

ILLINOIS POLLUTION CONTROL BOARD
February 28, 1991

IN THE MATTER OF:)
)
UST UPDATE) R90-12
USEPA REGULATIONS) (Identical in
(1/1/90 through 6/30/90)) Substance Rulemaking)

ADOPTED RULES. FINAL ORDER.

OPINION OF THE BOARD (by J. Anderson):

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

Section 22.4 of the Act governs adoption of regulations establishing the RCRA program in Illinois, including the regulations of UST's 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 RCRA/UST rules are found at 40 CFR 280. This rulemaking updates Illinois' UST rules to correspond with the following USEPA actions, during the period January 1 through June 30, 1990:¹

55 Fed. Reg. 17753	April 27, 1990
55 Fed. Reg. 18566	May 2, 1990
55 Fed. Reg. 23738	June 12, 1990

PUBLIC COMMENT

The Board adopted a Proposed Opinion and Order on November 8, 1990. The proposal appeared on December 21, 1990, at 14 Ill. Reg. 20162. The Board has received the following public comment:

¹This rulemaking does not address the effects on the UST regulations of H.B. 3325, which has been signed into law as P.A. 86-1050. The Board postponed action pending possible revisions by the legislature to P.A. 86-1050. During the pendency of this proposal, P.A. 86-1484 corrected a portion of P.A. 86-1050. Pending possible further revisions, the Board will delay considering whether changes are needed to the regulations until R91-1.

- PC 1 Impact Analysis from the Small Business Assistance Bureau, Department of Commerce and Community Affairs (DCCA), January 30, 1991
- PC 2 Administrative Code Division, February 4, 1991.
- PC 3 JCAR, December 21, 1990

DCCA found that there would be no impact on small business from adoption of these federally mandated rules. The Code Division found that the proposal met codification requirements. JCAR indicated that it had no questions.

The Board construes the lack of comment from the Agency, Office of the State Fire Marshal and United States Environmental Protection Agency, as meaning that these agencies find these rules acceptable.

HISTORY OF UST RULES

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

- R86-17 1 PCB 110, July 11, 1986; 10 Ill. Reg. 13998, August 22, 1986.
- R86-28 75 PCB 306, February 5, 1987; and 76 PCB 195, March 5, 1987; 11 Ill. Reg. 6017, April 3, 1987. Correction at 77 PCB 235, April 16, 1987; 11 Ill. Reg. 8684, May 1, 1987.
- R88-27 April 27, 1989; 13 Ill. Reg. 9519, effective June 12, 1989 (9/23/88 Technical Standards)
- R89-4 July 27, 1989; 13 Ill. Reg. 15010, effective September 12, 1989 (10/26/88 Financial Assurance Requirements)
- R89-10 March 1, 1990; 14 Ill. Reg. 5797, effective April 10, 1990 (10/27/88 - 6/30/89)
- R89-19 April 26, 1990 14 Ill. Reg. 9454, effective June 4, 1990 (UST State Fund)
- R90-3 June 7, 1990; 14 Ill. Reg. 11964, effective July 10, 1990 (7/1/89 - 12/31/89)
- R90-12 This Docket (1/1/90 - 6/30/90)
- R91-2 Next UST Docket (7/1/90 - 12/31/90)

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

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

FIRE MARSHAL RULES

Ill. Rev. Stat. 1989, ch. 127 1/2, par. 156 requires that the Office of the State Fire Marshal adopt equivalents of much of the USEPA UST rules. The Fire Marshal's rules are contained in 41 Ill. Adm. Code 170, along with preexisting rules adopted prior to the USEPA equivalent rules. They were adopted, amended, corrected and objected to in the following actions:

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

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

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

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

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

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

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

13 Ill. Reg. 15126, September 22, 1989

14 Ill. Reg. 63, January 5, 1990

14 Ill. Reg. 5781, April 20, 1990

SECTION-BY-SECTION DISCUSSION

Section 731.140

This Section is drawn from 40 CFR 280.40, which was amended by USEPA on April 27, 1990, at 55 Fed. Reg. 17753, and corrected

on June 12, 1990, at 55 Fed. Reg. 23738. This amendment is somewhat hard to follow, because, for codification reasons, the Board replaced the table in the USEPA rule with a narrative compliance date rule. The revised entry is in 35 Ill. Adm. Code 731.140(c)(1). Tanks with pressurized piping were required to comply with the leak detection requirements by December 22, 1990. The amendment corrects a cross reference, but leaves the compliance date alone.

Section 731.191

This Section includes the compliance dates for financial responsibility. The Section is drawn from 40 CFR 280.91, which was amended at 55 Fed. Reg. 18566, May 2, 1990, to extend the compliance date for owners of 13 through 99 USTs to April 26, 1991.

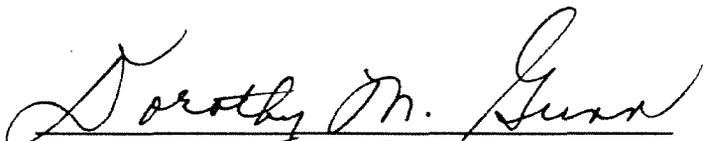
However, the Board takes special note that, at 55 Fed. Reg. 46025, October 31, 1990, USEPA extended to October 26, 1991, the compliance date for operators of smaller numbers of USTs, and for local government.

We will include this change in R91-2, to be proposed shortly. Section 7.2 of the Act does not allow more than 6 months of federal rules to be batched in any single proceeding, and the October 31, 1990, date above is more than six months after the earliest update here, i.e., April 27, 1990.

This Opinion supports the Order adopted this same day. The Board will wait 30 days before filing these adopted rules, pending post-adoption comments, particularly by the agencies involved in the authorization process.

IT IS SO ORDERED.

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


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board