

ILLINOIS POLLUTION CONTROL BOARD
October 4, 2007

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO THE) R07-17
BOARD'S PROCEDURAL RULES AND) (Rulemaking – Procedural, Land)
UNDERGROUND STORAGE TANK)
REGULATIONS TO REFLECT P.A. 94-0274,)
P.A. 94-0276, P.A. 94-0824, P.A. 95-0131,)
P.A. 95-0177, AND P.A. 95-0408 (35 ILL.)
ADM. CODE 101.202, 732.103, 732.702,)
734.115, 734.710))

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

Today the Board adopts for second-notice publication a proposal amending its procedural rules and underground storage tank (UST) regulations. This proposal intends only to make these regulations consistent with recent amendments to the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2006)). In an order dated April 19, 2007, the Board adopted its proposal for first-notice publication. *See* 31 Ill. Reg. 6537, 6629, 6648 (May 4, 2007).

In this opinion, the Board first provides the procedural history of this rulemaking. The Board then addresses the single public comment received in the course of this proceeding (PC 1), which was filed by the Illinois Environmental Protection Agency (Agency). The Board then summarizes the six statutory amendments generating the proposed rule changes. The order then sets forth the language amending the Board's rules.

PROCEDURAL HISTORY

On April 19, 2007, the Board adopted for first-notice publication a proposal amending its procedural rules and UST regulations. In its opinion and order, the Board stated that “[t]his proposal intends only to make these regulations consistent with recent amendments to the Environmental Protection Act.” *See* 31 Ill. Reg. 6537, 6629, 6648 (May 4, 2007).

On May 14, 2006, the Board received a public comment filed by the Agency (PC 1).

The first hearing in this proceeding took place in Chicago on May 16, 2007 (Tr.1).¹ No person offered testimony or comment, and no exhibits were admitted into the record at the first hearing. The second hearing in this proceeding took place in Springfield on August 9, 2007 (Tr.

¹ Under Section 26 of the Act (415 ILCS 5/26 (2006)), hearings are not necessary with regard to the elements of this proposal addressing procedural rules. Section 27 of the Act (415 ILCS 5/27 (2006)) requires hearings with regard to proposed amendments to the UST regulations.

2). No person offered testimony or comment, and no exhibits were admitted into the record at the second hearing.

In a letter dated May 4, 2007, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct a study of the economic impact of this rulemaking proposal. *See* 415 ILCS 5/27(b) (2006). The Board has not received a response to this letter from DCEO. At the second hearing in this proceeding, no person testified or offered comment on the Board's request to DCEO. *See* Tr. 2 at 6.

In an order dated August 28, 2007, the hearing officer extended to September 25, 2007, the deadline for submitting written comments on the Board's first-notice proposal. *See* 35 Ill. Adm. Code 102.108(b). The order noted that, since the Board opened this rulemaking docket, the General Assembly and the Governor had acted upon legislation appearing to require three additional amendments to Section 101.202 of the Board's procedural rules. Specifically, three recent Public Acts add exceptions to the Act's definition of "pollution control facility." *See* Public Acts 95-0131, 95-0177, 95-0408; *see also* 415 ILCS 5/3.330 (2006), 35 Ill. Adm. Code 101.202. The hearing officer order invited comment on whether the Board should also amend its procedural rules to reflect these three more recent legislative amendments. The Board received no further public comment before the extended deadline.

DISCUSSION

On May 14, 2007, the Agency filed comments in this proceeding. Those comments noted that the Board proposed to amend Sections 732.702(d) and 734.710(d) of its UST regulations in order to make those regulations consistent with Public Act 94-0276. PC 1 at 1, citing 35 Ill. Adm. Code 732.702(d), 734.710(d); *see* 415 ILCS 5/57.10(c) (2006). The Agency proposed alternate language for the same subsections in order "[t]o incorporate the statutory language in a manner that reflects the effect of a no further remediation letter upon unremediated off-site property." PC 1 at 2. The order below incorporates the Agency's proposed alternate language for second notice. The Agency recommended one other technical change to the Board's first-notice proposal (*see* PC 1 at 3), and the order below also incorporates that technical amendment.

A hearing officer order dated August 28, 2007 noted that, since the Board opened this rulemaking docket on April 19, 2007, the General Assembly and the Governor had acted upon legislation appearing to require additional amendments to Section 101.202 of the Board's procedural rules. Specifically, Public Acts 95-0131, 95-0177, and 95-0408 each added an exception to the Act's definition of "pollution control facility." Proposed Amendments to the Boards' Procedural Rules and Underground Storage Tank Regulations to Reflect P.A. 94-0274, P.A. 94-0276, and P.A. 94-0824 (35 Ill. Adm. Code 101.202, 732.103, 732.702, 734.115, 734.710) R07-17, slip op. at 1 (Aug. 28, 2007), citing 415 ILCS 5/3.330 (2006).

The August 28, 2007 hearing officer order invited comment on whether the Board should also amend its procedural rules to reflect these three recent Public Acts. The same order also set forth rule language anticipated to be adopted by the Board at second notice. The Board has not received any public comment addressing this issue and in the order below adopts language

substantively unchanged from that proposed in the August 28, 2007 hearing officer order. Specifically, the Board also includes below in its order language based on Public Acts 95-0131, 95-0177, and 95-0408, each of which is summarized in the following section of this opinion.

SUMMARY OF PROPOSAL

This rulemaking proposes only those changes necessary to make the Board's regulations consistent with revisions to the Act adopted since the last rulemaking docket addressed statutory revisions. *See* Amendments to the Procedural Rules – "Pollution Control Facility" Definition Under P.A. 93-0998, P.A. 94-0094, and P.A. 94-0249 (35 Ill. Adm. Code 101.202) R06-9 (Nov. 17, 2005). Below, the Board summarizes each of the six statutory amendments generating this proposal.

Public Act 94-0274

Public Act 94-0274 (P.A. 94-0274), effective January 1, 2006, amended the Act's definitions with regard to certain activities taken by the Agency in the UST program. *See* 415 ILCS 5/57.2 (2004). Specifically, P.A. 94-0274 provides that, in Title XVI of the Act addressing petroleum USTs,

the term "owner" shall also mean any person who has submitted to the Agency a written election to proceed under this Title and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "no further remediation letter" by the Agency pursuant to this Title. P.A. 94-0274.

The Board proposes to amend the definition of "owner" in Sections 732.103 and 734.115 of its UST regulations (35 Ill. Adm. Code 732.103, 734.115) to reflect the statutory amendment enacted by P.A. 94-0274.

Public Act 94-0276

Public Act 94-0276 (P.A. 94-0276), effective January 1, 2006, amended the Act's provisions regarding no further remediation (NFR) letters issued by the Agency. *See* 415 ILCS 5/57.10(c). Specifically, P.A. 94-0276 amends the Act's subsection regarding the significance of an NFR letter by providing that an NFR letter "does not apply to off-site contamination related to the occurrence that has not been remediated due to denial of access to the off-site property." P.A. 94-0276. The Board proposes to amend its regulations in Sections 732.702 and 734.710 (35 Ill. Adm. Code 732.702, 734.710) to reflect the statutory amendment enacted by P.A. 92-0276 and the Agency's comments described above.

Public Act 94-0824

Public Act 94-0824 (P.A. 94-0824), effective June 2, 2006, amended the Act's definition of "pollution control facility." *See* 415 ILCS 5/3.330(a)(11.5). Specifically, P.A. 94-0824 added an exception to that definition:

processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that its managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are: (i) located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and (ii) in compliance with all applicable zoning requirements. P.A. 94-0824.

The Board proposes to amend the definition of “pollution control facility” in Section 101.202 (35 Ill. Adm. Code 101.202) of its procedural rules to reflect the statutory amendment enacted by P.A. 94-0824.

Public Act 95-0131

Public Act 95-0131 (P.A. 95-0131), effective August 13, 2007, amended the Act’s definition of “pollution control facility” (415 ILCS 5/3.330 (2006)). Specifically, P.A. 95-0131 adds an exception to that definition:

the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of this Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency. P.A. 95-0131.

The Board proposes to amend the definition of “pollution control facility” in Section 101.202 (35 Ill. Adm. Code 101.202) of its procedural rules to reflect the statutory amendment enacted by P.A. 95-0131.

Public Act 95-0177

Public Act 95-0177 (P.A. 95-0177), effective January 1, 2008, amends the Act’s definition of “pollution control facility” (415 ILCS 5/3.330 (2006)). Specifically, P.A. 95-0177 adds an exception to that definition:

a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department

of Transportation hazardous material requirements. For purposes of this Section only, “non-putrescible solid waste” means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents. P.A. 95-0177.

The Board proposes to amend the definition of “pollution control facility” in Section 101.202 (35 Ill. Adm. Code 101.202) of its procedural rules to reflect the statutory amendment enacted by P.A. 95-0177. The Board notes that Public Act 95-0177 does not take effect until January 1, 2008 and reflects that date in its order below. The Board also notes that its proposal differs in one technical respect from the language of P.A. 95-0177. Although the Public Act includes the term “petruscible,” the Board will instead use the term “putrescible” in order to be consistent with existing substantive regulations. *See, e.g.*, 35 Ill. Adm. Code 810.103 (defining terms including “putrescible waste” in solid waste disposal regulations).

Public Act 95-0408

Public Act 95-0408 (P.A. 95-0408), effective August 24, 2007, amends the Act’s definition of “pollution control facility” (415 ILCS 5/3.330 (2006)). Specifically, P.A. 95-0408 adds an exception to that definition: “a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received.” P.A. 95-0408. The Board proposes to amend the definition of “pollution control facility” in Section 101.202 (35 Ill. Adm. Code 101.202) of its procedural rules to reflect the statutory amendment enacted by P.A. 95-0408.

CONCLUSION

The Board will proceed to second notice with its proposal to amend the Board’s procedural rules and UST regulations at 35 Ill. Adm. Code 101, 732, and 734. The Board has held a hearing on the economic impact of the proposal, and the Board finds that the proposal is economically reasonable and technically feasible. Therefore, the Board will adopt the proposal for second notice.

ORDER

The Board directs the Clerk to file the following proposed amendments with the Joint Committee on Administrative Rules for second notice review. Proposed additions to Parts 101, 732, and 734 are underlined, and proposed deletions appear stricken.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE A: GENERAL PROVISIONS
 CHAPTER I: POLLUTION CONTROL BOARD

PART 101
 GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings
101.110	Public Participation
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

Section	
101.200	Definitions Contained in the Act
101.202	Definitions for Board's Procedural Rules

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND STATUTORY DECISION DEADLINES

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents by Reference
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section	
101.400	Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings
101.402	Intervention of Parties
101.403	Joinder of Parties
101.404	Agency as a Party in Interest
101.406	Consolidation of Claims
101.408	Severance of Claims

SUBPART E: MOTIONS

Section	
101.500	Filing of Motions and Responses
101.502	Motions Directed to the Hearing Officer
101.504	Contents of Motions and Responses

101.506	Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
101.508	Motions to Board Preliminary to Hearing
101.510	Motions to Cancel Hearing
101.512	Motions for Expedited Review
101.514	Motions to Stay Proceedings
101.516	Motions for Summary Judgment
101.518	Motions for Interlocutory Appeal from Hearing Officer Orders
101.520	Motions for Reconsideration
101.522	Motions for Extension of Time

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section	
101.600	Hearings
101.602	Notice of Board Hearings
101.604	Formal Board Transcript
101.606	Informal Recordings of the Proceedings
101.608	Default
101.610	Duties and Authority of the Hearing Officer
101.612	Schedule to Complete the Record
101.614	Production of Information
101.616	Discovery
101.618	Admissions
101.620	Interrogatories
101.622	Subpoenas and Depositions
101.624	Examination of Adverse, Hostile or Unwilling Witnesses
101.626	Information Produced at Hearing
101.628	Statements from Participants
101.630	Official Notice
101.632	Viewing of Premises

SUBPART G: ORAL ARGUMENT

Section	
101.700	Oral Argument

SUBPART H: SANCTIONS

Section	
101.800	Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders
101.802	Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section

101.902	Motions for Reconsideration
101.904	Relief from and Review of Final Opinions and Orders
101.906	Judicial Review of Board Orders
101.908	Interlocutory Appeal

101.APPENDIX A

Captions

<u>101.ILLUSTRATION A</u>	Enforcement Case
<u>101.ILLUSTRATION B</u>	Citizen's Enforcement Case
<u>101.ILLUSTRATION C</u>	Variance
<u>101.ILLUSTRATION D</u>	Adjusted Standard Petition
<u>101.ILLUSTRATION E</u>	Joint Petition for an Adjusted Standard
<u>101.ILLUSTRATION F</u>	Permit Appeal
<u>101.ILLUSTRATION G</u>	Underground Storage Tank Appeal
<u>101.ILLUSTRATION H</u>	Pollution Control Facility Siting Appeal
<u>101.ILLUSTRATION I</u>	Administrative Citation
<u>101.ILLUSTRATION J</u>	General Rulemaking
<u>101.ILLUSTRATION K</u>	Site-specific Rulemaking
101.APPENDIX B	Appearance Form
101.APPENDIX C	Withdrawal of Appearance Form
101.APPENDIX D	Notice of Filing
101.APPENDIX E	Certificate of Service
101.ILLUSTRATION A	Service by Non-Attorney
101.ILLUSTRATION B	Service by Attorney
101.APPENDIX F	Notice of Withdrawal (Repealed)
101.APPENDIX G	Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. _____, effective _____.

SUBPART B: DEFINITIONS

Section 101.202 Definitions for Board's Procedural Rules

Unless otherwise provided in 35 Ill. Adm. Code 101-130, or unless a different meaning of a word or term is clear from the context, the following definitions also apply to the Board's procedural rules, found in 35 Ill. Adm. Code 101 through 130:

“Act” means the Environmental Protection Act [415 ILCS 5/1].

“Adjudicatory proceeding” means an action of a quasi-judicial nature brought before the Board pursuant to authority granted to the Board under Section 5(d) of the Act or as otherwise provided by law. Adjudicatory proceedings include enforcement, variance, permit appeal, pollution control facility siting appeal, Underground Storage Tank (UST) Fund determination, water well set back exception, adjusted standard, and administrative citation proceedings. Adjudicatory proceedings do not include regulatory, quasi-legislative, or informational proceedings.

“Adjusted standard” or “AS” means an alternative standard granted by the Board in an adjudicatory proceeding pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 104.Subpart D. The adjusted standard applies instead of the rule or regulation of general applicability.

“Administrative citation” or “AC” means a citation issued pursuant to Section 31.1 of the Act by the Agency, or by a unit of local government acting as the Agency's delegate pursuant to Section 4(r) of the Act.

“Administrative citation review (appeal)” means a petition for review of an administrative citation filed pursuant to Section 31.1(d) of the Act. (See 35 Ill. Adm. Code 108.)

“Affidavit” means a sworn, signed statement witnessed by a notary public.

“Affidavit of service” means an affidavit that states that service of a document upon specified persons was made, and the manner in which, and date upon which, service was made.

“Agency” means the Illinois Environmental Protection Agency as established by Section 4 of the Act.

“Agency recommendation” means the document filed by the Agency pursuant to Sections 37(a) and 28.1(d)(3) of the Act in which the Agency provides its recommended disposition of a petition for variance or an adjusted standard. This includes a recommendation to deny, or a recommendation to grant with or without conditions. (See 35 Ill. Adm. Code 104.218 and 104.416.)

“Amicus curiae brief” means a brief filed in a proceeding by any interested person who is not a party. (See Sections 101.110 and 101.628 of this Part.)

“Applicant” means any person who submits, or has submitted, an application for a permit or for local siting approval pursuant to any of the authorities to issue permits or granting of siting approval identified in Sections 39, 39.1, and 39.5 of the Act.

“Article” means *any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map* [415 ILCS 5/7.1].

“Attorney General” means the Attorney General of the State of Illinois or representatives thereof.

“Authorized representative” means any person who is authorized to act on behalf of another person.

“Board” means the Illinois Pollution Control Board as created in Section 5 of the Act or, if applicable, its designee.

“Board decision” means an opinion or an order voted in favor of by at least three members of the Board at an open Board meeting except in a proceeding to remove a seal under Section 34(d) of the Act.

“Board designee” means an employee of the Board who has been given authority by the Board to carry out a function for the Board (e.g., the Clerk, Assistant Clerk of the Board, or hearing officer).

“Board meeting” means an open meeting held by the Board pursuant to Section 5(a) of the Act in which the Board makes its decisions and determinations.

“Board’s procedural rules” means the Board’s regulations set forth at 35 Ill. Adm. Code 101 through 130.

“Brief” means a written statement that contains a summary of the facts of a proceeding, the pertinent laws, and an argument of how the law applies to the facts supporting a position.

“CAAPP” means the Clean Air Act Permit Program, as adopted in Section 39.5 of the Act.

“Certificate of acceptance” means a certification, executed by a successful petitioner in a variance proceeding, in which the petitioner agrees to be bound by all terms and conditions that the Board has affixed to the grant of variance.

“Chairman” means the Chairman of the Board designated by the Governor pursuant to Section 5(a) of the Act.

“Citizen’s enforcement proceeding” means an enforcement action brought before the Board pursuant to Section 31(d) of the Act by any person who is not authorized to bring the action on behalf of the People of the State of Illinois.

“Clean Air Act” or “CAA” means the federal *Clean Air Act, as now and hereafter amended, 42 USC 7401 et seq.* [415 ILCS 5/ 39.5]

“Clean Water Act” means the federal Clean Water Act, 33 USC 1251 et seq.

“Clerk” means the Clerk of the Board.

“Complaint” means the initial filing that begins an enforcement proceeding pursuant to Section 31 of the Act and 35 Ill. Adm. Code 103.

“Compliance plan” means a detailed description of a program designed to achieve compliance with the Act and Board regulations.

“Copy” means *any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article* [415 ILCS 5/7.1].

“Counter-complaint” means a pleading that a respondent files setting forth a claim against a complainant. (See 35 Ill. Adm. Code 103.206.)

“Cross-complaint” means a pleading that a party files setting forth a claim against a co-party. (See 35 Ill. Adm. Code 103.206.)

“Cross-media impacts” means impacts that concern multiple environmental areas, such as air, land and/or water.

“Decision date” means the Board meeting immediately preceding the decision deadline.

“Decision deadline” means the last day of any decision period, as established by law, within which the Board is required to render a decision in an adjudicatory proceeding. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions respectively.)

“Decision period” means the period of time established by the Act within which the Board is required to make a Board decision in certain adjudicatory proceedings. (See Subpart C of this Part.) (See also Sections 38(a), 40, and 40.1 of the Act that establish 120-day decision deadlines for variances, permit appeals, and review of pollution control facility siting decisions, respectively.)

“Deinked stock” means *paper that has been processed to remove inks, clays, coatings, binders and other contaminants* [415 ILCS 20/2.1].

“Delegated unit” means the unit of local government to which the Agency has delegated its administrative citation or other function pursuant to Section 4(r) of the Act.

“DNR” means the Illinois Department of Natural Resources.

“Discovery” means a pre-hearing process that can be used to obtain facts and information about the adjudicatory proceeding in order to prepare for hearing. The discovery tools include depositions upon oral and written questions, written interrogatories, production of documents or things, and requests for admission.

“DOA” means the Illinois Department of Agriculture.

“Duplicative” means the matter is identical or substantially similar to one brought before the Board or another forum.

“Environmental Management System Agreement” or “EMSA” means the agreement between the Agency and a sponsor, entered into under Section 52.3 of the Act and 35 Ill. Adm. Code 187, that describes the innovative environmental measures to be implemented, schedules to attain goals, and mechanisms for accountability.

“Enforcement proceeding” means an adjudicatory proceeding brought upon a complaint filed pursuant to Section 31 of the Act by the Attorney General, State’s Attorney, or other persons, in which the complaint alleges violation of the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order.

“Ex parte communication” means *any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the Board. “Ex parte communication” does not include the following:*

statements by a person publicly made in a public forum, including pleadings, transcripts, and public comments made part of the proceeding’s record;

statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; and

statements made by a State employee of the Board to Board members or other employees of the Board. [5 ILCS 430/5-50(b)]. For purposes of this definition, “Board employee” means a person the Board employs on a full-time, part-time, contract or intern basis. (See Section 101.114 of this Part.)

“Fast Track rulemaking” means a Clean Air Act rulemaking conducted pursuant to Section 28.5 of the Act.

“Federally required rule” means *a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.40 [415 ILCS 5/28.2].*

“Filing” means the act of delivering a document or article into the custody of the Clerk with the intention of incorporating that document or article into the record of a proceeding before the Board. The Clerk’s Office is located at 100 West Randolph Street, Suite 11-500, Chicago, IL 60601.

“Final order” means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act. (See Subpart I of this Part.)

“Frivolous” means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

“Hearing” means a public proceeding conducted by a hearing officer where the parties and other interested persons, as provided for by law and the Board’s procedural rules, present evidence and argument regarding their positions.

“Hearing officer” means a person licensed to practice law in the State of Illinois who presides over hearings and otherwise carries out record development responsibilities as directed by the Board.

“IAPA” means the Illinois Administrative Procedure Act [5 ILCS 100].

“Identical-in-substance rules (or regulations)” means *State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois [415 ILCS 5/7.2].*

“Initial filing” means the filing that initiates a Board proceeding and opens a docket. For instance, the initial filing in an enforcement proceeding is the complaint; in a permit appeal it is a petition for review; and in a regulatory proceeding it is the proposal.

“Innovative environmental measures” means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied. (See 35 Ill. Adm. Code 106.Subpart G.)

“Inquiry hearing” means a hearing conducted by the Board for the purpose of seeking input and comment from the public regarding the need for a rulemaking proceeding in a specific area.

“Interlocutory appeal” means an appeal of a Board decision to the appellate court that is not dispositive of all the contested issues in the proceeding. (See Section 101.908 of this Part.) An interlocutory appeal may also be the appeal of a hearing officer ruling to the Board. (See Section 101.518 of this Part.)

“Intervenor” means a person, not originally a party to an adjudicatory proceeding, who voluntarily participates as a party in the proceeding with the leave of the Board. (See Section 101.402 of this Part.)

“Intervention” means the procedure by which a person, not originally a party to an adjudicatory proceeding, voluntarily comes into the proceeding as a party with the leave of the Board. (See Section 101.402 of this Part.)

“JCAR” means the Illinois General Assembly’s Joint Committee on Administrative Rules established by the IAPA (see 5 ILCS 100/5-90).

“Joinder” means the procedure by which the Board adds a person, not originally a party to an adjudicatory proceeding, as a party to the proceeding. (See Section 101.403 of this Part and 35 Ill. Adm. Code 103.206.)

“Misnomer” means a mistake in name, giving an incorrect name in a complaint or other document with respect to any properly included party.

“Motion” means a request made to the Board or the hearing officer for the purposes of obtaining a ruling or order directing or allowing some act to be done in favor of the movant. (See definition of “movant” in this Section.)

“Movant” means the person who files a motion.

“New pollution control facility” means *a pollution control facility initially permitted for development or construction after July 1, 1981; or the area of expansion beyond the boundary of a currently permitted pollution control facility; or a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste* [415 ILCS 5/3.330(b)].

“Non-disclosable information” means *information which constitutes a trade secret; information privileged against introduction in judicial proceedings; internal communications of the several agencies; information concerning secret manufacturing processes or confidential data submitted by any person under the Act* [415 ILCS 5/7(a)].

“Notice list” means the list of persons in a regulatory proceeding who will receive all Board opinions and orders and all hearing officer orders. Persons on a notice list generally do not receive copies of motions, public comments, or testimony. (See definition of “service list” in this Section.) (See also 35 Ill. Adm. Code 102.422.)

“Notice to reinstate” means a document filed that recommences the decision period after a decision deadline waiver has been filed. The notice will give the Board a full decision period in which to make a decision. (See Section 101.308 of this Part.)

“Oral argument” means a formal verbal statement of advocacy on a proceeding’s legal questions made at a Board meeting with the Board’s permission. (See Section 101.700 of this Part.)

“OSFM” means Office of the State Fire Marshal.

“OSFM appeal” means an appeal of an OSFM final decision concerning eligibility and deductibility made pursuant to Title XVI of the Act.

“Participant” means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

“Participant in a CAAPP Comment Process” means a person who takes part in a Clean Air Act Permit Program (CAAPP) permit hearing before the Agency or comments on a draft CAAPP permit.

“Party” means the person by or against whom a proceeding is brought.

“Party in interest” means the Agency when asked to conduct an investigation pursuant to Section 30 of the Act during an ongoing proceeding. (See Section 101.404 of this Part.)

“Peremptory rulemaking” means *any rulemaking that is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions that preclude compliance with the general rulemaking requirements of Section 5-40 of the IAPA and that preclude the exercise by the Board as to the content of the rule it is required to adopt.* [5 ILCS 100/5-50]

“Permit appeal” means an adjudicatory proceeding brought before the Board pursuant to Title X of the Act.

“Person” means *any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.* [415 ILCS 5/3.315]

“Petition” means the initial filing in an adjudicatory proceeding other than an enforcement proceeding, including permit appeals, OSFM appeals, UST appeals, appeals of pollution control facility siting decisions, variances and adjusted standards.

“Pilot project” means an innovative environmental project that covers one or more designated facilities, designed and implemented in the form of an EMSA. (See Section 52.3 of the Act.)

“Pollution control facility” means *any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act. The following are not pollution control facilities:*

waste storage sites regulated under 40 CFR 761.42;

sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3 of the Act;

abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

sites or facilities used by any person to specifically conduct a landscape composting operation;

regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21 of the Act;

the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated

materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) of the Act are exempt under this definition;

the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that is managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are: ~~(i)~~ located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and ~~(ii)~~ in compliance with all applicable zoning requirements [415 ILCS 5/3.330];

the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

the portion of a site or facility accepting exclusively general construction or demolition debris, located in a county with a population over 700,000 as of January 1, 2000, and operated and located in accordance with Section 22.38 of the ~~Act~~ Act;

the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products; ~~and~~

the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of the Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station [415 ILCS 5/3.330];

the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of the Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;

effective January 1, 2008, a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, “non-putrescible solid waste” means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents; and

a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received.

“Pollution control facility siting appeal” means an appeal of a decision made by a unit of local government filed with the Board pursuant to Section 40.1 of the Act.

“Postconsumer material” means *paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after the waste has been passed through its end usage as a consumer item, including used corrugated boxes, old newspapers, mixed waste paper, tabulating cards, and used cordage.* Additionally, it includes *all paper, paperboard, and other fibrous wastes that are diverted or separated from the municipal solid waste stream* [415 ILCS 20/3(f)(2)(i) and (ii)]. (See also definition of “recycled paper” in this Section.)

“Prehearing conference” means a meeting held in an adjudicatory case to determine the status of the proceedings. A prehearing conference may also be a meeting held in a regulatory proceeding prior to the hearing, the purposes of which *shall be to maximize understanding of the intent and application of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among participants to promote efficient use of time at hearing* [415 ILCS 5/27(d)]. (See 35 Ill. Adm. Code 102.404 and 102.406.)

“Proceeding” means an action conducted before the Board pursuant to authority granted under Section 5 of the Act or as otherwise provided by law. Board proceedings are of two types: quasi-legislative (rulemaking and inquiry proceedings) and quasi-judicial (adjudicatory proceedings).

“Proponent” means any person, not including the Board or its staff, who submits a regulatory proposal to the Board for the adoption, amendment, or repeal of a regulation.

“Provisional variance” means a short term variance sought by an applicant and issued by the Agency pursuant to Section 35(b) of the Act. (See 35 Ill. Adm. Code 104.Subpart C.)

“Public comment” means information submitted to the Board during a pending proceeding either by oral statement made at hearing or written statement filed with the Board.

“Qualitative description” means a narrative description pertaining to attributes and characteristics.

“Quantitative description” means a numerically based description pertaining to attributes and characteristics.

“RCRA variance” means a variance from a RCRA rule or a RCRA permit required pursuant to Section 21(f) of the Act.

“Record” means the official collection, as kept by the Clerk, of all documents and exhibits including pleadings, transcripts, and orders filed during the course of a proceeding.

“Recycled paper” means paper which contains at least 50% recovered paper material. The recovered paper material must contain at least 45% deinked stock or postconsumer material. (See also “postconsumer material” in this Section.)

“Registered agent” means a person registered with the Secretary of State for the purpose of accepting service for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service for that entity.

“Regulatory hearing” or “proceeding” means a hearing or proceeding held pursuant to Title VII of the Act or other applicable law with respect to regulations.

“Regulatory relief mechanisms” means variances, provisional variances and adjusted standards. (See 35 Ill. Adm. Code 104.)

“Representing” means, for purposes of Part 130, *describing, depicting, containing, constituting, reflecting or recording* [415 ILCS 5/7.1].

“Requester” means, for purposes of Part 130, the person seeking from the agency the material claimed or determined to be a trade secret (see 415 ILCS 5/7.1).

“Resource Conservation and Recovery Act” or “RCRA” means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.).

“Rulemaking” or “rulemaking proceeding” means a proceeding brought under Title VII of the Act or other applicable law for the purpose of adoption, amendment, or repeal of a regulation.

“Sanction” means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board’s procedural rules, Board orders or hearing officer orders. (See also Subpart H of this Part.)

“SDWA” means the federal Safe Drinking Water Act (42 USC 300f et seq.).

“Service” means delivery of documents upon a person. (See Sections 101.300(c) and 101.304 of this Part.)

“Service list” means the list of persons designated by the hearing officer or Clerk in a regulatory or adjudicatory proceeding upon whom participants must serve motions, prefiled questions and prefiled testimony and any other documents that the participants file with the Clerk unless the hearing officer otherwise directs. (See definition of “notice list” in this Section.) (See also 35 Ill. Adm. Code 102.422.)

“Severance” means the separation of a proceeding into two or more independent proceedings, each of which terminates in a separate, final judgment.

“Site-specific rule or regulation” means a proposed or adopted regulation, not of general applicability, that applies only to a specific facility, geographic site, or activity. (See 35 Ill. Adm. Code 102.208.)

“Sponsor” means the proponent of a pilot project that enters into an EMSA with the Agency.

“State enforcement proceeding” means an enforcement proceeding, other than a citizen’s enforcement proceeding, that is brought pursuant to Section 31 of the Act.

“Stay” means a temporary suspension of the regular progress of a proceeding pursuant to an order of the Board or by operation of law. (See Section 101.514 of this Part.)

“Subpoena” means a command to appear at a certain time and place to give testimony upon a certain matter.

“Subpoena duces tecum” means a document that compels the production of specific documents and other items at a specified time and place.

“Summary judgment” means the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. (See Section 101.516 of this Part.)

“Third party complaint” means a pleading that a respondent files setting forth a claim against a person who is not already a party to the proceeding. (See 35 Ill. Adm. Code 103.206.)

“Trade secret” means *the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.* [415 ILCS 5/3.490]

“Transcript” means the official recorded testimony from a hearing.

“USEPA” means the United States Environmental Protection Agency.

“Underground storage tank appeal” or “UST appeal” means an appeal of an Agency final decision made pursuant to Title XVI of the Act.

“UST” means underground storage tank.

“Variance” means a temporary exemption from any specified regulation, requirement or order of the Board granted to a petitioner by the Board pursuant to Title IX of the Act *upon presentation of adequate proof that compliance with the rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship* [415 ILCS 5/35(a)].

“Waiver” means the intentional relinquishing of a known right, usually with respect to a hearing before the Board or entry of a Board decision within the decision period. (See also Section 101.308 of this Part.)

“Web site” means the Board’s computer-based informational service accessed on the Internet at <http://www.ipcb.state.il.us>.

(Source: Amended at 31 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

PART 732
PETROLEUM UNDERGROUND STORAGE TANKS
(RELEASES REPORTED SEPTEMBER 23, 1994, THROUGH JUNE 23, 2002)

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AUTHORITY: Implementing Sections 22.12 and 57-57.17 and authorized by Section 57.14 of the Environmental Protection Act [415 ILCS 5/22.12, 57-57.17].

SOURCE: Adopted in R94-2 at 18 Ill. Reg. 15008, effective September 23, 1994; amended in R97-10 at 21 Ill. Reg. 3617, effective July 1, 1997; amended in R01-26 at 26 Ill. Reg. 7119, effective April 29, 2002; amended in R04-22/23 at 30 Ill. Reg. 4928, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. _____, effective _____.

NOTE: ~~Italics denotes statutory language.~~

SUBPART A: GENERAL

Section 732.103 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part shall be the same as that applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].

“Act” means the Environmental Protection Act [415 ILCS 5].

“Agency” means the Illinois Environmental Protection Agency.

“Alternative Technology” means a process or technique, other than conventional technology, used to perform a corrective action with respect to soils contaminated by releases of petroleum from an underground storage tank.

“Board” means the Illinois Pollution Control Board.

“Bodily Injury” means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank [415 ILCS 5/57.2].

“Class I Groundwater” means groundwater that meets the Class I: potable resource groundwater criteria set forth in the Board regulations adopted pursuant to the Illinois Groundwater Protection Act [415 ILCS 5/57.2].

“Class III Groundwater” means groundwater that meets the Class III: special resource groundwater criteria set forth in the Board regulations adopted pursuant to the Illinois Groundwater Protection Act [415 ILCS 5/57.2].

“Community water supply” means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents [415 ILCS 5/3.145].

“Confirmed Exceedence” means laboratory verification of an exceedence of the applicable remediation objectives.

“Confirmation of a Release” means the confirmation of a release of petroleum in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

“Confirmed Release” means a release of petroleum that has been confirmed in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

“Conventional Technology” means a process or technique to perform a corrective action by removal, transportation and disposal of soils contaminated by a release of petroleum from an underground storage tank in accordance with applicable laws and regulations, but without processing to remove petroleum from the soils.

“Corrective action” means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act [415 ILCS 5/57.2].

“County Highway” means county highway as defined in the Illinois Highway Code [605 ILCS 5].

“District Road” means a district road as defined in the Illinois Highway Code [605 ILCS 5].

“Environmental Land Use Control” means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200.

“Federal Landholding Entity” means that federal department, agency or instrumentality with the authority to occupy and control the day-to-day use, operation and management of Federally Owned Property.

“Federally Owned Property” means real property owned in fee simple by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

“Fill Material” means non-native or disturbed materials used to bed and backfill around an underground storage tank [415 ILCS 5/57.2].

“Financial Interest” means any ownership interest, legal or beneficial, or being in the relationship of director, officer, employee, or other active participant in the affairs of a party. Financial interest does not include ownership of publicly traded stock.

“Free Product” means a contaminant that is present as a non-aqueous phase liquid for chemicals whose melting point is less than 30°C (e.g., liquid not dissolved in water).

“Full Accounting” means a compilation of documentation to establish, substantiate and justify the nature and extent of the corrective action costs incurred by an owner or operator.

“Fund” *means the Underground Storage Tank Fund* [415 ILCS 5/57.2].

“GIS” means Geographic Information System.

“GPS” means Global Positioning System.

“Groundwater” *means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure* [415 ILCS 5/3.210].

“Half-day” means four hours, or a fraction thereof, of billable work time. Half-days must be based upon the total number of hours worked in one calendar day. The total number of half-days per calendar day may exceed two.

“Handling Charges” means administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.

“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.* [415 ILCS 5/57.2]

“Highway Authority” means the Illinois Department of Transportation *with respect to a State highway; the Illinois State Toll Highway Authority with respect to a toll highway; the county board with respect to a county highway or a county unit district road if a discretionary function is involved and the county superintendent of highways if a ministerial function is involved; the highway commissioner with respect to a township or district road not in a county or unit road district; or the corporate authorities of a municipality with respect to a municipal street* [605 ILCS 5/2-213].

“Highway Authority Agreement” means an agreement with a highway authority that meets the requirements of 35 Ill. Adm. Code 742.1020.

“IEMA” means the Illinois Emergency Management Agency.

“Indemnification” *means indemnification of an owner or operator for the amount of judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by any agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage*

suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator [415 ILCS 5/57.2].

“Indicator Contaminants” means the indicator contaminants set forth in Section 732.310 of this Part.

“Institutional Control” means a legal mechanism for imposing a restriction on land use as described in 35 Ill. Adm. Code 742, Subpart J.

“Land Use Control Memorandum of Agreement” means an agreement entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limits or places requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment, or that is used to perfect a No Further Remediation Letter that contains land use restrictions.

“Licensed Professional Engineer” *means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering [415 ILCS 5/57.2].*

“Licensed Professional Geologist” *means a person licensed under the laws of the State of Illinois to practice as a professional geologist [415 ILCS 5/57.2].*

“Man-made Pathway” means constructed routes that may allow for the transport of mobile petroleum free-liquid or petroleum-based vapors including, but not limited to, sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches or previously excavated and filled areas.

“Monitoring Well” means a water well intended for the purpose of determining groundwater quality or quantity.

“Natural Pathway” means natural routes for the transport of mobile petroleum free-liquid or petroleum-based vapors including, but not limited to, soil, groundwater, sand seams and lenses, and gravel seams and lenses.

“Non-community Water Supply” *means a public water supply that is not a community water supply [415 ILCS 5/3.145].*

“Occurrence” *means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank [415 ILCS 5/57.2].*

“OSFM” means the Office of the State Fire Marshal.

“Operator” means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (Derived from 42 USC 6991)

BOARD NOTE: A person who voluntarily undertakes action to remove an underground storage tank system from the ground shall not be deemed an “operator” merely by the undertaking of such action.

“Owner” means:

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

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use; (Derived from 42 USC 6991)

Any person who has submitted to the Agency a written election to proceed under the underground storage tank program and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a “No Further Remediation Letter” by the Agency pursuant to the underground storage tank program [415 ILCS 5/57.2].

“Perfect” or “Perfected” means recorded or filed for record so as to place the public on notice, or as otherwise provided in Section 732.703(c) and (d) of this Part.

“Person” means, for the purposes of interpreting the definitions of the terms “owner” or “operator,” an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body and shall include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 USC 6991)

“Petroleum” means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). (Derived from 42 USC 6991)

“Physical Soil Classification” means verification of geological conditions consistent with regulations for identifying and protecting potable resource groundwater or verification that subsurface strata are as generally mapped in the publication Illinois Geological Survey Circular (1984) entitled “Potential For

Contamination Of Shallow Aquifers In Illinois,” by Berg, Richard C., et al. Such classification may include review of soil borings, well logs, physical soil analysis, regional geologic maps, or other scientific publication. [415 ILCS 5/57.2]

“Potable” means generally fit for human consumption in accordance with accepted water supply principles and practices [415 ILCS 5/3.340].

"Practical quantitation limit" or "PQL" means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 732.104 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 732.104 of this Part.

“Property Damage” means physical injury to, destruction of, or contamination of tangible property owned by a person other than an owner or operator of the UST from which a release of petroleum has occurred and which tangible property is located off the site where the release occurred. Property damage includes all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank [415 ILCS 5/57.2].

“Public Water Supply” means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a “community water supply” or a “non-community water supply” [415 ILCS 5/3.365].

“Registration” means registration of an underground storage tank with the OSFM in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4].

“Regulated recharge area” means a compact geographic area, as determined by the Board, the geology of which renders a potable resource groundwater particularly susceptible to contamination [415 ILCS 5/3.390].

“Regulated Substance” means any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC Sec. 9601(14)) (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (42 USC 6921 et seq.)), and petroleum. (Derived from 42 USC 6991)

“Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils [415 ILCS 5/57.2].

“Residential Tank” means an underground storage tank located on property used primarily for dwelling purposes.

“Residential Unit” means a structure used primarily for dwelling purposes including multi-unit dwellings such as apartment buildings, condominiums, cooperatives or dormitories.

“Right-of-way” means the land, or interest therein, acquired for or devoted to a highway [605 ILCS 5/2-217].

“Setback Zone” means a geographic area, designated pursuant to the Act or regulations (see 35 Ill. Adm. Code, Subtitle F), containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwater [415 ILCS 5/3.450].

“Site” means any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way [415 ILCS 5/57.2].

“State Highway” means a State highway as defined in the Illinois Highway Code [605 ILCS 5].

“Stratigraphic Unit” means a site-specific geologic unit of native deposited material and/or bedrock of varying thickness (e.g., sand, gravel, silt, clay, bedrock, etc.). A change in stratigraphic unit is recognized by a clearly distinct contrast in geologic material or a change in physical features within a zone of gradation. For the purposes of this Part, a change in stratigraphic unit is identified by one or a combination of differences in physical features such as texture, cementation, fabric, composition, density, and/or permeability of the native material and/or bedrock.

“Street” means a street as defined in the Illinois Highway Code [605 ILCS 5].

“Surface Body of Water” or “Surface Water Body” means a natural or man-made body of water on the ground surface including, but not limited to, lakes, ponds, reservoirs, retention ponds, rivers, streams, creeks and drainage ditches. Surface body of water does not include puddles or other accumulations of precipitation, run-off or groundwater in UST excavations.

“Tank Field” means all underground storage tanks at a site that reside within a circle with a 100 foot radius.

“Toll Highway” means a toll highway as defined in the Toll Highway Act [605 ILCS 10].

“Township Road” means a township road as defined in the Illinois Highway Code [605 ILCS 5].

“Underground Storage Tank” or “UST” means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected thereto:

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

Septic tank;

Pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.), or the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.), or which is an intrastate pipeline facility regulated under State laws as provided in either of these provisions of law, and that is determined by the Secretary of Energy 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 waste water 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 on or above the surface of the floor. (Derived from 42 USC 6991)

The term “underground storage tank” shall also mean 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 [415 ILCS 5/57.2].

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

“Wellhead Protection Area” means the wellhead protection area of a community water supply well as determined under the Agency’s wellhead protection program pursuant to 42 USC 300h-7.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section 732.702 Contents of a No Further Remediation Letter

A No Further Remediation Letter issued pursuant to this Part shall include all of the following:

- a) An acknowledgment that the requirements of the applicable report were satisfied;
- b) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries, or, for purposes of Section 732.703(d) of this Part, other means sufficient to identify site location with particularity;
- c) A statement that the remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;
- d) ~~A Except for off-site contamination related to the occurrence that has not been remediated due to denial of access to the off-site property [415 ILCS 5/57.10(e)], statement that the Agency's issuance of the No Further Remediation Letter~~

signifies that, except for off-site contamination related to the occurrence that has not been remediated due to denial of access to the off-site property:

- 1) *All corrective action requirements under Title XVI of the Act and this Part applicable to the occurrence have been complied with;*
 - 2) *All corrective action concerning the remediation of the occurrence has been completed; and*
 - 3) *No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment [415 ILCS 5/57.10(c)] [415 ILCS 5/57.10(e)(1) (3)], or, if the No Further Remediation Letter is issued pursuant to Section 732.411(e) of this Part, that the owner or operator has demonstrated to the Agency's satisfaction an inability to obtain access to an off-site property despite best efforts and therefore is not required to perform corrective action on the off-site property in order to satisfy the corrective action requirements of this Part, but is not relieved of responsibility to clean up portions of the release that have migrated off-site;*
- e) The prohibition under Section 732.703(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;
 - f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;
 - g) The recording obligations pursuant to Section 732.703 of this Part;
 - h) The opportunity to request a change in the recorded land use pursuant to Section 732.703(e) of this Part;
 - i) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]; and
 - j) Any other provisions agreed to by the Agency and the owner or operator.

(Source: Amended at 31 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

PART 734
PETROLEUM UNDERGROUND STORAGE TANKS
(RELEASES REPORTED ON OR AFTER JUNE 24, 2002)

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AUTHORITY: Implementing Sections 22.12 and 57 - 57.17 and authorized by Sections 5, 22, 27, and 57.14A of the Environmental Protection Act [415 ILCS 5/5, 22, 22.12, 27, and 57 - 57.17]

SOURCE: Adopted in R04-22/23 at 30 Ill. Reg.5090, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL

Section 734.115 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part must be the same as those applied to the same words or terms in the Environmental Protection Act [415 ILCS 5].

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

"Agency" means the Illinois Environmental Protection Agency.

"Alternative Technology" means a process or technique, other than conventional technology, used to perform a corrective action with respect to soils contaminated by releases of petroleum from an underground storage tank.

"Board" means the Illinois Pollution Control Board.

"Bodily Injury" means *bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank* [415 ILCS 5/57.2].

"Community Water Supply" means *a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents* [415 ILCS 5/3.145].

"Confirmation of a release" means the confirmation of a release of petroleum in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Confirmed Release" means a release of petroleum that has been confirmed in accordance with regulations promulgated by the Office of the State Fire Marshal at 41 Ill. Adm. Code 170.

"Conventional Technology" means a process or technique to perform a corrective action by removal, transportation, and disposal of soils contaminated by a release of petroleum from an underground storage tank in accordance with applicable laws and regulations, but without processing to remove petroleum from the soils.

"Corrective Action" means *activities associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act* [415 ILCS 5/57.2].

"County highway" means county highway as defined in the Illinois Highway Code [605 ILCS 5].

"District road" means district road as defined in the Illinois Highway Code [605 ILCS 5].

“Environmental Land Use Control” means Environmental Land Use Control as defined in 35 Ill. Adm. Code 742.200.

“Federal Landholding Entity” means that federal department, agency, or instrumentality with the authority to occupy and control the day-to-day use, operation, and management of Federally Owned Property.

“Federally Owned Property” means real property owned in fee simple by the United States on which an institutional control is or institutional controls are sought to be placed in accordance with this Part.

“Fill Material” *means non-native or disturbed materials used to bed and backfill around an underground storage tank* [415 ILCS 5/57.2].

“Financial interest” means any ownership interest, legal or beneficial, or being in the relationship of director, officer, employee, or other active participant in the affairs of a party. Financial interest does not include ownership of publicly traded stock.

"Free Product" means a contaminant that is present as a non-aqueous phase liquid for chemicals whose melting point is less than 30° C (e.g., liquid not dissolved in water).

"Full Accounting" means a compilation of documentation to establish, substantiate, and justify the nature and extent of the corrective action costs incurred by an owner or operator.

“Fund” *means the Underground Storage Tank Fund* [415 ILCS 5/57.2].

“GIS” means Geographic Information System.

“GPS” means Global Positioning System.

“Groundwater” *means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure* [415 ILCS 5/3.210].

“Half-day” means four hours, or a fraction thereof, of billable work time. Half-days must be based upon the total number of hours worked in one calendar day. The total number of half-days per calendar day may exceed two.

"Handling Charges" means administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.

“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 [415 ILCS 5/57.2].

“Highway authority” means the Illinois Department of Transportation with respect to a State highway; the Illinois State Toll Highway Authority with respect to a toll highway; the county board with respect to a county highway or a county unit district road if a discretionary function is involved and the county superintendent of highways if a ministerial function is involved; the highway commissioner with respect to a township or district road not in a county or unit road district; or the corporate authorities of a municipality with respect to a municipal street [605 ILCS 5/2-213].

“Highway Authority Agreement” means an agreement with a highway authority that meets the requirements of 35 Ill. Adm. Code 742.1020.

"IEMA" means the Illinois Emergency Management Agency.

“Indemnification” means indemnification of an owner or operator for the amount of judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by any agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator [415 ILCS 5/57.2].

“Indicator contaminants” means the indicator contaminants set forth in Section 734.405 of this Part.

“Institutional Control” means a legal mechanism for imposing a restriction on land use as described in 35 Ill. Adm. Code 742.Subpart J.

“Land Use Control Memorandum of Agreement” means an agreement entered into between one or more agencies of the United States and the Illinois Environmental Protection Agency that limits or places requirements upon the use of Federally Owned Property for the purpose of protecting human health or the environment, or that is used to perfect a No Further Remediation Letter that contains land use restrictions.

“Licensed Professional Engineer” means a person, corporation or partnership licensed under the laws of the State of Illinois to practice professional engineering [415 ILCS 5/57.2].

“Licensed Professional Geologist” means a person licensed under the laws of the State of Illinois to practice as a professional geologist [415 ILCS 5/57.2].

"Man-made Pathway" means a constructed route that may allow for the transport of mobile petroleum free-liquid or petroleum-based vapors including but not limited to sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches, or previously excavated and filled areas.

"Monitoring Well" means a water well intended for the purpose of determining groundwater quality or quantity.

"Natural Pathway" means a natural route for the transport of mobile petroleum free-liquid or petroleum-based vapors including but not limited to soil, groundwater, sand seams and lenses, and gravel seams and lenses.

"Non-community water supply" *means a public water supply that is not a community water supply* [415 ILCS 5/3.145].

"Occurrence" *means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank* [415 ILCS 5/57.2].

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

"Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (Derived from 42 USC 6991)

BOARD NOTE: A person who voluntarily undertakes action to remove an underground storage tank system from the ground must not be deemed an "operator" merely by the undertaking of such action.

"Owner" means:

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

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use; (Derived from 42 USC 6991)

Any person who has submitted to the Agency a written election to proceed under the underground storage tank program and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "No Further Remediation Letter" by the Agency pursuant to

the underground storage tank program [415 ILCS 5/57.2].

“Perfect” or “Perfected” means recorded or filed for record so as to place the public on notice, or as otherwise provided in Sections 734.715(c) and (d) of this Part.

"Person" means, for the purposes of interpreting the definitions of the terms "owner" or "operator," an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and must include the United States Government and each department, agency, and instrumentality of the United States. (Derived from 42 USC 6991)

“Petroleum” means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). (Derived from 42 USC 6991)

“Potable” *means generally fit for human consumption in accordance with accepted water supply principles and practices* [415 ILCS 5/3.340].

"Practical quantitation limit" (or “PQL”) means the lowest concentration that can be reliably measured within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions in accordance with "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 734.120 of this Part. For filtered water samples, PQL also means the Method Detection Limit or Estimated Detection Limit in accordance with the applicable method revision in: "Methods for the Determination of Metals in Environmental Samples," EPA Publication No. EPA/600/4-91/010; "Methods for the Determination of Metals in Environmental Samples, Supplement I," EPA Publication No. EPA/600/R-94/111; "Methods for the Determination of Organic Compounds in Drinking Water," EPA Publication No. EPA/600/4-88/039; "Methods for the Determination of Organic Compounds in Drinking Water, Supplement II," EPA Publication No. EPA/600/R-92/129; or "Methods for the Determination of Organic Compounds in Drinking Water, Supplement III," EPA Publication No. EPA/600/R-95/131, all of which are incorporated by reference at Section 734.120 of this Part.

“Property Damage” *means physical injury to, destruction of, or contamination of tangible property* owned by a person other than an owner or operator of the UST from which a release of petroleum has occurred and which tangible property is located off the site where the release occurred. Property damage includes *all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an*

underground storage tank [415 ILCS 5/57.2].

“Public Water Supply” means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a “community water supply” or a “non-community water supply” [415 ILCS 5/3.365].

"Registration" means registration of an underground storage tank with the OSFM in accordance with Section 4 of the Gasoline Storage Act [430 ILCS 15/4].

“Regulated Recharge Area” means a compact geographic area, as determined by the Board, ~~{(35 Ill. Adm. Code Subtitle F)}~~, the geology of which renders a potable resource groundwater particularly susceptible to contamination [415 ILCS 5/3.390].

“Regulated Substance” means any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ~~{(42 USC 9601(14))}~~ (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act ~~{(42 USC 6921 et seq.)}~~), and petroleum. (Derived from 42 USC 6991)

“Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils [415 ILCS 5/57.2].

"Residential Tank" means an underground storage tank located on property used primarily for dwelling purposes.

"Residential Unit" means a structure used primarily for dwelling purposes including multi-unit dwellings such as apartment buildings, condominiums, cooperatives, or dormitories.

“Right-of-way” means the land, or interest therein, acquired for or devoted to a highway [605 ILCS 5/2-217].

“Setback Zone” means a geographic area, designated pursuant to the Act [415 ILCS 5/14.1, 5/14.2, 5/14.3] or regulations [35 Ill. Adm. Code Subtitle F], containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwater [415 ILCS 5/3.450].

“Site” means any single location, place, tract of land or parcel of property, including contiguous property not separated by a public right-of-way [415 ILCS 5/57.2].

“State highway” means ~~state~~ a State highway as defined in the Illinois Highway Code [605 ILCS 5].

“Street” means a street as defined in the Illinois Highway Code [605 ILCS 5].

"Surface Body of Water" or "Surface Water Body" means a natural or man-made body of water on the ground surface including but not limited to lakes, ponds, reservoirs, retention ponds, rivers, streams, creeks, and drainage ditches. Surface body of water does not include puddles or other accumulations of precipitation, run-off, or groundwater in UST excavations.

“Toll highway” means a toll highway as defined in the Toll Highway Act, [605 ILCS 10].

“Township road” means township road as defined in the Illinois Highway Code [605 ILCS 5].

"Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any of the following or any pipes connected thereto:

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

Septic tank;

Pipeline facility (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 ~~{(49 USC App. 1671 et seq.)}~~, or the Hazardous Liquid Pipeline Safety Act of 1979 ~~{(49 USC App. 2001 et seq.)}~~, or which is an intrastate pipeline facility regulated under State laws as provided in either of these provisions of law, and that is determined by the Secretary of Energy 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 waste water 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 on or above the surface of the floor. (Derived from 42 USC § 6991)

The term “underground storage tank” shall also mean 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 [415 ILCS 5/57.2].

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

“Wellhead Protection Area” means the wellhead protection area of a community water supply well as determined under the Agency’s wellhead protection program pursuant to 42 USC §-300h-7.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

SUBPART G: NO FURTHER REMEDIATION LETTERS AND RECORDING REQUIREMENTS

Section 734.710 Contents of a No Further Remediation Letter

A No Further Remediation Letter issued pursuant to this Part must include all of the following:

- a) An acknowledgment that the requirements of the applicable report were satisfied;
- b) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries, or, for the purposes of Section 734.715(d) of this Part, other means sufficient to identify the site location with particularity;
- c) A statement that the remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;
- d) A Except for off site contamination related to the occurrence that has not been remediated due to denial of access to the off site property [415 ILCS 5/57.10(e)]

statement that the Agency's issuance of the No Further Remediation Letter signifies that, except for off-site contamination related to the occurrence that has not been remediated due to denial of access to the off-site property:

- 1) *All statutory and regulatory corrective action requirements applicable to the occurrence have been complied with;*
 - 2) *All corrective action concerning the remediation of the occurrence has been completed; and*
 - 3) *No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment [415 ILCS 5/57.10(c)] [415 ILCS 5/57.10(e)(1) (3)], or, if the No Further Remediation Letter is issued pursuant to Section 734.350(e) of this Part, that the owner or operator has demonstrated to the Agency's satisfaction an inability to obtain access to an off-site property despite best efforts and therefore is not required to perform corrective action on the off-site property in order to satisfy the corrective action requirements of this Part, but is not relieved of responsibility to clean up portions of the release that have migrated off-site;*
- e) The prohibition under Section 734.715(e) of this Part against the use of any site in a manner inconsistent with any applicable land use limitation, without additional appropriate remedial activities;
 - f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in voidance of the No Further Remediation Letter;
 - g) The recording obligations pursuant to Section 734.715 of this Part;
 - h) The opportunity to request a change in the recorded land use pursuant to Section 734.715(e) of this Part;
 - i) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]; and
 - j) Any other provisions agreed to by the Agency and the owner or operator.

(Source: Amended at 31 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 4, 2007, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board