



**SUMMARY OF COMMENTS AND RESPONSES  
FOR COMMENTS RECEIVED BY OSFM  
FOR RULEMAKING ON UST RULES**

**(41 Ill. Adm. Code 172, 174, 175, 176, 177, and 178)**

**December 20, 2022**

<b>Rule</b>	<b>First Notice; Published Date</b>
41 Ill. Adm. Code 172	46 Ill. Reg. 15982; September 23, 2022
41 Ill. Adm. Code 174	46 Ill. Reg. 16029; September 23, 2022
41 Ill. Adm. Code 175	46 Ill. Reg. 16068; September 23, 2022
41 Ill. Adm. Code 176	46 Ill. Reg. 16181; September 23, 2022
41 Ill. Adm. Code 177	46 Ill. Reg. 16206; September 23, 2022
41 Ill. Adm. Code 178	46 Ill. Reg. 16212; September 23, 2022

**Current rule language prior to proposed changes is shown in *italics* below.**

**COMMENT 1**

Commenters expressed concerns about the cost and application of the proposed requirements for double-walled sumps.

**OSFM RESPONSE 1**

In response to public comment, OSFM is dropping the proposed requirement to install double-walled sumps for new and replaced under-dispenser, tank top (submersible), transition and other containment sumps after March 1, 2023. OSFM is also proposing that single-walled horizontal spill containment cabinets will be exempt from the requirement that spill containment be double-walled.

See below for the revisions to the affected sections of the proposed rulemaking text:

**RULE TEXT CHANGES AS ORIGINALLY PROPOSED:**

***Section 175.410 Submersible, Under-dispenser, Transition and Other Containment Sumps***

- f) Beginning March 1, 2023, all new and replaced containment sumps shall be of double-wall construction. Beginning ~~On or after~~ October 13, 2028, double-walled containment sumps shall be installed where ~~no sump~~ ~~none~~ currently ~~exists~~ ~~exist~~.

RULE TEXT CHANGES AS MODIFIED IN RESPONSE TO PUBLIC COMMENT:

***Section 175.410 Submersible, Under-dispenser, Transition and Other Containment Sumps***

- f) *On or after October 13, 2028, containment sumps shall be installed where none currently exist.*

***Section 175.405 Spill Containment and Overfill Prevention Equipment***

- a) ... Single-wall horizontal cabinets shall be exempt from this double-wall requirement and may continue to be installed as single-walled.

The changes to the proposed rulemaking would allow owners to continue to install single-walled sumps. Owners will still need to comply with the current rule requirement that containment sumps must be installed by October 13, 2028 if none currently exist.

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**COMMENT 2**

Commenters had questions about the application of the proposed requirement for double-walled spill buckets.

**OSFM RESPONSE 2:**

In response to public comment, OSFM is proposing that single-walled horizontal spill containment cabinets will be exempt from the requirement that spill containment be double-walled. (See OSFM Response 1)

Provided these proposed rule changes are adopted, new or replaced spill prevention equipment will have to be double-walled. OSFM estimates that this proposed change will actually provide substantial cost savings for owners over the life of a tank. Installing a double-walled spill containment is marginally more expensive initially, but eliminates most of the future cost by avoiding concrete work when replacement is needed, as a double-walled field installed spill bucket can be replaced using an insert without having to break concrete. Existing single-walled spill buckets and other spill prevention equipment will be allowed to remain so long as they continue to pass any required testing (such as triennial testing) and are fully functional. These double-walled spill containments will not be required to be monitored.

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**COMMENT 3**

Commenters expressed concerns about the cost of proposed requirements in the rules (as a whole) and believed UST supply issues would affect their ability to comply with proposed requirements.

**OSFM RESPONSE 3**

In response to public comments, sumps and horizontal cabinets are no longer required to be double-walled as originally proposed. (See OSFM Response 1). OSFM estimates that proposed changes on double-walled spill prevention equipment will provide substantial cost savings for owners over the life of a tank. (See OSFM Response 2).

Regarding the other rule changes:

OSFM has not proposed any changes regarding replacement of tanks. Supply chain constraints affecting new tanks (primarily fiberglass) are not applicable to other UST equipment, but only to the tanks, which are not part of this rulemaking. OSFM is unaware of any supply chain issue regarding the availability of other UST equipment.

In addition, at the present time, only one-fifth (1/5) of currently active facilities have single-walled piping that will have to be replaced with double-walled piping under these proposed rule changes. Most UST facilities have already installed double-walled piping and USTs using European suction will be exempt from this requirement. For those 1/5 of USTs that remain, OSFM believes the cost savings in prevented releases far exceeds the cost of replacing the piping at these facilities, since most releases at active facilities occur from the piping. Public safety and liability issues are also significant for these facilities due to the potential for explosions that can be caused by releases, and OSFM is aware that several recent releases resulted in liability amounts exceeding \$1,000,000 for each owner involved. OSFM believes that this requirement will ultimately save even more in long-term site remediation costs, as clean-up costs per facility continue to increase.

Many other items in the proposed rule changes will save costs for owners. For example, these proposed rules allow the owner to avoid an entire tank system removal and replacement if an out of service tank passes delayed anode testing after the fact, at a cost savings of approximately \$160,000 per UST.

As another example, these proposed rules expand the 5-year out of service limit extension for double-walled tanks installed prior to February 1, 2008 without the accompanying interstitial monitoring equipment, once again at a cost savings of approximately \$160,000 per UST. Since these tanks were installed prior to requirements for interstitial monitoring, owners will have the remainder of their 30-year warranty period to avoid removal requirements due to the out of service status of the tank.

In response to the comment, to clarify that European Suction systems are exempt from this double-wall requirement, OSFM is adding "with the exception of European Suction systems" to the proposed rule language of Section 175.420 as follows:

- k) Beginning October 13, 2028, all existing piping shall be of double-wall construction and equipped with interstitial monitoring that is fully functional and meets the applicable requirements of Section 175.630(f), with the exception of European suction systems. Beginning March 1, 2023, any tank installation or replacement shall require replacement of any existing single-wall piping with double-wall piping, with the exception of European suction systems.

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**COMMENT 4**

Commenter asked why OSFM did not also proposed changes to require all single-walled tanks to be replaced with double-walled tanks, as that would help prevent release of product.

**OSFM RESPONSE 4**

Due to supply chain constraints for tanks at this time, OSFM has chosen not to propose requiring the upgrade of single-walled tanks to double-walled in this rulemaking. OSFM has prioritized double-walled piping since leaks from active systems typically come from the piping.

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**COMMENT 5**

Commenters asked when the proposed rules will be implemented.

**OSFM RESPONSE 5**

OSFM is hopeful that the proposed rules will be adopted and become effective on or before March 1, 2023.

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**COMMENT 6**

Commenters asked whether 3-year periodic testing of sumps and spill containment equipment will still be required under the proposed rules.

**OSFM RESPONSE 6**

Yes, 3-year periodic testing of sumps and spill containment equipment will still be required. However, in response to public comments, sumps and horizontal cabinets are no longer required to be double-walled as originally proposed. (See OSFM Response 1)

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**COMMENT 7**

Commenter asked whether a “single-walled spill bucket within a ‘monitored’ single-walled sump” would be considered double-walled.

**OSFM RESPONSE 7**

No, this configuration does not meet the definition of double-walled. The current OSFM rules provide the following definition for double-walled as it relates to UST systems and equipment:

*"Double-walled", in reference to tanks and piping, is a factory certified container consisting of an inner wall and an outer wall with an interstitial space between the inner*

*wall and outer wall suitable for interstitial monitoring, and is designed, constructed and installed to:*

*contain regulated substances released from the tank system until they are detected and removed;*

*prevent the release of regulated substances to the environment at any time during the operational life of the UST; and*

*be checked at least every 30 days for evidence of a release.*

*A field-installed liner or insert does not qualify as a double-walled tank.*

In response to public comments, sumps and horizontal cabinets are no longer required to be double-walled as originally proposed. (See OSFM Response 1)

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#### **COMMENT 8**

Commenter asked whether existing equipment, in reference to double-walled spill buckets or double-walled sumps, could remain in use under the new regulations, or have a required replacement deadline.

#### **OSFM RESPONSE 8**

In response to public comments, sumps and horizontal cabinets are no longer required to be double-walled as originally proposed. (See OSFM Response 1)

Under proposed rules, existing single-walled spill buckets will be permitted to be used until such time as the equipment fails a triennial test or otherwise requires replacement. (See OSFM Response 2)

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#### **COMMENT 9**

Commenters asked whether there would be any exemptions to the proposed rules.

#### **OSFM RESPONSE 9**

There will be no exemptions to the rules as adopted.

In response to public comments, sumps and horizontal cabinets are no longer required to be double-walled as originally proposed. (See OSFM Response 1) Single-walled horizontal cabinets may continue to be installed as single-walled. OSFM is also providing clarification in the proposed rules that European suction systems are exempt from the requirement for double-walled piping. (See OSFM Response 3).

Provided these proposed rule changes become effective by March 1, 2023, there will be no exemptions to the rules as adopted as of that date. However, OSFM will honor any permit that has been issued prior to the March 1, 2023 effective date (See OSFM Response 10 for additional information).

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#### **COMMENT 10**

Commenters asked how proposed rules will affect projects already in progress or facilities that already have permits for upcoming projects that don't account for items required by the proposed rules. Commenters also asked specifically about the impact on spill prevention equipment and piping.

#### **OSFM RESPONSE 10**

Provided these proposed rule changes become effective by March 1, 2023, the proposed changes will be effective for all UST locations statewide as of that date. For example, spill prevention equipment installed on or after March 1, 2023 will be required to be double-walled when installed as new or when existing ones are replaced. Existing single-wall spill containment in the ground before March 1, 2023 will be allowed to remain so long as it continues to pass any required testing.

If an OSFM permit has been issued prior to March 1, 2023, for purposes of installing a single-wall spill bucket or other equipment, and that permit's initial 6-month permit timeframe has not yet expired, the single-wall spill prevention equipment or other equipment will be allowed to be installed pursuant to that permit until the initial 6-month permit expiration date even if the date of installation is after March 1, 2023. However, subsection 175.300(h) of the OSFM rules (41 Ill. Adm. Code 175.300(h)) prohibits permit extensions that circumvent a newly adopted technical requirement. For reference, the relevant language of this subsection of the OSFM rules is included below.

#### ***Section 175.300 Permitted UST Activity***

- h) Expiration and Extension of Permits. Permits expire 6 months from the date they are issued. The applicant may apply for additional 6-month extensions. Permit extensions that circumvent newly adopted technical requirements will not be allowed. If a party submits evidence of non-cancelable contracts executed in reliance on the permit sought to be extended, or if work has commenced, a party will not be viewed as circumventing the technical requirement. Each extension request must be submitted electronically or in writing before the permit lapses and must be accompanied by a \$200 fee.*

With regard to piping, current rule language requires that all newly installed piping runs be double-walled. For reference, some relevant language of current OSFM rules as well as proposed OSFM rule language, is included below.

**Current rule language applicable to permits issued prior to March 1, 2023** (under which the work would be allowed to extend past March 1, 2023, so long as the work is completed during the six months before the initial permit expiration):

***Section 175.420 Piping***

- b) *Installed underground piping shall be of double-wall construction and equipped with interstitial monitoring that meets the applicable requirements of Section 175.630(f) and 40 CFR 280.43(g) for all permits issued February 1, 2008 and after. When required to make interstitial monitoring functional, the appropriate containment (e.g., under-dispenser containment, tank containment sumps, or junction sumps) shall be installed. Any replaced piping that exceeds 20 feet or 50% of the total piping run shall require the entire pipe run to be replaced with double-wall, monitored piping as required for newly installed piping. If the site has multiple distinct pipe runs, only that piping run being replaced shall be required to be double-wall construction with interstitial monitoring installed in compliance with this subsection (b). European suction systems are exempt from the requirement for having double-wall product piping, as well as from the requirement for having interstitial monitoring.*
  
- k) *Beginning May 1, 2003, the new installation or total upgrade of product piping shall be double-walled for the entire length of that product line, with the exception of European suction.*

**Proposed rule language applicable to permits issued on or after March 1, 2023:**

***Section 175.420 Piping***

- b) *Installed underground piping shall be of double-wall construction and equipped with interstitial monitoring that meets the applicable requirements of Section 175.630(f) and 40 CFR 280.43(g) for all permits issued February 1, 2008 and after. When required to make interstitial monitoring functional, the appropriate containment (e.g., under-dispenser containment, tank containment sumps, or junction sumps) shall be installed. Any replaced piping that routinely contains product and that exceeds 20 feet or 50% of the total piping run shall require the entire pipe run to be replaced with double-wall, monitored piping as required for newly installed piping. If the site has multiple distinct product pipe runs, only that specific piping run being replaced shall be required to be double-wall construction with interstitial monitoring installed in compliance with this subsection (b). Unless otherwise required by the manufacturer, the dispenser product piping sump jumper tubes shall be removed or the product piping test boots pulled back after testing to allow the interstice to be open to the sump sensors. European suction systems are exempt from the requirement for having*

*double-wall product piping, as well as from the requirement for having interstitial monitoring.*

- k) Beginning October 13, 2028, all existing piping shall be of double-wall construction and equipped with interstitial monitoring that is fully functional and meets the applicable requirements of Section 175.630(f), with the exception of European suction systems. Beginning March 1, 2023, any tank installation or replacement shall require replacement of any existing single-wall piping with double-wall piping, with the exception of European suction systems. Beginning May 1, 2003, the new installation or total upgrade of product piping shall be double-walled for the entire length of that product line, with the exception of European suction systems.

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#### **COMMENT 11**

Commenters expressed concerns about the proposed change on linings and believed it would limit options for owner/operators.

#### **OSFM RESPONSE 11**

The current rules allow lining only for compatibility purposes—linings for repair have never been allowed, and linings for corrosion protection were no longer allowed after January 1, 2011. The proposed change would limit that further to only double-walled tanks, and no longer allow lining for compatibility for single-walled tanks. OSFM has found that facilities have rarely installed linings for compatibility in the last 10 years, but OSFM is continuing to allow this for double-walled tanks which are typically newer and more reliable.

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#### **COMMENT 12**

Commenters expressed concerns about the availability of contractors and OSFM's UST inspectors. Commenters suggested the allotment of additional time for compliance with proposed requirements.

#### **OSFM RESPONSE 12**

At the present time Illinois has 109 licensed contractors. If owners are proactive regarding this change, there should not be any issue regarding the availability of contractors. OSFM has historically worked with owners in the event of any supply chain or other equipment or contractor availability issues. OSFM has adequate staff to continue to do this, which would avoid the need for enforcement action so long as the owner remains willing to work with OSFM.



**COMMENT 13**

Commenters supported proposed requirements for all new and replaced piping to be double walled piping, for double-walled spill buckets, and removal of manifolded piping above the shear valve.

**OSFM RESPONSE 13**

OSFM appreciates the positive feedback and agrees these changes are necessary.

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**COMMENT 14**

Commenter supported proposed changes to remove the obligation to submit a Notification for Underground Storage Tanks form upon the conclusion of the permitted work for a UST removal or abandonment-in-place.

**OSFM RESPONSE 14**

OSFM also agrees that this change is necessary. It should streamline and simplify the process and save on contractor personnel costs.

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**COMMENT 15**

Commenter supported proposed changes to eliminate a 10-foot setback for points where electrical conduit crosses the path of UST product piping, simplifying design for piping installs.

**OSFM RESPONSE 15**

OSFM also agrees that this change is necessary. It should simplify piping installs without compromising safety and save on contractor personnel costs.

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**COMMENT 16**

Commenter supported proposed changes to provide for and require electronic submission and processing of forms.

**OSFM RESPONSE 16**

OSFM also agrees that this change is necessary. This process is already available online and so the rules are being updated to reflect this current electronic process.

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## **COMMENT 17**

Commenter asked about release reporting requirements and the term “confirmed release”. Commenter suggested changes to clarify requirements.

## **OSFM RESPONSE 17**

OSFM notes that the term “release” is defined in OSFM rules at 41 Ill. Adm. Code 174.100 as follows:

*"Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing from a UST into groundwater, surface water or subsurface soils.*

The Illinois Environmental Protection Act likewise provides, at 415 ILCS 5/57.2, the following definition governing eligibility and deductible determinations:

"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.

This definition is also based on virtually identical language found in both the federal UST statute and rules (see definition of “release” at 42 USC 6991(8) and at 40 CFR 280.12).

Under 40 CFR 280.34 “all releases” must be reported. Therefore, OSFM does not feel it has authority to implement a threshold standard for reporting a "release" absent further clarification of federal or state statute.

In order to clarify the term “confirmed release”, OSFM is making the following change to the proposed Section 178.100 definition in response to the comment (adding “by soil sampling that produces lab results above lab reporting limits for the requisite indicator contaminants specified in” as noted below):

"Confirmed release" means a release that has been confirmed by soil sampling that produces lab results above lab reporting limits for the requisite indicator contaminants specified in ~~according to~~ the procedures found at 41 Ill. Adm. Code 176.330.

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## **COMMENT 18**

Commenter asked whether owner/operators could access the OSFM Contractor Portal to submit forms.

## **OSFM RESPONSE:**

No, access to the OSFM Contractor Portal is limited to OSFM-licensed contractors. A contractor or authorized representative cannot submit the Notification on behalf of an owner without having the owner sign an Authorization to Submit form allowing the contractor or authorized

representative to submit the form. Electronic forms that must be submitted by a UST contractor only are not accessible to the general public. Examples would include, but not be limited to, the Annual Leak Detection Certification Report, Cathodic Protection Testing Results Report, Like-for-Like Replacement form, and the Motor Fuel Dispensing Application, and the Underground Storage Tank Permit Application.

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**COMMENT 19**

Commenter expressed desire to discuss additional safety enhancement options for UST equipment not currently addressed by this rulemaking.

**OSFM RESPONSE 19**

For other equipment items that are not currently part of this rulemaking, OSFM remains available to discuss equipment and safety practices in the industry at a later time.

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**COMMENT 20**

Commenters suggested minor changes to address typos, grammar, and other non-substantive items in the proposed rules.

**OSFM RESPONSE 20**

OSFM is updating the proposed rules to reflect these minor changes.