

OFFICE OF THE STATE FIRE MARSHAL
ADOPTED AMENDMENTS
Effective May 2, 2023

TITLE 41: FIRE PROTECTION
CHAPTER I: OFFICE OF THE STATE FIRE MARSHAL

PART 178
UNDERGROUND STORAGE TANK FUND ELIGIBILITY AND DEDUCTIBLE
DETERMINATIONS BY THE OFFICE OF THE STATE FIRE MARSHAL

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AUTHORITY: Implementing Title XVI of the Illinois Environmental Protection Act [415 ILCS 5/57] and authorized by Section 57.9 of the Illinois Environmental Protection Act [415 ILCS 15/57.9].

SOURCE: Adopted at 47 Ill. Reg. _____, effective _____.

Section 178.100 Definitions

The following definitions shall apply to this Part concerning eligibility and deductible determinations made pursuant to Title XVI of the Illinois Environmental Protection Act [415 ILCS 5/57 through 5/57.19]:

"Agency" means the Illinois Environmental Protection Agency.

"Ancillary Equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"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 the procedures found at 41 Ill. Adm. Code 176.330.

"Corrective action" means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of Title XVI of the Illinois Environmental Protection Act. [415 ILCS 5/57.2]

"Farm" or "Agricultural Site" is a tract of land devoted to the production of crops or raising of animals, including fish. "Farm" includes all contiguous land and structures and other appurtenances and improvements; also, fish hatcheries, rangeland and nurseries with growing operations. "Farm" does not include agribusiness (as defined in 20 ILCS 3501/801-10(z)), laboratories where animals are raised, land used to grow timber, and pesticide aviation operations. Moreover,

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this definition does not include retail stores or garden centers where nursery farm products are marketed, but not grown.

"Farm Tank" means a motor fuel UST located on a farm and used exclusively for farm purposes.

"Flow-through Process Tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process. When the process is shut down, flow-through process tanks do not store product to be used once the process is resumed and may contain no more than a de minimis amount of product.

"Fund" means the Underground Storage Tank Fund. [415 ILCS 5/57.2]

"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]

"Indemnification" means indemnification of an owner or operator for the amount of any 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 an 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]

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

"Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank. (42 U.S.C. 6991(3))

"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; and

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In the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use. (42 U.S.C. 6991(4))

The term "owner" shall also mean any person who has submitted to the Agency a written election to proceed under Title XVI of the Illinois Environmental Protection Act 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 Title XVI of the Illinois Environmental Protection Act. [415 ILCS 5/57.2]

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

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

"Residential Tank" is a tank located on property used primarily for dwelling and not commercial purposes.

"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]

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. The term "underground storage tank" shall not include any pipes connected to any tank which is excluded from this definition. The term underground storage tank does not include any of the following:

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):

That is regulated under chapter 601 of title 49; or

That is an intrastate pipeline facility regulated under state laws as provided in chapter 601 of title 49, and which is determined by the

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U.S. Department of Transportation 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 wastewater 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 upon or above the surface of the floor. (42 U.S.C. 6991(10))

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

Section 178.110 Requirements for Eligibility

The Underground Storage Tank Fund shall be accessible by owners and operators who have a confirmed release from an underground storage tank or related tank system of a substance listed in this Section. The owner or operator is eligible to access the Underground Storage Tank Fund for reimbursement of corrective action or indemnification costs if the eligibility requirements of Title XVI of the Illinois Environmental Protection Act are satisfied and:

- a) *Neither the owner nor the operator is the United States Government;*
- b) *The tank does not contain fuel which is exempt from the Motor Fuel Tax Law [35 ILCS 505];*
- c) *The costs were incurred as a result of a confirmed release of any of the following substances:*
 - 1) *"Fuel" as defined in Section 1.19 of the Motor Fuel Tax Law [35 ILCS 505/1.19];*

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- 2) *Aviation fuel;*
- 3) *Heating oil;*
- 4) *Kerosene; or*
- 5) *Used oil which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law [35 ILCS 505/1.3];*
- d) *The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act [430 ILCS 15];*
- e) *The costs were incurred after the owner or operator notified the Illinois Emergency Management Agency of a confirmed release (costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment);*
- f) *The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order; and*
- g) *The costs were associated with corrective action as defined in Section 178.100. [415 ILCS 5/57.9(a)]*

Section 178.120 Deductible Amounts

- a) *For releases reported prior to June 8, 2010, an owner or operator may access the Underground Storage Tank Fund for costs associated with an Agency approved plan and the Agency shall approve the payment of costs associated with corrective action after the application of a \$10,000 deductible, except in the following situations:*
 - 1) *A deductible of \$15,000 shall apply when one or more, but not all, of the underground storage tanks were registered prior to July 28, 1989, and the State received notice of the confirmed release on or after July 28, 1989.*
 - 2) *A deductible of \$50,000 shall apply if any of the underground storage tanks were registered prior to July 28, 1989, and the State received notice of the confirmed release prior to July 28, 1989.*
 - 3) *A deductible of \$100,000 shall apply when none of the underground storage tanks were registered prior to July 28, 1989, except in the case of underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and which serve other than*

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farms or residential units, a deductible of \$100,000 shall apply when none of these tanks were registered prior to July 1, 1992. [415 ILCS 5/57.9(b)]

- b) *For releases reported on or after June 8, 2010, an owner or operator may access the Underground Storage Tank Fund for costs associated with an Agency approved plan, and the Agency shall approve the payment of costs associated with corrective action after the application of a \$5,000 deductible. [415 ILCS 5/57.9(b)]*
- c) *A deductible shall apply annually for each site at which costs were incurred under a claim submitted pursuant to Title XVI of the Illinois Environmental Protection Act, except that if corrective action in response to an occurrence takes place over a period of more than one year, in subsequent years, no deductible shall apply for costs incurred in response to such occurrence. [415 ILCS 5/57.9(b)]*

Section 178.130 Request for Eligibility and Deductible Determinations

- a) Once notice of the existence of a UST has been submitted to OSFM, along with payment of any required fees pursuant to 41 Ill. Adm. Code 176.450 and 176.455, any owner or operator of a UST in operation at any time after January 1, 1974 may submit an application seeking an eligibility and deductible determination from OSFM. The application shall be submitted electronically, and an Authorization to Submit Eligibility and Deductible Application shall be completed and submitted as part of the application. The application is available at the forms page for the Division of Petroleum and Chemical Safety at <https://sfm.illinois.gov/about/divisions/petroleum-chemical-safety/applications-and-forms.html>.
- b) Within 60 days of receipt of the electronic application for an eligibility and deductible determination, OSFM shall issue its eligibility and deductible decision. Pursuant to 415 ILCS 5/57.9(c) and 35 Ill. Adm. Code 105.504(b), such decision (or failure to issue an eligibility and deductible determination within the time prescribed) may be appealed to the Pollution Control Board (PCB) if filed by the applicant owner or operator within 35 days of issuance of the OSFM decision. (See 35 Ill. Adm. Code 105.504(b))