

HB5778



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5778

Introduced 2/16/2012, by Rep. Donald L. Moffitt

SYNOPSIS AS INTRODUCED:

415 ILCS 5/57.9

Amends the Environmental Protection Act. Decreases by \$80,000 the deductible that the owners and operators of certain leaking underground storage tanks must pay in order to have their corrective action costs paid from the Underground Storage Tank Fund. Provides that if an owner or operator has already paid the higher deductible, then it is entitled to seek reimbursement from the State for the difference between the higher and lower deductible. Also makes revisory changes. Effective immediately.

LRB097 18889 JDS 64127 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Section 57.9 as follows:

6 (415 ILCS 5/57.9)

7 Sec. 57.9. Underground Storage Tank Fund; eligibility and
8 deductibility.

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

15 (1) Neither the owner nor the operator is the United
16 States Government.

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

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

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

23 (B) Aviation fuel.

1 (C) Heating oil.

2 (D) Kerosene.

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

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

9 (5) The owner or operator notified the Illinois
10 Emergency Management Agency of a confirmed release, the
11 costs were incurred after the notification and the costs
12 were a result of a release of a substance listed in this
13 Section. Costs of corrective action or indemnification
14 incurred before providing that notification shall not be
15 eligible for payment.

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

19 (7) The costs were associated with "corrective action"
20 of this Act.

21 If the underground storage tank which experienced a
22 release of a substance listed in this Section was installed
23 after July 28, 1989, the owner or operator is eligible to
24 access the Underground Storage Tank Fund if it is
25 demonstrated to the Office of the State Fire Marshal the
26 tank was installed and operated in accordance with Office

1 of the State Fire Marshal regulatory requirements. Office
2 of the State Fire Marshal certification is prima facie
3 evidence the tank was installed pursuant to the Office of
4 the State Fire Marshal regulatory requirements.

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

13 (1) A deductible of \$100,000 shall apply when none of
14 the underground storage tanks were registered prior to July
15 28, 1989, except in the case of underground storage tanks
16 used exclusively to store heating oil for consumptive use
17 on the premises where stored and which serve other than
18 farms or residential units, a deductible of \$100,000 shall
19 apply when none of these tanks were registered prior to
20 July 1, 1992, provided, however, that a deductible of
21 \$20,000 shall apply in the circumstances covered under this
22 paragraph (1) if all of the following criteria are met:-

23 (A) the failure to timely register the underground
24 storage tank was not intentional and resulted from
25 inadvertence or excusable neglect;

26 (B) the remediation of the release from the

1 underground storage tank is completed between January
2 1, 2011 and December 31, 2012; and

3 (C) the underground storage tank was registered
4 before January 1, 2012.

5 If any individual or entity has paid the previously
6 applicable \$100,000 deductible, or any portion thereof
7 above \$20,000, and meets the requirements of subparagraphs
8 (A) through (C) of this paragraph (1), then that individual
9 or entity shall be eligible to recover the amount paid
10 toward the deductible that is in excess of \$20,000.

11 (2) A deductible of \$50,000 shall apply if any of the
12 underground storage tanks were registered prior to July 28,
13 1989, and the State received notice of the confirmed
14 release prior to July 28, 1989.

15 (3) A deductible of \$15,000 shall apply when one or
16 more, but not all, of the underground storage tanks were
17 registered prior to July 28, 1989, and the State received
18 notice of the confirmed release on or after July 28, 1989.

19 For releases reported on or after June 8, 2010 (the
20 effective date of Public Act 96-908) ~~this amendatory Act of the~~
21 ~~96th General Assembly~~, an owner or operator may access the
22 Underground Storage Tank Fund for costs associated with an
23 Agency approved plan, and the Agency shall approve the payment
24 of costs associated with corrective action after the
25 application of a \$5,000 deductible.

26 A deductible shall apply annually for each site at which

1 costs were incurred under a claim submitted pursuant to this
2 Title, except that if corrective action in response to an
3 occurrence takes place over a period of more than one year, in
4 subsequent years, no deductible shall apply for costs incurred
5 in response to such occurrence.

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

8 (1) When an owner or operator reports a confirmed
9 release of a regulated substance, the Office of the State
10 Fire Marshal shall provide the owner or operator with an
11 "Eligibility and Deductibility Determination" form. The
12 form shall either be provided on-site or within 15 days of
13 the Office of the State Fire Marshal receipt of notice
14 indicating a confirmed release. The form shall request
15 sufficient information to enable the Office of the State
16 Fire Marshal to make a final determination as to owner or
17 operator eligibility to access the Underground Storage
18 Tank Fund pursuant to this Title and the appropriate
19 deductible. The form shall be promulgated as a rule or
20 regulation pursuant to the Illinois Administrative
21 Procedure Act by the Office of the State Fire Marshal.
22 Until such form is promulgated, the Office of State Fire
23 Marshal shall use a form which generally conforms with this
24 Act.

25 (2) Within 60 days of receipt of the "Eligibility and
26 Deductibility Determination" form, the Office of the State

1 Fire Marshal shall issue one letter enunciating the final
2 eligibility and deductibility determination, and such
3 determination or failure to act within the time prescribed
4 shall be a final decision appealable to the Illinois
5 Pollution Control Board.

6 (Source: P.A. 96-908, eff. 6-8-10.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.