

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

FEB 18 2011

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
 )  
UNDERGROUND STORAGE TANKS )  
(35 ILL. ADM. CODE 731) AND )  
PETROLEUM LEAKING )  
UNDERGROUND STORAGE TANKS )  
(35 ILL. ADM CODE 732 and 734) )  
 )

R 11-22  
(Rulemaking - Land)

NOTICE OF FILING

TO:

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's Motion for Acceptance, Appearance of Attorney, Certification of Origination, Statement of Reasons, Synopsis of Testimony, Statement Regarding Material Incorporated by Reference, and the Proposed Amendments, for the above-captioned proceeding, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Kyle Rominger  
Kyle Rominger  
Deputy General Counsel  
Division of Legal Counsel

DATE: 2-17-11  
Illinois Environmental Protection Agency  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544

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R 11-22  
(Rulemaking - Land)

MOTION FOR ACCEPTANCE

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") and moves, pursuant to 35 Ill. Adm. Code 102.200 and 102.202, that the Illinois Pollution Control Board ("Board") accept for hearing the Illinois EPA's proposal for amendments to 35 Ill. Adm. Code 731, 732, and 734. This proposal includes: 1) an appearance for the attorneys representing the Agency; 2) a Certification of Origination; 3) a Statement of Reasons, Synopsis of Testimony, and Statement Regarding Material Incorporated by Reference; 4) the proposed amendments; 5) proof of service upon all persons required to be served pursuant to 35 Ill. Adm. Code 102.422; and 6) an electronic version of the proposed amendments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Douglas P. Scott  
Douglas P. Scott  
Director

DATED: February 10, 2011  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-3397

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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R 11-28  
(Rulemaking - Land)

APPEARANCE

The undersigned, as one of its attorneys, hereby enters an Appearance on behalf of the Illinois Environmental Protection Agency.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Kyle Rominger  
Kyle Rominger  
Deputy General Counsel  
Division of Legal Counsel

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R 11-22  
(Rulemaking – Land)

**CERTIFICATION OF ORIGINATION**

**NOW COMES** the Illinois Environmental Protection Agency (“Illinois EPA”) and, pursuant to 35 Ill. Adm. Code 102.202(i), certifies that this proposal for amendments to 35 Ill. Adm. Code 731, 732 and 734 amends the most recent version of that rule as published on the Illinois Pollution Control Board’s website.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Kyle Rominger  
Kyle Rominger  
Deputy General Counsel

DATE: 2-17-11

1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217)782-5544

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R 11-22  
(Rulemaking – Land)

STATEMENT OF REASONS, SYNOPSIS OF TESTIMONY, AND STATEMENT  
REGARDING MATERIAL INCORPORATED BY REFERENCE

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") and, pursuant to 35 Ill. Adm. Code 102.202, submits its Statement of Reasons, Synopsis of Testimony, and Statement Regarding Material Incorporated by Reference for the above referenced proceeding.

STATEMENT OF REASONS

I. Facts in Support, Purpose and Effect

A. Background

In this proposal, the Illinois EPA submits proposed amendments to the Pollution Control Board ("Board") rules governing the Leaking Underground Storage Tank ("LUST") Program. This proposal is submitted pursuant to Public Act 96-908, which amended several of the LUST Program's statutory provisions. Public Act 96-908 was signed into law and became effective on June 8, 2010. A copy of Public Act 96-908 is included as Attachment A in this proposal.

B. Regulatory Development

The Illinois EPA developed the proposed regulations with input from the regulated community. The amendments were initially drafted by an Illinois EPA workgroup, then

distributed to the Illinois Petroleum Marketers Association and the Illinois Petroleum Council for review and comment. The Illinois EPA did not receive any comments on the proposed rules.

### C. Description of the Proposed Regulations

The amendments update 35 Ill. Adm. Code 731, 732, and 734 (“Part 731”, “Part 732”, and “Part 734”, respectively). Part 731 is updated to clarify the application of Part 734 to owners and operators subject to Title XVI of the Environmental Protection Act (“Act”). A repeal of Part 732 is proposed because it no longer has any application after the enactment of P.A. 96-908. Finally, Part 734 is updated to reflect Title XVI as amended by P.A. 96-908. The following is a brief description of the proposed amendments.

#### Amendments to Part 731

1. The Authority note is amended to (i) update citations to the Act and (ii) delete a reference to Section 22.13 of the Act, which was repealed by P.A. 88-496.
2. A new subsection 731.110(d) clarifies the applicability of Part 734 to the remediation of UST releases subject to Title XVI of the Act. Title XVI addresses, inter alia, “procedures for the remediation of underground storage tank sites due to the release and other substances regulated under [Title XVI] from certain underground storage tanks or related tank systems”. 415 ILCS 5/57. The current regulations implementing Title XVI are found in Part 734.
3. Because heating oil tanks are specifically mentioned in subsection 731.110(e), a new Board Note is proposed for that subsection to clarify the applicability of Part 734 to the remediation of heating oil UST releases. Heating oil is petroleum, and heating oil USTs are expressly addressed in subsections 57.1(b) and 57.5(g) of Title XVI. Therefore, the proposed Board Note directs owners and operators of heating oil USTs to

Part 734, the current regulations implementing Title XVI. In addition, the existing Board Note under subsection 731.110(e) is amended to correct a citation to subsection 22.4(d)(5) of the Act, which was changed to subsection 22.4(d)(4) by P.A. 87-1088.

#### Amendments to Part 732

Previously, the applicability of Title XVI of the Act to a particular UST release was based upon the date the release was reported. As Title XVI was amended, releases reported under previous versions of the Title remained subject to the requirements contained in those previous versions. See 415 ILCS 5/57.13 as added by Section 15 of P.A. 88-496, and as amended by Section 5 of P.A. 92-554 and Section 950 of P.A. 95-331. This eventually resulted in the adoption of two sets of rules to implement Title XVI: Parts 732 and 734. Part 732 was the first Part adopted to implement Title XVI. When the Board adopted Part 734 in 2006, Part 732 remained applicable to UST releases reported on or after September 23, 1994, but prior to June 24, 2002.

Public Act 96-908 deleted the provisions specifying the applicability of different versions of Title XVI based on the date releases were reported. It replaced these provisions with a requirement that makes all UST releases for which a No Further Remediation Letter is issued on or after June 8, 2010, subject to Title XVI of the Act. See 415 ILCS 5/57.13. In other words, all UST releases subject to Title XVI that are closed on or after June 8, 2010, are subject to the current Title XVI its implementing rules in Part 734. Because of this change Part 732 is no longer needed, and the Illinois EPA proposes its repeal. A copy of Part 732 is included as Attachment B in this proposal.

### Amendments to Part 734

1. Section 734.100 is amended to reflect the effectiveness of Part 734 to all UST releases that are closed on or after June 8, 2010. Subsection 734.100(a)(1) is amended to provide that the Illinois EPA can take into account activities conducted prior to June 8, 2010, when determining whether response requirements have been met. Subsection 734.100(b) is amended to include statutory language stating that costs incurred prior to June 8, 2010, and work conducted prior to June 8, 2010, must be reviewed under the law in effect at the time the costs were incurred or the work was conducted. Language is also added to clarify that budgets and costs associated with plans approved prior June 8, 2010, must also be reviewed under the law in effect at the time the plan was approved.

2. Section 734.105 is amended by deleting subsections (a) and (d) because elections into Part 734 are no longer applicable. As noted above, all open incidents are now subject to Part 734.

3. Section 734.115 is amended by deleting the definition of “half-day”. This term is not used in Part 734. In addition, a definition of “residential property” is being added. This term is used in the statutory language being added in subsections 734.360(b) and 734.632(a) and (d). It is also used in new subsection 734.630(ddd). The definition simply reiterates the definition of “residential property” in the Board’s Tiered Approach to Corrective Action Objectives (“TACO”) rules. See 35 Ill. Adm. Code 742.200.

4. Section 734.120 is amended by updating the citation to the ASTM standard incorporated by reference.



5. Sections 734.145 and 734.210 are updated to reflect recent changes to Office of the State Fire Marshal (“OSFM”) regulations. A copy of the pertinent OSFM regulations is included as Attachment C in this proposal.

Subsection 734.210(a) is amended to mirror language in 41 Ill. Adm. Code 176.320(a) of the OSFM’s rules, which requires immediate reporting of releases and immediate identification and mitigation of fire, explosion, and vapor hazards. In addition, a Board Note is proposed to help direct persons to the OSFM rules pertaining to release reporting. The remainder of Section 734.210, as well as Section 734.145, is amended to reflect the reduction in the time for confirming releases under the OSFM rules from 14 days to 7 days. See 41 Ill. Adm. Code 176.310(b). The Board Note under subsection 734.210(g) is amended to reflect the new citations of the OSFM rules, and subsection 734.210(h)(1) is amended to correct an incomplete cross reference.

6. Section 734.360 is added to implement new subsection 57.7(c)(3)(A) of the Act.

7. Section 734.630 is amended as follows:

a. Subsection 734.630(s) is amended to include a missing word.

b. Subsections 734.630(gg) and (nn) are amended to clarify that those subsections do not prevent payment from the UST Fund for costs considered corrective action costs payable from the UST Fund pursuant to new Section 57.19 of the Act (see also proposed Section 734.632).

c. Subsection 734.630(xx) is deleted because elections under Section 734.105 to proceed in accordance with Part 734 are no longer applicable. See the deletion of Section 734.105 described in item 2 above.

d. Subsection 734.630(ccc) is added to clarify costs that are not eligible for payment from the Fund pursuant to new subsection 57.7(c)(3)(A)(i) of the Act and the corresponding proposed subsection 734.360(a).

e. Subsection 734.630(ddd) is added to clarify costs that are not eligible for payment from the Fund pursuant to new subsection 57.7(c)(3)(A)(ii) of the Act and the corresponding proposed subsection 734.360(b).

f. Subsection 734.630(eee) is added to clarify costs that are not eligible for payment from the Fund pursuant to proposed subsection 734.360(c), which implements new subsection 57.7(c)(3)(A)(iii) of the Act.

g. Subsection 734.630(fff) is added to clarify costs that are not eligible for payment from the Fund pursuant to proposed subsection 734.360(d), which implements new subsection 57.7(c)(3)(A)(iii) of the Act.

8. Section 734.632 is added to implement new Section 57.19 of the Act.

9. Section 734.810 is amended to remove UST abandonment costs from the maximum payment amounts provided under that Section. This results in UST abandonment costs being subject to Section 734.850 (Payment on Time and Materials Basis).

10. Section 734.855 is amended to make bidding provisions consistent with the bidding requirements in new subsections 57.7(c)(3)(B) and (C) of the Act. Proposed non-statutory language is modeled after Department of Central Management Services rules for competitive sealed bidding.

11. Section 734.860 is amended by deleting a reference to a bidding requirement deleted from Section 734.855 pursuant to the changes described in item 9

above.

## II. Technical Feasibility and Economic Reasonableness

### A. Technical Feasibility

Any new technical requirements are the result of changes to the LUST Program made by Public Act 96-908, and to a lesser extent changes to OSFM release reporting rules. The Illinois EPA believes that any new technical requirements are consistent with the historical evolution of the LUST Program, and that they do not raise issues of technical feasibility.

### B. Economic Reasonableness

As noted above, this proposal updates the Board's LUST rules so they are consistent with Title XVI of the Act as amended by Public Act 96-908 and recent amendments to OSFM rules. Public Act 96-908 contains provisions intended to reduce the economic burden on the UST Fund by reducing the cost of UST cleanups. The Illinois EPA has proposed a few amendments in addition to those implementing the changes made by Public Act 96-908 and the revised OSFM rules. These are mainly minor amendments that have little, if any, economic impact. An exception is the proposed amendment to Section 734.810, which will allow UST abandonment costs to be paid on a time and materials basis instead of a lump sum basis. The Illinois EPA believes this change will have a positive impact upon UST owners and operators due to their ability to seek recovery of UST abandonment costs in excess of the current lump sum payment amount.

## SYNOPSIS OF TESTIMONY

The Illinois EPA plans to provide as witness at hearing (i) Hernando Albarracin, Manager of the Illinois EPA's Leaking Underground Storage Tank Section, and (ii) Gary King, Manager of the Illinois EPA's Division of Remediation Management. Mr. Albarracin will provide

testimony describing and explaining the proposed rules and will assist in answering questions at hearing. Mr. King will not offer specific testimony, but will assist in answering questions as a part of the panel requested below.

Written testimony will be submitted prior to hearing in accordance with the Board's procedural rules. The Illinois EPA respectfully requests that the Board allow Illinois EPA witnesses to present any oral testimony in a panel form instead of calling the witnesses individually. A panel format should streamline the hearing process, and has proved beneficial in past rulemakings.

STATEMENT REGARDING MATERIAL INCORPORATED BY REFERENCE

The Illinois EPA previously obtained a copy of the material incorporated by reference in Section 734.120 and provided it to the Board's technical staff. Because ASTM standards are subject to licensing fees, the Illinois EPA would incur additional costs to acquire additional copies for inclusion and distribution with this proposal. The incorporated standard is accessible by interested parties and members of the public through appropriate libraries and directly from the American Society for Testing and Materials. Therefore, the Illinois EPA respectfully requests that the Board waive the submission of copies of the material incorporated by reference as required under 35 Ill. Adm. Code 102.202(d).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

  
\_\_\_\_\_  
Kyle Rominger  
Deputy General Counsel

DATED: 2-17-11  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER d: UNDERGROUND INJECTION CONTROL AND  
UNDERGROUND STORAGE TANK PROGRAMS

PART 731  
UNDERGROUND STORAGE TANKS

SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

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

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

Section	
731.120	Performance Standards for New Systems (Repealed)
731.121	Upgrading of Existing Systems (Repealed)
731.122	Notification Requirements

SUBPART C: GENERAL OPERATING REQUIREMENTS

Section	
731.130	Spill and Overfill Control (Repealed)
731.131	Operation and Maintenance of Corrosion Protection
731.132	Compatibility (Repealed)
731.133	Repairs Allowed (Repealed)
731.134	Reporting and Recordkeeping (Repealed)

SUBPART D: RELEASE DETECTION

Section	
731.140	General Requirements for all Systems (Repealed)
731.141	Petroleum Systems (Repealed)
731.142	Hazardous Substance Systems (Repealed)

- 731.143 Tanks (Repealed)
- 731.144 Piping (Repealed)
- 731.145 Recordkeeping (Repealed)

SUBPART E: RELEASE REPORTING, INVESTIGATION AND CONFIRMATION

Section

- 731.150 Reporting of Suspected Releases (Repealed)
- 731.151 Investigation due to Off-site Impacts (Repealed)
- 731.152 Release Investigation and Confirmation (Repealed)
- 731.153 Reporting and Cleanup of Spills and Overfills (Repealed)

SUBPART F: RELEASE RESPONSE AND CORRECTIVE ACTION

Section

- 731.160 General
- 731.161 Initial Response
- 731.162 Initial Abatement Measures and Site Check
- 731.163 Initial Site Characterization
- 731.164 Free Product Removal
- 731.165 Investigations for Soil and Groundwater Cleanup
- 731.166 Corrective Action Plan
- 731.167 Public Participation

SUBPART G: OUT-OF-SERVICE SYSTEMS AND CLOSURE

Section

- 731.170 Temporary Closure (Repealed)
- 731.171 Permanent Closure and Changes-in-Service (Repealed)
- 731.172 Assessing Site at Closure or Change-in-Service (Repealed)
- 731.173 Previously Closed Systems (Repealed)
- 731.174 Closure Records (Repealed)

SUBPART H: FINANCIAL RESPONSIBILITY

Section

- 731.190 Applicability (Repealed)
- 731.191 Compliance Dates (Repealed)
- 731.192 Definitions (Repealed)
- 731.193 Amount and Scope of Required Financial Responsibility (Repealed)
- 731.194 Allowable Mechanisms and Combinations (Repealed)
- 731.195 Financial Test of Self-insurance (Repealed)
- 731.196 Guarantee (Repealed)
- 731.197 Insurance or Risk Retention Group Coverage (Repealed)
- 731.198 Surety Bond (Repealed)

- 731.199 Letter of Credit (Repealed)
- 731.200 UST State Fund (Repealed)
- 731.202 Trust Fund (Repealed)
- 731.203 Standby Trust Fund (Repealed)
- 731.204 Substitution of Mechanisms (Repealed)
- 731.205 Cancellation or Nonrenewal by Provider (Repealed)
- 731.206 Reporting (Repealed)
- 731.207 Recordkeeping (Repealed)
- 731.208 Drawing on Financial Assurance (Repealed)
- 731.209 Release from Financial Assurance Requirement (Repealed)
- 731.210 Bankruptcy or other Incapacity (Repealed)
- 731.211 Replenishment (Repealed)
- 731.900 Incorporation by reference (Repealed)
- 731.901 Compliance Date (Repealed)

Appendix A Notification Form

Appendix C Statement for Shipping Tickets and Invoices

AUTHORITY: Implementing and authorized by Ill. Rev. Stat. 1989, ch. 111-1/2, pars. ~~1022.4, 1022.13 and 1027~~ (Sections 22.4(d), ~~22.13(d)~~ and 27 of the Environmental Protection Act [415 ILCS 5/22.4(d) and 27], as amended by P.A. 87-323).

SOURCE: Adopted in R86-1 at 10 Ill. Reg. 14175, effective August 12, 1986; amended in R86-28 at 11 Ill. Reg. 6220, effective March 24, 1987; amended in R88-27 at 13 Ill. Reg. 9519, effective June 12, 1989; amended in R89-4 at 13 Ill. Reg. 15010, effective September 12, 1989; amended in R89-10 at 14 Ill. Reg. 5797, effective April 10, 1990; amended in R89-19 at 14 Ill. Reg. 9454, effective June 4, 1990; amended in R90-3 at 14 Ill. Reg. 11964, effective July 10, 1990; amended in R90-12 at 15 Ill. Reg. 6527, effective April 22, 1991; amended in R91-2 at 15 Ill. Reg. 13800, effective September 10, 1991; amended in R91-14 at 16 Ill. Reg. 7407, effective April 24, 1992; amended in \_\_\_\_\_ at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_.

#### SUBPART A: PROGRAM SCOPE AND INTERIM PROHIBITION

##### Section 731.110 Applicability

- a) This Part applies to owners and operators of an Underground Storage Tank (UST) system as defined in Section 731.112, except as otherwise provided in subsections (b) through (d) of this Section. ~~or (e).~~
- b) The following UST systems are excluded from the requirements of this Part:
  - 1) Any UST system holding hazardous waste or a mixture of such hazardous waste and other regulated substances.



- 2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 12(f) of the Environmental Protection Act (~~Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1012(f)~~).
  - 3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
  - 4) Any UST system whose capacity is 110 gallons or less.
  - 5) Any UST system that contains a de minimis concentration of regulated substances.
  - 6) Any emergency spill or overflow containment UST system that is expeditiously emptied after used.
- c) Deferrals. Section 731.122 does not apply to any of the following types of UST systems:
- 1) Wastewater treatment tank systems;
  - 2) Any UST systems containing radioactive materials that are regulated by the Nuclear Regulatory Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);
  - 3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A, incorporated by reference in Section 731.113;
  - 4) Airport hydrant fuel distribution systems; and
  - 5) UST systems with field-constructed tanks.
- d) Owners and operators subject to Title XVI of the Act are required to respond to releases in accordance with 35 Ill. Adm. Code Part 734 instead of Subpart F of this Part.
- e) Heating oil USTs.
- 1) Definitions. The following definitions apply to this subsection only:

"Beneath the surface of the ground" is as defined in Section 731.112.

"Consumptive use" with respect to heating oil means consumed on the premises.

"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; OTHER RESIDUAL FUEL OILS INCLUDING NAVY SPECIAL FUEL OIL AND BUNKER C. (Section 22.18(e)(1)(H) of the Act)

"HEATING OIL UNDERGROUND STORAGE TANK" OR "HEATING OIL UST" MEANS AN UNDERGROUND STORAGE TANK SERVING OTHER THAN FARMS OR RESIDENTIAL UNITS THAT IS USED EXCLUSIVELY TO STORE HEATING OIL FOR CONSUMPTIVE USE ON THE PREMISES WHERE STORED. (Section 22.18(e)(1)(I) of the Act)

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Pipe" or "piping" is as defined in Section 731.112.

"Regulated substance" is as defined in Section 731.112.

"Tank" is as defined in Section 731.112.

"Underground storage tank" ("UST") is 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 the underground pipes connected thereto) is ten per centum or more beneath the surface of the ground.

- 2) Subsection (a) through (c) notwithstanding, THIS PART APPLIES TO OWNERS AND OPERATORS OF ANY HEATING OIL UST. (Section 22.4(d)(5) of the Act)
- 3) The owner or operator of a heating oil UST shall comply with the same requirements as the owner or operator of a "petroleum UST", as defined in Section 731.112, any other provisions of this Part notwithstanding.

BOARD NOTE: This subsection implements Section 22.4(d)(4)(5) of the Act, which requires that this Part be applicable to “heating oil USTs”, as that term is defined in Section 22.18(e) of the Act. However, that and related terms are used in a manner which is inconsistent with the definitions and usage in this Part. The definitions used in this applicability statement are therefore limited to this subsection.

BOARD NOTE: Owners and operators of heating oil USTs are subject to Title XVI of the Act and therefore required to respond to releases in accordance with 35 Ill. Adm. Code Part 734 instead of Subpart F of this Part.

(Source: Amended at 35 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)  
(REPEALED)

SOURCE: Repealed at R\_\_\_\_ at \_\_\_\_ 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)

SUBPART A: GENERAL

Section	
734.100	Applicability
734.105	Election to Proceed under Part 734
734.110	Severability
734.115	Definitions
734.120	Incorporations by Reference
734.125	Agency Authority to Initiate Investigative, Preventive, or Corrective Action
734.130	Licensed Professional Engineer or Licensed Professional Geologist Supervision
734.135	Form and Delivery of Plans, Budgets, and Reports; Signatures and Certifications
734.140	Development of Remediation Objectives
734.145	Notification of Field Activities
734.150	LUST Advisory Committee

SUBPART B: EARLY ACTION

Section	
734.200	General
734.205	Agency Authority to Initiate
734.210	Early Action
734.215	Free Product Removal
734.220	Application for Payment of Early Action Costs

SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

Section	
734.300	General
734.305	Agency Authority to Initiate
734.310	Site Investigation -- General
734.315	Stage 1 Site Investigation
734.320	Stage 2 Site Investigation
734.325	Stage 3 Site Investigation
734.330	Site Investigation Completion Report
734.335	Corrective Action Plan

734.340 Alternative Technologies  
734.345 Corrective Action Completion Report  
734.350 Off-site Access  
734.355 Status Report  
734.360 Use of TACO

#### SUBPART D: MISCELLANEOUS PROVISIONS

Section  
734.400 General  
734.405 Indicator Contaminants  
734.410 Remediation Objectives  
734.415 Data Quality  
734.420 Laboratory Certification  
734.425 Soil Borings  
734.430 Monitoring Well Construction and Sampling  
734.435 Sealing of Soil Borings and Groundwater Monitoring Wells  
734.440 Site Map Requirements  
734.445 Water Supply Well Survey  
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AUTHORITY: Implementing Sections 22.12 and 57 - ~~57.1957.17~~ 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 - ~~57.1957.17~~]

SOURCE: Adopted in R04-22/23 at 30 Ill. Reg.5090, effective March 1, 2006; amended in R07-17 at 31 Ill. Reg. 16151, effective November 21, 2007; amended in R \_\_\_\_\_ at \_\_\_\_\_, effective \_\_\_\_\_.

NOTE: Italics denotes statutory language.

## SUBPART A: GENERAL

### Section 734.100 Applicability

- a) This Part applies to owners or operators of any underground storage tank system used to contain petroleum and for which a release is reported to Illinois Emergency Management Agency (IEMA) ~~on or after March 1, 2006~~ in accordance with the Office of State Fire Marshal (OSFM) regulations. This Part does not apply to owners or operators of sites for which the OSFM does not require a report to IEMA or for which the OSFM has issued or intends to issue a certificate of removal or abandonment pursuant to Section 57.5 of the Act [415 ILCS 5/57.5].
- 1) For releases reported ~~prior to June 8, 2010, on or after June 24, 2002, but prior to March 1, 2006, and for owners and operators electing prior to March 1, 2006 to proceed in accordance with Title XVI of the Act as amended by P.A. 92-0554,~~ the Agency may deem that one or more requirements of this Part have been satisfied, based upon activities conducted prior to June 8, 2010, March 1, 2006, even though the activities were not conducted in strict accordance with the requirements of this Part. For example, an owner or operator that adequately defined the extent of on-site contamination prior to June 8, 2010 March 1, 2006 may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.
  - 2) Costs incurred pursuant to a budget approved prior to March 1, 2006 must be reimbursed in accordance with the amounts approved in the budget and must not be subject to the maximum payment amounts set forth in Subpart H of this Part.
- b) This Part, as amended by Public Act 96-908, applies to all releases subject to Title XVI of the Act for which a No Further Remediation Letter is issued on or after June 8, 2010, provided that (i) costs incurred prior to June 8, 2010, shall be payable from the UST Fund in the same manner as allowed under the law in effect at the time the costs were incurred and (ii) releases for which corrective action was completed prior to June 8, 2010, shall be eligible for a No Further Remediation Letter in the same manner as allowed under the law in effect at the time the corrective action was completed. [415 ILCS 5/57.13] Costs incurred pursuant to a plan approved by the Agency prior to June 8, 2010, must be reviewed in accordance with the law in effect at the time the plan was approved. Any budget associated with such a plan must also be reviewed in accordance with the law in effect at the time the plan was approved. Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may



~~elect to proceed in accordance with this Part pursuant to Section 734.105 of this Part.~~

- c) Upon the receipt of a corrective action order issued by the OSFM on or after June 24, 2002, and pursuant to Section 57.5(g) of the Act [415 ILCS 5/57.5(g)], where the OSFM has determined that a release poses a threat to human health or the environment, the owner or operator of any underground storage tank system used to contain petroleum and taken out of operation before January 2, 1974, or any underground storage tank system used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit, must conduct corrective action in accordance with this Part.
- d) Owners or operators subject to this Part by law or by election must proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 734.125 of this Part to expedite investigative, preventive, or corrective action by an owner or operator or to initiate such action.
- e) The following underground storage tank systems are excluded from the requirements of this Part:
  - 1) Equipment or machinery that contains petroleum substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks.
  - 2) Any underground storage tank system whose capacity is 110 gallons or less.
  - 3) Any underground storage tank system that contains a de minimis concentration of petroleum substances.
  - 4) Any emergency spill or overfill containment underground storage tank system that is expeditiously emptied after use.
  - 5) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act [33 USC 1251 *et seq.* (1972)].
  - 6) Any UST system holding hazardous waste listed or identified under Subtitle C of the Solid Waste Disposal Act [42 USC 3251 *et seq.*] or a mixture of such hazardous waste or other regulated substances.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 734.105 Election to Proceed under Part 734

- a) ~~(Repealed) Owners or operators of any underground storage tank system used to contain petroleum and for which a release was reported to the proper State authority prior to June 24, 2002, may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.~~
- b) Except as provided in Section 734.100(c) of this Part, owners or operators of underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and that serve other than a farm or residential unit may elect to proceed in accordance with this Part by submitting to the Agency a written statement of such election signed by the owner or operator. Such election must be submitted on forms prescribed and provided by the Agency and, if specified by the Agency in writing, in an electronic format. Corrective action must then follow the requirements of this Part. The election must be effective upon receipt by the Agency and must not be withdrawn once made.
- c) Owners and operators electing pursuant to this Section to proceed in accordance with this Part must submit with their election a summary of the activities conducted to date and a proposed starting point for compliance with this Part. The Agency must review and approve, reject, or modify the submission in accordance with the procedures contained in Subpart E of this Part. The Agency may deem a requirement of this Part to have been met, based upon activities conducted prior to an owner's or operator's election, even though the activities were not conducted in strict accordance with the requirement. For example, an owner or operator that adequately defined the extent of on-site contamination prior to the election may be deemed to have satisfied Sections 734.210(h) and 734.315 even though sampling was not conducted in strict accordance with those Sections.
- d) ~~(Repealed) If the owner or operator elects to proceed pursuant to this Part, corrective action costs incurred in connection with the release and prior to the notification of election must be payable from the Underground Storage Tank Fund in the same manner as was allowable under the law applicable to the owner or operator prior to the notification of election. Corrective action costs incurred after the notification of election must be payable from the Fund in accordance with this Part.~~
- e) This Section does not apply to any release for which the Agency has issued a No Further Remediation Letter.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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 Property” means residential property as defined in 35 Ill. Adm. Code 742.200.

"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 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 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 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 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 734.120 Incorporations by Reference

- a) The Board incorporates the following material by reference:

ASTM. American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 (610) 832-9585

ASTM D2487-10, Standard Practice for Classification of Soils for Engineering Purposes (Unified Soil Classification System) (January 1, 2010)

~~ASTM D 2487-93, Standard Test Method for Classification of Soils for Engineering Purposes, approved September 15, 1993.~~

NTIS. National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 605-6000 or (800) 553-6847

“Methods for the Determination of Metals in Environmental Samples,”  
EPA Publication No. EPA/600/4-91/010 (June 1991);

“Methods for the Determination of Metals in Environmental Samples,  
Supplement I,” EPA Publication No. EPA/600/R-94/111 (May  
1994);

“Methods for the Determination of Organic Compounds in Drinking  
Water,” EPA Publication No. EPA/600/4-88/039 (December 1988)  
(revised July 1991);

“Methods for the Determination of Organic Compounds in Drinking  
Water, Supplement II,” EPA Publication No. EPA/600/R-92/129 (August  
1992);

“Methods for the Determination of Organic Compounds in Drinking  
Water, Supplement III,” EPA Publication No. EPA/600/R-95/131 (August  
1995);

“Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods,”  
EPA Publication No. SW-846, Third Edition (September 1986), as  
amended by Updates I, IIA, III, and IIIA (Final Update IIIA dated April  
1998), Doc. No. 955-001-00000-1.

b) This Section incorporates no later editions or amendments.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### Section 734.145 Notification of Field Activities

The Agency may require owners and operators to notify the Agency of field activities prior to the date the field activities take place. The notice must include information prescribed by the Agency, and may include, but is not be limited to, a description of the field activities to be conducted, the person conducting the activities, and the date, time, and place the activities will be conducted. The Agency may, but is not required to, allow notification by telephone, facsimile, or electronic mail. This Section does not apply to activities conducted within 45 days plus 7 14-days after initial notification to IEMA of a release, or to free product removal activities conducted within 45 days plus 7 14-days after the confirmation of the presence of free product.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART B: EARLY ACTION

### Section 734.210 Early Action

- a) Upon confirmation of a release of petroleum from an UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions ~~within 24 hours after the release~~:
  - 1) Immediately report the release in accordance with OSFM rules; Report the release to IEMA (e.g., by telephone or electronic mail);  
  
BOARD NOTE: The OSFM rules for the reporting of UST releases are found at 41 Ill. Adm. Code 176.320(a).
  - 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
  - 3) Immediately identify ~~Identify~~ and mitigate fire, explosion and vapor hazards.
- b) Within 20 days after initial notification to IEMA of a release plus ~~7~~ 14 days, the owner or operator must perform the following initial abatement measures:
  - 1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;
  - 2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;
  - 3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
  - 4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies include treatment or disposal of soils, the owner or operator must comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;
  - 5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator must consider the nature of the stored

substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

- 6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.
- c) Within 20 days after initial notification to IEMA of a release plus 7 14 days, the owner or operator must submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.
- d) Within 45 days after initial notification to IEMA of a release plus 7 14 days, the owner or operator must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information must include, but is not limited to, the following:
  - 1) Data on the nature and estimated quantity of release;
  - 2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;
  - 3) Results of the site check required at subsection (b)(5) of this Section; and
  - 4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part.
- e) Within 45 days after initial notification to IEMA of a release plus 7 14 days, the owner or operator must submit to the Agency the information collected in compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.
- f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal (see 41 Ill. Adm. Code 160, 170, 180, 200). The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment of early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank [415 ILCS 5/57.6(b)]. Early action may also include disposal in accordance with*

applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank.

- g) For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 7-14-days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 7-14-days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 7-14-days. Costs incurred beyond 45 days plus 7-14-days must be eligible if the Agency determines that they are consistent with early action.

BOARD NOTE: Owners or operators seeking payment from the Fund are to first notify IEMA of a suspected release and then confirm the release within 7-14-days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 176.300 through 176.320~~170.560 and 170.580~~. The Board is setting the beginning of the payment period at subsection (g) to correspond to the notification and confirmation to IEMA.

- h) The owner or operator must determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.
- 1) At a minimum, for each UST that is removed, the owner or operator must collect and analyze soil samples as indicated in subsections (h)(1)(A) through (E). The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.
- A) One sample must be collected from each UST excavation wall. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified on a wall, the sample must be collected from the center of the wall length at a point located one-third of the distance from the excavation floor to the ground surface. For walls that exceed 20 feet in length, one sample must be collected for each 20 feet of wall length, or fraction thereof, and the samples must be evenly spaced along the length of the wall.
- B) Two samples must be collected from the excavation floor below each UST with a volume of 1,000 gallons or more. One sample must be collected from the excavation floor below each UST with a volume of less than 1,000 gallons. The samples must be collected from locations representative of soil that is the most

contaminated as a result of the release. If areas of contamination cannot be identified, the samples must be collected from below each end of the UST if its volume is 1,000 gallons or more, and from below the center of the UST if its volume is less than 1,000 gallons.

- C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must be collected from a location representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a length of piping run excavation being sampled, the sample must be collected from the center of the length being sampled. For UST piping abandoned in place, the samples must be collected in accordance with subsection (h)(2)(B) of this Section.
  - D) If backfill is returned to the excavation, one representative sample of the backfill must be collected for each 100 cubic yards of backfill returned to the excavation.
  - E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.
- 2) At a minimum, for each UST that remains in place, the owner or operator must collect and analyze soil samples as follows. The Agency must allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.
- A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for each 20 feet of side length, or fraction thereof, and the borings must be evenly spaced along the side. The borings must be drilled in the native soil surrounding the UST(s) and as close practicable to, but not more than five feet from, the backfill material surrounding the UST(s). Each boring must be drilled to a depth of 30 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the

groundwater table if site specific conditions warrant, but no more than 30 feet below grade.

- B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close as practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.
  - C) If auger refusal occurs during the drilling of a boring required under subsection (h)(2)(A) or (B) of this Section, the boring must be drilled in an alternate location that will allow the boring to be drilled to the required depth. The alternate location must not be more than five feet from the boring's original location. If auger refusal occurs during drilling of the boring in the alternate location, drilling of the boring must cease and the soil samples collected from the location in which the boring was drilled to the greatest depth must be analyzed for the applicable indicator contaminants.
  - D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.
- 3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) of this Section are met, within 30 days after the completion of early action activities the owner or operator must submit a report demonstrating compliance with those remediation objectives. The report must include, but not be limited to, the following:



- A) A characterization of the site that demonstrates compliance with the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;
  - B) Supporting documentation, including, but not limited to, the following:
    - i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);
    - ii) Analytical results, chain of custody forms, and laboratory certifications for all samples collected pursuant to this subsection (h); and
    - iii) A table comparing the analytical results of all samples collected pursuant to this subsection (h) to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
  - C) A site map containing only the information required under Section 734.440 of this Part.
- 4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, the owner or operator must continue in accordance with Subpart C of this Part:
- A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);
  - B) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or
  - C) There is evidence that contaminated soils may be or may have been in contact with groundwater, unless:
    - i) The owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping; and

- ii) The Agency determines that further groundwater investigation is not necessary.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: SITE INVESTIGATION AND CORRECTIVE ACTION

### Section 734.360 Application of Certain TACO Provisions

For purposes of payment from the Fund, corrective action activities required to meet the minimum requirements of this Part shall include, but not be limited to, the following use of the Board's Tiered Approach to Corrective Action Objectives rules adopted under Title XVII of the Act: [415 ILCS 5/57.7(c)(3)(A)]

- a) For the site where the release occurred, the use of Tier 2 remediation objectives that are no more stringent than Tier 1 remediation objectives. [415 ILCS 5/57.7(c)(3)(A)(i)]
- b) The use of industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property. [415 ILCS 5/57.7(c)(3)(A)(ii)]
- c) If a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated, the groundwater ordinance must be used as an institutional control.
- d) If the use of a groundwater ordinance as an institutional control is not required pursuant to subsection (c) of this Section, another institutional control must be used in accordance with 35 Ill. Adm. Code 742 to address groundwater contamination at the site where the release occurred. Institutional controls used to comply with this subsection (d) include, but are not limited to, the following:
  - 1) Groundwater ordinances that are not required to be used as institutional controls pursuant to subsection (c) of this Section.
  - 2) No Further Remediation Letters that prohibit the use and installation of potable water supply wells at the site.

(Source: Added at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART F: PAYMENT FROM THE FUND

### Section 734.630 Ineligible Corrective Action Costs

Costs ineligible for payment from the Fund include but are not limited to:

- a) Costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in Appendix C of this Part, during early action activities conducted pursuant to Section 734.210(f) of this Part, and costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in Appendix C of this Part during early action activities conducted pursuant to Section 734.210(f) of this Part;
- b) Costs or losses resulting from business interruption;
- c) Costs incurred as a result of vandalism, theft, or fraudulent activity by the owner or operator or agent of an owner or operator, including the creation of spills, leaks, or releases;
- d) Costs associated with the replacement of above grade structures such as pumps, pump islands, buildings, wiring, lighting, bumpers, posts, or canopies, including but not limited, to those structures destroyed or damaged during corrective action activities;
- e) *Costs of corrective action incurred by an owner or operator prior to July 28, 1989 [415 ILCS 5/57.8(j)];*
- f) Costs associated with the procurement of a generator identification number;
- g) Legal fees or costs, including but not limited to legal fees or costs for seeking payment under this Part unless the owner or operator prevails before the Board and the Board authorizes payment of such costs;
- h) Purchase costs of non-expendable materials, supplies, equipment, or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools;
- i) Costs associated with activities that violate any provision of the Act or Board, OSFM, or Agency regulations;
- j) Costs associated with investigative action, preventive action, corrective action, or enforcement action taken by the State of Illinois if the owner or operator failed, without sufficient cause, to respond to a release or substantial threat of a release

upon, or in accordance with, a notice issued by the Agency pursuant to Section 734.125 of this Part and Section 57.12 of the Act;

- k) Costs for removal, disposal, or abandonment of a UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;
- l) Costs associated with the installation of new USTs, the repair of existing USTs, and removal and disposal of USTs determined to be ineligible by the OSFM;
- m) Costs exceeding those contained in a budget or amended budget approved by the Agency;
- n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 734.210 of this Part;
- o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;
- p) Costs associated with improperly installed sampling or monitoring wells;
- q) Costs associated with improperly collected, transported, or analyzed laboratory samples;
- r) Costs associated with the analysis of laboratory samples not approved by the Agency;
- s) Costs for any corrective action activities, services, or materials unless accompanied by a letter from OSFM or the Agency confirming eligibility and deductibility in accordance with Section 57.9 of the Act;
- t) Interest or finance costs charged as direct costs;
- u) Insurance costs charged as direct costs;
- v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;
- w) Costs associated with the compaction and density testing of backfill material;
- x) Costs associated with sites that have not reported a release to IEMA or are not required to report a release to IEMA;
- y) Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations;

- z) Costs of alternative technology that exceed the costs of conventional technology;
- aa) Costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services;
- bb) Costs requested that are based on mathematical errors;
- cc) Costs that lack supporting documentation;
- dd) Costs proposed as part of a budget that are unreasonable;
- ee) Costs incurred during early action that are unreasonable;
- ff) Costs incurred on or after the date the owner or operator enters the Site Remediation Program under Title XVII of the Act and 35 Ill. Adm. Code 740 to address the UST release;
- gg) Costs incurred after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. This subsection (gg) does not apply to the following:
  - 1) Costs incurred for MTBE remediation pursuant to Section 734.405(i)(2) of this Part;
  - 2) Monitoring well abandonment costs;
  - 3) County recorder or registrar of titles fees for recording the No Further Remediation Letter;
  - 4) Costs associated with seeking payment from the Fund; ~~and~~
  - 5) Costs associated with remediation to Tier 1 remediation objectives on-site if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives in response to the release; and
  - 6) Costs associated with activities conducted under Section 734.632 of this Part;
- hh) Handling charges for subcontractor costs that have been billed directly to the owner or operator;

- ii) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;
- jj) Costs associated with standby and demurrage;
- kk) Costs associated with a corrective action plan incurred after the Agency notifies the owner or operator, pursuant to Section 734.355(b) of this Part, that a revised corrective action plan is required, provided, however, that costs associated with any subsequently approved corrective action plan will be eligible for payment if they meet the requirements of this Part;
- ll) Costs incurred prior to the effective date of an owner's or operator's election to proceed in accordance with this Part, unless such costs were incurred for activities approved as corrective action under this Part;
- mm) Costs associated with the preparation of free product removal reports not submitted in accordance with the schedule established in Section 734.215(a)(5) of this Part;
- nn) Costs submitted more than one year after the date the Agency issues a No Further Remediation Letter pursuant to Subpart G of this Part. This subsection (nn) does not apply to costs associated with activities conducted under Section 734.632 of this Part;
- oo) Costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in Section 734.625(a)(16) of this Part;
- pp) Costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in Sections 734.625(a)(16) or (17) of this Part;
- qq) Costs associated with oversight by an owner or operator;
- rr) Handling charges charged by persons other than the owner's or operator's primary contractor;
- ss) Costs associated with the installation of concrete, asphalt, or paving as an engineered barrier to the extent they exceed the cost of installing an engineered barrier constructed of asphalt four inches in depth. This subsection does not apply if the concrete, asphalt, or paving being used as an engineered barrier was replaced pursuant to Section 734.625(a)(16) of this Part;
- tt) The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;

- uu) Costs associated with the removal or abandonment of a potable water supply well, or the replacement of such a well or connection to a public water supply, except as otherwise provided in Section 734.625(a)(19) of this Part;
- vv) Costs associated with the repair or replacement of potable water supply lines, except as otherwise provided in Section 734.625(a)(20) of this Part;
- ww) Costs associated with the replacement of underground structures or utilities, including but not limited to septic tanks, utility vaults, sewer lines, electrical lines, telephone lines, cable lines, or water supply lines, except as otherwise provided in Sections 734.625(a)(19) or (20) of this Part;
- xx) ~~(Reserved) For sites electing under Section 734.105 of this Part to proceed in accordance with this Part, costs incurred pursuant to Section 734.210 of this Part;~~
- yy) Costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget;
- zz) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;
- aaa) Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (aaa) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release.
- bbb) Costs associated with groundwater remediation if a groundwater ordinance already approved by the Agency for use as an institutional control in accordance with 35 Ill. Adm. Code 742 can be used as an institutional control for the release being remediated.
- ccc) Costs associated with on-site corrective action to achieve Tier 2 remediation objectives that are more stringent than Tier 1 remediation objectives.
- ddd) Costs associated with corrective action to achieve remediation objectives other than industrial/commercial remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property.
- eee) Costs associated with groundwater remediation if a groundwater ordinance must be used as an institutional control under subsection (c) of Section 734.360 of this Part.

- fff) Costs associated with on-site groundwater remediation if an institutional control is required to address on-site groundwater remediation under subsection (d) of Section 734.360 of this Part

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 734.632 Eligible Corrective Action Costs Incurred After NFR Letter

Notwithstanding subsections (gg) and (nn) of Section 734.630 of this Part, [t]he following shall be considered corrective action activities eligible for payment from the Fund even when an owner or operator conducts these activities after the issuance of a No Further Remediation Letter. Corrective action conducted under this Section and costs incurred under this Section must comply with the requirements of Title XVI of the Act and this Part, including, but not limited to, requirements for the submission and Agency approval of corrective action plans and budgets, corrective action completion reports, and applications for payment.

- a) Corrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial property remediation objectives pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of the Act and subsection (b) of Section 734.360 of this Part is being developed into residential property.
- b) Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because a groundwater ordinance used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of the Act and subsection (c) of Section 734.360 of this Part can no longer be used as an institutional control.
- c) Corrective action to address groundwater contamination if the owner or operator demonstrates that such action is necessary because an on-site groundwater use restriction used as an institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7 of the Act and subsection (d) of Section 734.360 of this Part must be lifted in order to allow the installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner or operator.
- d) The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed residential property remediation objectives, if industrial/commercial property remediation objectives were used pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of the Act and subsection (b) of Section 734.360 of this Part and the owner or operator demonstrates that (i) the contamination is the result of the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the soil is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not



limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement.

- e) The disposal of water exceeding groundwater remediation objectives that is removed from an excavation on the site where the release occurred if a groundwater ordinance is used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of the Act and subsection (c) of Section 734.360 of this Part, or if an on-site groundwater use restriction is used as an institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7 of the Act and subsection (d) of Section 734.360 of this Part, and the owner or operator demonstrates that (i) the excavation is located within the measured or modeled extent of groundwater contamination resulting from the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the groundwater is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement. [415 ILCS 5/57.19].

(Source: Added at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### SUBPART H: MAXIMUM PAYMENT AMOUNTS

##### Section 734.810 UST Removal ~~or Abandonment~~ Costs

Payment for costs associated with UST removal ~~or abandonment~~ of each UST must not exceed the amounts set forth in this Section. Such costs must include, but not be limited to, those associated with the excavation, removal, and disposal, ~~and abandonment~~ of UST systems.

UST Volume	Maximum Total Amount per UST
110 – 999 gallons	\$2,100
1,000 – 14,999 gallons	\$3,150
15,000 or more gallons	\$4,100

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

##### Section 734.855 Bidding

As an alternative to the maximum payment amounts set forth in this Subpart H, one or more maximum payment amounts may be determined via bidding in accordance with this Section. Each bid must cover all costs included in the maximum payment amount that the bid is replacing. Bidding is optional. Bidding is allowed only if the owner or operator demonstrates that corrective action cannot be performed for amounts less than or equal to maximum payment set forth in this Part. [415 ILCS 5/57.7(c)(3)(C)].

a) Bidding must be publicly-noticed, competitive, and sealed bidding that includes, at a minimum, the following:

- 1) The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measureable.

The invitation for bids must include instructions and information concerning bid submission requirements, including but not limited to the time during which bids may be submitted, the address to which bids must be submitted, and the time and date set for opening of the bids. The time during which bids may be submitted must begin on the date the invitation for bids is issued and must end at the time and date set for opening of the bids. In no case shall the time for bid submission be less than 14 days.

Each bid must be stamped with the date and time of receipt, and stored unopened in a secure place until the time and date set for opening the bids. Bids must not be accepted from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.

- 2) At least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published by the owner or operator in a local paper of general circulation for the area in which the site is located. The owner or operator must also provide a copy of the public notice to the Agency. The notice must be received by the Agency at least 14 days prior to the date set in the invitation for the opening of bids.

- 3) Bids must be opened publicly by the owner or operator in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section. After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection.

The person opening the bids may not serve as a witness. The names of the person opening the bids and the names of all witnesses must be recorded and submitted to the Agency on the bid summary form required under subsection (b) of this Section.

- 4) Bids must be unconditionally accepted by the owner or operator without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.
- 5) Correction or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with subsection (c) of this Section. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator.
- 6) The owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information must be recorded and submitted to the Agency in the applicable budget in accordance with subsection (b) of this Section.
- 7) All bidding documentation must be retained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency for inspection and copying during normal business hours. [415 ILCS 5/57.7(c)(3)(B)]

- a) ~~A minimum of three written bids must be obtained. The bids must be based upon the same scope of work and must remain valid for a period of time that will allow the owner or operator to accept them upon the Agency's approval of the associated budget. Bids must be obtained only from persons qualified and able to perform the work being bid. Bids must not be obtained from persons in which the owner or operator, or the owner's or operator's primary contractor, has a financial interest.~~
- b) All The bids must be summarized on forms prescribed and provided by the Agency. The bid summary forms, along with copies of the invitation for bids, the public notice required under subsection (a)(2) of this Section, proof of

publication of the notice, and each bid received, the bid requests and the bids obtained, must be submitted to the Agency in the associated budget. If more than the minimum three bids are obtained, summaries and copies of all bids must be submitted to the Agency.

- c) Corrections to bids are allowed only to the extent the corrections are not contrary to the best interest of the owner or operator and the fair treatment of other bidders. If a bid is corrected, copies of both the original bid and the revised bid must be submitted in accordance with subsection (b) of this Section along with an explanation of the corrections made.
- 1) Mistakes discovered before opening. A bidder may correct mistakes discovered before the time and date set for opening of bids by withdrawing his or her bid and submitting a revised bid prior to the time and date set for opening of bids.
  - 2) Mistakes discovered after opening of a bid but before award of the winning bid.
    - A) If the owner or operator knows or has reason to conclude that a mistake has been made, the owner or operator must request the bidder to confirm the information. Situations in which confirmation should be requested include obvious or apparent errors on the face of the document or a price unreasonably lower than the others submitted.
    - B) If the mistake and the intended correct information are clearly evident on the face of the bid, the information shall be corrected and the bid may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid are typographical errors, errors extending unit prices, transportation errors, and mathematical errors.
    - C) If the mistake and the intended correct information are not clearly evident on the face of the bid, the low bid may be withdrawn if:
      - i) a mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident; or
      - ii) there is proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.
  - 3) Mistakes shall not be corrected after selection of the winning bid unless the Agency determines that it would be unconscionable not to allow the mistake to be corrected (e.g., the mistake would result in a windfall to the owner or operator).

- 4) Minor informalities. A minor informality or irregularity is one that is a matter of form or pertains to some immaterial or inconsequential defect or variation from the exact requirement of the invitation for bid, the correction or waiver of which would not be prejudicial to the owner or operator (i.e., the effect on price, quality, quantity, delivery, or contractual conditions is negligible). The owner or operator must waive such informalities or allow correction depending on which is in the owner's or operator's best interest.
- d) For purposes of this Section, factors to be considered in determining whether a bidder is responsible include, but are not limited to, the following:
- 1) The bidder has available the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
  - 2) The bidder is able to comply with required or proposed delivery or performance schedules, taking into consideration all existing commercial and governmental commitments;
  - 3) The bidder has a satisfactory record of performance. Bidders who are or have been deficient in current or recent contact performance in dealing with the owner or operator or other clients may be deemed "not responsible" unless the deficiency is shown to have been beyond the reasonable control of the bidder; and
  - 4) The bidder has a satisfactory record of integrity and business ethics. Bidders who are under investigation or indictment for criminal or civil actions that bear on the subject of the bid, or that create a reasonable inference or appearance of a lack of integrity on the part of the bidder, may be declared not responsible for the particular subject of the bid.
- e) ~~The maximum payment amount for the work bid must be the amount of the lowest bid, unless the lowest bid is less than the maximum payment amount set forth in this Subpart H, in which case the maximum payment amount set forth in this Subpart H must be allowed. The owner or operator is not required to use the lowest bidder to perform the work, but instead may use another person qualified and able to perform the work, including, but not limited to, a person in which the owner or operator, or the owner's or operator's primary consultant, has a direct or indirect financial interest. However, regardless of who performs the work, the maximum payment amount will remain the amount of the lowest bid.~~

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 734.860 Unusual or Extraordinary Circumstances

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payment amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part. ~~Examples of unusual or extraordinary circumstances include, but are not limited to, an inability to obtain a minimum of three bids pursuant to Section 734.855 of this Part due to a limited number of persons providing the service needed.~~

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)