

ILLINOIS POLLUTION CONTROL BOARD  
April 9, 1992

IN THE MATTER OF: )  
 )  
UST UPDATE ) R91-14  
USEPA REGULATIONS ) (Identical in  
(1/1/91 - 6/30/91) ) Substance  
 ) Rulemaking)

Adopted Rule. Final Order.

OPINION OF THE BOARD (by J. Anderson):

Pursuant to Section 22.4(d) of the Environmental Protection Act (Act), the Board is amending the UST underground storage tank regulations in 35 Ill. Adm. Code 731. The Board is adopting a separate Order on this same day. This action will not be held for the usual 30 day post-adoption period, as we believe it is unnecessary.

Section 22.4 of the Act governs adoption of regulations establishing the RCRA/UST program in Illinois. Section 22.4(d) provides for quick adoption of regulations which are "identical in substance" to federal regulations. Section 22.4(d) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal UST rules are found at 40 CFR 280. This rulemaking updates Illinois' UST rules to correspond with the following USEPA actions, during the period January 1 through June 30, 1991:

56 Fed. Reg. 24, January 2, 1991.

56 Fed. Reg. 21603, May 10, 1991.

As is discussed below, P.A. 87-323 requires the Board to repeal most of its UST rules, including the Sections which would have been affected by the few USEPA amendments. This Update is therefore driven entirely by the changes in statutory authority in P.A. 87-323. This results in the repeal of around 60 out of 75 pages in Part 731.

PUBLIC COMMENT

The Board entered two Proposed Opinions and Orders in this matter. The Proposed Opinion and Order of January 9, 1992, addressed the repeals mandated by P.A. 87-323. The Proposed Opinion and Order of January 23, 1992, addressed the inclusion of certain heating oil USTs in the program.

The Proposed Orders of January 9 and 23, 1992, were combined into a single proposal for publication in the Illinois Register. The proposal appeared on February 14, 1992, at 16 Ill. Reg. 2330. The Board received the following public comment:

- PC 1        Illinois Environmental Protection Agency (Agency),  
Susan Schroeder and Harry Chappel, February 21,  
1992.
- PC 2        North Oak Chrysler Plymouth (North Oak), Carey  
Rosemarin, Jenner and Block, February 21, 1992.
- PC 3        Administrative Code Division, Connie Bradway,  
March 16, 1992.

The comments are discussed in detail below. In summary, while the Agency requested repeal of additional provisions of the Board's rules, North Oak argued that P.A. 87-323 did not require repeal of the Board's regulations.

#### HISTORY OF UST RULES

The UST rules are contained in 35 Ill. Adm. Code 731. They were adopted and amended as follows:

- R86-17     1 PCB 110, July 11, 1986; 10 Ill. Reg. 13998,  
August 22, 1986.
- R86-28     75 PCB 306, February 5, 1987; and 76 PCB 195,  
March 5, 1987; 11 Ill. Reg. 6017, April 3,  
1987. Correction at 77 PCB 235, April 16, 1987;  
11 Ill. Reg. 8684, May 1, 1987.
- R88-27     April 27, 1989; 13 Ill. Reg. 9519, effective  
June 12, 1989 (9/23/88 Technical Standards)
- R89-4      July 27, 1989; 13 Ill. Reg. 15010, effective  
September 12, 1989 (10/26/88 Financial Assurance  
Requirements)
- R89-10     March 1, 1990; 14 Ill. Reg. 5797, effective  
April 10, 1990 (10/27/88 - 6/30/89)
- R89-19     April 26, 1990 14 Ill. Reg. 9454, effective June  
4, 1990 (UST State Fund)
- R90-3      June 7, 1990; 14 Ill. Reg. 11964, effective  
July 10, 1990 (7/1/89 - 12/31/89)
- R90-12     February 28, 1991; 15 Ill. Reg. 6527, effective  
April 22, 1991 (1/1/90 - 6/30/90)

R91-2 July 25, 1991; 15 Ill. Reg. 13800, effective September 10, 1991 (7/1/90 - 12/31/90)

R91-14 This Docket (1/1/91 - 6/30/91)

On April 27, 1989 the Board adopted regulations which are identical in substance to the major revisions to the USEPA UST rules which appeared at 53 Fed. Reg. 37194, September 23, 1988. The Board separated the financial responsibility rules from the September 23 rules in order to avoid delaying adoption of the latter. The financial responsibility rules (53 Fed. Reg. 43370, 10/26/88) were adopted in R89-4.

Until R88-27 the UST rules were addressed in the RCRA update Dockets. The Board separated the September 23, 1988 rules from the RCRA update process because of the size and timing of the rulemaking, and because of the desirability of developing a separate mailing list for persons interested only in tanks. The Board will recombine the RCRA and UST updates with the next Dockets.

#### FIRE MARSHAL RULES

The statute requires that the Office of the State Fire Marshal adopt equivalents of much of the USEPA UST rules. The Fire Marshal's rules are contained in 41 Ill. Adm. Code 170, along with preexisting rules adopted prior to the USEPA equivalent rules. They were adopted, amended, corrected, proposed, and objected to in the following actions:

13 Ill. Reg. 5669, effective April 21, 1989 (Technical Standards).

13 Ill. Reg. 7744, effective May 9, 1989.

13 Ill. Reg. 8515, effective May 19, 1989 (Financial Assurance).

13 Ill. Reg. 8875, effective May 19, 1989.

13 Ill. Reg. 13288, August 18, 1989.

13 Ill. Reg. 13305, August 18, 1989.

13 Ill. Reg. 14992, effective September 11, 1989.

13 Ill. Reg. 15126, September 22, 1989.

14 Ill. Reg. 63, January 5, 1990.

14 Ill. Reg. 5781, April 20, 1990.

15 Ill. Reg. 13800, effective September 10, 1991.

15 Ill. Reg. 10875, proposed July 26, 1991.

#### STATUTORY AUTHORITY

The State statutes authorizing the UST rules have a short, but incredibly complex history. These are now intertwined with the statutes authorizing the UST State Fund. The following is a brief summary of the UST statutes to date:

<u>P.A.</u>	<u>SUMMARY</u>
84-1072	Required Board to adopt rules which are "no less stringent" than USEPA UST rules. Implemented in R86-1 and R86-28.
85-861	Required Board to adopt "identical in substance" rules. Also required Fire Marshal to adopt rules which were "identical in substance" to USEPA rules, but not including those dealing with "corrective action". Implemented in R88-27 and R89-4.
86-125	Created the UST State Fund. (See R89-19)
86-958	Added Section 22.13(d) to the Act, specifying that the UST State Fund was intended as a fund by which persons could meet the USEPA financial responsibility requirements. Authorized the Board to adopt implementing regulations. Implemented in R89-19.
86-1050	Modified Section 22.4(d) of the Act to limit the Board's authority to adopting "regulations relating to corrective action", but failed to define what this meant. Modified Section 22.13(d) so as to preclude use of UST State Fund to meet USEPA financial responsibility requirements. Added heating oil USTs of over 1100 gallons to certain provisions.
86-1484	Partially corrected P.A. 86-1050, allowing continued use of State Fund.
87-323	Added Section 22.4(d)(4) to the Act, defining what is not "corrective action". Directed Board to regulate certain heating oil USTs.

#### LIMITATION TO CORRECTIVE ACTION

When the main body of the UST rules were adopted in R88-27 and R89-4, the Fire Marshal was directed to adopt rules which were "identical in substance" to the USEPA rules, except those dealing with "corrective action". The Fire Marshal was to implement the rules up to the point of corrective action, the Agency was to implement the rules pertaining to corrective action. However, the Board was required to adopt the entire body of the USEPA rules, including those also adopted by the Fire Marshal. As the statute was then structured, the Board had to adopt these rules. In the event of a release, the Agency would be able to bring an enforcement action before the Board alleging violations of the design and operating requirements which caused the release.

Asking two agencies to adopt the same rules carried a risk that they would not adopt the exact same rules. To avoid these problems, Section 22.4(d) also allowed the Board to modify its rules to make them "identical in substance" to regulations adopted by the Fire Marshal. However, the Fire Marshal never gave the required notice allowing the Board to modify its regulations.

The statutory scheme has now been modified so as to make the Board's statutory authority to adopt UST rules solely as related to Agency-enforced corrective action. As defined in Section 22.4(d)(4), "corrective action" includes everything but:

[D]esign, construction, installation, general operation, release detection, release reporting, release investigation, release confirmation, out-of-service systems and their closure and financial responsibility.

These terms follow closely the titles of the Subparts in the Board and USEPA rules. Almost all of Subparts B, C, D, E, G and H is to be repealed. What remains is the notification requirements in Subpart B, and the release response and corrective action provisions of Subpart F. In addition, much of the general material in Subpart A will be repealed, except to the extent that it is necessary for the remaining portions of the Board rules. The Board has reviewed the definitions and incorporations by reference to determine which are used in the Board rules that remain (or are used in other definitions). All others will be repealed.

The Board proposed to leave the notification requirement in Section 731.122, based on its omission from the list of what is not "corrective action". The Agency has indicated that it believes this Section should also be repealed, but has not provided any statutory rationale (PC 1). The Board agrees that it makes no practical sense to leave the notification in.

However, the Board will withhold any deletion of the notification requirement until what appears to be an error in P.A. 87-323 is corrected.

As noted above, the Board's rulemaking authority is now constrained to those corrective action activities which the Agency implements. As was discussed on p. 3 and 23 in the R88-28 Opinion, the Board originally found the transition from Fire Marshal to Agency authority to be somewhere between Sections 731.161 and 731.162, between "initial response" and "corrective action" proper. It is clear under the new statutory scheme that the transition point has been moved back to the beginning of Subpart F, in Section 731.160. In other words, the Board and Agency will have authority over "immediate response".

We recognize that the deletions create a vagueness in the remaining portions; however, these amendments are driven by statutory amendments. One problem is that the corrective action provisions of the USEPA rules exist within the larger body of the UST rules. They include cross references into that larger body of rules. It is unclear how the Board is supposed to deal with these cross references. As is discussed below, the Board has repealed the cross references, leaving a narrative description of the actions being referenced. This may make it difficult for persons to follow the rules in actual practice. However, this result appears to be dictated by the statutory amendments.

We suggest that another problem with the current scheme is that the UST regulatory program appears to provide no real enforcement potential before the Board, except for failure of the operator to properly execute his corrective action plan, even for intentional violation of the design and operating requirements. For example, an operator could intentionally design a tank in violation of the regulations, operate it in a reckless manner so as to cause a release, and then fail to report the release. So long as the operator (after being caught) complied with the corrective action requirements of Subpart F, the UST regulatory scheme leaves no possibility of enforcement before the Board. Moreover, if the operator failed to comply with Subpart F, Board enforcement would be limited to enforcement of the "paperwork" requirements of that Subpart. There would be no opportunity to enforce for the pollution incident itself, or for the underlying design and operating violations which caused the release.

A similar problem is suggested by North Oak (PC 2), which is the complainant in North Oak Chrysler Plymouth v. AMOCO, PCB 91-214. This is an enforcement action by a current property owner against the prior owner, seeking, among other things, that the Board order the prior owner to conduct a "release investigation" or "site assessment" pursuant to repealed Section 731.152 or 731.173. If a "release" from a "UST" were found, the prior owner would have to conduct "corrective action". However, under P.A.

87-323, the "release investigation" and "site assessment" rules are exclusively in the Fire Marshal's rules. This renders it impossible for the Board to enter an effective Order in this type of situation, absent prior enforcement by the Fire Marshal.

In its comments, North Oak presents transcripts of the House and Senate debates on P.A. 87-323. The debate focused exclusively on the expansion of the UST Fund to cover heating oil tanks, with no mention of the restriction in the Board's UST rules to "corrective action". However, because the language of the amendments to Section 22.4(d)(4) is clear on its face, legislative intent is not a factor.

North Oak also contends that, even if the Board's authority is restricted, there is no express directive to repeal prior rules. The Board, however, believes that, once authority for a rule has been withdrawn, the rule must be repealed. Moreover, with the statutory authority modified, it would be impossible for the Board to update its rules to keep them "identical in substance" with USEPA rules, as required by Section 7.2 of the Act.

In the transcripts of the debates presented in PC 2, there are assertions that the Board had agreed to P.A. 87-323. This is incorrect. The Board participated in the drafting of this bill, and raised serious objections, which the other participants declined to address. Although the Board ultimately determined not to oppose the bill, it never agreed to it.

#### INCLUSION OF HEATING OIL USTs

The second major change in P.A. 87-323 was the mandate to expand the UST rules to include certain "heating oil USTs".

#### BACKGROUND

As defined in the federal RCRA Act, and in 40 CFR 280.12, the term "UST" excludes any "Tank used for storing heating oil for consumptive use on the premises where stored". The Board adopted this definition in R88-27. Since the term "UST" defines the scope of the program in 40 CFR 280.10 and Section 731.110, neither the USEPA nor Board rules applied to excluded heating oil tanks.

When the Fire Marshal adopted its version of the UST rules, it modified the RCRA definition of "UST" so as to exclude only those heating oil tanks "of 1,100 gallons or less capacity". In other words, the Fire Marshal's UST rules included tanks used for storing heating oil for consumptive use on the premises where stored, if they were over 1,100 gallons in capacity, regardless of whether they were residential or non-residential tanks.

Then, P.A. 86-1050, effective July 11, 1990, amended the definition of "UST" in both the Gasoline Storage Act and the Environmental Protection Act. It added heating oil tanks greater than 1,100 gallons "serving other than residential units" to the definitions of "UST" in the Gasoline Storage Act and in Section 22.18(e) of the Act, which is the Section that deals with the UST State Fund. Although this was evidently intended as a legislative ratification of the Fire Marshal's inclusion of certain heating oil tanks in its regulatory program, the statutory mandate did not square with the Fire Marshal's regulations.

In addition, P.A. 86-1050 failed to authorize the Board to modify its identical in substance UST regulations to add, to the State's authorized UST regulations, heating oil USTs. Section 7.2(a) of the Act defines "identical in substance" as "State regulations which require the same actions ... by the same group of affected persons as would federal regulations if USEPA administered the subject program in Illinois". In the absence of a specific mandate, the definition of "identical in substance" continued to control the scope of the Board's regulations.

#### P.A. 87-323

P.A. 87-323 has made two major changes with respect to heating oil tanks. First, it has added paragraph (5) to Section 22.4(d) of the Act, which requires the Board to adopt "identical in substance" UST rules. The change specifically mandates the Board to make the UST rules applicable to "any heating oil underground storage tank". Second, it has modified the State Fund provisions in the Act [at Section 22.18(e)(1)], as well as the Gasoline Storage Act, to define "heating oil underground storage tank" (as set out below). Among other things, the new definition: eliminates the "1,100 gallon" limitation; and, excludes farm and residential heating oil USTs, regardless of size.

These amendments raise serious questions as what "heating oil tanks" the Board rules are supposed to apply to, and whether the other exclusions in the rules apply to the regulated heating oil tanks. These are discussed in greater detail below.

#### DEFINITION OF "HEATING OIL"

As amended in P.A. 87-323, Section 22.18(e), the definitions applicable to the State Fund, now defines "UST" as including "heating oil underground storage tanks", regardless of size. Section 22.18(e)(1)(H) and (I) add the following definitions:

"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.

"Heating oil underground storage tank" means an underground storage tank serving other than farms or residential units that is used exclusively to store heating oil for consumptive use on the premises where stored.

In other words, "heating oil USTs" are now eligible for reimbursement under the State Fund, and, for purposes of the State Fund, "heating oil USTs" include all non-farm, non-residential USTs storing heating oil for consumptive use on the premises, regardless of size. For example, while a 20,000 gallon farm or residential tank is ineligible, a 500 gallon non-farm, non-residential tank is eligible.

The "heating oil" definition in Section 22.18(e)(1)(H) is similar to the definition of "heating oil" in the USEPA and Board rules [40 CFR 280.12 and Section 731.112]. The federal and Board regulatory definition reads as follows, with the additional material in the Board and USEPA definitions in bold:

"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.**

There are three major differences between the new statutory definition and the federal and Board regulatory definition. First, the regulatory definition includes a "catch-all" which is absent from the statutory definition. Second, the statutory definition has moved the limitation as to purpose into a new definition of "heating oil UST". Third, the concept that "heating oil" can be used in "boilers or furnaces" has been lost altogether. In other words, the definition of "heating oil" is narrower (without the catch-all), but is broader in the sense that "heating oil" itself includes no limitation as to purpose. Moreover, even used in conjunction with "heating oil UST", tanks used for storing oil for boilers or industrial process furnaces have an ambiguous status.

#### WHAT TYPE OF HEATING OIL TANKS SHOULD BE REGULATED?

Section 22.4(d)(5) directs the Board to make its UST rules applicable "to any heating oil underground storage tank". Does this mean "heating oil UST" as defined in Section 22.18(e) of the Act, or does it mean "UST" and "heating oil", as defined within the RCRA rules?

As a general rule, the Board does not modify the definitions in the identical in substance rules to be consistent with terms defined in the Act. The Board has long held that attempting to so modify definitions within such programs would modify the scope of the programs and the way the parts of the program fit together, so that the Board could not comply with the "identical in substance" mandate. However, in this situation, the Board is faced with a specific mandate that it modify the scope of the program to add additional tanks. The questions then become: what scope is intended; and how can the change in scope best be effectuated, without changing the way the parts of the program fit together?

Since the revision to the statutory mandate in Section 22.4(d)(5) was effected in the same Public Act which added the definitions to Section 22.18, it seems most likely that the intent was to include those "heating oil USTs" now eligible for reimbursement under the fund. The Board has therefore made its UST rules applicable to "heating oil USTs" as defined in Section 22.18.

There are two basic ways of changing the scope of the UST rules. The first approach would be to modify the definitions in Section 731.112 to make them consistent with Section 22.18(e), and then add "heating oil USTs" to the applicability statement in Section 731.110. The second approach, which the Board is following, would use the statutory definitions within the applicability statement [Section 731.110], thus retaining the USEPA definitions in Section 731.112, for use within the body of the rules.

The Board has rejected the first approach because, as discussed above, it carries a risk of introducing fundamental changes in the way the USEPA-derived rules relate to each other (and in the scope of rules not directly related to the heating oil question). In addition, it would make it difficult to maintain the rule set in routine update Dockets, since it would be necessary to continuously guard against USEPA amendments either to the definitions involved, or to Sections using the terms with non-USEPA definitions.

The Board has therefore followed the second approach, using the statutory definitions within the applicability statement, while retaining the USEPA definitions in Section 731.112, for use within the body of the rules. However, this poses potential problems, in that essential terms, including "heating oil", would have two different meanings within Part 731. As discussed below, the Board has drafted the rule so as to clearly delineate the two definition sets.

#### SECTION-BY-SECTION DISCUSSION

## Section 731.110

This Section has been retained in accordance with P.A. 87-323. This is the applicability Section for the entire Part. It is retained, since it functions as the applicability Section for the corrective action requirements, which are to be retained in Subpart F.

Section 731.110(c) includes a "deferral" for several types of USTs from most of the UST rules (except the Subpart F corrective action requirements). All the listed requirements are to be repealed.

Section 731.110(c) includes a "deferral" for several types of USTs from most of the UST rules (except the Subpart F corrective action requirements). All the listed requirements are to be repealed, except for the notification requirement in Section 731.122. Accordingly, this will become a deferral only from that requirement, as far as the Board rules are concerned.

Section 731.110(d) is another deferral, only from the release detection requirements of Subpart D. Since these are to be repealed, there is no need at all for the deferral in the Board rules. Accordingly, this subsection will be repealed.

## APPLICABILITY DEFINITIONS

As discussed above, the Board has stated the applicability of Part 731 to "heating oil USTs" by means of limited use definitions drawn from Section 22.18(e) of the Act. It turns out that this is easier said than done, since the definitions in Section 22.18(e) themselves use terms which, although undefined in the Act, are defined in the existing, federally-derived Board rules. It is fairly clear that P.A. 87-232 was drawing on these rules for the more basic terms. It is therefore necessary to bring some of these terms into the definitions used in the applicability statement.

The main term which must be drawn from the existing, federally-derived rules is "UST".<sup>1</sup> The Board has repeated the general part of the text of this definition, which is all that is needed to make sense of the term, as used.

Several additional terms are used in the definition of "UST". These include "beneath the surface of the ground",

---

<sup>1</sup>Actually, Section 22.18(e) includes a definition of "UST". However, this references the definition in the RCRA Act, which is implemented in 40 CFR 280, which in turn is implemented in Section 731.112. The Board has proposed to shorten this loop by directly setting forth the definition.

"pipe", "regulated substance" and "tank". These are simply referenced into the applicability definitions.

Two other terms used in the definitions in Section 22.18(e) of the Act are defined in the rules. These are "consumptive use" and "on the premises where stored". The Board has moved the text of these definitions from the federally-derived definitions of Section 731.112 to the applicability definition set. These terms are no longer needed in the general definitions, since they were used only to state the heating oil exemption in those rules. The Board has added "Board notes" at their places in the definition list, to aid future comparison with the USEPA rules, and as an important cross reference to aid readers accustomed to finding the heating oil exclusion in the USEPA rules.

Within the USEPA-derived regulations, the heating oil exclusion is located as an exclusion from the definition of "UST". The Board has removed the text of the exclusion. A "Board note" will be left, cross referencing the applicability statement in Section 731.110(e).

The applicability definition set reads as follows:

Section 731.110(e)(1):

Definitions. The following definitions apply to this subsection 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; OTHER RESIDUAL FUEL OILS INCLUDING NAVY SPECIAL FUEL OIL AND BUNKER C. (Section 22.18(e)(1)(H) of the Act)

"HEATING OIL UNDERGROUND STORAGE TANK" or "heating oil UST" MEANS AN UNDERGROUND STORAGE TANK SERVING OTHER THAN FARMS OR RESIDENTIAL UNITS THAT IS USED EXCLUSIVELY TO STORE HEATING OIL FOR CONSUMPTIVE USE ON THE PREMISES WHERE STORED. (Section 22.18(e)(1)(I) of the Act)

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

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

"Regulated substance" is as defined in Section 731.112.

"Tank" is as defined in Section 731.112.

"Underground storage tank" ("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 or more beneath the surface of the ground.

#### TEXT OF EXCLUSION

With the applicability definitions so stated, the applicability statement becomes relatively straightforward. The text reads as follows:

Section 731.110(e):

- 2) Subsection (a) - (c) notwithstanding, THIS PART APPLIES TO OWNERS AND OPERATORS OF ANY HEATING OIL UST. (Section 22.4(d)(5) of the Act)
- 3) The owner or operator of a heating oil UST shall comply with the same requirements as the owner or operator of a "petroleum UST", as defined in Section 731.112, any other provisions of this Part notwithstanding.

BOARD NOTE: This subsection implements Section 22.4(d)(5) of the Act, which requires that this Part be applicable to "heating oil USTs", as that term is defined in Section 22.18(e) of the Act. However, that and related terms are used in a manner which is inconsistent with the definitions and usage in this Part. The definitions used in this applicability statement are therefore limited to this subsection.

#### GLOBAL EXCLUSIONS

The USEPA, and Board, UST rules include six exclusions, and a number of deferrals [Section 731.110(b) and (c)]. One of these is the exclusion for USTs of 110 gallons or less. However, Section 22.4(d)(5) of the Act appears to leave no room for this exclusion. The Board's rules must apply to "any heating oil UST", a term which is defined in the statute without reference to

the exclusions.<sup>2</sup> Therefore, the way the rule is structured, the exemptions do not apply to heating oil tanks.

#### Sections 731.111 and 731.114

These sections have been repealed in accordance with P.A. 87-323.

#### Section 731.112

In this Section, certain definitions were retained because they appear within Sections which were retained or amended (or appear within other definitions which were retained). The definitions which have been taken out of this Section applied only to repealed sections. The following is a list of some of the retained definitions and the place they appear:

<u>Definition</u>	<u>Place where Defined Term Appears</u>
"Aboveground release"	Subpart F
"Ancillary equipment"	Definition of "UST system"
"Below ground release"	Subpart F
"Beneath the surface of the ground"	Definition of "UST"
"Connected piping"	Definition of "UST system"
"Consumptive use"	Definition of "UST"
"Dielectric material"	Definition of "Electrical equipment"
"Electrical Equipment"	Section 731.110
"Excavation zone"	Section 731.162
"Farm Tank"	Definition of "UST"
"Flow-through process tank"	Definition of "UST"
"Free product"	Section 731.162

---

<sup>2</sup>The Board has above held that Section 22.4(d)(5), as added by P.A. 87-323, intended to reference the statutory definitions added to Section 22.18(e). If P.A. 87-323 had been intended to reference the regulatory definitions, the exclusions would arguably apply.

"Gathering lines"	Definition of "UST"
"Heating oil"	Definition of "UST"
"Hydraulic lift tank"	Section 731.110
"Liquid trap"	Definition of "UST"
"Motor fuel"	Definition of "Petroleum"
"Noncommercial purposes"	Definition of "UST"
"Operator"	Section 731.110
"Overfill release"	Subpart F
"Owner"	Section 731.110
"Person"	Definition of "Owner"
"Pipe"	Definition of "UST"
"Pipeline facilities"	Definition of "UST" and Section 731.110
"Regulated substance"	Section 731.110
"Release"	Subpart F
"Residential tank"	Definition of "UST"
"Septic tank"	Definition of "UST"
"Storm water or wastewater collection system"	Definition of "UST"
"Surface impoundment"	Definition of "UST"
"Tank"	Definition of "UST"
"Underground area"	Definition of "UST"
"Underground storage tank" or "UST"	731.110 and Subpart F
"UST system"	Section 731.110
"Wastewater treatment tank"	Section 731.110

Section 731.113

In this Section, certain incorporations by reference were retained because they appeared within Sections which were retained or amended. The incorporations by reference which have been taken out of this Section applied only to repealed Sections. The following is a list of the retained incorporations and the place they are used:

<u>Incorporations</u>	<u>Place where Incorporation Used</u>
10 CFR 50, App. A	Section 731.110
40 CFR 280.3 (1987) (repealed September 23, 1988)	Section 731.122
40 CFR 302.4 and 302.6	Section 731.112

The first and third items have been updated to reference the current (1991) Edition of the CFR. The second will continue to reference the original USEPA notification requirement, which is now repealed.

#### Subpart B

This Subpart has been repealed in accordance with P.A. 87-323. The information contained in them can now be found in the Fire Marshal's Code at 41 Ill. Adm. Code 170 et seq.

#### Section 731.122

This Section requires notification of the existence of tanks. As discussed above, the Board has retained it, since it appears to have been excluded from the list of things which are not "corrective action".

The Section contains numerous cross references into rules which are to be repealed. The Board has proposed to repeal the references, leaving a narrative description of the requirements.

#### Subparts C through E

These Subparts have been repealed in accordance with P.A. 87-323. The information contained in them can now be found in the Fire Marshal's Code at 41 Ill. Adm. Code 170 et seq.

#### Section 731.160 et seq.

Subpart F deals with corrective action. This is clearly contained within the Board's rulemaking authority under P.A. 87-323.



This Subpart includes several cross references to Board repealed Sections. The Board has removed the cross references, leaving only a narrative description of what is referred to.

As was discussed in general above, in R88-27 the Board determined that the division between the Fire Marshal and Agency authority was between Sections 731.161 and 731.162, when "initial response" gives way to the "initial abatement measures". The new legislation clearly moves the demarcation back to the end of Subpart E, such that the initial abatement measures are now within Board and Agency jurisdiction.

#### Subparts G and H

These Subparts have been repealed in accordance with P.A. 87-323. The information contained in them can now be found in the Fire Marshal's Code at 41 Ill. Adm. Code 170 et seq.

#### Appendix A

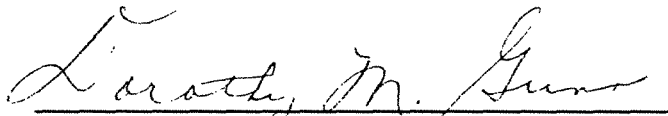
This Appendix is referenced in Section 731.122, which is being retained. The Board has therefore proposed to update the incorporation by reference of 40 CFR 280, App. I.

#### Appendix C

Section 731.122 includes a reference to "Appendix C", which should correspond with 40 CFR 280, App. III. The Board inadvertently omitted to adopt this in R88-27. The Board has therefore adopted the Appendix at this time. (PC 1)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion was adopted on the 9<sup>th</sup> day of April, 1992, by a vote of 7-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board