

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Underground Storage Tanks
- 2) Code Citation: 35 Ill. Adm. Code 731
- 3) Section Number: 731.110 Proposed Action: Amend
- 4) Statutory Authority: Implementing Sections 22.12 and 57 - 57.19 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/22.12, 27, 28, and 57 - 57.19]
- 5) A Complete Description of the Subjects and Issues Involved: The Illinois Environmental Protection Agency (IEPA) initiated this rulemaking by filing a proposal intended to update the Board's underground storage tank (UST) regulations to reflect the adoption of Public Act 96-908. Public Act 96-908 enacted a number of amendments to Title XVI of the Environmental Protection Act (Act), which addresses USTs.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: In the record of this rulemaking proceeding, IEPA stated that it "did not use a published study or research report in developing the proposed amendments" and therefore did not submit such material pursuant to the Board's procedural rules.
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No.
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may download copies of the Board's opinion and order from the Board's Web site at www.ipcb.state.il.us and may also request copies by calling the Clerk's office at 312-814-3620.

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OCT 14 2011

**STATE OF ILLINOIS
Pollution Control Board**

The Board will accept written public comment on this proposal for 45 days after the date

POLLUTION CONTROL BOARD

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of publication in the *Illinois Register*. Comments should refer to Docket R11-22 and be addressed to:

John Therriault
Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: this rulemaking may impact any small business, small municipality, or not-for-profit corporation that owns or operates a UST or performs activities associated with the remediation of leaking USTs.
 - B) Reporting, bookkeeping or other procedures required for compliance: the proposed amendment to Part 731 requires owners and operators subject to Title XVI of the Act to address releases according to Part 734, which now includes various reporting procedures.
 - C) Types of Professional skills necessary for compliance: no professional skills beyond those currently required by the existing UST regulations applicable to affected sources will be required for compliance with proposed amendments to Part 731.
- 14) Regulatory Agenda on which this rulemaking was summarized: January 2011

The full text of the Proposed Amendment begins on the next page:

TITLE 35: ENVIRONMENTAL PROTECTION

SUBTITLE G: WASTE DISPOSAL

CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND
UNDERGROUND STORAGE TANK PROGRAMS

PART 731

UNDERGROUND STORAGE TANKS

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

Section

731.101 Definitions and exemptions (Repealed)
731.102 Interim prohibitions (Repealed)
731.103 Notification Requirements (Repealed)
731.110 Applicability
731.111 Interim Prohibition for Deferred Systems (Repealed)
731.112 Definitions
731.113 Incorporations 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

SUBPART C: GENERAL OPERATING REQUIREMENTS

Section

731.130 Spill and Overfill Control (Repealed)
731.131 Operation and Maintenance of Corrosion Protection
731.132 Compatibility (Repealed)
731.133 Repairs Allowed (Repealed)
731.134 Reporting and Recordkeeping (Repealed)

SUBPART D: RELEASE DETECTION

Section

731.140 General Requirements for all Systems (Repealed)
731.141 Petroleum Systems (Repealed)
731.142 Hazardous Substance Systems (Repealed)
731.143 Tanks (Repealed)
731.144 Piping (Repealed)
731.145 Recordkeeping (Repealed)

SUBPART E: RELEASE REPORTING, INVESTIGATION AND CONFIRMATION

Section

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

731. ~~Appendix A~~ Notification APPENDIX A Notification Form

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

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) 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 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 3635 Ill. Reg. _____, effective _____.

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

Section 731.110 Applicability

a) This Part applies to owners and operators of an Underground Storage Tank (UST) system as defined in Section 731.112, except as otherwise provided in ~~subsections (b) through (d) of this Section or (e)~~ subsection (b) or (c).

b) 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 ~~Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1012(f))~~ Act.

3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

4) Any UST system whose capacity is 110 gallons or less.

5) Any UST system that contains a de minimis concentration of regulated substances.

6) Any emergency spill or overflow containment UST system that is expeditiously emptied after used.

c) Deferrals.

1) Section 731.122 does not apply to any of the following types of UST systems:

~~1A)~~ Wastewater treatment tank systems;

~~2B)~~ Any UST systems containing radioactive materials that are regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (42 ~~U.S.C.~~ USC 2011 et seq.);

~~3C)~~ Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, ~~Appendix~~ appendix A, incorporated by reference in Section 731.113;

~~4D)~~ Airport hydrant fuel distribution systems; and

~~5E)~~ UST systems with field-constructed tanks.

d2) 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.

ed) Heating ~~oil~~Oil USTs-

1) Definitions. The following definitions apply to this subsection (d) only:

"Beneath the surface of the ground" is as defined in Section 731.112.

"Consumptive use" with respect to heating oil means consumed on the premises.

~~"HEATING OIL," MEANS PETROLEUM THAT IS NO. 1, NO. 2, NO. 4 LIGHT, NO. 4 HEAVY, NO. 5 LIGHT, NO. 5 HEAVY, OR NO. 6 TECHNICAL GRADES OF FUEL OIL; OTHER RESIDUAL FUEL OILS INCLUDING NAVY SPECIAL FUEL OIL AND BUNKER C. (Section 22.18(e)(1)(H) of the Act)~~

"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)~~

"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" ~~(or "UST") is~~ 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 ten per centum or more beneath the surface of the ground.

2) ~~Subsection~~Subsections (a) through (c) notwithstanding, ~~THIS PART APPLIES TO OWNERS AND OPERATORS OF ANY HEATING OIL UST. 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 (d) implements Section 22.4(d)(4)~~(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~~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 and therefore are required to respond to releases in accordance with 35 Ill. Adm. Code ~~Part~~-734 instead of Subpart F of this Part.

(Source: Amended at ~~36~~35 Ill. Reg. _____, effective _____)

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~~ILLINOIS REGISTER~~

~~POLLUTION CONTROL BOARD~~

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Legend:	
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Statistics:	
	Count
Insertions	34
Deletions	37
Moved from	0
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Style change	0
Format changed	0
Total changes	71

1 TITLE 35: ENVIRONMENTAL PROTECTION
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7 PART 731
8 UNDERGROUND STORAGE TANKS
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- 105 731.APPENDIX A Notification Form
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108 AUTHORITY: Implementing and authorized by Sections 22.4(d) and 27 of the Environmental
109 Protection Act [415 ILCS 5/22.4(d) and 27].

110

111 SOURCE: Adopted in R86-1 at 10 Ill. Reg. 14175, effective August 12, 1986; amended in R86-
112 28 at 11 Ill. Reg. 6220, effective March 24, 1987; amended in R88-27 at 13 Ill. Reg. 9519,
113 effective June 12, 1989; amended in R89-4 at 13 Ill. Reg. 15010, effective September 12, 1989;
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118 April 24, 1992; amended in R11-22 at 35 Ill. Reg. _____, effective _____.

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120 SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

121

122 **Section 731.110 Applicability**

- 123
- 124 a) This Part applies to owners and operators of an Underground Storage Tank (UST)
- 125 system as defined in Section 731.112, except as otherwise provided in
- 126 subsections~~subsections~~ (b) or (c).
- 127
- 128 b) The following UST systems are excluded from the requirements of this Part:
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- 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 ~~Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111½, par. 1012(f))~~.
 - 3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
 - 4) Any UST system whose capacity is 110 gallons or less.
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 - 6) Any emergency spill or overflow containment UST system that is expeditiously emptied after used.
- c) Deferrals.
- 1) Section 731.122 does not apply to any of the following types of UST systems:
 - ~~A)1)~~ Wastewater treatment tank systems;
 - ~~B)2)~~ Any UST systems containing radioactive materials that are regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (42 ~~USC~~U.S.C. 2011 et seq.);
 - ~~C)3)~~ Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, ~~appendix~~Appendix A, incorporated by reference in Section 731.113;
 - ~~D)4)~~ Airport hydrant fuel distribution systems; and
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- ~~d)e)~~ Heating Oil ~~oil~~ USTs-

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2) ~~Subsections~~ Subsection (a) through (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.

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216 as that term is defined in Section 22.18(e) of the Act. However, that and
217 related terms are used in a manner ~~that~~which is inconsistent with the
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222 Title XVI of the Act and therefore are required to respond to releases in
223 accordance with 35 Ill. Adm. Code 734 instead of Subpart F of this Part.
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225 (Source: Amended at 35 Ill. Reg. _____, effective _____)