

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO REGULATION) R01-26
OF PETROLEUM LEAKING UNDERGROUND) (Rulemaking - Land)
STORAGE TANKS, 35 ILL. ADM.732)

EXH

12

SUGGESTED REVISIONS
SUBMITTED BY THE UNITED STATES DEPARTMENT OF DEFENSE

NOW COMES the U.S. Department of Defense ("DoD"), through one of its attorneys, and submits to the Illinois Pollution Control Board (the "Board") certain recommended changes to the text of the Part 732 rulemaking proposal filed with this Board by the Illinois Environmental Protection Agency (the "Agency") on December 6, 2000 and to certain proposed changes contained in the Agency's subsequent Motion to Amend dated February 16, 2001. DoD recommends that the following revisions be made:

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

SUBPART A: GENERAL

Section 732.103 Definitions

"GIS" means Geographic Information System

"GPS" means Global Positioning System

"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.

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

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:

- b) A description of the location of the affected property by adequate legal description; ~~or~~ by reference to a plat showing its boundaries, or other means sufficient to identify site location with particularity;

Section 732.703 Duty to Record a No Further Remediation Letter

- d) For sites located on Federally Owned Property for which the Federal Landholding Entity does not have the authority under federal law to record institutional controls on the chain of title, the following requirements shall apply:
 - 1) To perfect a No Further Remediation Letter containing any restriction on future land use(s), the Federal Landholding Entity or Entities responsible for the site must enter into a Land Use Control Memorandum of Agreement ("LUC MOA") with the Agency that requires the Federal Landholding Entity to do, at a minimum, the following:
 - A) Identify the location on the Federally Owned Property of ~~each~~ the site subject to a the No Further Remediation Letter. Such identification shall be by means of common address, notations in any available facility master land use plan, site specific GIS or GPS coordinates, plat maps, or any other means that identifies the site in question with particularity;
 - B) Implement periodic site inspection procedures that ensure oversight by the Federal Landholding Entities of any land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;

- C) Implement procedures for the Federal Landholding Entities to periodically advise the Agency of continued compliance with all maintenance and inspection requirements set forth in the LUC MOA;
 - D) Implement procedures for the Federal Landholding Entities to notify the Agency of any planned or emergency changes in land use that may adversely impact land use limitations or restrictions imposed pursuant to the No Further Remediation Letter;
 - E) Notify the Agency at least 60 days in advance of a conveyance by deed or fee simple title, by the Federal Landholding Entities, of a the site or sites subject to a the No Further Remediation Letter, to any entity that will not remain or become a Federal Landholding Entity, and provide the Agency with information about how the Federal Landholding Entities will ensure the No Further Remediation Letter is recorded on the chain of title upon transfer of the property; and
 - F) Attach to the LUC MOA a copy of the No Further Remediation Letter for each site subject to the LUC MOA.
- 2) To perfect a No Further Remediation Letter containing no restriction(s) on future land use, the Federal Landholding Entity shall submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days after receipt of the letter. The letter shall be filed in accordance with Illinois law so it forms a permanent part of the chain of title. The Federal Landholding Entity shall obtain and submit to the Agency, within 30 days after recording, a copy of the letter demonstrating that the recording requirements have been satisfied.
- 3) Failure to comply with the requirements of this subsection and the LUC MOA may result in voidance of the No Further Remediation Letter as well as any other penalties that may be available.
- e) At no time shall any site for which a land use limitation has been imposed as a result of corrective action under this Part be used in a manner inconsistent with the land use limitation set forth in the No Further Remediation Letter. The land use limitation specified in the No Further Remediation Letter may be revised only by the perfecting of a subsequent No Further Remediation Letter, issued pursuant to Title XVII of the Act and regulations thereunder, following further investigation or remediation that demonstrates the attainment of objectives appropriate for the new land use.

Section 732.704

Voidance of a No Further Remediation Letter

a)

- 9) The failure to comply with the requirements of Section 732.703(d) of this Part or the failure to record a No Further Remediation Letter perfected in accordance with Section 732.703(d) within 45 days following the transfer of the Federally Owned Property subject to the No Further Remediation Letter to any entity that will not remain or become a Federal Landholding Entity; or