisions are "a final decision which the Board will not review." Christ Episcopal Church v. OSFM, PCB 94-192, slip op. at 2 (Dec. 1, 1994) (notification that the tank was not registerable will not be reviewed by the Board in the appeal of an eligibility determination); Hoing v. OSFM, PCB 98-146, slip op. at 5 (May 17, 2001)(the question of whether the tanks were registered "is not properly before the Board"); Divane Bros. Electric Co. v. IEPA, PCB 93-105, slip op. at 6 (Nov. 4, 1993) (whether or not the tank should have been registered by OSFM was not the issue before the Agency during it's eligibility determination, but "whether the tank was registered by

OSFM, as OSFM is the agency responsible for registering tanks")

The Illinois EPA is seeking to improperly attack the OSFM's registration of these tanks based upon a different interpretation of regulations that OSFM is charged with enforcing. As it has in many past cases, the Board should decline to review OSFM's registration of these tanks.

II. THE ILLINOIS EPA IS ENFORCING A STANDARD OF GENERAL APPLICABILITY TO ALL COMPARTMENT TANKS.

The Illinois EPA claims that is engaged in an analysis of the number of tanks based upon "site specific facts," in light of the Board's definition of "UST" which includes a "combination of tanks." (Response, at p. 13) This is directly contrary to the testimony of Brian Bauer, the Acting Manager of Illinois EPA's Leaking Underground Storage Tank Section:

MS. VAN WIE: If you're aware that a tank is a compartment tank --

A. Uh-huh.

MS. VAN WIE: -- do you view that as one tank for reimbursement or two tanks for reimbursement?

A. We viewed it as one tank for reimbursement.

MS. VAN WIE: Always or -- I'm not just – I'm talking generally, not just specific to this matter.

A. Always.

MS. VAN WIE: Always? Okay.

A. Yeah. Yeah.

(Hrg. Trans. at p. 44)

In other words, the Illinois EPA has a policy that compartment tanks are always single tanks. A rule is "each agency statement of general applicability that implements, applies,

interprets or prescribes law or policy." (5 ILCS 100/1-70 (emphasis added)) The Administrative Procedure Act does not bar such rules, but requires that they be promulgated through a fair and informative process.

The Illinois EPA claims that it interpreted the Board's definition of "underground storage tank" at 35 Ill. Adm. Code 734.115 and this proceeding is a proper forum for adjudicating what is an "underground storage tank." This appears to be a post-decision legal justification, given that this regulation is absent from the Illinois EPA determination letter. (35 Ill. Adm. Code § 734.610(d) (Illinois EPA must explain what legal provisions may be violated if the application for payment is approved) In any event, the problem as discussed in the previous section is that the OSFM has already made a final determination of the number of tanks applying that same "combination of tanks" language. This determination is then incorporated into the OSFM's eligibility determination which the Board rules require to be included in each and every budget and payment application. (35 Ill. Adm. Code 734.605(b)(3)(payment application); see also id. § 734.310(b)(site investigation budget); § 734.335 (corrective action plan budget). The Board's rules accordingly require reimbursement decisions to follow the OSFM's determination.

III. THE ILLINOIS EPA'S DIFFICULTIES IN ASCERTAINING AN ALTERNATIVE NUMBER OF TANKS IS A DIRECT PRODUCT OF ENFORCING AN UNPROMULGATED RULE.

Most, if not all, of the evidentiary issues raised by the Illinois EPA's Response deal with how it learned or didn't learn of the presence of compartment tanks. The Petition for Review did not raise an objection with that aspect of the Agency's review. The issue before the Board is a legal issue that would be no different than if the reviewer simply learned about the tanks at the site by emailing Petitioner's consultant.

The Illinois EPA implies that Petitioner's consultant had a duty to affirmatively disclose compartment tanks. (Resp. at p. 13) The testimony at hearing from the Acting Section Manager is to the contrary:

Q. Do those forms indicate that compartment tanks need to be identified?

A. The reimbursement forms?

Q. Yes.

A. No.

Q. Okay. And you're probably also familiar with the agency instructions for those forms, I assume?

A. Yes.

Q. Those instructions do not refer to identifying compartment tanks. Is that true?

A. That's probably correct. Yes.

Q. Is it also true that there's nothing in any of these Part 734 regulations that expressly mentions compartment tanks? Isn't that true?

A. I believe so. Yes.

(Hrg. Trans. at p. 43)

Petitioner's consultant did not identify tanks because it's clearly irrelevant. To the extent that the Illinois EPA thinks that maps in the 45 Day Report show the presence of compartment tanks, then the Illinois EPA similarly knew of the issue when it received the 45 Day Report. It is quite perplexing for the Illinois EPA to insist that it didn't know about the compartment tanks until after re-review when it insists that the 45 Day Report shows the presence of compartment

tanks. This confusion is compounded by the Illinois EPA inspector testifying that he personally observed compartment tanks during the tank pull, which he reported to the Section Manager. (Hrg. Trans. at p. 36) When and how the Illinois EPA knew about the compartments tanks seems important to the Illinois EPA, but apparently quite allusive.

What all of this shows is what a secret rule looks like. The OSFM does not track compartment tanks, so it's uncertain whether a site has them until they are uncovered. (Hrg. Trans. at p. 12 (Tod Rowe)) Board regulations and Agency forms and instructions don't mention them (Hrg. Trans. at p. 43 (Bauer)), and submittals are matched-up with the OSFM eligibility determination. (Hrg. Trans. at p. 27 (Carol Rowe))[2] The Illinois EPA inspector during the tank pull noted the presence of a compartment tank, but apparently this is just an observation he made (Hrg. Trans. at pp. 37-38), and there is no systematic process at the Illinois EPA to know whether a compartment tank is present. And even after receiving the information from the OSFM through correspondence documented in the Agency record (A.R.339 - A.R.346), it appears the Illinois EPA gathered more information after it made its final decision. (A.R.001-A.R.013 (OSFM tank installation documents))

Ultimately, the Illinois EPA "does not contest there were three (3) tanks at the facility," but they also apparently simultaneously possessed the essence of two tanks. (Resp. at p. 11) Petitioner agrees with the first part and any insinuation that it was wrong to report that there were three tanks at the facility is absurd.

[2] Carol Rowe was asked about the "West UST Cross View," a map dated after the tank pull, which obviously obscures the location of the tank to the east. (Resp. Hrg. Ex. 2) This is simply the nature of two-dimensional cross views.

WHEREFORE, Petitioner,1441 KINGSHIGHWAY LLC, prays that the Board find the Agency erred in its decision, direct the Agency to approve the payment as submitted, award payment of attorney's fees and grant Petitioner such other and further relief as it deems meet and just.

1441 KINGSHIGHWAY LLC,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 280

[FRL-63385-3]

Underground Storage Tanks; Technical Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today finalizes regulations for underground storage tanks containing petroleum or substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), except any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). These regulations were first proposed on April 17, 1987 (52 FR 12662) and a subsequent Supplemental Notice was published on December 23, 1987 (52 FR 48638).

Under Section 9003 of RCRA, EPA must establish requirements for leak detection, leak prevention, financial responsibility, and corrective action for all underground storage tanks containing regulated substances as necessary to protect human health and the environment. Today's final rule sets forth requirements satisfying the mandates of section 9003, except that final requirements concerning financial responsibility will be addressed later by EPA in another **Federal Register** notice.

EFFECTIVE DATE: December 22, 1988, except § 280.22(g) which is effective October 24, 1988.

ADDRESS: The docket for this rulemaking (Docket No. UST 2-1) is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for federal holidays. You may make an appointment to review docket materials by calling (202) 475-9720. You may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: Call the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or 382-3000 (in Washington, DC).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority

These regulations are issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, and 9006, 9007, and 9009 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), and 6991(h)).

II. Background

A. Subtitle I of RCRA

The Hazardous and Solid Waste Amendments of 1984 extended and strengthened the provisions of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA) of 1976. One major portion of RCRA as amended, Subtitle I, provides for the development and

"New generation" piping systems comparable to the "new generation" of tanks are under development but not widely used.

c. *Nonoperational Components.* Nonoperational components consist of tank bung holes, tank manholes, vent and fill lines, vapor recovery lines, and manifold piping (the piping used in connecting tanks together). These components, all located above the top of the tank, are called nonoperational because releases from these sources do not occur under normal operating conditions. Releases from them are usually unseen because they are underground. These releases are episodic and usually of small volume, because they only occur when the tank is overfilled or when manifolded tanks are filled through the piping connecting the tanks together. Generally, when an overfill occurs, the volume of product contained in the fill tube above the loose nonoperational component will be forced out into the environment until the product level in the UST drops below the leaking component. These leaking, nonoperational components are reported to be most often caused by improper installation practices, such as loose bung hole plugs not being tightened at installation or vent lines being handtightened on top of the tank.

Two solutions are available to stop this type of release: either ensure proper installation of these different types of fittings or eliminate overfills. Elimination of overfilling of the tank is the surest remedy and is probably the easiest to accomplish with overfill shutoff devices now widely available. Most releases associated with nonoperational components would be prevented if overfills were successfully eliminated.

d. *Spills and Overfills.* In addition to episodic releases from nonoperational components, there is an even more prevalent source of release that takes place at the tank fill port during tank filling. Although usually small in volume, spill and overfill releases are probably the most common causes of release from UST systems. These releases usually occur at the surface of the ground around the top of the fill pipe when the delivery truck's hose is disconnected from the fill pipe. Most of these releases go unreported due to the typically small volume of product lost (generally, less than the volume of the delivery truck's hose). Most excavated bare steel tanks, however, show evidence of spilled material, such as dissolved asphalt coating near the fill pipe. Regulatory officials in Dade County (Florida) cite spills and overfills as the primary cause of release—45 percent of reported releases. These surface releases are at least twice as numerous as tank or piping releases.

Spills most often occur at the fill pipe opening when the delivery truck's hose is disconnected, usually releasing only a few gallons. Overfills occur far less frequently but usually release much larger volumes. Overfills generally result in a release from loose, nonoperational components located above the tanks (as discussed in the previous section), or from the top of the tank's vent pipe as product is forced out during overfilling of the system. Experienced installation contractors emphasize to EPA that the control of spills and control of overfills are two different problems and equipment that controls one may not control the other.

3. Industry Codes and Practices

In the preamble to the proposed rule (52 FR 12670), EPA identified numerous industry consensus codes and recommended practices that influenced the development of the proposed regulatory program. A table was provided listing several codes and practices concerning the proper management of UST systems that have been developed, mostly in the past decade, by industry associations, nationally recognized professional organizations, and independent testing laboratories. Since the proposal of the Federal rule over a year ago, these consensus code-making groups and industry standard-setting activities have continued at an increased rate. (Refer to section IV.H.1. for a more detailed discussion clarifying the use of codes developed by nationally recognized organizations or independent testing laboratories.)

Table 1 reflects a sampling of the current status of this national consensus code-making network. The codes and standards marked with an asterisk have been reviewed, updated, or revised over the past year. For example, last summer, the American Petroleum Institute reviewed several of its recommended practices (e.g., API 1631 and 1615) and improved the guidance provided in these documents. In addition, several new codes are now under development or have been recently added. For example, the National Leak Prevention Association was formed and developed an industry consensus code for the interior lining of tanks (NLPA 631).

BILLING CODE 6560-50-M

the rationale for the changes, and the Agency's interpretation of these terms.

a. *Definitions of Terms in the Statute.*

(1) Underground Storage Tank. *Underground storage tank* is defined in the statute as any one or a 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 10 percent or more *beneath the surface of the ground.*

Today's rule sets forth the following definitions for terms used in the statutory definition of underground storage tank:

(a) 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.

Several commenters stated that the definition of tank in the proposed rule was too broad, and included devices that do not store regulated substances but rather use, treat, collect, or capture regulated substances. By expanding the scope of tank beyond just storage tanks, say the commenters, EPA departed from its Congressional mandate and created a program that is overly inclusive and difficult to manage. The commenters also argued that the inclusion of hydraulic lift tanks, electrical equipment, oil-water seperators, sumps, treatment tanks, and other devices not normally regarded as storage tanks would overwhelm the Agency's ability to adequately enforce the regulations. Also, the added burden of regulating these devices would be disproportionate to their potential environmental harm. Few of these devices have documented leak histories, according to the commenters.

Throughout the development of the UST regulations, where there has been ambiguity in the terms defining the jurisdiction of the Subtitle I program, it has been the Agency's policy to define the scope of the UST regulations broadly and interpret the exclusions relatively narrowly. By taking this approach, the Agency hoped to avoid prematurely eliminating from its jurisdiction tanks that may pose an environmental threat. This policy has afforded the Agency the opportunity to gather more information on the various classes of tanks in the potential regulated universe. EPA has retained the prerogative to narrow the scope of the program by regulation rather than statutory interpretation, taking into account potential environmental and health risks, implementability, and administrative burden. The Agency decided that this approach would result in a program that provides maximum protection to human health and the environment while taking into account the regulatory burdens associated with the program. Further explanation of these regulatory exclusions is found earlier in this preamble under IV.A.2, Regulatory Exclusions, many of which deal with precisely those tanks about which commenters expressed concern.

Accordingly, EPA disagrees with commenters who argued that EPA's definition of "tank" results in an unauthorized expansion of its regulatory program under Subtitle I. Although EPA acknowledges that this program includes only "storage" tanks, Congress defined "storage" in section 9001 of RCRA as "containing an accumulation of regulated substances." EPA's interpretation of the Subtitle I jurisdiction to encompass any devices holding an accumulation of any regulated substances (unless subject to a statutory exclusion) is thus not inconsistent with the statute. Moreover, this definition is the same as that which has been used in the Subtitle C tank program for years.

(b) Underground pipes connected thereto 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 should be allocated equally between the systems. Tanks that are simply manifolded together are considered as one UST system. However, if an exempt tank is connected by piping to a regulated tank, half of the piping is allocated to each tank system. This allocation of connected piping is an attempt to reconcile two conflicting statutory provisions: Section 9001(1) states that an UST system includes the tank and all underground pipes connected thereto but also states that a statutorily excluded UST system also includes all of the piping connected to it. As a result, half of the piping is allocated to the regulated tank system and half to the excluded tank system if two are connected.

In the RCRA Subtitle C tank rules, the starting point of the "connected piping" is the point at which the contained substance is initially considered to be a hazardous waste. It should be noted that the above terms as they apply here, while similar, are different than the Subtitle C definition.

(c) Regulated Substance. Today's definition of "regulated substance" in the final rule codifies the statutory definitions of "regulated substance" and "petroleum" and provides additional clarification concerning the coverage of certain substances and mixtures of these substances under the regulations.

(1) *Overview.* In the April 17 proposal, the Agency codified the statutory definition of regulated substance. Thus, "regulated substance" was defined to include: (1) Any substance listed under section 101(14) of CERCLA, except those regulated as hazardous waste under Subtitle C of RCRA; and (2) petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure. The term "petroleum" was also separately defined as crude oil, crude oil fractions, and refined petroleum fractions including gasoline, kerosene, heating oils, and diesel fuels. The proposal addressed mixtures of petroleum and any hazardous substance with a "50 percent rule," and under which, for example, an UST system containing a mixture that was 50 percent or more petroleum was proposed to be a "petroleum UST system."

In the Supplemental Notice of December 23, 1987, the Agency proposed further clarification of these definitions by requesting public comment on a specific list of substances and blends that would be subject to the petroleum UST requirements. This list was intended to be comparable to the list of CERCLA hazardous substances (not including hazardous wastes). Thus, an owner or operator would have to comply with the UST regulations only if one of more of the stored substances were on either of the two lists of regulated substances. The proposed list of petroleum substances would also be used to determine, for purposes of release detection requirements, if a substance would be regulated as a petroleum UST system.

The few comments the Agency received about the proposed definition of regulated substance asked for further clarification of the term petroleum. The commenters' concern was whether the release detection requirements for new hazardous substance USTs (i.e., secondary containment), or those for new petroleum USTs, applied to particular substances. EPA also received numerous comments on the proposed list of petroleum substances contained in this Supplemental Notice. In general, most commenters expressed preference for this proposed list because it was more specific and clarified which substances had to meet the release

Appendix I—Notification for Underground Storage Tanks (Form)

Notification for Underground Storage Tanks

FORM APPROVED
OMB NO. 2050-0068
APPROVAL EXPIRES 9-30-91

EPA estimates public reporting burden for this form to average 30 minutes per response, including time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding this burden estimate to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA."

I.D. Number | **STATE USE ONLY**

Date Received

GENERAL INFORMATION

Notification is required by Federal law for all underground tanks that have been used to store regulated substances since January 1, 1974, that are in the ground as of May 8, 1986, or that are brought into use after May 8, 1986. The information requested is required by Section 9002 of the Resource Conservation and Recovery Act (RCRA), as amended.

The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonably available records, or, in the absence of such records, your knowledge, belief, or recollection.

Who Must Notify? Section 9002 of RCRA, as amended, requires that unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owners must notify:

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

(b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

What Tanks Are Included? Underground storage tank is defined as any one or combination of tanks that is used to contain an accumulation of "regulated substances," and (2) whose volume (including connected underground pipping) is 10% or more beneath the ground. Some examples are underground tanks storing: 1. gasoline, used oil, or diesel fuel, and 2. industrial solvents, pesticides, herbicides or fumigants.

What Tanks Are Excluded? Tanks removed from the ground are not subject to notification. Other tanks excluded from notification are:

1. farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,
2. tanks used for storing heating oil for consumptive use on the premises where stored,
3. septic tanks,
4. pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979, or which are an intrastate pipeline facility regulated under State laws,
5. surface impoundments, pits, ponds, or lagoons,
6. storm water or wastewater collection systems,
7. flow-through process tanks,
8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations,
9. storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

What Substances Are Covered? The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) with the exception of those substances regulated as hazardous waste under Subtitle C of RCRA. It also includes petroleum (e.g., 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).

Where To Notify? Completed notification forms should be sent to the address given at the top of this page.

When To Notify? 1. Owners of underground storage tanks in use or that have been taken out of operation after January 1, 1974, but still in the ground, must notify by May 8, 1986. 2. Owners who bring underground storage tanks into use after May 8, 1986, must notify within 30 days of bringing the tanks into use.

Penalties. Any owner who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed $10,000 for each tank for which notification is not given or for which false information is submitted.

INSTRUCTIONS

Please type or print in ink all items except "signature" in Section V. This form must be completed for each location containing underground storage tanks. If more than 5 tanks are owned at this location, photocopy the reverse side, and staple continuation sheets to this form.

Indicate number of continuation sheets attached: ☐

I. OWNERSHIP OF TANK(S)

Owner Name (Corporate, Individual, Public Agency, or Other Entity)

Street Address

County

City | State | ZIP Code

Area Code | Phone Number

Type of Owner *(Mark all that apply [X])*

☐ Current ☐ Former ☐ State or Local Gov't ☐ Federal Gov't (GSA facility I.D. no. _____) ☐ Private or Corporate ☐ Ownership uncertain

II. LOCATION OF TANK(S)

(If same as Section I, mark box here ☐)

Facility Name or Company Site Identifier, as applicable

Street Address or State Road, as applicable

County

City (nearest) | State | ZIP Code

Indicate number of tanks at this location: ☐

Mark box here if tank(s) are located on land within an Indian reservation or on other Indian trust lands: ☐

III. CONTACT PERSON AT TANK LOCATION

Name (If same as Section I, mark box here ☐) | Job Title | Area Code | Phone Number

IV. TYPE OF NOTIFICATION

☐ Mark box here only if this is an amended or subsequent notification for this location.

V. CERTIFICATION (Read and sign after completing Section VI.)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner or owner's authorized representative | Signature | Date Signed

CONTINUE ON REVERSE SIDE

Owner Name (from Section I) _____ Location (from Section II) _____ Page No. ____ of ____ Pages

VI. DESCRIPTION OF UNDERGROUND STORAGE TANKS *(Complete for each tank at this location.)*

Tank Identification No. (e.g., ABC-123), or Arbitrarily Assigned Sequential Number (e.g., 1,2,3...)	Tank No.	Tank No.	Tank No.	Tank No.	Tank No.
1. Status of Tank *(Mark all that apply ☒)*					
Currently in Use	☐	☐	☐	☐	☐
Temporarily Out of Use	☐	☐	☐	☐	☐
Permanently Out of Use	☐	☐	☐	☐	☐
Brought into Use after 5/8/85	☐	☐	☐	☐	☐
2. Estimated Age (Years)					
3. Estimated Total Capacity (Gallons)					
4. Material of Construction *(Mark one ☒)*					
Steel	☐	☐	☐	☐	☐
Concrete	☐	☐	☐	☐	☐
Fiberglass Reinforced Plastic	☐	☐	☐	☐	☐
Unknown	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
5. Internal Protection *(Mark all that apply ☒)*					
Cathodic Protection	☐	☐	☐	☐	☐
Interior Lining (e.g., epoxy resins)	☐	☐	☐	☐	☐
None	☐	☐	☐	☐	☐
Unknown	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
6. External Protection *(Mark all that apply ☒)*					
Cathodic Protection	☐	☐	☐	☐	☐
Painted (e.g., asphaltic)	☐	☐	☐	☐	☐
Fiberglass Reinforced Plastic Coated	☐	☐	☐	☐	☐
None	☐	☐	☐	☐	☐
Unknown	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
7. Piping *(Mark all that apply ☒)*					
Bare Steel	☐	☐	☐	☐	☐
Galvanized Steel	☐	☐	☐	☐	☐
Fiberglass Reinforced Plastic	☐	☐	☐	☐	☐
Cathodically Protected	☐	☐	☐	☐	☐
Unknown	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
8. Substance Currently or Last Stored in Greatest Quantity by Volume *(Mark all that apply ☒)*					
a. Empty	☐	☐	☐	☐	☐
b. Petroleum					
Diesel	☐	☐	☐	☐	☐
Kerosene	☐	☐	☐	☐	☐
Gasoline (including alcohol blends)	☐	☐	☐	☐	☐
Used Oil	☐	☐	☐	☐	☐
Other, Please Specify	_____	_____	_____	_____	_____
c. Hazardous Substance	☐	☐	☐	☐	☐
Please Indicate Name of Principal CERCLA Substance	_____	_____	_____	_____	_____
OR					
Chemical Abstract Service (CAS) No.	_____	_____	_____	_____	_____
Mark box ☒ if tank stores a mixture of substances	☐	☐	☐	☐	☐
d. Unknown	☐	☐	☐	☐	☐
9. Additional Information (for tanks permanently taken out of service)					
a. Estimated date last used (mo, yr)	/	/	/	/	/
b. Estimated quantity of substance remaining (gal.)	_____	_____	_____	_____	_____
c. Mark box ☒ if tank was filled with inert material (e.g., sand, concrete)	☐	☐	☐	☐	☐

Owner Name (from Section I) _____ Location (from Section II) _____ Page No. _____ of _____ Pages

VII. CERTIFICATION OF COMPLIANCE (COMPLETE FOR ALL NEW TANKS AT THIS LOCATION)

10 Installation (mark all that apply):

- ☐ The installer has been certified by the tank and piping manufacturers.
- ☐ The installer has been certified or licensed by the implementing agency.
- ☐ The installation has been inspected and certified by a registered professional engineer.
- ☐ The installation has been inspected and approved by the implementing agency.
- ☐ All work listed on the manufacturer's installation checklists has been completed.
- ☐ Another method was used as allowed by the implementing agency. Please specify:

_____

11 Release Detection (mark all that apply):

- ☐ Manual tank gauging.
- ☐ Tank tightness testing with inventory controls.
- ☐ Automatic tank gauging.
- ☐ Vapor monitoring.
- ☐ Ground water monitoring.
- ☐ Interstitial monitoring within a secondary barrier.
- ☐ Interstitial monitoring within secondary containment.
- ☐ Automatic line leak detectors.
- ☐ Line tightness testing.
- ☐ Another method allowed by the implementing agency. Please specify:

_____

12 Corrosion Protection (if applicable):

- ☐ As specified for coated steel tanks with cathodic protection.
- ☐ As specified for coated steel piping with cathodic protection.
- ☐ Another method allowed by the implementing agency. Please specify:

_____

13 I have financial responsibility in accordance with Subpart I. Please specify:

Method _____

Insurer _____

Policy Number _____

14 OATH: I certify that the information concerning installation provided in Item 10 is true to the best of my belief and knowledge.

Installer _____ _____

Name Date

_____

Position

_____

Company

BILLING CODE 6560-50-C