### ILLINOIS POLLUTION CONTROL BOARD November 15, 1989

IN THE MATTER OF: ) UST UPDATE. USEPA REGULATIONS ) R89-10 (10/27/88 through 6/30/89) )

PROPOSAL FOR PUBLIC COMMENT

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

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

Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois. Section 22.4(d) provides for quick adoption of regulations which are "identical in substance" to federal regulations. Section 22.4(d) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal UST rules are found at 40 CFR 280. This rulemaking updates Illinois' UST rules to correspond with the following USEPA actions, through June 30, 1989.

53	Fed.	Reg.	44976	November	7, 1988
			51274	December	21, 1988
54	Fed.	Reg.	5452	February	3, 1989

HISTORY OF UST RULES

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

- R86-1 71 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986.
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987.
- R88-27 April 27, 1989; 13 Ill. Reg. 9519, effective June 12, 1989.
- R89-4 July 27, 1989; 13 Ill. Reg. 15010, effective September 12, 1989.

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

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

#### FIRE MARSHAL RULES

As is discussed in greater detail below, the legislation requires that both the Board and Office of the State Fire Marshal adopt equivalents of much of the USEPA UST rules. The Fire Marshal's rules are contained in 41 Ill. Adm. Code 170, along with preexisting rules adopted prior to the USEPA equivalent rules. They were adopted, amended, corrected and objected to in the following actions:

> 13 Ill. Reg. 5669, effective April 21, 1989. 13 Ill. Reg. 7744, effective May 9, 1989. 13 Ill. Reg. 8515, effective May 19, 1989. 13 Ill. Reg. 8875, effective May 19, 1989. 13 Ill. Reg.13288, August 18, 1989. 13 Ill. Reg.13305, August 18, 1989. 13 Ill. Reg.14992, effective September 11, 1989. 13 Ill. Reg.15126, September 22,1989

The technical standards were adopted at 13 Ill. Reg. 5669. The financial assurance requirements were incorporated by reference at 13 Ill. Reg. 8515. The other actions were corrections.

#### STATUTORY AUTHORITY

The February 2, 1989 Opinion in R88-27 included a lengthy discussion of Section 22.4(d) of the Act, and other provisions of P.A. 85-861, the statutory basis of the UST program.<sup>1</sup> The Board will reference that discussion here, and will only summarize it in this Proposed Opinion.

Section 22.4(d) of the Act requires the Board to adopt regulations which are "identical in substance" with USEPA's UST regulations. Ill. Rev. Stat. 1987, ch. 127 1/2, par. 154(b)(i) requires the Office of the Illinois State Fire Marshal to adopt regulations which are also to be "identical in substance"<sup>2</sup> to the same USEPA UST regulations. While the Fire Marshal is to adopt regulations only through "corrective action", the Board is to adopt the entire set of rules. In R88-27 the Board adopted regulations which, among other things, reflect the delineation between regulations before and after "corrective action".

The financial responsibility regulations bridge the corrective action gap. Operators are required to provide financial assurance immediately or in the near future. This will mainly be for tanks which are not known or suspected to be leaking. However, if a tank leaks, and the operator fails to take sufficient corrective action, the financial institutions will pay funds for corrective action which will be under the direction of the Agency. Thus the Fire Marshal will be responsible for receiving the financial assurance documents, but the Agency will be the recipient of any funds.

Ill. Rev. Stat. 1987, ch. 127 1/2, par. 154(b)(ii) allows the Fire Marshal to adopt "additional requirements". Section 22.4(d) of the Act allows the Board, upon receiving notice of such requirement, to adopt further Board requirements which are "identical in substance" to the additional Fire Marshal requirements. The R88-27 rules followed the USEPA rules closely. The Board will consider adopting "additional requirements" following notice from the Fire Marshal.

#### SUMMARY OF CHANGES

The USEPA actions are minor changes to the major packages addressed in R88-27 and R89-4. As it turns out, these extend a date to a point which had already passed before the Board adopted the original date, and modify forms which the Board has just incorporated by reference anyway. The changes to the Board regulations are therefore minimal.

Section 731.191

This Section is drawn from 40 CFR 280.91, which was amended at 54 Fed. Reg. 5452, February 3, 1989. 40 CFR 280.91(a) sets a compliance date of January 24, 1989 for the financial assurance requirements for certain operators. Because this date had already passed, in R89-4 the Board required immediate compliance. However, the federal compliance date has now been amended to add a complex proviso extending the effective date for certain requirements to July 24, 1989, a date which has also passed. Because this may have caused confusion, the Board is now proposing to insert the January 24, 1989 date and July 24 proviso.

Section 731.193

In Section 731.193(f), Board has proposed to insert language which was inadvertently omitted in R89-4. This Section is drawn from 40 CFR 280.93(f), which was adopted at 53 Fed. Reg. 43372, October 28, 1988.

Section 731.203 incorporates changes in the Trust Agreement Form. In R89-4 the Board incorporated these forms by reference, without setting the text forth in full. The Board has updated the incorporations by reference.

#### Appendix A

The notification form was amended at 53 Fed. Reg. 37208, September 23, 1988. The form should have been updated in R88-27, but was inadvertently omitted. Rather than include the form with the rules, the Board has proposed to incorporate the USEPA regulation by reference, and to require the use of Fire Marshal forms where available. If the forms are not available, the person may prepare a notification form based on the USEPA rule. This is the format employed for the financial assurance forms in R89-4.

#### ORDER

The Board proposes to amend 35 Ill. Adm. Code 731 as follows. The Board will receive written public comment for 45 days after the date of publication in the Illinois Register.

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

# PART 731 UNDERGROUND STORAGE TANKS

## SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

Section 731.101 731.102 731.103 731.110 731.111 731.112 731.113 731.114	Definitions and exemptions (Repealed) Interim prohibitions (Repealed) Notification Requirements (Repealed) Applicability Interim Prohibition for Deferred Systems Definitions Incorporations by Reference Implementing Agency
SUBPART B:	UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION
Section 731.120 731.121	Performance Standards for New Systems Upgrading of Existing Systems

731.122 Notification Requirements

#### SUBPART C: GENERAL OPERATING REQUIREMENTS

Section

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

SUBPART D: RELEASE DETECTION

Section

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

SUBPART E: RELEASE REPORTING, INVESTIGATION AND CONFIRMATION

Section

- 731.151 Investigation due to Off-site Impacts
- 731.152 Release Investigation and Confirmation
- 731.153 Reporting and Cleanup of Spills and Overfills

SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

Section

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731.161	Initial	Response
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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 731.170 731.171 731.172 731.173 731.174	Temporary Closure Permanent Closure and Changes-in-Service Assessing Site at Closure or Change-in-Service Previously Closed Systems Closure Records
	SUBPART H: FINANCIAL RESPONSIBILITY
Section	

731.190 Applicability

- 731.191 Compliance Dates
- 731.192 Definitions

731.193	Amount and Scope of Required Financial Responsibility
731.194	Allowable Mechanisms and Combinations
731.195	Financial Test of Self-insurance
731.196	Guarantee
731.197	Insurance or Risk Retention Group Coverage
731.198	Surety Bond
731.199	Letter of Credit
731.202	Trust Fund
731.203	Standby Trust Fund
731.204	Substitution of Mechanisms
731.205	Cancellation or Nonrenewal by Provider
731.206	Reporting
731.207	Recordkeeping
731.208	Drawing on Financial Assurance
731.209	Release from Financial Assurance Requirement
731.210	Bankruptcy or other Incapacity
731.211	Replenishment
731.900	Incorporation by reference (Repealed)
731.901	Compliance Date (Repealed)

Appendix A Notification Form

AUTHORITY: Implementing Section 22.4(d) and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1988 Supp. ch. 111 1/2, pars. 1022.4(d) and 1027).

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. effective

SUBPART H: FINANCIAL RESPONSIBILITY

Section 731.191 Compliance Dates

Owners of petroleum underground storage tanks are required to comply with the requirements of this Subpart by the following dates:

- a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration or the Rural Electrification Administration: - #mmediately-- January 24, 1989, except that compliance with Section 280.94(b) is required by: July 24, 1989.
- b) All petroleum marketing firms owning 100 through 999 USTs: October 26, 1989.

- c) All petroleum marketing firms owning 13 through 99 USTs at more than one facility: April 26, 1990.
- All petroleum UST owners not described in subsections
   (a), (b) or (c), including units of local government: October 26, 1990.

(Source: Amended at 14 Ill. Reg. effective )

Section 731.193 Amount and Scope of Required Financial Responsibility

- a) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:
  - For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: \$1 million.
  - 2) For all other owners or operators of petroleum underground storage tanks: \$500,000.
- b) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
  - For owners or operators of 1 to 100 petroleum underground storage tanks: \$1 million; and
  - For owners or operators of 101 or more petroleum underground storage tanks: \$2 million.
- c) For the purposes of subsections (b) and (f) only, a "petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.
- d) Except as provided in subsection (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

- 1) Taking corrective action;
- Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
- 3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsection (a) and (b).
- e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required must be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.
- f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibilty in the amount of at least \$2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.
- g) The amounts of assurance required under this Section exclude legal defense costs.
- h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(Source: Amended at 14 Ill. Reg. effective )

Section 731.203 Standby Trust Fund

a) An owner or operator using any one of the machanisms authorized by Sections 731.196, 731.198 or 731.199 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by the Illinois Commissioner of Banks and Trust Companies, or who complies with the Corporate Fiduciary Act. (Ill. Rev. Stat. 1987, ch. 17, pars. 1551-1 et seq.)

- b) Forms.
  - 1) The Board incorporates by reference 40 CFR
    280.103(b) as adopted at 53 Fed. Reg. 43370,
    October 26, 1988 and as amended at 53 Fed. Reg.
    51274, December 21, 1988. This Section
    incorporates no future editions or amendments.
  - 2) The Fire Marshal shall promulgate forms based on the forms in 40 CFR 280.103(b), with such changes as are necessary under Illinois law.
  - 3) The owner or operator shall use such forms if available; otherwise, the owner or operator shall use the form in 40 CFR 280.103(b), except that instructions in brackets must be replaced with the relevant information and the brackets deleted.
  - 4) In addition, the owner or operator and trustee shall agree that Illinois law governs the trust.
- c) The Fire Marshal shall instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Fire Marshal determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.
- d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this Subpart.

(Source: Amended at 14 Ill. Reg. effective )

Section 731.Appendix A

The Board incorporates by reference 40 CFR 280, Appendix I (1988), as amended at 53 Fed. Reg. 37208, September 23, 1988. This Section incorporates no future editions or amendments. Persons required to notify shall use forms provided by the Fire Marshal if available. Otherwise, they may prepare forms based on 40 CFR 280, Appendix I.

(Source: Amended at 14 Ill. Reg. effective )

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VLDESCRIPTION OF UNDERGROU	ISO DEM	S.C.	Page No ol Pages		
Tank Identification No. (e.g., ABC-123), or Arbitrarvy Assigned Sequential Number (e.g., 1,2,3,)	Tank No.	Tank No.	Tank No.	Tank No.	Tank No
1. Status of Tank Currently in Use (Mark of Parl apply 22) Temporanily Out of Use Permanently Out of Use					
Brought into Use after 5/8/86					
2. Estimated Age (Years)					<u>.</u>
3 Estimated Total Capacity (Gallons)		1			
4. Material of Construction Stee: (Mark one ⊈) Concrete Fibergiass Reinforced Plastic Unknown Other Please Specify					
· · · · · · · · · · · · · · · · · · ·		<u>}</u>	!		!
5. Internal Protection Cathodic Protection (Marx all that apply \$) Cathodic Protection Interior Lining (e.g., epoxy resins) None Unknown					
Other, Please Specify					
6. Externel Protection Cathodic Protection (Mark ell thel apply 1) Painted (e.g., asphaltic) Fiberglass Reinforced Plastic Coated None Uriknown					
Other, Please Specify					
7. Piping Bare Steel (Mark all that apply 12.) Galvanized Steel Fiberglass Reinforced Plastic Cathodically Protected Unknown Other, Please Specify					
Substance Currently or Last Stored     a. Empty					
in Greatest Quantity by Volume b. Petroleum (Mark all theil apply 2) Diesel Kerosene Gasoline (including alcohol blends) Used Oil					
Other, Please Specify c. Hazardous Substance					
C. Hazarooue Substance Please Indicate Name of Principal CERCLA Substance					
OR Chemical Abstract Service (CAS) No.					
Mark box (2) if tank stores a mixture of substances d. Unknown					
9. Additional Information (for tanks permanently taken out of service)			1		
<ul> <li>a: Estimated date last used (mo/yr)</li> <li>b: Estimated quanticy of substance remaining (gar)</li> </ul>	/	·	/	:	/
<ul> <li>c. Mark box Q - 'tank was filled with inert materia: (e.g. sand, concrete)</li> </ul>					

(Source: Added at 11 Ill. Reg. 6220, effective THRLER 24, 1987)

IT IS SO ORDERED.

rothy M.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board