

ILLINOIS POLLUTION CONTROL BOARD
February 28, 1991

IN THE MATTER OF:)
)
UST UPDATE) R91-2
USEPA REGULATIONS) (Identical in
(7/1/90 - 12/31/90)) Substance Rulemaking)

PROPOSAL FOR PUBLIC COMMENT

PROPOSED OPINION OF THE BOARD (by J. Anderson):

Pursuant to Section 22.4(d) of the Environmental Protection Act (Act), the Board is proposing to amend the UST underground storage tank regulations in 35 Ill. Adm. Code 731.

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 July 1 through December 31, 1990:¹

55 Fed. Reg. 46025

October 31, 1990

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.

¹This rulemaking does not address the effects on the UST regulations of H.B. 3325, which has been signed into law as P.A. 86-1050. In R90-12, the Board postponed action pending possible revisions to P.A. 86-1050. During the pendency of that proposal, P.A. 86-1484 corrected a portion of P.A. 86-1050. In anticipation of possible further corrective legislation, we will again postpone any action on P.A. 86-1050.

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 (1/1/90 - 6/30/90)
- R91-2 This Docket (7/1/90 - 12/31/90)

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 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

SECTION-BY-SECTION DISCUSSION

Section 731.113

The Board has proposed to update the incorporations by reference of federal regulations to the 1990 Edition of the Code of Federal Regulations, which includes federal actions through June 30, 1990.

This Section includes "abnormal" incorporations by reference, i.e. references to federal rules which are cross-referenced in the USEPA UST rules, but which are not a part of the UST program itself. Any "normal" incorporations by reference of UST rules occur at the appropriate point in the verbatim text.

When USEPA cross references another federal regulation, it usually means to include any future amendments to the referenced rule. However, the Board is limited to incorporating specific editions of federal regulations. (Section 6.02 of the APA) Therefore, in order to maintain equivalence, the Board must periodically update its references.

Any "normal" incorporations by reference which are amended at the federal level can be found by an index search of the USEPA UST rules, and are routinely updated in the Update Dockets. However, because the "abnormal" references are not located in any specific portion of the USEPA rules, amendments cannot be found in this way. This is why they are consolidated in the incorporation Section. The Board has proposed to simply update these references, but has not attempted to discover if there are in fact any amendments to these regulations.

The main impact of this update may be to update the references to 40 CFR 302, which is the CERCLA consolidated listing of "hazardous substances". This is used in the UST rules to define

"hazardous substance UST". Updating the reference will bring tanks containing any newly listed hazardous substances into the program.

Section 731.191

This Section includes the compliance dates for financial responsibility. The Section is drawn from 40 CFR 280.91, which was amended at 55 Fed. Reg. 46025, October 31, 1990, to extend the compliance date for owners of less than 13 USTs to October 26, 1991, and for units of local government, until one year after the adoption of additional mechanisms for units of local government.

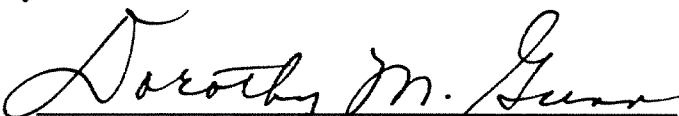
The USEPA rule uses the phrase "local government entities". The Board has proposed to use the phrase "unit of local government" from the Illinois Constitution, in accordance with the definition in Section 731.192, as adopted in R89-4.

The USEPA rule also refers to "underground storage tanks containing petroleum". The Board has proposed to use the term defined in Section 731.191, "petroleum UST", which is used to state the compliance dates for other types of owners. However, there is a possibility that USEPA intends to be defining a new type of tank to specify the scope of the financial responsibility rules as applied to local government. The Board **solicits comment**.

This proposed Opinion supports a Proposed Order adopted this same day.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Proposed Opinion was adopted on the 28th day of February, 1991, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board