

ILLINOIS POLLUTION CONTROL BOARD  
April 26, 1990

IN THE MATTER OF:            )  
                                  )  
UST STATE FUND                )     R89-19  
                                  )     (Rulemaking)

ADOPTED RULE.    FINAL ORDER.

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

\*Pursuant to Section 22.4(d) and 22.13(d) of the Environmental Protection Act (Act), as amended by P.A. 86-0958, the Board is amending the underground storage tank (UST) regulations in 35 Ill. Adm. Code 731 to provide for a State Fund that is intended to satisfy federal UST financial assurance requirements.

Section 22.13 of the Act establishes the "Underground Storage Tank Fund". Section 22.13(d) requires the Board to implement the Fund by adopting regulations pursuant to Section 22.4(d), which 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. The rules governing State Funds are 40 CFR 280.100 and 280.101, adopted at 53 Fed. Reg. 43378, October 26, 1988.

PUBLIC COMMENT

The Board adopted a Proposed Opinion and Order on January 25, 1990. The proposal appeared on February 23, 1990, at 14 Ill. Reg. 2791. The Board has received the following public comment, which is addressed in the body of this Opinion, below:

- PC 1     Joint comments of Illinois Environmental Protection Agency (Agency) and Office of the Illinois State Fire Marshal (Fire Marshal), March 15, 1990
  
- PC 2     Illinois Petroleum Marketers Association and Illinois Association of Convenience Stores, March 26, 1990

\* The Board appreciates the contributions of Morton Dorothy in drafting this Opinion and Order.

- PC 3 Administrative Code Division, technical comments,  
March 29, 1990
- PC 4 Joint Committee on Administrative Rules, March 12,  
1990.

#### 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.
- R89-10 Adopted March 1, 1990; 14 Ill. Reg. 5797,  
effective April 10, 1990.
- R89-19 This Docket.
- R90-3 Proposed March 8, 1990; March 23, 1990; 14 Ill.  
Reg. 4406.

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.

In R88-27, 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.

#### HISTORY OF THE STATE FUND

The R89-4 regulations require that owners or operators obtain "private insurance", as defined below, and establish a standby trust fund to receive the proceeds of the financial assurance. 40 CFR 280.100 and 280.101 allow the use of state

funds under certain conditions. The Board adopted no equivalent of 40 CFR 280.100 or 280.101 because, at the time R89-4 was under consideration, there appeared to be no State fund in Illinois which met the conditions.

At about the same time R89-4 was adopted, S.B. 64 was signed into law as P.A. 86-125. S.B. 64 created a State fund. However, S.B. 64 did not state that it was intended to create a State Fund meeting the USEPA requirements; did not provide that persons qualifying under the Fund met the federal financial assurance requirement; did not direct the Board to amend its rules to allow the use of the Fund in lieu of private insurance; and, did not permit the Board to use the "identical in substance" rulemaking mechanism to so amend its rules.

To correct the problem, S.B. 752 (P.A. 86-0958) added Section 22.13(d) to the Act as follows:

The Fund is intended to be a State Fund by which persons who qualify for access to the Fund in the event of a release may satisfy the financial responsibility requirements under applicable federal law and regulations. The Board shall implement this intent by adopting regulations pursuant to subsection (d) of Section 22.4 of this Act.

It is this mandate that the Board is implementing in this instant Docket R89-19.

#### FIRE MARSHAL RULES

State statutes require that the Office of the State Fire Marshal also adopt equivalents of some of the same 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 include 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.
- 14 Ill. Reg. 5781, effective April 10, 1990.

The technical standards were adopted at 13 Ill. Reg. 5669. The financial assurance requirements incorporated the USEPA rules by reference at 13 Ill. Reg. 8515. The other actions were corrections and responses to objections. The April 10, 1990 amendments set new standards for Tank Removal.

PUBLIC COMMENTS\*

The Agency and Fire Marshal filed a joint public comment objecting to proposed Section 731.200(c) through (h). (PC 1) They state:

In accordance with the Memorandum of Understanding between the Agency and the Fire Marshal of 1987, and in accordance with the division of program responsibilities for the RCRA Subtitle I underground storage tank program, the Fire Marshal has sole responsibility for the administration of the program for financial responsibility as envisioned in 40 CFR 280.90. Consequently, it is the Fire Marshal who has the authority to issue regulations pertaining to the administration of the financial responsibility portion of the underground storage tank program.

The Board does not accept the above arguments for the reasons expressed below.

At the outset, we note that the comment, whether intended or not, inherently questions the scope of Board's statutory mandate for the regulations it has already adopted in R89-4. Those regulations implement the federal financial assurance underground storage tank program, including the administration portion; this instant proceeding, R89-19, simply responds to a statutory mandate to implement an additional, optional, provisions contained in that federal program, allowing for the use of an identical in substance state fund.

The Board has been, and continues to be, under a statutory mandate to adopt the UST regulations within tight timeframes, including the financial assurance regulations, regardless of any Memorandum of Agreement or regulatory activity of the Fire Marshal.

Presumably because they cannot, the Agency and the Fire Marshal do not cite any statutory authority for their argument. It is axiomatic that State agencies derive their authority from State statutes. They cannot create authority by mutual agreement, or by agreement with federal agencies.

In R88-27 and R89-4 the Board determined that Section 22.4(d) of the Act required it to adopt the entire text of the USEPA UST regulations. These rulemakings are now complete.

\* PC 3 and 4 contained no substantive comments, and thus will not be separately addressed here.

Both the Agency and the Fire Marshal were on the Board's mailing list and were sent copies of the proposed Opinions and Orders.

The Board had received positive comment from the Agency and no comment from the Fire Marshal as to its interpretation. The Agency commented as follows in R89-4:

The financial assurance portion of the UST program in Illinois is the responsibility of the Office of the State Fire Marshal (OSFM). The PCB is required to promulgate regulations covering financial assurance by Sec. 22.4 of the Illinois Environmental Protection Act even though the OSFM will be implementing the program.

(PC #1, R89-4, April 24, 1989)

The regulations and the accompanying opinions were adopted without major revisions on the points now in question. The Board then withheld filing of the adopted rules for one month, which allowed the agencies a final opportunity to file comments. The Board received no final comments, and filed the rules. The rules were not appealed. The agencies have waived the arguments they are now making as they pertain to those rules.

JCAR has reviewed the Board and Fire Marshal UST rules, focusing on overlapping jurisdiction. JCAR determined that the Board's rules and underlying interpretation of the statutes were appropriate.

We note that P.A. 86-0958 was adopted after the Board adopted the financial responsibility requirements, and was specifically aimed at fixing a problem in them. As such it represents legislative ratification of the mandate to the Board to adopt the financial responsibility requirements. Indeed, if the Board failed to go forward with the proposed amendments, the UST State Fund would not satisfy the financial responsibility requirements of the regulations. The result of this would be that UST operators would be required to obtain private insurance in addition to the State Fund, a result clearly at odds with legislative intent.

We note that the Agency and Fire Marshal appear to assume that rulemaking authority is inherently linked to implementing authority: i.e., that the agency with authority to implement a program has the implied, exclusive authority to adopt regulations. This assumption is incorrect. For instance, in the Environmental Protection Act, the Board is given express rulemaking authority over programs which are almost always implemented by other agencies. Indeed, Section 47(a) of the Act provides:

The State of Illinois, and all its agencies, institutions, officers and subdivisions shall comply with all requirements, prohibitions, and other provisions of the the Act and of regulations adopted thereunder. (Ill. Rev. Stat. 1988, ch. 111 1/2, par 1047(a)).

Furthermore, Section 7.2(a)(5) of the Act, which governs the Board's identical in substance rulemaking, provides that, in adopting an identical in substance regulation:

...[T]he Board regulation shall specify whether a decision is to be made by the Board, the Agency or some other State agency, based upon the general division of functions within this Act and other Illinois statutes. (Ill. Rev. Stat. 1988 Supp., ch. 111 1/2, par. 1007.2(a)(5)).

In summary, the Act clearly establishes the Board as a State agency with authority to adopt regulations which are to be applied by other State agencies. Although the Fire Marshal has independent regulatory authority, it must comply with Board regulations in its administration of the program, just as must the Agency.

The Board reaffirms its prior holdings on its statutory authority, and specifically makes reference to P. 2-4 of the R88-27 Opinion and P. 2,3 of the R89-4 Opinion.

We note that there are "practical" reasons why the Board should adopt the full scope of the requirements. For example, suppose a tank leaks, and the cause is a violation of the basic requirements other than those related to corrective actions. The basic requirements must be present in Board rules for the Agency, or any other person, including a member of the public, to bring an enforcement action alleging violation of them. Also, the repetition of the rules serves as a check on any modifications which the Fire Marshal might make, or waivers it might grant, as was discussed in R88-27. The Board is given the option of adopting additional Fire Marshal requirements so that the Board can assess whether the requirement is an environmental protection matter which ought to be enforceable before the Board.

We agree that the statutory scheme has inherent potential problems because it requires two agencies to adopt similar regulations governing the same subject matter. The Board can only assume from the statutory intent that the General Assembly intended that the agencies maintain compatibility of the regulations.

We note that problems of compatibility may now exist.

The Fire Marshal adopted financial responsibility rules at 13 Ill. Reg. 8515, effective May 19, 1989. They are worded in full as follows:

Section 170.700 Incorporation by Reference

The Office of the State Fire Marshal adopts by incorporation by reference 40 CFR 280, Subpart H, as adopted at 53 FR 43370, October 26, 1988. This Section incorporates no later editions or amendments.

This rule fails to effect the USEPA financial responsibility requirement in Illinois for several reasons. First, it is merely an incorporation by reference. The rule does not go on to require operators to comply with the USEPA requirements. Second, the Fire Marshal has not implemented the USEPA directives in 40 CFR 280.92 to define the terms "bodily injury", "property damage" and "substantial business relationship". As was discussed in the R89-4 Opinion, with these terms undefined in State regulations, the USEPA rules fail to state the scope of the financial assurance requirement, and allow guarantees which would violate Department of Insurance regulations. In addition, the Fire Marshal rules, contrary to USEPA directives, allow the use of instruments from financial institutions which have not qualified to do business with the appropriate Illinois regulatory agencies. In the event of a release, the Agency would have problems collecting on these instruments, and, in the absence of Board regulations governing financial assurance, could not file an enforcement action alleging failure to have proper financial assurance.

We fully recognize that the complexity of the UST regulatory and program implementation provisions in the statutes can create problems of compatibility, but suggest that these problems are not necessarily insurmountable.

The Board believes that there are ways to accomplish the same statutory purposes. For example, once the Board adopts the full set of rules pursuant to Section 7.2 of the Act, the Fire Marshal may elect to adopt the Board regulations, and enforce them along with the Agency. In any event, we know that the Agency and Fire Marshal share our concern that any "kinks" in the system be worked out, so that our environmental responsibilities can be most efficiently exercised.

The Illinois Petroleum Marketers Association and Illinois Association of Convenience Stores, in PC 2, questioned the "Board's desire to get involved in" UST regulations, and recommend "that the controls and rulemaking be left in the hands of the Office of the Illinois State Fire Marshal and the Illinois Environmental Protection Agency".

As discussed above, the Board is required by statute to adopt these regulations. These regulations anticipated ongoing interactions with the Agency and the Fire Marshal. Indeed, the agencies need the regulatory underpinning to implement the programs.

As is also discussed above, the legislature intended that the UST State Fund could be used in lieu of the private financial assurance mechanisms specified in the federal rules and already adopted by the Board. Unless the Board amends its rules to allow the use of the State Fund as an alternative, tank operators will have to provide private insurance meeting federal requirements, in addition to the State Fund. This surely would not benefit the tank operators.

#### "IDENTICAL IN SUBSTANCE" MANDATE

The Board construes Section 22.13(d) as a legislative pre-determination that the UST Fund provisions satisfy the identical in substance mandate. However, pursuant to its Section 22.4(d) mandate, the Board has included a few provisions in the regulations that it believes are necessary to accommodate the legislation to certain USEPA requirements.

Section 22.4(d) requires the Board to adopt regulations which are "identical in substance". Section 7.2 of the Act prescribes how the Board is to implement the mandate.

In 40 CFR 280.100 or 280.101, the USEPA rules prescribe the form of a state fund which qualifies under federal law, not a verbatim text. In such situations Section 7.2(a)(3) requires the Board to "adopt a regulation as prescribed, to the extent possible consistent with other relevant USEPA regulations and existing State law." Our analysis of certain issues follows.

#### PRIVATE INSURANCE REQUIREMENT

35 Ill. Adm. Code 731.195, and 40 CFR 280.95, specify certain methods by which an operator demonstrates financial responsibility. Mechanisms include private insurance, bonds, letters of credit, trust funds, self-insurance for operators which meet a financial test and guarantees from related corporations which meet the financial test. Operators\* are allowed to use these mechanisms in combinations to meet the total amount of required financial assurance. Operators must establish a standby trust fund to receive the proceeds of any mechanism in the event of a release.

In this Opinion the Board will use the term "private insurance" to refer to the mechanisms under the USEPA rules,

\* As used in this Opinion, "operators", means "owners or operators", except where otherwise indicated.



exclusive of state funds, by which an operator can meet the financial assurance requirement. It is to be understood that this refers to mechanisms other than insurance, including self-insurance and guarantees.

#### 40 CFR 280.100 AND 280.101

State funds are governed by 40 CFR 280.100 and 280.101. Section 280.100 applies to UST's in states without an approved program where the state requires a financial assurance mechanism. USEPA may accept the mechanism if it meets a certain standard.

Section 280.101 applies to UST's located in where USEPA is administering the financial responsibility requirements in a state "which assures that monies will be available from a state fund". USEPA will accept the state fund in lieu of private insurance if a certain standard is met.

Which Section applies? Clearly Section 280.101 is directed at state funds. However, in Illinois, the UST fund is also a "state-required mechanism", since its availability is mandatory. Arguably the UST fund could be approvable under either Section. However, the applicability question has deeper levels.

Both Section 280.100 and 280.101 are "USEPA-only Sections", which apply only to USEPA approval of alternative mechanisms and state funds when USEPA is administering the program. They are silent as to these mechanisms when the State is administering the program. The Board has generally drafted the UST rules as a set of rules to apply after the State takes over the program. This approach is required under 40 CFR 281, which requires the State to have the final program in place before the application for program approval is submitted. As the Board understands the process, any State mechanisms in the final program will be approved under the general language on program approval in 40 CFR 281. The Board specifically requested comment on this, but received no response.

Sections 280.100 and 280.101 are silent as to the contents of the State program; however, the Board notes that Section 7.2(a) of the Act defines "identical in substance" regulations as regulations "which require the same actions ... as would federal regulations if USEPA administered the subject program in Illinois". Therefore, as a matter of State law, the Board believes that the State fund must be structured so as to be approvable under Sections 280.100 or 280.101.

#### APPROVABILITY OF THE FUND

40 CFR 280.101 allows the use of a "state fund" if the Regional Administrator determines that it is "at least equivalent to the financial mechanisms specified" in the regulations. The

Regional Administrator is to evaluate equivalency principally in terms of:

... Certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds which will be made available; and the types of costs covered. 40 CFR 280.101(b).

40 CFR 280.100(a) and 280.101(a) allow the use of State funds to meet federal requirements only if approved by the Regional Administrator of USEPA. Section 22.4(d) of the Act requires the Board to maintain an "identical in substance" program. There is arguably a potential problem between the mandates of Section 22.4(d) and 22.13, if the Board were to allow the use of the State Fund, but USEPA were to fail to approve the Fund. However, in that the General Assembly has provided for immediate use of the Fund to satisfy the financial assurance requirement in the Board rules, the Board will not condition use of the Fund on USEPA approval.

As the Board understands the process, approval of state funds will be a procedure separate from the authorization application process. USEPA may be able to approve the use of the State fund prior to authorization of the Illinois UST program.

Since, under 40 CFR 280.101(b), approvability of the State fund depends on: the amount of coverage; the types of costs covered; and, the certainty of availability of funds, we will discuss these along with the issues addressed below.

#### AMOUNT OF COVERAGE

40 CFR 280.93, and 35 Ill. Adm. Code 731.193, specify the amounts of required financial assurance. For most operators this is \$1 million per occurrence, with an annual aggregate of \$1 million, with alternative amounts specified for small or large throughput tanks.

#### TYPES OF COSTS COVERED

35 Ill. Adm. Code 731.193, as adopted in R89-4, and federal law, require owners or operators of UST's to:

... demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from operation of petroleum underground storage tanks... 35 Ill. Adm. Code 731.193 and 40 CFR 280.93.

### CERTAINTY OF AVAILABILITY OF FUNDS

Coverage under the UST State Fund is subject to conditions, including private insurance coverage for the deductible, registration of the tank, compliance with Board regulations, adequacy of the Fund, prepayment by the operator of corrective action costs and claims, and prepayment of the deductible. If the operator fails to meet these conditions, there is no coverage from the Fund.

This is best illustrated by the requirement, in S.B. 64, that the operator pay a deductible before the fund will pay his corrective action expenses, or third party claims. On the other hand, the USEPA requirements for private insurance provide:

The [Insurer] is liable for the payment of any amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the [Insurer]. (40 CFR 280.97(b)(1), paragraph (2)(b) of the required private insurance form.) (Incorporated by reference in 35 Ill. Adm. Code 731.197)

### ADDITIONAL REQUIREMENTS FOR APPROVABILITY

40 CFR 280.101 has some requirements for an approvable fund which do not appear to be specifically addressed in the legislation. 40 CFR 280.101(d) requires the State to issue "a letter or certificate describing the nature of the state's assumption of responsibility". The certificate must identify the facility and the "amount of funds for corrective action and/or for compensating third parties that is assured by the State. The Board has included these requirements in the adopted rules. The USEPA rule requires in addition that the operator keep the certificate at the facility. However, the Board has not required this, consistent with the approach taken in R89-4 in Section 731.206 and 731.207.

### CERTIFICATE OF COVERAGE

40 CFR 280.101(d) requires the State to issue, within 60 days after USEPA approval of the use of a State fund, letters or certificates of coverage to operators covered by the fund. However, access to the UST fund under S.B. 64 is subject to many conditions which cannot be determined until after a release has occurred. If S.B. 64 is taken literally, it would be impossible for the Fire Marshal to issue certificates of coverage until after a release has occurred. We do not construe SB 64 in this manner. If the Fire Marshal could not issue certificates of coverage in advance, the Bills may fail in their central purpose of releasing the operator from the requirement to maintain private insurance. In the adopted rules below, the Board has

reconciled this potential conflict by construing the conditions of S.B. 64 as conditions under which the Fire Marshal issues the certificate of coverage, rather than as post-hoc conditions for payment.

The Board specifically requested comment, but received no response, as to whether there might be an alternative way to reconcile these provisions.

There is a very real possibility that an operator will qualify for a certificate, and later fail to meet the conditions. For example, one condition is that the operator have private insurance for the deductible. The operator could obtain the certificate, and then allow the private insurance to lapse by failing to pay premiums when due. For this reason the Board had proposed to limit certificates of coverage to one year. Annual renewal would have tended to limit the number of operators with certificates who subsequently "fall off the wagon". We are removing these provisions, however, because on further review, they do not appear to be necessary under the federal program.

#### APPEALABILITY OF CERTIFICATE OF COVERAGE

The Board proposed to allow operators to appeal to the Board the denial of a certificate of coverage by the Fire Marshal. The agencies objected to this in PC 1. They state that "No statutory authority can be found in the [Act]". The Board notes that Section 5(d) of the Act provides that "The Board shall have authority to conduct hearings ... upon other petitions for review of final determinations which are made pursuant to the Act or Board rule and which involve a subject which the Board is authorized to regulate..."

Although the Board has authority to hear these appeals, the Board has nonetheless deleted this from the proposal. Although the determination as to the certificate of coverage is based on the same considerations as the determination of actual coverage, which is appealable to the Board by statute, the Board notes that the determination occurs in advance of any environmental impact, at a time when the operators would be dealing solely with the Fire Marshal. The issues on a denial of a certificate are likely to be remote from the environmental issues with which the Board is best equipped to deal. The Board has therefore concluded that these appeals are best left to the Circuit Courts.

#### ROLE OF PRIVATE INSURANCE

S.B. 64 requires that the operator have private insurance for the deductible which is not covered by the Fund. The Bill is not otherwise more specific as to the nature of this insurance. The Board has included a provision that allows the use of any of the private mechanisms allowed under Board rules, which are derived from the USEPA rules. The mechanisms include insurance, bonds, letters of credit and trust funds. In addition, they

include self insurance for operators which meet a financial test, and guarantees from parent corporations which meet the financial test. The Board specifically requested comment, but received no response, as to whether this is consistent with the statutes, and as to whether use of these mechanisms to meet the deductible ought to be compulsory.

#### STANDBY TRUST FUND

As noted above, 40 CFR 280.103 and 35 Ill. Adm. Code 731.203 require the operator to establish a standby trust fund to receive the proceeds of private insurance. 35 Ill. Adm. Code 731.208 (40 CFR 280.108) governs the details of how the Agency draws on the standby trust. However, these provisions are different from the provisions in the Bills. Therefore, the Board has not directly required operators to establish standby trusts, or to require the Fund proceeds to be paid into such a trust. However, this is not to say that the USEPA private insurance requirements would not apply for the deductible, as discussed above.

#### CONCLUSION

The Board will adopt the Section set forth below. The Board will not file this Section with the Administrative Code Division until May 22, 1990, to allow time for post adoption comment particularly by the entities involved in the authorization process.

#### ORDER

The Board hereby adopts the following Section as 35 Ill. Adm. Code 731.200:

Section 731.200      UST State Fund

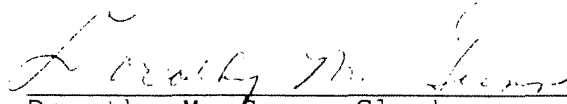
- a) Section 22.13 of the Act creates the Underground Storage Tank Fund (Fund). THE FUND IS INTENDED TO BE A STATE FUND BY WHICH PERSONS WHO QUALIFY FOR ACCESS TO THE FUND IN THE EVENT OF A RELEASE MAY SATISFY THE FINANCIAL RESPONSIBILITY REQUIREMENTS UNDER THIS PART. (Section 22.13 of the Act.)
- b) An owner or operator may apply to the Fire Marshal for a certificate of coverage, on forms provided by the Fire Marshal.
- c) If the Fire Marshal determines that the owner or operator would be entitled to receive funds from the Fund in the event of a release, it shall issue a certificate of coverage. The certificate must specify:
  - 1) Name of the owner or operator;
  - 2) Name and address of the facility;

- 3) The amount of funds for corrective action or compensating third parties which is assured by the Fund;
- 4) The effective date of the certificate.
- d) An owner or operator with a certificate is deemed in compliance with the requirements of this Subpart with respect to the facility listed in the certificate.
- e) Owners or operators may use any financial assurance mechanism or combination of mechanisms meeting the requirements of the other Sections of this Subpart to meet the Fund requirement that they have insurance for the deductible.
- f) IF THE AGENCY REFUSES TO REIMBURSE OR AUTHORIZES ONLY A PARTIAL REIMBURSEMENT, THE AFFECTED OWNER OR OPERATOR MAY PETITION THE BOARD FOR A HEARING pursuant to 35 Ill. Adm. Code 105. (Section 22.18b(g) of the Act).

(Source: Added at 14 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 24<sup>th</sup> day of April, 1990, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board