

ILLINOIS POLLUTION CONTROL BOARD
July 25, 1991

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

ADOPTED RULE FINAL ORDER.

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

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

Section 22.4 of the Act governs adoption of regulations establishing the RCRA/UST program in Illinois. Section 22.4(d) provides for quick adoption of regulations which are "identical in substance" to federal regulations. Section 22.4(d) provides that Title VII of the Act and Section 5 of the Administrative Procedure Act (APA) shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by the Joint Committee on Administrative Rules (JCAR). The federal UST rules are found at 40 CFR 280. This rulemaking updates Illinois' UST rules to correspond with the following USEPA actions, during the period July 1 through December 31, 1990:¹

55 Fed. Reg. 46025

October 31, 1990

PUBLIC COMMENT

The proposal was published on May 3, 1991, at 15 Ill. Reg. 6424. The Board has received the following comment:

PC 1 Administrative Code Division, May 20, 1991

PC 2 Department of Commerce and Community Affairs,
Small Business Assistance Bureau (DCCA), June 21,
1991

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

The Code Division had no comments. DCCA found no significant economic impact on small business.

The Board received no comment from the Illinois Environmental Protection Agency, the Office of the Illinois State Fire Marshal or the United States Environmental Protection Agency. The Board construes this lack of comment as meaning that these agencies find these rules acceptable in all respects as proposed.

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 February 28, 1991; 15 Ill. Reg. 6527, effective April 22, 1991 (1/1/90 - 6/30/90)
- R91-2 This Docket (7/1/90 - 12/31/90)

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

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

FIRE MARSHAL RULES

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

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

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

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

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

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

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

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

13 Ill. Reg. 15126, September 22, 1989

14 Ill. Reg. 63, January 5, 1990

14 Ill. Reg. 5781, April 20, 1990

SECTION-BY-SECTION DISCUSSION

Section 731.113

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

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

of UST rules occur at the appropriate point in the verbatim text.

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

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

The main impact of this update may be to update the references to 40 CFR 302, which is the CERCLA consolidated listing of "hazardous substances". This is used in the UST rules to define "hazardous substance UST". Updating the reference will bring tanks containing any newly listed hazardous substances into the program.

Section 731.191

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

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

The USEPA rule also refers to "underground storage tanks containing petroleum". The Board has used the term defined in Section 731.191, "petroleum UST", which is used to state the compliance dates for other types of owners. However, there is a possibility that USEPA intends to be defining a new type of tank to specify the scope of the financial responsibility rules as applied to local government. The Board solicited comment on this, but received no response.

The text of the rules as amended follows. The Board will wait until after August 26, 1991, to file the adopted amendments, to allow time for final review and comment by the agencies involved in the authorization process.

ORDER

35 Ill. Adm. Code 731 is amended as follows:

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

PART 731
 UNDERGROUND STORAGE TANKS

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

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

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

Section	
731.120	Performance Standards for New Systems
731.121	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
 731.150 Reporting of Suspected Releases
 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
 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
 731.171 Permanent Closure and Changes-in-Service
 731.172 Assessing Site at Closure or Change-in-Service
 731.173 Previously Closed Systems
 731.174 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
 731.200 UST State Fund
 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 and authorized by Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1022.4, 1022.13 and 1027 (Sections 22.4(d), 22.13(d) and 27 of the Environmental Protection Act).

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. , effective

NOTE: Capitalization denotes statutory language.

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

Section 731.113 Incorporations by Reference

a) The following publications are incorporated by reference:

ACT. Available from the Association for Composite Tanks, 108 N. State St., Suite 720, Chicago, IL 60602, (800) 368-2105:

ACT-100/88, "Specification for the Fabrication of FRP Clad/Composite Underground Storage Tanks", revised March 16, 1988

ANSI. Available from the American National Standards Institute, 1430 Broadway, New York, New York 10018, (212) 354-3300:

See ASME.

API. Available from the American Petroleum Institute, 1220 L Street, N.W., Washington, D.C. 20005, (202) 682-8000:

API Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks", Second Edition, December, 1987

API Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems", Fourth Edition, November, 1987

API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets", Fourth Edition, December, 1987

API Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations", First Edition, April, 1985

API Recommended Practice 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations", First Edition, August, 1986

API Recommended Practice 1631, "Interior Lining of Underground Storage Tanks", Second Edition, December, 1987

API Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems", Second Edition, December, 1987

API Publication 2015, "Cleaning Petroleum Storage Tanks", Third Edition, September, 1985

API Publication 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines", Second Edition, April, 1983

ASME. Available from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, (212) 705-7722:

"Chemical Plant and Petroleum Refinery Piping", ASME/ANSI B31.3 - 1987, as supplemented by B31.3a - 1988 and B31.3b - 1988. Also available from ANSI.

"Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols", ASME/ANSI B31.4 - 1986, as supplemented by B31.4a - 1987. Also available from ANSI.

ASTM. Available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, (215) 299-5400:

ASTM D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks", approved July 25, 1986.

NACE. Available from the National Association of Corrosion Engineers, 1400 South Creek Dr., Houston, TX 77084, (713) 492-0535:

NACE Standard Recommended Practice RP0169-83, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems", Revised January, 1983

NACE Standard Recommended Practice RP0285-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", Approved March, 1985

NFPA. Available from the National Fire Protection Association, Batterymarch Park, Boston, MA 02269, (617) 770-3000 or (800) 344-3555:

NFPA 30, "Flammable and Combustible Liquids Code", issued July 17, 1987. Also available from ANSI.

NFPA 385, "Tank Vehicles for Flammable and Combustible Liquids", issued December 7, 1984. Also available from ANSI.

NIOSH. Available from the National Institute for Occupational Safety and Health, Publications Office, 4676 Columbia Parkway, Cincinnati, OH 45226 (513) 533-8287:

NIOSH Publication No. 80-106, "Criteria for a Recommended Standard ...Working in a Confined Spaces", December, 1979

PEI. Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101 918/ 743-9941.

PEI/RP100-87, "Recommended Practices for Installation of Underground Liquid Storage Systems" , 1987 Edition

STI. Available from the Steel Tank Institute, 728 Anthony Trail, Northbrook, IL 60062, (312) 498-1980:

STI-P3, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks", effective May 1, 1987.

STI, "Standard for Dual Wall Underground Steel Storage Tanks" (1986).

UL. Underwriters Laboratories, Inc., Publications Stock, 333 Pfingsten Road, Northbrook, IL 60062-2096 312/ 272-8800, extension 2612 or 2622:

UL 58 -- 1985, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", Eighth Edition, April 15, 1986. Also available from ANSI.

UL 567 -- 1983, "Standard for Pipe Connectors for Flammable and Combustible Liquids and LP-Gas", Fifth Edition, March 12, 1984, as revised September 30, 1985. Also available from ANSI.

UL 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products", First Edition, July 1, 1983, as revised April 29, 1986 and March 3, 1987

UL Canada. Underwriters' Laboratories of Canada, 7 Crouse Rd., Scarborough, Ontario M1R 3A9 CANADA, 416/ 757-3611.

UL Canada Standard CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", First Edition, June, 1985.

UL Canada Standard CAN4-S603.1-M85, "Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids", First Edition, June, 1985.

UL Canada Standard CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products", First Edition, February, 1983.

UL Canada Standard CAN4-S631-M84, "Standard for Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems", First Edition, May, 1984.

UL Canada Standard CAN4-S633-M84, "Flexible Underground Hose Connectors for Flammable and Combustible Liquids", First Edition, June, 1984.

UL Canada Subject C107C-M1984, "Guide for Glass Fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids", First Edition, June, 1984.

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

10 CFR 50, Appendix A (~~1988~~1990)

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

40 CFR 302.4, 302.5 and 302.6 (~~1988~~1990)

40 CFR 355.40 (~~1988~~1990)

- c) This Section incorporates no later editions or amendments.

(Source: Amended at 15 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:

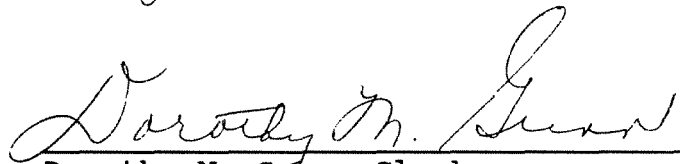
- a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration or the Rural Electrification Administration: January 24, 1989, except that compliance with Section 730.194(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, 1991.
- d) All petroleum UST owners not described in subsections (a), (b) or (c), ~~including~~ excluding units of local government: October 26, ~~1990~~ 1991.
- e) All units of local government: one year after the date of adoption by the Board of additional mechanisms for use by units of local government to comply with financial responsibility requirements for petroleum USTs.

(Source: Amended at 15 Ill. Reg. , effective
)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 25th day of July, 1991, by a vote of 5-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board