

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

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

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
731.110	Amendment
731.112	Amendment
731.113	Amendment
731.122	Repealed
731.161	Amendment
731.162	Amendment
731.163	Amendment
731.164	Amendment
731.165	Amendment
731.166	Amendment
731.167	Amendment
731.250	New Section
731.251	New Section
731.Appendix A	Repealed
731.Appendix C	Repealed
- 4) Statutory Authority: 415 ILCS 5/7.2, 22.4, and 27
- 5) A Complete Description of the Subjects and Issues Involved: The following briefly describes the subjects and issues involved in the docket R16-16 rulemaking of which the amendments to Part 731 are a single segment. Also affected is 35 Ill. Adm. Code 731, which is covered by a separate notice in this issue of the *Illinois Register*. A comprehensive description is contained in the Board's opinion and order of April 21, 2016, proposing amendments in docket R16-16, which opinion and order is available from the address below.



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

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

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

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USEPA instituted new requirements relating to subject matters outside the scope of the Board's UST mandate. These include the new requirements for secondary containment for tanks and piping, operator training, periodic operation and maintenance, release prevention and detection technologies, and updated codes of practice. New requirements that address previously deferred tank systems (field-constructed tanks, airport hydrant fuel distribution systems, and USTs storing fuel solely for emergency power generators) fall within the scope of current Board regulations to the extent that the requirements involve corrective action requirements. USEPA further made editorial and corrective amendments to existing rules.

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

Tables appear in the Board's opinion and order of April 21, 2016 in docket R16-16 that list numerous corrections and amendments that are not based on current federal amendments. The tables contain deviations from the literal text of the federal amendments underlying these amendments, as well as corrections and clarifications that the Board made in the base text involved. Persons interested in the details of those corrections and amendments should refer to the April 21, 2016 opinion and order in docket R16-16.

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

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? Yes
- 10) Are there any other rulemakings pending on this Part? No

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- 11) Statement of Statewide Policy Objective: These proposed amendments do 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: The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R16-16 and be addressed to:

John T. Therriault, Clerk
Illinois Pollution Control Board
State of Illinois Center, Suite 11-500
100 W. Randolph St.
Chicago IL 60601

Please direct inquiries to the following person and reference docket R16-16:

Michael J. McCambridge
Staff Attorney
Illinois Pollution Control Board
100 W. Randolph 11-500
Chicago IL 60601

312/814-6924
e-mail: michael.mccambridge@illinois.gov

Request copies of the Board's opinion and order at 312/814-3620, or download a copy from the Board's Website at <http://www.ipcb.state.il.us>.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities, and not-for-profit corporations affected: This rulemaking may affect those small businesses, small municipalities, and not-for-profit corporations that generate, transport, treat, store, or dispose of hazardous waste. These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
 - B) Reporting, bookkeeping or other procedures required for compliance: The existing rules and proposed amendments require extensive reporting, bookkeeping

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and other procedures, including the preparation of manifests and annual reports, waste analyses and maintenance of operating records. These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

- C) Types of professional skills necessary for compliance: Compliance with the existing rules and proposed amendments may require the services of an attorney, certified public accountant, chemist, and registered professional engineer. These proposed amendments do not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].
- 14) Regulatory Agenda on which this rulemaking was summarized: December 4, 2015; 39 Ill. Reg. 15622; 15639-41

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

1 TITLE 35: ENVIRONMENTAL PROTECTION
2 SUBTITLE G: WASTE DISPOSAL
3 CHAPTER I: POLLUTION CONTROL BOARD
4 SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND
5 UNDERGROUND STORAGE TANK PROGRAMS

6
7 PART 731
8 UNDERGROUND STORAGE TANKS

9
10 SUBPART A: PROGRAM SCOPE ~~AND INTERIM PROHIBITION~~

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Pollution Control Board

- 11
12 Section
13 731.101 Definitions and exemptions (Repealed)
14 731.102 Interim prohibitions (Repealed)
15 731.103 Notification Requirements (Repealed)
16 731.110 Applicability
17 731.111 Interim Prohibition for Deferred Systems (Repealed)
18 731.112 Definitions
19 731.113 ~~Incorporation~~ Incorporations by Reference
20 731.114 Implementing Agency (Repealed)

21
22 SUBPART B: UST SYSTEMS: DESIGN, CONSTRUCTION,
23 INSTALLATION AND NOTIFICATION

- 24
25 Section
26 731.120 Performance Standards for New Systems (Repealed)
27 731.121 Upgrading of Existing Systems (Repealed)
28 731.122 Notification Requirements (Repealed)

29
30 SUBPART C: GENERAL OPERATING REQUIREMENTS

- 31
32 Section
33 731.130 Spill and Overfill Control (Repealed)
34 731.131 Operation and Maintenance of Corrosion Protection (Repealed)
35 731.132 Compatibility (Repealed)
36 731.133 Repairs Allowed (Repealed)
37 731.134 Reporting and Recordkeeping (Repealed)

38
39 SUBPART D: RELEASE DETECTION

- 40
41 Section
42 731.140 General Requirements for all Systems (Repealed)
43 731.141 Petroleum Systems (Repealed)

- 44 731.142 Hazardous Substance Systems (Repealed)
- 45 731.143 Tanks (Repealed)
- 46 731.144 Piping (Repealed)
- 47 731.145 Recordkeeping (Repealed)

48

49 SUBPART E: RELEASE REPORTING, INVESTIGATION AND CONFIRMATION

50

51 Section

- 52 731.150 Reporting of Suspected Releases (Repealed)
- 53 731.151 Investigation due to Off-site Impacts (Repealed)
- 54 731.152 Release Investigation and Confirmation (Repealed)
- 55 731.153 Reporting and Cleanup of Spills and Overfills (Repealed)

56

57 SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

58

59 Section

- 60 731.160 General
- 61 731.161 Initial Response
- 62 731.162 Initial Abatement Measures and Site Check
- 63 731.163 Initial Site Characterization
- 64 731.164 Free Product Removal
- 65 731.165 Investigations for Soil and Groundwater Cleanup
- 66 731.166 Corrective Action Plan
- 67 731.167 Public Participation

68

69 SUBPART G: OUT-OF-SERVICE SYSTEMS AND CLOSURE

70

71 Section

- 72 731.170 Temporary Closure (Repealed)
- 73 731.171 Permanent Closure and Changes-in-Service (Repealed)
- 74 731.172 Assessing Site at Closure or Change-in-Service (Repealed)
- 75 731.173 Previously Closed Systems (Repealed)
- 76 731.174 Closure Records (Repealed)

77

78 SUBPART H: FINANCIAL RESPONSIBILITY

79

80 Section

- 81 731.190 Applicability (Repealed)
- 82 731.191 Compliance Dates (Repealed)
- 83 731.192 Definitions (Repealed)
- 84 731.193 Amount and Scope of Required Financial Responsibility (Repealed)
- 85 731.194 Allowable Mechanisms and Combinations (Repealed)
- 86 731.195 Financial Test of Self-insurance (Repealed)

- 87 731.196 Guarantee (Repealed)
- 88 731.197 Insurance or Risk Retention Group Coverage (Repealed)
- 89 731.198 Surety Bond (Repealed)
- 90 731.199 Letter of Credit (Repealed)
- 91 731.200 UST State Fund (Repealed)
- 92 731.202 Trust Fund (Repealed)
- 93 731.203 Standby Trust Fund (Repealed)
- 94 731.204 Substitution of Mechanisms (Repealed)
- 95 731.205 Cancellation or Nonrenewal by Provider (Repealed)
- 96 731.206 Reporting (Repealed)
- 97 731.207 Recordkeeping (Repealed)
- 98 731.208 Drawing on Financial Assurance (Repealed)
- 99 731.209 Release from Financial Assurance Requirement (Repealed)
- 100 731.210 Bankruptcy or other Incapacity (Repealed)
- 101 731.211 Replenishment (Repealed)
- 102 731.900 Incorporation by reference (Repealed)
- 103 731.901 Compliance Date (Repealed)

SUBPART K: UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS
AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

- 108 Section
- 109 731.250 Definitions
- 110 731.251 General Requirements

- 112 731.APPENDIX A Notification Form (Repealed)
- 113 731.APPENDIX C Statement for Shipping Tickets and Invoices (Repealed)

115 AUTHORITY: Implementing and authorized by Sections 22.4(d), 22.13(d) and 27 of the
116 Environmental Protection Act [415 ILCS 5/22.4(d), 22.13(d) and 27].

118 SOURCE: Adopted in R86-1 at 10 Ill. Reg. 14175, effective August 12, 1986; amended in R86-
119 28 at 11 Ill. Reg. 6220, effective March 24, 1987; amended in R88-27 at 13 Ill. Reg. 9519,
120 effective June 12, 1989; amended in R89-4 at 13 Ill. Reg. 15010, effective September 12, 1989;
121 amended in R89-10 at 14 Ill. Reg. 5797, effective April 10, 1990; amended in R89-19 at 14 Ill.
122 Reg. 9454, effective June 4, 1990; amended in R90-3 at 14 Ill. Reg. 11964, effective July 10,
123 1990; amended in R90-12 at 15 Ill. Reg. 6527, effective April 22, 1991; amended in R91-2 at 15
124 Ill. Reg. 13800, effective September 10, 1991; amended in R91-14 at 16 Ill. Reg. 7407, effective
125 April 24, 1992; amended in R11-22 at 36 Ill. Reg. 4886, effective March 19, 2012; amended in
126 R16-16 at 40 Ill. Reg. _____, effective _____.

~~SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION~~

130 **Section 731.110 Applicability**
 131

132 a) This Part applies to all owners and operators of an Underground Storage Tank
 133 (UST) system as defined in Section 731.112, except as otherwise provided in
 134 subsection (b) or (c).
 135

136 1) Previously Deferred UST Systems. Airport hydrant fuel distribution
 137 systems, UST systems with field-constructed tanks, and UST systems that
 138 store fuel solely for use by emergency power generators must meet the
 139 requirements of this Part as follows:
 140

141 A) Airport hydrant fuel distribution systems and UST systems with
 142 field-constructed tanks must meet the requirements in Subpart K of
 143 this Part.
 144

145 B) This subsection (a)(1)(B) corresponds with 40 CFR
 146 280.11(a)(1)(ii), which subjects UST systems that store fuel solely
 147 for use by emergency power generators installed on or before
 148 October 13, 2015 to release detection requirements that are outside
 149 the scope of the Board's regulations. This statement maintains
 150 structural consistency with the federal regulations.
 151

152 C) UST systems that store fuel solely for use by emergency power
 153 generators installed after October 13, 2015 must meet all
 154 applicable requirements of this Part at the time of installation.
 155

156 2) This subsection (a)(2) subjects various partially excluded UST systems to
 157 specified installation requirements outside the scope of the Board
 158 regulations. This statement maintains structural consistency with the
 159 federal regulations.
 160

161 b) Exclusions. The following UST systems are excluded from the requirements of
 162 this Part:
 163

164 1) Any UST system holding hazardous waste or a mixture of such hazardous
 165 waste and other regulated substances.
 166

167 2) Any wastewater treatment tank system that is part of a wastewater
 168 treatment facility regulated under Section 12(f) of the Act [415 ILCS
 169 5/12(f)].
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171 3) Equipment or machinery that contains regulated substances for operational
 172 purposes such as hydraulic lift tanks and electrical equipment tanks.

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- 4) Any UST system whose capacity is 110 gallons or less.
- 5) Any UST system that contains a de minimis concentration of regulated substances.
- 6) Any emergency spill or overflow containment UST system that is expeditiously emptied after used.

c) Partial Exclusions/Deferrals.

- 1) Section 731.122 ~~and Subpart K~~ ~~does~~ not apply to any of the following types of UST systems:
 - A) Wastewater treatment tank systems not covered under subsection (b)(2);
 - B) Aboveground storage tanks associated with either of the following:
 - i) Airport hydrant fuel distribution systems regulated under Subpart K; and
 - ii) UST systems with field-constructed tanks regulated under Subpart K;
 - ~~B)~~ Any UST systems containing radioactive materials that are regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (42 USC 2011 et seq.); and
 - ~~D)~~ Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed/regulated by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to under 10 CFR 50, appendix A, incorporated by reference in Section 731.113;
 - ~~E)~~ Airport hydrant fuel distribution systems; and
 - ~~E)~~ UST systems with field-constructed tanks.
- 2) Owners and operators subject to Title XVI of the Act are required to respond to releases in accordance with 35 Ill. Adm. Code ~~Part 734~~ instead of Subpart F of this Part.

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d) Heating Oil USTs:-

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

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

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

"Heating Oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker C. (Section 57.2 of the Act [415 ILCS 5/57.2])

"Heating Oil Underground Storage Tank" or "Heating Oil UST" means an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit. (Section 57.2 of the Act [415 ILCS 5/57.2])

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

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

"Regulated substance" is as defined in Section 731.112.

"Tank" is as defined in Section 731.112.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ~~10~~ ten per centum or more beneath the surface of the ground.

- 2) Subsections (a) through (c) notwithstanding, *this Part applies to owners and operators of any heating oil UST.* (Section 22.4(d)(4) of the Act [415 ILCS 5/22.4(d)(4)])

- 3) The owner or operator of a heating oil UST ~~must~~ shall comply with the same requirements as the owner or operator of a petroleum UST, as defined in Section 731.112, any other provisions of this Part

259 notwithstanding.

260
261 BOARD NOTE: This subsection (d) implements Section 22.4(d)(4) of the
262 Act [415 ILCS 5/22.4(d)], which requires that this Part be applicable to
263 "heating oil USTs," as that term is defined in Section 57.2 of the Act [415
264 ILCS 5/57.2]. However, that and related terms are used in a manner that
265 is inconsistent with the definitions and usage in this Part. The definitions
266 used in this applicability statement are therefore limited to this subsection
267 (d).

268
269 BOARD NOTE: Owners and operators of heating oil USTs are subject to
270 Title XVI of the Act [415 ILCS 5/Title XVI] and therefore are required to
271 respond to releases in accordance with 35 Ill. Adm. Code 734 instead of
272 Subpart F of this Part.

273
274 (Source: Amended at 40 Ill. Reg. _____, effective _____)

275
276 **Section 731.112 Definitions**

277
278 "Aboveground release" means any release to the surface of the land or to surface
279 water. This includes, but is not limited to, releases from the aboveground portion
280 of an UST system and aboveground releases associated with overfills and transfer
281 operations as the regulated substance moves to or from an UST system.

282
283 "Act" means the Environmental Protection Act [415 ILCS 5]Ill. Rev. Stat. 1989,
284 ch. 111½, par. 1001 et seq.).

285
286 "Agency" means the Illinois Environmental Protection Agency.

287
288 "Ancillary equipment" means any devices including, but not limited to, such
289 devices as piping, fittings, flanges, valves and pumps used to distribute, meter or
290 control the flow of regulated substances to and from an UST.

291
292 "Belowground release" means any release to the subsurface of the land and to
293 groundwater. This includes, but is not limited to, releases from the belowground
294 portions of an underground storage tank system and belowground releases
295 associated with overfills and transfer operations as the regulated substance moves
296 to or from an underground storage tank.

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298 "Beneath the surface of the ground" means beneath the ground surface or
299 otherwise covered with earthen materials.

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301 "Board" means the Illinois Pollution Control Board.

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"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 ~~USC~~U.S.C. 9601 et seq.)

"Connected piping" means all underground piping including valves, elbows, joints, flanges and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems must be allocated equally between them.

~~BOARD NOTE: For "consumptive use" see Section 731.110(e).~~

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"EMA" means the Illinois Emergency Management Agency.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, wall and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Fire Marshal" means the Office of the State Fire Marshal.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous liquid phase (e.g., liquid not dissolved in water:).

345 "Gasoline Storage Act" means 415 ILCS 15~~Ill. Rev. Stat. 1989, ch. 127½, par.~~
346 ~~151 et seq., as amended by P.A. 87-323.~~

347
348 "Gathering lines" means any pipeline, equipment, facility or building used in the
349 transportation of oil or gas during oil or gas production or gathering operations.
350

351 "Hazardous substance" means any substance listed in 40 CFR 302.4, incorporated
352 by reference in Section 731.113 (but not including any substance regulated as a
353 hazardous waste under 35 Ill. Adm. Code 721).

354 BOARD NOTE: This definition is derived from the definition of "hazardous
355 substance UST system" in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194,
356 September 23, 1988, and "hazardous substance" in Section 101(14) of CERCLA.
357 The United States Environmental Protection Agency (USEPA) regulations
358 ~~that~~which implement the statutes cited in CERCLA have been inserted in place of
359 the authorizing statutes.

360
361 "Hazardous substance UST system" means an underground storage tank system
362 that contains a "hazardous substances," or any mixture of "hazardous substances"
363 and "petroleum," and which is not a "petroleum UST system."

364 BOARD NOTE: This definition is derived from the corresponding definition in
365 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting
366 terms defined elsewhere in this Section.
367

368 "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No.
369 5-light, No. 5-heavy or No. 6 technical grades of fuel oil; other residual fuel oils
370 (including Navy Special Fuel Oil and Bunker C); or other fuels when used as
371 substitutes for one of these fuel oils. Heating oil is typically used in the operation
372 of heating equipment, boilers or furnaces.

373 BOARD NOTE: For the applicability of these rules to heating oil USTs, see
374 Section 731.110(d)(e).
375

376 "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop
377 mechanical system that uses compressed air or hydraulic fluid to operate lifts,
378 elevator and other similar devices.
379

380 "Liquid trap" means sumps, well cellars and other traps used in association with
381 oil and gas production, gathering and extraction operations (including gas
382 production plants), for the purpose of collecting oil, water and other liquid. These
383 liquid traps may temporarily collect liquids for subsequent disposition for
384 reinjection into a production or pipeline stream, or may collect and separate
385 liquids from gas stream.
386

387 "Motor fuel" means petroleum or a petroleum-based substance that is motor

388 gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel or any grade of gasohol, and
389 is typically used in the operation of a motor engine.

390
391 "New tank system" means a tank system that will be used to contain an
392 accumulation of regulated substances and for which installation has commenced
393 after December 22, 1988. (See also "Existing Tank System.")

394
395 "Noncommercial purposes" with respect to motor fuel means not for resale.
396 BOARD NOTE: For the definition of "on the premises where stored", see
397 Section 731.110(e).

398
399 "Operator" means any person in control of, or having responsibility for, the daily
400 operation of the UST system.

401
402 "Overfill release" is a release that occurs when a tank is filled beyond its capacity,
403 resulting in a discharge of the regulated substance to the environment.

404
405 "Owner" means:

406
407 In the case of an UST system in use on November 8, 1984, or brought into
408 use after that date, any person who owns an UST system used for storage,
409 use or dispensing of regulated substances; and

410
411 In the case of any UST system in use before November 8, 1984, but no
412 longer in use on that date, any person who owned such UST immediately
413 before the discontinuation of its use.

414
415 "Person" means an individual, trust, firm, joint stock company, federal agency,
416 corporation, state, unit of local government, commission, political subdivision of
417 a state or any interstate body. "Person" also includes a consortium, a joint
418 venture, a commercial entity and the United States Government.

419
420 "Petroleum" means crude oil or any fraction thereof which is liquid at standard
421 conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds
422 per square inch absolute). The term "petroleum" includes, but is not limited to,
423 petroleum and petroleum-based substances comprising a complex blend of
424 hydrocarbons derived from crude oil through processes of separation, conversion,
425 upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual
426 fuel oils, lubricants, petroleum solvents and used oils.

427 BOARD NOTE: This definition is derived from the definitions of "petroleum
428 UST system" and "regulated substance" in 40 CFR 280.12, as adopted at 53 Fed.
429 Reg. 37194, September 23, 1988.

430

431 "Petroleum UST system" means an underground storage tank system that contains
432 petroleum or a mixture of "petroleum" with de minimis quantities of other
433 "regulated substances.";

434 BOARD NOTE: This definition is derived from the corresponding definition in
435 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting
436 terms defined elsewhere in this Section.

437
438 "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed
439 of non-earthen materials.

440
441 "Pipeline facilities (including gathering lines)" are new and existing pipe rights-
442 of-way and any associated equipment, facilities or buildings.

443
444 "Regulated substance" means any "hazardous substance" or "petroleum.";
445 BOARD NOTE: This definition is derived from the corresponding definition in
446 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting
447 terms defined elsewhere in this Section.

448
449 "Release" means any spilling, leaking, emitting, discharging, escaping, leaching
450 or disposing from an UST into groundwater, surface water or subsurface soils.

451
452 "Release detection" means determining whether a release of a regulated substance
453 has occurred from the UST system into the environment or a leak has occurred
454 into the interstitial space between the UST system and its secondary barrier or
455 secondary containment around it.

456
457 "Residential tank" is a tank located on property used primarily for dwelling
458 purposes.

459
460 "Septic tank" is a water-tight covered receptacle designed to receive or process,
461 through liquid separation or biological digestion, the sewage discharged from a
462 building sewer. The effluent from such receptacle is distributed for disposal
463 through the soil and settled solids and scum from the tank are pumped out
464 periodically and hauled to a treatment facility.

465
466 "Storm water or wastewater collection system" means piping, pumps, conduits
467 and any other equipment necessary to collect and transport the flow of surface
468 water run-off resulting from precipitation, or domestic, commercial or industrial
469 wastewater to and from retention areas or any areas where treatment is designated
470 to occur. The collection of storm water and wastewater does not include
471 treatment except where incidental to conveyance.

472
473 "Surface impoundment" is a natural topographic depression, man-made

474 excavation, or diked area formed primarily of earthen materials (although it may
475 be lined with man-made materials) that is not an injection well.

476
477 "Tank" is a stationary device designed to contain an accumulation of regulated
478 substances and constructed of non-earthen materials (e.g., concrete, steel, plastic)
479 that provide structural support.

480
481 "Underground area" means an underground room, such as a basement, cellar,
482 shaft or vault, providing enough space for physical inspection of the exterior of
483 the tank situated on or above the surface of the floor.

484
485 "Underground release" means any below-ground release.

486
487 "Underground storage tank" or "UST" means any one or combination of tanks
488 (including underground pipes connected thereto) ~~that~~ which is used to contain an
489 accumulation of regulated substances, and the volume of which (including the
490 volume of the underground pipes connected thereto) is 10 percent ~~ten per centum~~
491 or more beneath the surface of the ground. ~~This~~ Such term does not include any of
492 the following:

493
494 Farm or residential tank of 1,100 gallons or less capacity used for storing
495 motor fuel for noncommercial purposes;:-

496 BOARD NOTE: For the applicability of these rules to heating oil tanks,
497 see Section 731.110(e).

498
499 Septic tank;:-

500
501 Pipeline facility (including gathering lines) ~~regulated under:~~

502
503 ~~The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C.A. 1671 et~~
504 ~~seq. (1987 and 1987 Supp.)), or~~

505
506 ~~The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C.A.~~
507 ~~2001 et seq. (1987)), or~~

508
509 ~~The Illinois Gas Pipeline Safety Act (Ill. Rev. Stat. 1989, ch.~~
510 ~~111½, pars. 551 et seq.);~~

511
512 That is regulated under 49 USC 60101 through 60140; or

513
514 That is an intrastate pipeline facility regulated under state laws as
515 provided in 49 USC 60105, and which is determined by the U.S
516 Department of Transportation to be connected to a pipeline, or to

517 be operated or intended to be capable of operating at pipeline
518 pressure or as an integral part of a pipeline;

519 Surface impoundment, pit, pond or lagoon;:-

520 Storm-water or wastewater collection system;:-

521 Flow-through process tank;:-

522 Liquid trap or associated gathering lines directly related to oil or gas
523 production and gathering operations; ~~or~~ Or,

524 Storage tank situated in an underground area (such as a basement, cellar,
525 mineworking, drift, shaft or tunnel) if the storage tank is situated upon or
526 above the surface of the floor.

527 BOARD NOTE: The term "underground storage tank" does not include any pipes
528 connected to any tank that which is described in the subparagraphs of this
529 definition of "underground storage tank."above subparagraphs.

530 "USEPA" means United States Environmental Protection Agency.

531 "UST system" or "Tank system" means an underground storage tank, connected
532 underground piping, underground ancillary equipment, and containment system,
533 if any.

534 "Wastewater treatment tank" means a tank that is designed to receive and treat an
535 influent wastewater through physical, chemical or biological methods.

536 (Source: Amended at 40 Ill. Reg. _____, effective _____)

537 **Section 731.113 Incorporation~~Incorporations~~ by Reference**

- 538 a) CFR (Code of Federal Regulations). Available from the Superintendent of
539 Documents, U.S. Government Printing Office, Washington, D.C. 20401, (202)
540 783-3238:

541 ~~10 CFR 50, Appendix A (1991)~~

542 ~~40 CFR 280.3 (1987) (repealed September 23, 1988)~~

543 ~~40 CFR 302.4 (2015) and 302.6 (1991)~~

- 544 b) This Section incorporates no later editions or amendments.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

Section 731.122 Notification Requirements (Repealed)

- a) Any owner who brings an underground storage tank system into use after May 8, 1986, shall within 30 days of bringing such tank into use, submit, in the form prescribed in Appendix A, below, a notice of existence of such tank system to the Fire Marshal.—

BOARD NOTE: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the Fire Marshal in accordance with RCRA and 40 CFR 280.3 (1987), unless notice was given pursuant to 40 CFR 302.6, incorporated by reference in Section 731.113. Section 4(b)(1) of the Gasoline Act (Ill. Rev. Stat. 1987, ch. 127½, par. 156(b)(1)) required notification by December 31, 1987, for tanks which held regulated substances after January 1, 1974. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in Appendix A.

- e) Owners required to submit notices under subsection (a), above, shall provide notices to the Fire Marshal for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.
- d) Notices required to be submitted under subsection (a), above, must provide all of the information in Sections I through VI of the form for each tank for which notice must be given. Notices for tanks installed after December 22, 1988, must also provide all of the information in Section VII of the prescribed form for each tank for which notice must be given.
- e) All owners and operators of new UST systems shall certify in the notification form compliance with the following requirements:
 - 1) Installation of tanks and piping;
 - 2) Cathodic protection of steel tanks and piping;
 - 3) Financial responsibility; and

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4) ~~Release detection.~~

f) ~~All owners and operators of new UST systems shall ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with regulatory requirements.~~

g) ~~Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification obligations under subsection (a), above. The form provided in Appendix C may be used to comply with this requirement.~~

(Source: Repealed at 40 Ill. Reg. _____, effective _____)

SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

Section 731.161 Initial Response

Upon confirmation of a release or after a release from the UST system is identified in any other manner, owners and operators ~~must~~shall perform the following initial response actions within 24 hours of a release:

- a) Report the release to EMA (e.g., by telephone or electronic mail);
- b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- c) Identify and mitigate fire, explosion and vapor hazards.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.162 Initial Abatement Measures and Site Check

- a) Owners and operators ~~must~~shall perform the following abatement measures:
 - 1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
 - 2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and groundwater;
 - 3) Continue to monitor and mitigate any additional fire and safety hazards

646 posed by vapors or free product that have migrated from the UST
 647 excavation zone and entered into substance structures (such as sewers or
 648 basements);

649
 650 4) Remedy hazards posed by contaminated soils that are excavated or
 651 exposed as a result of release confirmation, site investigation, abatement
 652 or corrective action activities. If these remedies include treatment or
 653 disposal of soils, the owner and operator ~~must~~ shall comply with 35 Ill.
 654 Adm. Code 722, 724, 725 and 807 through 815.

655
 656 5) Measure for the presence of a release where contamination is most likely
 657 to be present at the UST site, unless the presence and source of the release
 658 have been confirmed in accordance with the site check or the closure site
 659 assessment. In selecting sample types, sample locations and measurement
 660 methods, the owner and operator ~~must~~ shall consider the nature of the
 661 stored substance, the type of backfill, depth to groundwater and other
 662 factors as appropriate for identifying the presence and source of the
 663 release; and

664
 665 6) Investigate to determine the possible presence of free product, and begin
 666 free product removal as soon as practicable and in accordance with
 667 Section 731.164.

668
 669 b) Within 20 days after release confirmation, owners and operators ~~must~~ shall submit
 670 a report to the Agency, summarizing the initial abatement steps taken under
 671 subsection (a), ~~above~~, and any resulting information or data.

672
 673 (Source: Amended at 40 Ill. Reg. _____, effective _____)

674
 675 **Section 731.163 Initial Site Characterization**

676
 677 a) Owners and operators ~~must~~ shall assemble information about the site and the
 678 nature of the release, including information gained while confirming the release or
 679 completing the initial abatement measures in Section 731.160 and Section
 680 731.161. This information must include, but is not necessarily limited to the
 681 following:

682
 683 1) Data on the nature and estimated quantity of release;

684
 685 2) Data from available sources or site investigations concerning the
 686 following factors: surrounding populations, water quality, use and
 687 approximate locations of wells potentially affected by the release,
 688 subsurface soil conditions, locations of subsurface sewers, climatological

- 689 conditions and land use;
- 690
- 691 3) Results of the site check required under Section 731.162(a)(5); and
- 692
- 693 4) Results of the free product investigations required under Section
- 694 731.162(a)(6), to be used by owners and operators to determine whether
- 695 free product must be recovered under Section 731.164.
- 696
- 697 b) Within 45 days after confirmation of the release, owners and operators ~~must~~ shall
- 698 submit the information collected in compliance with subsection (a) to the Agency,
- 699 in a manner that demonstrates its applicability and technical adequacy.

700 (Source: Amended at 40 Ill. Reg. _____, effective _____)

701

702

703 **Section 731.164 Free Product Removal**

704

705 At sites where investigations under Section 731.162(a)(6) indicate the presence of free product,

706 owners and operators ~~must~~ shall remove free product to the maximum extent practicable, while

707 continuing, as necessary, any actions initiated under Section 731.161 through Section 731.163,

708 or preparing for actions required under Section 731.165 through Section 731.166. In meeting the

709 requirements of this Section, owners and operators must:

- 710
- 711 a) Conduct free product removal in a manner that minimizes the spread of
- 712 contamination into previously uncontaminated zones by using recovery and
- 713 disposal techniques appropriate to the hydrogeologic conditions at the site, and
- 714 that properly treats, discharges or disposes of recovery by products in compliance
- 715 with applicable local, state and federal regulations;
- 716
- 717 b) Use abatement of free product migration as a minimum objective for the design of
- 718 the free product removal system;
- 719
- 720 c) Handle any flammable products in a safe and competent manner to prevent fires
- 721 or explosions; and
- 722
- 723 d) Prepare and submit to the Agency, within 45 days after confirming a release, a
- 724 free product removal report that provides at least the following information:
- 725
- 726 1) The name of the persons responsible for implementing the free product
- 727 removal measures;
- 728
- 729 2) The estimated quantity, type and thickness of free product observed or
- 730 measured in wells, boreholes and excavation;
- 731

- 732 3) The type of free product recovery system used;
- 733
- 734 4) Whether any discharge will take place on-site or off-site during the
- 735 recovery operation and where this discharge will be located;
- 736
- 737 5) The type of treatment applied to, and the effluent quality expected from,
- 738 any discharge;
- 739
- 740 6) The steps that have been or are being taken to obtain necessary permits for
- 741 any discharge; and
- 742
- 743 7) The disposition of the recovered free product.
- 744

745 (Source: Amended at 40 Ill. Reg. _____, effective _____)

746

747 **Section 731.165 Investigations for Soil and Groundwater Cleanup**

748

- 749 a) In order to determine the full extent and location of soils contaminated by the
- 750 release, and the presence and concentrations of dissolved product contamination
- 751 in the groundwater, owners and operators must~~shall~~ conduct investigations of the
- 752 release, the release site, and the surrounding area possibly affected by the release
- 753 if any of the following conditions exist:
- 754
- 755 1) There is evidence that groundwater wells have been affected by the release
- 756 (e.g., as found during release confirmation or previous corrective action
- 757 measures);
- 758
- 759 2) Free product is found to need recovery in compliance with Section
- 760 731.164;
- 761
- 762 3) There is evidence that contaminated soils may be in contact with
- 763 groundwater (e.g., as found during conduct of the initial response
- 764 measures or investigations required under Sections~~Section~~ 731.160
- 765 through ~~Section~~ 731.164); and
- 766
- 767 4) The Agency requests an investigation, based on the potential effects of
- 768 contaminated soil or groundwater on nearby surface water and
- 769 groundwater resources.
- 770
- 771 b) Owners and operators must~~shall~~ submit the information collected under
- 772 subsection (a) as soon as practicable or in accordance with a schedule established
- 773 by the Agency.
- 774

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.166 Corrective Action Plan

- a) At any point after reviewing the information submitted in compliance with ~~Sections~~Section 731.161 through ~~Section~~731.163, the Agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators ~~must~~shall submit the plan according to a schedule and format established by the Agency. Alternatively, owners and operators may, after fulfilling the requirements of ~~Sections~~Section 731.161 through ~~Section~~731.163, choose to submit a corrective action plan for responding to contaminated soil and groundwater.
- b) The Agency ~~must~~shall approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety and the environment. In making this determination, the Agency ~~must~~shall consider the following factors as appropriate:
 - 1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence and potential for migration;
 - 2) The hydrogeologic characteristics of the facility and the surrounding area;
 - 3) The proximity quality and current and future uses of nearby surface water and groundwater;
 - 4) The potential effects of residual contamination on nearby surface water and groundwater;
 - 5) An exposure assessment; and
 - 6) Any information assembled in compliance with this Subpart.
- c) Upon approval of the corrective action plan or as directed by the Agency, owners and operators ~~must~~shall implement the plan, including modifications to the plan made by the Agency. They ~~must~~shall monitor, evaluate and report the results of implementing the plan in accordance with a schedule and in a format established by the Agency.
- d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved provided that they:

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- 1) Notify the Agency of their intention to ~~begin~~^{begin} cleanup;
- 2) Comply with any conditions imposed by the Agency, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- 3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.167 Public Participation

- a) For each confirmed release that requires a corrective action plan, the Agency ~~must~~^{shall} provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice must include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in the Illinois Register, letters to individual household or personal contacts by field staff.
- b) The Agency ~~must~~^{shall} ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.
- c) Before approving a corrective action plan, the Agency ~~must~~^{shall} hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reasons.
- d) The Agency ~~must~~^{shall} give public notice that complies with subsection (a) if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART K: UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS
AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

Section 731.250 Definitions

For purposes of this Subpart K, the following definitions apply:

860 "Airport hydrant fuel distribution system" or "airport hydrant system" means a
861 UST system that fuels aircraft and operates under high pressure with large
862 diameter piping that typically terminates into one or more hydrants (fill stands).
863 The "airport hydrant system" begins where fuel enters one or more tanks from an
864 external source such as a pipeline, barge, rail car, or other motor fuel carrier.

865
866 "Field-constructed tank" means a tank constructed in the field. For example, a
867 tank constructed of concrete that is poured in the field, or a steel or fiberglass tank
868 primarily fabricated in the field is considered field-constructed.

869
870 (Source: Added at 40 Ill. Reg. _____, effective _____)

871

872 **Section 731.251 General Requirements**

873 a) Implementation of Requirements. Owners and operators must comply with the
874 release response requirements of this Part for UST systems with field-constructed
875 tanks and airport hydrant systems at installation.

876 BOARD NOTE: Corresponding 40 CFR 280.251(a) includes compliance
877 deadlines for UST upgrade; general operating; operator training; release detection,
878 release reporting, response, and investigation; closure; financial responsibility;
879 and notification requirements. Of these, Board regulations include only the
880 release response requirements. Fire Marshal requirements apply to all of the other
881 UST requirements.

882 b) This subsection (b) corresponds with 40 CFR 280.251(b), which requires
883 compliance with UST notification requirements, which are outside the scope of
884 Board regulations. This statement maintains structural consistency with the
885 corresponding federal regulations.

886 c) Owners and operators must comply with the requirements of Subparts A and F of
887 this Part.

888 d) This subsection (d) corresponds with 40 CFR 280.251(d), which requires
889 compliance with UST performance standards, which are outside the scope of
890 Board regulations. This statement maintains structural consistency with the
891 corresponding federal regulations.

892

893 (Source: Added at 40 Ill. Reg. _____, effective _____)

894

895 **Section 731.APPENDIX A Notification Form (Repealed)**

896

897 ~~The Board incorporates by reference 40 CFR 280, Appendix I (1991). This Section incorporates~~
898 ~~no future editions or amendments. Persons required to notify shall use forms provided by the~~
899 ~~Fire Marshal if available. Otherwise, they may prepare forms based on 40 CFR 280, Appendix I.~~

900

901 (Source: Repealed at 40 Ill. Reg. _____, effective _____)

902

903 **Section 731.APPENDIX C Statement for Shipping Tickets and Invoices (Repealed)**

904

905 ~~Note. A Federal law (The Resource Conservation and Recovery Act (RCRA), as amended (Pub.~~
906 ~~L. 98-616)) requires owners of certain underground storage tanks to notify designated State or~~
907 ~~local agencies by May 8, 1986, of the existence of their tanks. Notifications for tanks brought~~
908 ~~into use after May 8, 1986, must be made within 30 days. Consult USEPA's regulations, issued~~
909 ~~on November 8, 1985 (40 CFR 280) to determine if you are affected by this law.~~

910

911 (Source: Repealed at 40 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND
UNDERGROUND STORAGE TANK PROGRAMS

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STATE OF ILLINOIS
Pollution Control Board

PART 731
UNDERGROUND STORAGE TANKS

SUBPART A: PROGRAM SCOPE

Section

- 731.101 Definitions and exemptions (Repealed)
- 731.102 Interim prohibitions (Repealed)
- 731.103 Notification Requirements (Repealed)
- 731.110 Applicability
- 731.111 Interim Prohibition for Deferred Systems (Repealed)
- 731.112 Definitions
- 731.113 Incorporation by Reference
- 731.114 Implementing Agency (Repealed)

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

Section

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

SUBPART C: GENERAL OPERATING REQUIREMENTS

Section

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

SUBPART D: RELEASE DETECTION

Section

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

SUBPART K: UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS
AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

Section

731.250 Definitions
731.251 General Requirements

731.APPENDIX A Notification Form (Repealed)
731.APPENDIX C Statement for Shipping Tickets and Invoices (Repealed)

AUTHORITY: Implementing and authorized by Sections 22.4(d), 22.13(d) and 27 of the Environmental Protection Act [415 ILCS 5/22.4(d), 22.13(d) and 27].

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

SUBPART A: PROGRAM SCOPE

Section 731.110 Applicability

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

1) Previously ~~deferred~~ Deferred UST ~~systems~~ Systems. Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this Part as follows:

A) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet the requirements in Subpart K of this Part.

B) This subsection (a)(1)(B) corresponds with 40 CFR 280.11(a)(1)(ii), which subjects UST systems that store fuel solely for use by emergency power generators installed on or before October 13, 2015 to release detection requirements that are outside the scope of the Board's regulations. This statement maintains structural consistency with the federal regulations.

C) UST systems that store fuel solely for use by emergency power generators installed after October 13, 2015 must meet all applicable requirements of this Part at the time of installation.

2) This subsection (a)(2) subjects various partially excluded UST systems to specified installation requirements outside the scope of the Board regulations. This statement maintains structural consistency with the federal regulations.

b) Exclusions. The following UST systems are excluded from the requirements of this Part:

1) Any UST system holding hazardous waste or a mixture of such hazardous waste and other regulated substances.

2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 12(f) of the Act [415 ILCS 5/12(f)].

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

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

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

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

c) Partial Exclusions-

1) Section 731.122 and Subpart K ~~of this Part~~ do not apply to any of the following:

A) Wastewater treatment tank systems not covered under subsection (b)(2);

B) Aboveground storage tanks associated with either of the following:

i) Airport hydrant fuel distribution systems regulated under Subpart K ~~of this Part~~; and

ii) UST systems with field-constructed tanks regulated under Subpart K ~~of this Part~~;

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

D) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR ~~50~~, 50.

2) Owners and operators subject to Title XVI of the Act are required to respond to releases in accordance with 35 Ill. Adm. Code ~~Part~~ 734 instead of Subpart F of this Part.

d) Heating Oil USTs-

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

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

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

"Heating Oil" means petroleum that is No. 1, No. 2, No. 4 - light, No. 4 - heavy, No. 5 - light, No. 5 - heavy, or No. 6 technical grades of fuel oil; and other residual fuel oils including navy special fuel oil and bunker C. (Section 57.2 of the Act [415 ILCS 5/57.2])

"Heating Oil Underground Storage Tank" or "Heating Oil UST" means an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit. (Section 57.2 of the Act [415 ILCS 5/57.2])

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

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

"Regulated substance" is as defined in Section 731.112.

"Tank" is as defined in Section 731.112.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ~~ten~~10 per centum or more beneath the surface of the ground.

2) Subsections (a) through (c) notwithstanding, this Part applies to owners and operators of any heating oil UST. (Section 22.4(d)(4) of the Act [415 ILCS 5/22.4(d)(4)])

3) The owner or operator of a heating oil UST must comply with the same requirements as the owner or operator of a petroleum UST, as

defined in Section 731.112, any other provisions of this Part notwithstanding.

BOARD NOTE: This subsection (d) implements Section 22.4(d)(4) of the Act [415 ILCS 5/22.4(d)], which requires that this Part be applicable to "heating oil USTs," as that term is defined in Section 57.2 of the Act [415 ILCS 5/57.2]. However, that and related terms are used in a manner that is inconsistent with the definitions and usage in this Part. The definitions used in this applicability statement are therefore limited to this subsection (d).

BOARD NOTE: Owners and operators of heating oil USTs are subject to Title XVI of the Act [415 ILCS 5/Title XVI] and therefore are required to respond to releases in accordance with 35 Ill. Adm. Code 734 instead of Subpart F of this Part.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.112 Definitions

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves and pumps used to distribute, meter or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Board" means the Illinois Pollution Control Board.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 ~~U.S.C.~~ USC 9601 et seq.)

"Connected piping" means all underground piping including valves, elbows, joints, flanges and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems must be allocated equally between them.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"EMA" means the Illinois Emergency Management Agency.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, wall and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Fire Marshal" means the Office of the State Fire Marshal.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous liquid phase (e.g., liquid not dissolved in water).

"Gasoline Storage Act" means 415 ILCS 15.

"Gathering lines" means any pipeline, equipment, facility or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance" means any substance listed in 40 CFR 302.4, incorporated by reference in Section 731.113 (but not including any substance regulated as a hazardous waste under 35 Ill. Adm. Code 721).

BOARD NOTE: This definition is derived from the definition of "hazardous substance UST system" in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, and "hazardous substance" in Section 101(14) of CERCLA. The United States Environmental Protection Agency (USEPA) regulations ~~which~~that implement the statutes cited in CERCLA have been inserted in place of the authorizing statutes.

"Hazardous substance UST system" means an underground storage tank system that contains a "hazardous substances," or any mixture of "hazardous substances" and "petroleum," and which is not a "petroleum UST system."

BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section.

"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.

BOARD NOTE: For the applicability of these rules to heating oil USTs, see Section 731.110(d).

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevator and other similar devices.

"Liquid trap" means sumps, well cellars and other traps used in association with oil and gas production, gathering and extraction operations (including gas production plants), for the purpose of collecting oil, water and other liquid. These liquid traps may temporarily collect liquids for subsequent disposition for reinjection into a production or pipeline stream, or may collect and separate liquids from gas stream.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel or any grade of gasohol, and is typically used in the operation of a motor engine.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also "Existing Tank System.")

"Noncommercial purposes" with respect to motor fuel means not for resale.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use or dispensing of regulated substances; and

In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, unit of local government, commission, political subdivision of a state or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity and the United States Government.

"Petroleum" means crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term "petroleum" includes, but is not limited to, petroleum and petroleum-based substances comprising a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils.

BOARD NOTE: This definition is derived from the definitions of "petroleum UST system" and "regulated substance" in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of "petroleum" with de minimis quantities of other "regulated substances."

BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section.

"Pipe" or "Piping" means a hollow cylinder or tabular conduit that is constructed of non-earthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities or buildings.

"Regulated substance" means any "hazardous substance" or "petroleum."

BOARD NOTE: This definition is derived from the corresponding definition in 40 CFR 280.12, as adopted at 53 Fed. Reg. 37194, September 23, 1988, inserting terms defined elsewhere in this Section. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching

or disposing from an UST into groundwater, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water or wastewater collection system" means piping, pumps, conduits and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below-ground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) ~~which~~that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ~~ten~~10 percent or more beneath the surface of the ground. ~~Such~~This term does not include any of the following:

Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

BOARD NOTE: For the applicability of these rules to heating oil tanks, see Section 731.110(e).

Septic tank;

Pipeline facility (including gathering lines):

That is regulated under 49 USC ~~§§~~ 60101- through 60140; or

~~Which~~That is an intrastate pipeline facility regulated under state laws as provided in 49 USC ~~§§~~ 60105, and which is determined by the U.S. Department of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

Surface impoundment, pit, pond or lagoon;

Storm-water or wastewater collection system;

Flow-through process tank;

Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

BOARD NOTE: The term "underground storage tank" does not include any pipes connected to any tank ~~which~~that is described in the ~~above~~ subsectionssubparagraphs of this definition of "underground storage tank."

"USEPA" means United States Environmental Protection Agency.

"UST system" or "Tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical or biological methods.

(Source: Amended at 40 Ill. Reg. , effective)

Section 731.113 Incorporation by Reference

a) CFR (Code of Federal Regulations). Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, (202) 783-3238:

40 CFR 302.4 (2015)

b) This Section incorporates no later editions or amendments.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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

Section 731.122 Notification Requirements (Repealed)

Repealed at 40 Ill. Reg. _____, effective _____ (Source: _____)

SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

Section 731.161 Initial Response

Upon confirmation of a release or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release:

- a) Report the release to EMA (e.g., by telephone or electronic mail);
- b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- c) Identify and mitigate fire, explosion and vapor hazards.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.162 Initial Abatement Measures and Site Check

a) Owners and operators must perform the following abatement measures:

- 1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
- 2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and groundwater;
- 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into substance structures (such as sewers or basements);
- 4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include

treatment or disposal of soils, the owner and operator must comply with 35 Ill. Adm. Code 722, 724, 725 and 807 through 815.

5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check or the closure site assessment. In selecting sample types, sample locations and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 731.164.

b) Within 20 days after release confirmation, owners and operators must submit a report to the Agency, summarizing the initial abatement steps taken under subsection (a) ~~7-above~~ and any resulting information or data.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.163 Initial Site Characterization

a) Owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in Section 731.160 and Section 731.161. This information must include, but is not necessarily limited to the following:

1) Data on the nature and estimated quantity of release;

2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;

3) Results of the site check required under Section 731.162(a)(5); and

4) Results of the free product investigations required under Section 731.162(a)(6), to be used by owners and operators to determine whether free product must be recovered under Section 731.164.

b) Within 45 days after confirmation of the release, owners and operators must submit the information collected in compliance with subsection (a) to the Agency, in a manner that demonstrates its applicability and technical adequacy.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.164 Free Product Removal

At sites where investigations under Section 731.162(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable, while continuing, as necessary, any actions initiated under Section 731.161 through Section 731.163, or preparing for actions required under Section 731.165 through Section 731.166. In meeting the requirements of this Section, owners and operators must:

- a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by products in compliance with applicable local, state and federal regulations;
- b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- d) Prepare and submit to the Agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:
 - 1) The name of the persons responsible for implementing the free product removal measures;
 - 2) The estimated quantity, type and thickness of free product observed or measured in wells, boreholes and excavation;
 - 3) The type of free product recovery system used;
 - 4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
 - 5) The type of treatment applied to, and the effluent quality expected from, any discharge;
 - 6) The steps that have been or are being taken to obtain necessary permits for any discharge; and
 - 7) The disposition of the recovered free product.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.165 Investigations for Soil and Groundwater Cleanup

a) In order to determine the full extent and location of soils contaminated by the release, and the presence and concentrations of dissolved product contamination in the groundwater, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

1) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

2) Free product is found to need recovery in compliance with Section 731.164;

3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under ~~Section~~Sections 731.160 through ~~Section~~731.164); and

4) The Agency requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

b) Owners and operators must submit the information collected under subsection (a) as soon as practicable or in accordance with a schedule established by the Agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.166 Corrective Action Plan

a) At any point after reviewing the information submitted in compliance with ~~Section~~Sections 731.161 through ~~Section~~731.163, the Agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the Agency. Alternatively, owners and operators may, after fulfilling the requirements of ~~Section~~Sections 731.161 through ~~Section~~ 731.163, choose to submit a corrective action plan for responding to contaminated soil and groundwater.

b) The Agency must approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety and the environment. In making this determination, the Agency must consider the following factors as appropriate:

- 1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence and potential for migration;
 - 2) The hydrogeologic characteristics of the facility and the surrounding area;
 - 3) The proximity quality and current and future uses of nearby surface water and groundwater;
 - 4) The potential effects of residual contamination on nearby surface water and groundwater;
 - 5) An exposure assessment; and
 - 6) Any information assembled in compliance with this Subpart.
- c) Upon approval of the corrective action plan or as directed by the Agency, owners and operators must implement the plan, including modifications to the plan made by the Agency. They must monitor, evaluate and report the results of implementing the plan in accordance with a schedule and in a format established by the Agency.
- d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved provided that they:
- 1) Notify the Agency of their intention to begin cleanup;
 - 2) Comply with any conditions imposed by the Agency, including halting cleanup or mitigating adverse consequences from cleanup activities; and
 - 3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 731.167 Public Participation

- a) For each confirmed release that requires a corrective action plan, the Agency must provide notice to the public by means designed to reach those members of the ~~must~~-public directly affected by the release and the planned corrective action. This notice must include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in the Illinois Register, letters to individual household or personal contacts by field staff.

b) The Agency must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

c) Before approving a corrective action plan, the Agency must hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reasons.

d) The Agency must give public notice that complies with subsection (a) if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Agency.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

SUBPART K: UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

Section 731.250 Definitions

For purposes of this Subpart K, the following definitions apply:

"Airport hydrant fuel distribution system" ~~(also called~~ "airport hydrant system") means ~~an~~ UST system ~~which~~ that fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The "airport hydrant system" begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

(Source: Added at 40 Ill. Reg. _____, effective _____)

Section 731.251 General Requirements

a) Implementation of ~~requirements~~ Requirements. Owners and operators must comply with the release response requirements of this Part for UST systems with field-constructed tanks and airport hydrant systems at installation.

BOARD NOTE: Corresponding 40 CFR 280.251(a) includes compliance deadlines for UST upgrade; general operating; operator training; release detection, release reporting, response, and investigation; closure; financial responsibility; and notification requirements. Of these. Board regulations include only the release response requirements ~~among these.~~ Fire ~~Marshall~~ Marshal requirements apply to all of the other UST requirements.

b) This subsection (b) corresponds with 40 CFR 280.251(b), which requires compliance with UST notification requirements, which are outside the scope of Board regulations. This statement maintains structural consistency with the corresponding federal regulations.

c) Owners and operators must comply with the requirements of ~~subparts~~Subparts A and F of this Part.

d) This subsection (d) corresponds with 40 ~~FR~~CFR 280.251(d), which requires compliance with UST performance standards, which are outside the scope of Board regulations. This statement maintains structural consistency with the corresponding federal ~~regualtions~~regulations.

(Source: Added at 40 Ill. Reg. ~~—~~—, effective —)

Section 731.APPENDIX A Notification Form (Repealed)

(Source: Repealed at 40 Ill. Reg. ~~—~~—, effective —)

Section 731.APPENDIX C Statement for Shipping Tickets and Invoices (Repealed)

(Source: Repealed at 40 Ill. Reg. ~~—~~—, effective —)

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TITLE 74: PUBLIC FINANCE
CHAPTER VI: COURT OF CLAIMS

PART 790
COURT OF CLAIMS REGULATIONS

SUBPART A: COURT OF CLAIMS RULES

Section

790.10 Terms of Court
790.20 Pleadings and Practice
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790.50 Complaint-Required Provisions
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790.60 Exhaustion of Remedies
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790.80 Death of Claimant
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790.100 Answer by Respondent
790.110 Hearings - Assignments and Continuances
790.120 Transcript of Evidence
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790.140 Departmental Records and Reports - Prima Facie Evidence
790.150 Medical Examination of Claimant
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790.160 Excerpts from the Record
790.170 Briefs
790.180 Excerpts and Briefs - Time for Filing
790.190 Extension of Time
790.200 Motions
790.210 Oral Argument of Case
790.220 Rehearing or New Trial
790.230 Rehearing - Procedure (Repealed)
790.240 New Trial (Repealed)
790.250 Records - Calendar
790.260 Dismissal for want of Prosecution
790.270 Fees and Costs

SUBPART B: ADOPTION AND EFFECTIVE DATES

Section

790.280 Adoption and Effective Dates

AUTHORITY: Authorized by Section 9A and implementing the Court of Claims Act [705 ILCS 505].

SOURCE: Rules of the Court of Claims, filed and effective July 1, 1975; codified at 6 Ill. Reg. 2111; recodified at 6 Ill. Reg. 2594; amended at 24 Ill. Reg. 8228, effective July 1, 2000; amended at 32 Ill. Reg.

12315, effective July 18, 2008; amended at 40 Ill. Reg. _____,
effective _____.

Section 790.30 Pleadings - Forms

Four copies of all pleadings shall be filed with the office of the Clerk. The pleadings shall be produced on good white paper by a typing, printing, duplicating or copying process that provides a clear image. If photocopies are used, the original must also be filed. In order that the files of the Clerk's office may be kept under the system commonly known as "flat filing", all papers presented to the Clerk shall be flat and unfolded. Such papers need not have a cover.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.40 Procedure

a) Filing. Cases shall be commenced by the filing of a verified complaint with the Clerk of the Court. A party filing a case shall be designated as the claimant, and either the State of Illinois or the appropriate State agency (Section 8(d), Court of Claims Act [705 ILCS 505/8(d)]) shall be designated as the respondent. The Clerk will note on the complaint, and each copy, the date of filing, and deliver one of the copies to the Attorney General or to the legal counsel of the appropriate State agency. Joinder of claimants in one case is permitted, as provided by the Code of Civil Procedure [735 ILCS 5].

b) Attorney of Record. In all cases filed in this Court, all claimants not appearing pro se must be represented of record by a member of the Illinois bar. Permission for an out-of-state attorney to appear will require compliance with Supreme Court Rules 707, 718 and 756, governing out-of-state attorneys' authorization to practice. If the name of an attorney, his address, and telephone number appear on a complaint, no written appearance for such attorney need be filed, but withdrawal and substitution of attorneys shall be by written motion, with proof of service upon the claimant, and filed in the case.

c) Complaint-form. The complaint shall be captioned substantially as follows:

IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS A.B.,
) Claimant vs.) No.) \$ STATE OF ILLINOIS (or) Amount Claimed the
appropriate) State Agency),) Respondent)
(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.50 Complaint-Required Provisions

a) General. A complaint shall be verified by the Claimant or counsel and must set forth fully in the following order:

- 1) Nature of the Claim. A statement of the nature of the claim, its basis (tort, contract, etc.) and each State officer or agency that is alleged to be responsible, in whole or in part, for the liability asserted in the claim; if the claim is against a State employee, the basis upon which liability is claimed against the State must be specifically stated;
- 2) Jurisdiction. The Section of the Court of Claims Act under which jurisdiction is asserted;
- 3) Fact Allegations. All allegations of fact required to set forth the claimant's cause of action;
- 4) History of Claim. Whether the claim has been presented to any State department or officer, or has been the subject of administrative proceedings, and if so:
 - A) when and to whom or which administrative body the claim was presented;
 - B) the action taken on behalf of the claim by the State or the appropriate State agency or officer and by each administrative body that has considered the claim;
- 5) Ownership. What persons are owners of the claim or interested therein, and when and upon what consideration such persons became interested;
- 6) Assignments. That no assignment or transfer of the claim, or any part thereof or interest therein, has been made except as stated in the complaint;
- 7) Entitlement. That claimant is justly entitled to the amount claimed from the State of Illinois or the appropriate State agency after allowing all just credits;
- 8) Verification. That the facts stated in the complaint are true;
- 9) Whether this claim or any other claim arising out of the same occurrence (against any person, firm or governmental agency other than the State of Illinois or any of its officers or agencies) has been previously presented to any person, firm, court or administrative tribunal other than the State of Illinois, and, if so:
 - A) when, to whom, and what action was taken by each person, firm, court or administrative tribunal; and
 - B) what payments or other considerations, if any, have been received. Claimant must file with the Clerk of the Court copies of all instruments evidencing such payment or consideration;

10) Status of Respondent. If a State officer or agency or department of the State is sued in a capacity as holder, administrator or trustee of a fund, or as executor or administrator of a trust or estate, or as a guardian, conservator or any similar capacity, the complaint shall identify:

- A) the fund, estate, trust or other entity involved;
- B) the statute or principle of law governing the creation of the fund or other entity; and
- C) any instrument or order of court or administrative or governmental agency creating such capacity or fund or entity;

11) Damages. A bill of particulars, stating in detail each item of damages, and the amount claimed;

12) If the claimant is an executor, administrator, guardian or other representative appointed by a judicial tribunal, a duly certified copy of the record of appointment must be filed with the complaint.

b) Personal injuries. Where a complaint alleges damages as a result of personal injuries, claimant shall:

1) Attach to the complaint, as a separate item, copies of the notices served as required by Sec. 22-1 of the Court of Claims Act [705 ILCS 505/22-1], showing how and when the notices were served.

2) Include with the bill of particulars, as required by subsection(a)(11), the names and addresses of all persons providing medical services; if hospitalized, name of hospital and dates of hospitalization; name of claimant's employer, place of employment, and dates of time lost, if any.

c) Contracts. If the claimant bases the complaint upon a contract, or other instrument in writing, a copy shall be attached for reference.

d) Lapsed appropriations. All claims for services or materials furnished to the State of Illinois, payment of which has been denied solely because of a lapsed appropriation, shall be filed with the Clerk of the Court of Claims in the following manner:

1) Claims shall be initiated by filing with the Clerk of the Court of Claims 4 copies of a verified lapsed appropriation claim form (available upon request from the Clerk's office) or a facsimile.

2) Respondent shall confirm or deny that such sum of money or any sum of money is due the claimant.

3) Claims against no more than one department or State agency shall be included in each complaint.

4) Claimant's name and address, or that of his or her attorney, shall appear at the bottom of the complaint.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.55 Discovery

Discovery shall be conducted in accordance with the Civil Practice Law [735 ILCS 5/Art. II] and the Rules of the Supreme Court of Illinois, except as follows:

a) Discovery requests and responses to discovery requests, including interrogatories and requests for production of documents, shall not be filed with the Clerk of the Court unless ordered by the Court, a Judge thereof, or a Commissioner. Requests for admission and the responses thereto shall be filed with the Clerk of the Court.

b) For claims involving property of inmates incarcerated in Illinois Department of Corrections facilities:

1) The respondent shall forward to the claimant, or, if claimant is represented, claimant's attorney, copies of the following documents in the possession or control of the Department of Corrections within 120 days after the filing of the complaint. The complaint is not deemed filed during the pendency of a petition for leave to proceed in forma pauperis.

A) Grievances and appeals of grievances pertaining to the property in question filed by the claimant, and all responses thereto.

B) Any personal property inventory sheets and property permits or contracts that tend to prove or disprove ownership of the property in question.

C) Incident reports, disciplinary reports, and "shakedown" receipts relevant to the subject of the claim.

2) The deadline for forwarding these documents to claimant is tolled during the consideration of a motion to dismiss or any other motion the granting of which would dispose of the case. No other discovery is permitted in these claims except by order of the Court, a Judge thereof, or a Commissioner.

c) For claims involving personal injury of inmates while incarcerated in Illinois Department of Corrections facilities:

1) The respondent shall forward to claimant or, if claimant is represented, claimant's attorney, copies of the following documents in the possession or control of the Department of Corrections within 120 days after the filing of the complaint:

A) Grievances and appeals of grievances pertaining to the injuries in question filed by the claimant, and all responses thereto.

B) All medical records relevant to the subject of the claim.

C) Incident reports relevant to the subject of the claim.

2) The deadline for forwarding these documents to claimant is tolled during the consideration of a motion to dismiss or any other motion the granting of which would dispose of the case. No other discovery is permitted in these claims except by order of the Court, a Judge thereof, or a Commissioner.

d) When complying with the provisions of this Section, the respondent may redact any information including, but not limited to, confidential information such as social security numbers, home telephone numbers, home addresses, and information the disclosure of which would be violative of federal or State law. In the event any information is redacted by the respondent, the respondent shall, in writing, state the reason for the redaction, and forward the statement to the claimant or his attorney within the time allowed in this Section, or any extension authorized under subsection (f).

e) In the event that the claimant disputes the propriety of redaction of any information, the Court, a Judge thereof, or a Commissioner shall be empowered to examine the material in camera and to enter an order requiring the respondent to forward the redacted material to the claimant or his attorney.

f) The Court, a Judge thereof, or a Commissioner may extend the time for compliance with the provisions of this Section.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.110 Hearings - Assignments and Continuances

The Court shall assign the case to a Commissioner who, within a reasonable time, shall set the time and place for hearing, and notify opposing counsel in writing. No continuances shall be granted by the Commissioner except upon good cause shown, supported by affidavit. Any communications between the Commissioner and the Court are deemed preliminary and confidential.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.120 Transcript of Evidence

a) Filing. All evidence shall be taken in writing in the manner in which depositions in civil actions are usually taken. When the evidence is taken, and the proofs in a case are closed, the evidence shall be

transcribed, and the transcript shall be filed by the court reporter with the clerk within 30 days after the completion of the hearing.

b) Form. The format of the transcript of evidence shall conform to that of court reporters as nearly as practicable. Double spacing shall be used for each question and answer. Letter or legal size paper shall be used, and margins shall be of suitable size.

c) Index - witnesses. An index identifying the names of the witnesses shall be included in the transcript of evidence. The index shall further disclose the pages on which the testimony of each witness appears.

d) Index - exhibits. An index identifying exhibits and reflecting the pages on which the exhibits are marked for identification shall be included in the transcript of evidence. The index shall further disclose the pages on which the exhibits are admitted into evidence or whereon admission thereof is denied.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.140 Departmental Records and Reports - Prima Facie Evidence

All records and files maintained in the regular course of business by any department, commission, board, agency or authority of the State of Illinois, and all departmental reports made by any officer thereof relating to any matter or case pending before the Court shall be prima facie evidence of the facts set forth therein; provided, a copy thereof shall have been first duly mailed or delivered by the Attorney General or the legal counsel of the appropriate State agency to the claimant, or his attorney of record, and 2 copies filed with the Clerk.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.155 Subpoenas

a) The Court may issue subpoenas through the Chief Justice or one of its Judges or Commissioners to require attendance of witnesses for the purpose of testifying before it, any Judge of the Court, any notary public, or any of its Commissioners, and to require the production of any books, records, papers or documents that may be material or relevant as evidence in any matter pending before it. If any person refuses to comply with any subpoenas issued in the name of the Chief Justice, or one of the Judges or Commissioners, attested to by the Clerk, with the seal of the Court attached, and served upon the person named in the subpoena, as a summons in a civil action is served, the circuit court of the proper county, on application of the party at whose instance the subpoena was issued, shall compel obedience by attachment proceedings, as for contempt, as in a case of a disobedience of the requirements of a subpoena from the circuit court on a refusal to testify.

b) The Clerk of the Court of Claims, when an action is pending, shall, from time to time, issue subpoenas on behalf of the Chief Justice, the Judges or Commissioners, for those witnesses and to those counties in the States as may be required by the attorneys or either party.

c) Every subpoena shall:

1) state that it is issued by the Court of Claims; and

2) state the title of the action and its civil action number; and

3) command each person to whom it is directed to attend and give testimony or to produce or permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person. A command to produce evidence shall be joined with a command to appear at trial or hearing or at deposition.

d) The Clerk may issue subpoenas on behalf of a party requesting issuance provided that there is a valid request to the Clerk indicating the information to be subpoenaed. An attorney of record may also issue and sign a subpoena on a form provided by the Clerk.

e) Prior notice of any subpoena for production of documents and things before trial shall be served on each party by mailing or delivering written notice to the other parties to the action, or their attorneys, at the last known address of the attorney or party, with proof of service filed with the Clerk.

f) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to a subpoena. The Court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, including being held in default, debarred from filing any other pleading or maintaining any claim or defense.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.170 Briefs

The Court, a Judge thereof, or a Commissioner may order the filing of briefs in a case where the filing of briefs may enlighten the Court. If so ordered, each party shall file with the Clerk 2 copies of a typewritten or printed brief setting forth the points of law upon which reliance is had, with reference made to the authorities sustaining their contentions. Citation of numerous authorities in support of the same point is not favored. Accompanying the briefs, there shall be a statement of the facts and an argument in support of the briefs. Wherever facts from the record are restated, there shall be a reference to the pages of the record and not to the pages of the excerpts.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.200 Motions

a) General. All motions and objections shall comply with Section 790.30 of this Part.

b) Motions. All motions shall be in writing. Four copies of all motions, and suggestions in support of the motion, shall be filed with the Clerk of the Court and the assigned Commissioner, together with proof of service upon counsel for the other party. When the motion is based upon matter that does not appear of record, it shall be supported by an affidavit. A copy of the motion, suggestions in support of the motion, and affidavit, if any, shall be served upon counsel for the opposing party at the time the motion is filed with the Clerk.

c) Objections. Objections to motions, and suggestions in support of the objection, must be in writing and filed within 21 days after the filing of the original motion. Upon the filing, within 21 days after the filing of the motion, of a request for an extension of time supported by an affidavit that an objection will be filed within the extended time, the time shall be automatically extended for an additional 21 days. No other extensions will be allowed except in compelling circumstances. Four copies of all objections to motions shall be filed with the Clerk of the Court, together with proof of service upon counsel for the other party. When motions are filed by either the claimant or the respondent, the moving party shall also submit a proposed order.

d) Rulings by Commissioners. After a cause has been assigned to a Commissioner, all motions during the course of the hearings, except motions to dismiss, motions for summary judgment, or other dispositive motions, may be determined by the Commissioner. The Commissioner shall cause to be filed with the Clerk of the Court any order so issued.

e) Oral argument on motions. There shall be no oral argument on motions or objections to motions, except on motions where, in the Court's discretion, oral arguments thereon would be of value to the Court.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.210 Oral Argument of Case

Oral argument on a matter before the Court, including a petition for rehearing, will be permitted only when ordered by the Court. Oral argument may be granted in the discretion of the Court upon request of a party or by Court order.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.220 Rehearing or New Trial

A party desiring a rehearing or new trial in any case shall, within 30 days after the filing of the opinion or order, file with the Clerk 4 copies of the petition for rehearing. The petition shall state briefly the points supposed to have been overlooked or misapprehended by the Court, with authorities and suggestions concisely stated in support of the points. A copy of the petition shall be served on counsel for the other party and proof of service shall be shown in the petition. Any petition violating this Section will be stricken. The opposite party shall have 20 days from the date of filing of the petition for rehearing to answer the petition, and the petitioner shall have 10 days thereafter within which to file a reply. The granting of a petition for rehearing can result in such relief as the Court deems appropriate. Neither the claimant, nor the respondent, shall be permitted to file more than one application or petition for rehearing.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.230 Rehearing - Procedure (Repealed)

(Source: Repealed at 40 Ill. Reg. _____, effective _____)

Section 790.250 Records - Calendar

Records. The Clerk shall record all orders of the Court, including the final disposition of cases. The Clerk shall keep all required dockets in which shall be entered all claims filed, together with their number, dates of filing, the name of claimants, their attorneys of record and respective addresses. As papers are received, the Clerk shall stamp the filing date thereon, and forthwith mail to opposing counsel a copy of all orders entered, pleadings, motions, notices and briefs as filed. Such mailing shall constitute due notice and service thereof.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

Section 790.270 Fees and Costs

a) In claims based upon lapsed appropriations or lost warrant no filing fee shall be required. In all other claims the following fees shall apply:

Filing of complaint in which amount of claim is less than \$1,000
\$15
Filing of complaint in which amount of claim is \$1,000 or more
\$35

b) Filing fees may be waived for an indigent person upon application provided and approved by the Court of Claims.

1) All applications shall be notarized and include: the name and address of the applicant; applicant's occupation and employer; income from the previous year; sources and amount of income expected in the future; persons dependent on the applicant for support; a brief statement of any real estate or personal property (including any motor vehicles) and the value of the real estate, personal property and motor vehicle held by the applicant; a statement (and any government issued documentation) of receiving assistance under one or more of the following public benefits programs (Supplemental Security Income (SSI), Aid to the Aged, Blind and Disabled (AABD), Temporary ~~Assistance~~Assistance for Needy Families (TANF), Supplemental Nutritional Assistance Program (SNAP), etc.), or documentation of receiving unemployment insurance benefits; a statement of any applications filed on behalf of the applicant for leave to sue or defend as an indigent person during the previous year; and a statement that the applicant is unable to pay the cost of the case and has a meritorious claim or defense.

2) The Court, considering the information of the application as a whole, shall determine whether the information contained in the application demonstrates to the Court that an inability to pay exists, and if so, will waive the fees. Receipt of public benefit program assistance or unemployment insurance benefits stated in subsection (b)(1) shall result in waiver of fees, irrespective of other information provided.

c) Certified copies of documents filed in the Court of Claims may be obtained upon application to the Secretary of State and payment of the prescribed costs.

(Source: Amended at 40 Ill. Reg. _____, effective _____)

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