

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 changing Sections 57.8 and 57.9 as follows:

6 (415 ILCS 5/57.8)

7 Sec. 57.8. Underground Storage Tank Fund; payment; options
8 for State payment; deferred correction election to commence
9 corrective action upon availability of funds. If an owner or
10 operator is eligible to access the Underground Storage Tank
11 Fund pursuant to an Office of State Fire Marshal
12 eligibility/deductible final determination letter issued in
13 accordance with Section 57.9, the owner or operator may submit
14 a complete application for final or partial payment to the
15 Agency for activities taken in response to a confirmed
16 release. An owner or operator may submit a request for partial
17 or final payment regarding a site no more frequently than once
18 every 90 days.

19 (a) Payment after completion of corrective action
20 measures. The owner or operator may submit an application for
21 payment for activities performed at a site after completion of
22 the requirements of Sections 57.6 and 57.7, or after
23 completion of any other required activities at the underground

1 storage tank site.

2 (1) In the case of any approved plan and budget for
3 which payment is being sought, the Agency shall make a
4 payment determination within 120 days of receipt of both
5 the complete application for payment and the report
6 documenting completion of the activities approved in the
7 plan, whichever is received later. Such determination
8 shall be considered a final decision. The Agency's review
9 shall be limited to generally accepted auditing and
10 accounting practices. In no case shall the Agency conduct
11 additional review of any plan which was completed within
12 the budget, beyond auditing for adherence to the
13 corrective action measures in the proposal. If the Agency
14 fails to approve the payment application within 120 days,
15 such application shall be deemed approved by operation of
16 law and the Agency shall proceed to reimburse the owner or
17 operator the amount requested in the payment application.
18 However, in no event shall the Agency reimburse the owner
19 or operator an amount greater than the amount approved in
20 the plan.

21 (2) If sufficient funds are available in the
22 Underground Storage Tank Fund, the Agency shall, within 60
23 days, forward to the Office of the State Comptroller a
24 voucher in the amount approved under the payment
25 application.

26 (3) In the case of insufficient funds, the Agency

1 shall form a priority list for payment and shall notify
2 persons in such priority list monthly of the availability
3 of funds and when payment shall be made. Payment shall be
4 made to the owner or operator at such time as sufficient
5 funds become available for the costs associated with site
6 investigation and corrective action and costs expended for
7 activities performed where no proposal is required, if
8 applicable. Such priority list shall be available to any
9 owner or operator upon request. Priority for payment shall
10 be determined by the date the Agency receives a complete
11 request for partial or final payment. Upon receipt of
12 notification from the Agency that the requirements of this
13 Title have been met, the Comptroller shall make payment to
14 the owner or operator of the amount approved by the
15 Agency, if sufficient money exists in the Fund. If there
16 is insufficient money in the Fund, then payment shall not
17 be made. If the owner or operator appeals a final Agency
18 payment determination and it is determined that the owner
19 or operator is eligible for payment or additional payment,
20 the priority date for the payment or additional payment
21 shall be the same as the priority date assigned to the
22 original request for partial or final payment.

23 (4) Any deductible, as determined pursuant to the
24 Office of the State Fire Marshal's eligibility and
25 deductibility final determination in accordance with
26 Section 57.9, shall be subtracted from any payment invoice

1 paid to an eligible owner or operator. Only one deductible
2 shall apply per underground storage tank site.

3 (5) In the event that costs are or will be incurred in
4 addition to those approved by the Agency, or after
5 payment, the owner or operator may submit successive plans
6 containing amended budgets. The requirements of Section
7 57.7 shall apply to any amended plans.

8 (6) For purposes of this Section, a complete
9 application shall consist of:

10 (A) A certification from a Licensed Professional
11 Engineer or Licensed Professional Geologist as
12 required under this Title and acknowledged by the
13 owner or operator.

14 (B) A statement of the amounts approved in the
15 budget and the amounts actually sought for payment
16 along with a certified statement by the owner or
17 operator that the amounts so sought were expended in
18 conformance with the approved budget.

19 (C) A copy of the Office of the State Fire
20 Marshal's eligibility and deductibility determination.

21 (D) Proof that approval of the payment requested
22 will not result in the limitations set forth in
23 subsection (g) of this Section being exceeded.

24 (E) A federal taxpayer identification number and
25 legal status disclosure certification on a form
26 prescribed and provided by the Agency.

1 (F) If the Agency determined under subsection
2 (c)(3) of Section 57.7 of this Act that corrective
3 action must include a project labor agreement, a
4 certification from the owner or operator that the
5 corrective action was (i) performed under a project
6 labor agreement that meets the requirements of Section
7 25 of the Project Labor Agreements Act and (ii)
8 implemented in a manner consistent with the terms and
9 conditions of the Project Labor Agreements Act and in
10 full compliance with all statutes, regulations, and
11 Executive Orders as required under that Act and the
12 Prevailing Wage Act.

13 (b) Commencement of site investigation or corrective
14 action upon availability of funds. The Board shall adopt
15 regulations setting forth procedures based on risk to human
16 health or the environment under which the owner or operator
17 who has received approval for any budget plan submitted
18 pursuant to Section 57.7, and who is eligible for payment from
19 the Underground Storage Tank Fund pursuant to an Office of the
20 State Fire Marshal eligibility and deductibility
21 determination, may elect to defer site investigation or
22 corrective action activities until funds are available in an
23 amount equal to the amount approved in the budget. The
24 regulations shall establish criteria based on risk to human
25 health or the environment to be used for determining on a
26 site-by-site basis whether deferral is appropriate. The

1 regulations also shall establish the minimum investigatory
2 requirements for determining whether the risk based criteria
3 are present at a site considering deferral and procedures for
4 the notification of owners or operators of insufficient funds,
5 Agency review of request for deferral, notification of Agency
6 final decisions, returning deferred sites to active status,
7 and earmarking of funds for payment.

8 (c) When the owner or operator requests indemnification
9 for payment of costs incurred as a result of a release of
10 petroleum from an underground storage tank, if the owner or
11 operator has satisfied the requirements of subsection (a) of
12 this Section, the Agency shall forward a copy of the request to
13 the Attorney General. The Attorney General shall review and
14 approve the request for indemnification if:

15 (1) there is a legally enforceable judgment entered
16 against the owner or operator and such judgment was
17 entered due to harm caused by a release of petroleum from
18 an underground storage tank and such judgment was not
19 entered as a result of fraud; or

20 (2) a settlement with a third party due to a release of
21 petroleum from an underground storage tank is reasonable.

22 (d) (1) Notwithstanding any other provision of this Title,
23 the Agency shall not approve payment to an owner or operator
24 from the Fund for costs of corrective action or
25 indemnification incurred during a calendar year in excess of
26 the following aggregate amounts based on the number of

1 petroleum underground storage tanks owned or operated by such
2 owner or operator in Illinois.

3	Amount	Number of Tanks
4	\$2,000,000	fewer than 101
5	\$3,000,000	101 or more

6 (2) ~~(1)~~ Costs incurred in excess of the aggregate amounts
7 set forth in paragraph (1) of this subsection shall not be
8 eligible for payment in subsequent years.

9 (3) ~~(2)~~ For purposes of this subsection, requests
10 submitted by any of the agencies, departments, boards,
11 committees, or commissions of the State of Illinois shall be
12 acted upon as claims from a single owner or operator.

13 (4) ~~(3)~~ For purposes of this subsection, owner or operator
14 includes (i) any subsidiary, parent, or joint stock company of
15 the owner or operator and (ii) any company owned by any parent,
16 subsidiary, or joint stock company of the owner or operator.

17 (e) Costs of corrective action or indemnification incurred
18 by an owner or operator which have been paid to an owner or
19 operator under a policy of insurance, another written
20 agreement, or a court order are not eligible for payment under
21 this Section. An owner or operator who receives payment under
22 a policy of insurance, another written agreement, or a court
23 order shall reimburse the State to the extent such payment
24 covers costs for which payment was received from the Fund. Any
25 monies received by the State under this subsection (e) shall
26 be deposited into the Fund.

1 (f) (Blank~~ed~~).

2 (g) The Agency shall not approve any payment from the Fund
3 to pay an owner or operator:

4 (1) for costs of corrective action incurred by such
5 owner or operator in an amount in excess of \$1,500,000 per
6 occurrence; and

7 (2) for costs of indemnification of such owner or
8 operator in an amount in excess of \$1,500,000 per
9 occurrence.

10 (h) Payment of any amount from the Fund for corrective
11 action or indemnification shall be subject to the State
12 acquiring by subrogation the rights of any owner, operator, or
13 other person to recover the costs of corrective action or
14 indemnification for which the Fund has compensated such owner,
15 operator, or person from the person responsible or liable for
16 the release.

17 (i) If the Agency refuses to pay or authorizes only a
18 partial payment, the affected owner or operator may petition
19 the Board for a hearing in the manner provided for the review
20 of permit decisions in Section 40 of this Act.

21 (j) Costs of corrective action or indemnification incurred
22 by an owner or operator prior to July 28, 1989, shall not be
23 eligible for payment or reimbursement under this Section.

24 (k) The Agency shall not pay costs of corrective action or
25 indemnification incurred before providing notification of the
26 release of petroleum in accordance with the provisions of this

1 Title.

2 (l) Corrective action does not include legal defense
3 costs. Legal defense costs include legal costs for seeking
4 payment under this Title unless the owner or operator prevails
5 before the Board in which case the Board may authorize payment
6 of legal fees.

7 (m) The Agency may apportion payment of costs for plans
8 submitted under Section 57.7 if:

9 (1) the owner or operator was deemed eligible to
10 access the Fund for payment of corrective action costs for
11 some, but not all, of the underground storage tanks at the
12 site; and

13 (2) the owner or operator failed to justify all costs
14 attributable to each underground storage tank at the site.

15 (n) The Agency shall not pay costs associated with a
16 corrective action plan incurred after the Agency provides
17 notification to the owner or operator pursuant to item (7) of
18 subsection (b) of Section 57.7 that a revised corrective
19 action plan is required. Costs associated with any
20 subsequently approved corrective action plan shall be eligible
21 for reimbursement if they meet the requirements of this Title.

22 (Source: P.A. 98-109, eff. 7-25-13; revised 7-30-24.)

23 (415 ILCS 5/57.9)

24 Sec. 57.9. Underground Storage Tank Fund; eligibility and
25 deductibility.

1 (a) The Underground Storage Tank Fund shall be accessible
2 by owners and operators who have a confirmed release from an
3 underground storage tank or related tank system of a substance
4 listed in this Section. The owner or operator is eligible to
5 access the Underground Storage Tank Fund if the eligibility
6 requirements of this Title are satisfied and:

7 (1) Neither the owner nor the operator is the United
8 States Government.

9 (2) The tank does not contain fuel which is exempt
10 from the Motor Fuel Tax Law.

11 (3) The costs were incurred as a result of a confirmed
12 release of any of the following substances:

13 (A) "Fuel", as defined in Section 1.19 of the
14 Motor Fuel Tax Law.

15 (B) Aviation fuel.

16 (C) Heating oil.

17 (D) Kerosene.

18 (E) Used oil which has been refined from crude oil
19 used in a motor vehicle, as defined in Section 1.3 of
20 the Motor Fuel Tax Law.

21 (4) The owner or operator registered the tank and paid
22 all fees in accordance with the statutory and regulatory
23 requirements of the Gasoline Storage Act.

24 (5) The owner or operator notified the Illinois
25 Emergency Management Agency of a confirmed release, the
26 costs were incurred after the notification and the costs

1 were a result of a release of a substance listed in this
2 Section. Costs of corrective action or indemnification
3 incurred before providing that notification shall not be
4 eligible for payment.

5 (6) The costs have not already been paid to the owner
6 or operator under a private insurance policy, other
7 written agreement, or court order.

8 (7) The costs were associated with "corrective action"
9 of this Act.

10 If the underground storage tank which experienced a
11 release of a substance listed in this Section was
12 installed after July 28, 1989, the owner or operator is
13 eligible to access the Underground Storage Tank Fund if it
14 is demonstrated to the Office of the State Fire Marshal
15 the tank was installed and operated in accordance with
16 Office of the State Fire Marshal regulatory requirements.
17 Office of the State Fire Marshal certification is prima
18 facie evidence the tank was installed pursuant to the
19 Office of the State Fire Marshal regulatory requirements.

20 (b) For releases reported prior to June 8, 2010 (the
21 effective date of Public Act 96-908) ~~this amendatory Act of~~
22 ~~the 96th General Assembly~~, an owner or operator may access the
23 Underground Storage Tank Fund for costs associated with an
24 Agency approved plan and the Agency shall approve the payment
25 of costs associated with corrective action after the
26 application of a \$10,000 deductible, except in the following

1 situations:

2 (1) For costs incurred prior to the effective date of
3 this amendatory Act of the 104th General Assembly, a A
4 deductible of \$100,000 shall apply when none of the
5 underground storage tanks were registered prior to July
6 28, 1989, except in the case of underground storage tanks
7 used exclusively to store heating oil for consumptive use
8 on the premises where stored and which serve other than
9 farms or residential units, a deductible of \$100,000 shall
10 apply when none of these tanks were registered prior to
11 July 1, 1992.

12 (2) For costs incurred prior to the effective date of
13 this amendatory Act of the 104th General Assembly, a A
14 deductible of \$50,000 shall apply if any of the
15 underground storage tanks were registered prior to July
16 28, 1989, and the State received notice of the confirmed
17 release prior to July 28, 1989.

18 (3) For costs incurred prior to the effective date of
19 this amendatory Act of the 104th General Assembly, a A
20 deductible of \$15,000 shall apply when one or more, but
21 not all, of the underground storage tanks were registered
22 prior to July 28, 1989, and the State received notice of
23 the confirmed release on or after July 28, 1989.

24 In cases where paragraph (1), (2), or (3) of this
25 subsection applies, costs incurred after the effective date of
26 this amendatory Act shall be subject to the \$10,000

1 deductible, which shall be reduced by any deductible amount
2 applied to costs incurred prior to the effective date of this
3 amendatory Act of the 104th General Assembly.

4 For releases reported on or after June 8, 2010 (the
5 effective date of Public Act 96-908) ~~this amendatory Act of~~
6 ~~the 96th General Assembly~~, an owner or operator may access the
7 Underground Storage Tank Fund for costs associated with an
8 Agency approved plan, and the Agency shall approve the payment
9 of costs associated with corrective action after the
10 application of a \$5,000 deductible.

11 A deductible shall apply annually for each site at which
12 costs were incurred under a claim submitted pursuant to this
13 Title, except that if corrective action in response to an
14 occurrence takes place over a period of more than one year, in
15 subsequent years, no deductible shall apply for costs incurred
16 in response to such occurrence.

17 (c) Eligibility and deductibility determinations shall be
18 made by the Office of the State Fire Marshal.

19 (1) When an owner or operator reports a confirmed
20 release of a regulated substance, the Office of the State
21 Fire Marshal shall provide the owner or operator with an
22 "Eligibility and Deductibility Determination" form. The
23 form shall either be provided on-site or within 15 days of
24 the Office of the State Fire Marshal receipt of notice
25 indicating a confirmed release. The form shall request
26 sufficient information to enable the Office of the State

1 Fire Marshal to make a final determination as to owner or
2 operator eligibility to access the Underground Storage
3 Tank Fund pursuant to this Title and the appropriate
4 deductible. The form shall be promulgated as a rule or
5 regulation pursuant to the Illinois Administrative
6 Procedure Act by the Office of the State Fire Marshal.
7 Until such form is promulgated, the Office of the State
8 Fire Marshal shall use a form which generally conforms
9 with this Act.

10 (2) Within 60 days of receipt of the "Eligibility and
11 Deductibility Determination" form, the Office of the State
12 Fire Marshal shall issue one letter enunciating the final
13 eligibility and deductibility determination, and such
14 determination or failure to act within the time prescribed
15 shall be a final decision appealable to the Illinois
16 Pollution Control Board.

17 (Source: P.A. 96-908, eff. 6-8-10; revised 7-30-24.)