

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.)