

SB2390



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2390

Introduced 2/14/2008, by Sen. Matt Murphy

SYNOPSIS AS INTRODUCED:

415 ILCS 5/57.7

Amends a Section of the Environmental Protection Act involving Petroleum Underground Storage Tanks. Provides that site investigation completion reports must be made available, upon request, to any person with an ownership interest in a remediation site or the property on which the remediation site is located. Makes changes to the remediation process, including requiring public hearings, when remediation objectives have not been achieved within the specified time period. Provides that if all applicable remediation objectives have not been achieved at a site within 10 years after completion of the site investigation, the Agency, in collaboration with the Board, must hold a public hearing to determine whether the responsible owner or operator will either (i) pay the Agency to conduct the proper corrective action or (ii) purchase the site from the current site owner for the site's fair market value. Effective immediately.

LRB095 14794 CMK 41104 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 57.7 as follows:

6 (415 ILCS 5/57.7)

7 Sec. 57.7. Leaking underground storage tanks; site
8 investigation and corrective action.

9 (a) Site investigation.

10 (1) For any site investigation activities required by
11 statute or rule, the owner or operator shall submit to the
12 Agency for approval a site investigation plan designed to
13 determine the nature, concentration, direction of
14 movement, rate of movement, and extent of the contamination
15 as well as the significant physical features of the site
16 and surrounding area that may affect contaminant transport
17 and risk to human health and safety and the environment.

18 (2) Any owner or operator intending to seek payment
19 from the Fund shall submit to the Agency for approval a
20 site investigation budget that includes, but is not limited
21 to, an accounting of all costs associated with the
22 implementation and completion of the site investigation
23 plan.

1 (3) Remediation objectives for the applicable
2 indicator contaminants shall be determined using the
3 tiered approach to corrective action objectives rules
4 adopted by the Board pursuant to this Title and Title XVII
5 of this Act. For the purposes of this Title, "Contaminant
6 of Concern" or "Regulated Substance of Concern" in the
7 rules means the applicable indicator contaminants set
8 forth in subsection (d) of this Section and the rules
9 adopted thereunder.

10 (4) Upon the Agency's approval of a site investigation
11 plan, or as otherwise directed by the Agency, the owner or
12 operator shall conduct a site investigation in accordance
13 with the plan.

14 (5) Within 30 days after completing the site
15 investigation, the owner or operator shall submit to the
16 Agency for approval a site investigation completion
17 report. At a minimum the report shall include all of the
18 following:

19 (A) Executive summary.

20 (B) Site history.

21 (C) Site-specific sampling methods and results.

22 (D) Documentation of all field activities,
23 including quality assurance.

24 (E) Documentation regarding the development of
25 proposed remediation objectives.

26 (F) Interpretation of results.

1 (G) Conclusions.

2 (6) Any report submitted to the Agency under this
3 Section must be made available, upon request, to any person
4 with an ownership interest in the site or the property on
5 which the site is located. For the purpose of this
6 subsection (a), "ownership interest" has the same meaning
7 as provided in Section 21-285 of the Property Tax Code.

8 (b) Corrective action.

9 (1) If the site investigation confirms none of the
10 applicable indicator contaminants exceed the proposed
11 remediation objectives, within 30 days after completing
12 the site investigation the owner or operator shall submit
13 to the Agency for approval a corrective action completion
14 report in accordance with this Section.

15 (2) If any of the applicable indicator contaminants
16 exceed the remediation objectives approved for the site,
17 within 30 days after the Agency approves the site
18 investigation completion report the owner or operator
19 shall submit to the Agency for approval a corrective action
20 plan designed to mitigate any threat to human health, human
21 safety, or the environment resulting from the underground
22 storage tank release. The plan shall describe the selected
23 remedy and evaluate its ability and effectiveness to
24 achieve the remediation objectives approved for the site.
25 At a minimum, the report shall include all of the
26 following:

- 1 (A) Executive summary.
- 2 (B) Statement of remediation objectives.
- 3 (C) Remedial technologies selected.
- 4 (D) Confirmation sampling plan.
- 5 (E) Current and projected future use of the
6 property.
- 7 (F) Applicable preventive, engineering, and
8 institutional controls including long-term
9 reliability, operating, and maintenance plans, and
10 monitoring procedures.
- 11 (G) A schedule for implementation and completion
12 of the plan.
- 13 (3) Any owner or operator intending to seek payment
14 from the Fund shall submit to the Agency for approval a
15 corrective action budget that includes, but is not limited
16 to, an accounting of all costs associated with the
17 implementation and completion of the corrective action
18 plan.
- 19 (4) Upon the Agency's approval of a corrective action
20 plan, or as otherwise directed by the Agency, the owner or
21 operator shall proceed with corrective action in
22 accordance with the plan.
- 23 (5) Within 30 days after the completion of a corrective
24 action plan that achieves applicable remediation
25 objectives the owner or operator shall submit to the Agency
26 for approval a corrective action completion report. The

1 report shall demonstrate whether corrective action was
2 completed in accordance with the approved corrective
3 action plan and whether the remediation objectives
4 approved for the site, as well as any other requirements of
5 the plan, have been achieved.

6 (6) If within 4 years after the approval of any
7 corrective action plan the applicable remediation
8 objectives have not been achieved and the owner or operator
9 has not submitted a corrective action completion report,
10 the owner or operator must submit a status report for
11 Agency review. The status report must include, but is not
12 limited to, a description of the remediation activities
13 taken to date, the effectiveness of the method of
14 remediation being used, the likelihood of meeting the
15 applicable remediation objectives using the current method
16 of remediation, and the date the applicable remediation
17 objectives are expected to be achieved. The status report
18 must be evaluated by the Agency and made available to the
19 public on the Agency's Internet website no less than 30
20 days before a public hearing is held to determine whether
21 the owner or operator may continue remediation efforts
22 under the current corrective action plan for the site. Any
23 public hearing conducted under this item (6) must be held
24 in the municipality nearest the remediation site.

25 (7) If the Agency determines any approved corrective
26 action plan will not achieve applicable remediation

1 objectives within 10 years after completion of the site
2 investigation ~~a reasonable time~~, based upon the method of
3 remediation and site specific circumstances, the Agency
4 may require the owner or operator to submit to the Agency
5 for approval a revised corrective action plan. If the owner
6 or operator intends to seek payment from the Fund, the
7 owner or operator must also submit a revised budget.

8 (8) If all applicable remediation objectives have not
9 been achieved at a site within 10 years after completion of
10 the site investigation, the Agency, in collaboration with
11 the Board, must hold a public hearing to determine whether
12 the responsible owner or operator will either (i) pay the
13 Agency to conduct the proper corrective action or (ii)
14 purchase the site from the current site owner for the
15 site's fair market value. If the Agency proceeds under item
16 (i), the Agency must complete the proper corrective action
17 within 2 years after the public hearing under this
18 paragraph.

19 (c) Agency review and approval.

20 (1) Agency approval of any plan and associated budget,
21 as described in this subsection (c), shall be considered
22 final approval for purposes of seeking and obtaining
23 payment from the Underground Storage Tank Fund if the costs
24 associated with the completion of any such plan are less
25 than or equal to the amounts approved in such budget.

26 (2) In the event the Agency fails to approve,

1 disapprove, or modify any plan or report submitted pursuant
2 to this Title in writing within 120 days of the receipt by
3 the Agency, the plan or report shall be considered to be
4 rejected by operation of law for purposes of this Title and
5 rejected for purposes of payment from the Underground
6 Storage Tank Fund.

7 (A) For purposes of those plans as identified in
8 paragraph (5) of this subsection (c), the Agency's
9 review may be an audit procedure. Such review or audit
10 shall be consistent with the procedure for such review
11 or audit as promulgated by the Board under Section
12 57.14. The Agency has the authority to establish an
13 auditing program to verify compliance of such plans
14 with the provisions of this Title.

15 (B) For purposes of corrective action plans
16 submitted pursuant to subsection (b) of this Section
17 for which payment from the Fund is not being sought,
18 the Agency need not take action on such plan until 120
19 days after it receives the corrective action
20 completion report required under subsection (b) of
21 this Section. In the event the Agency approved the
22 plan, it shall proceed under the provisions of this
23 subsection (c).

24 (3) In approving any plan submitted pursuant to
25 subsection (a) or (b) of this Section, the Agency shall
26 determine, by a procedure promulgated by the Board under

1 Section 57.14, that the costs associated with the plan are
2 reasonable, will be incurred in the performance of site
3 investigation or corrective action, and will not be used
4 for site investigation or corrective action activities in
5 excess of those required to meet the minimum requirements
6 of this Title.

7 (4) For any plan or report received after June 24,
8 2002, any action by the Agency to disapprove or modify a
9 plan submitted pursuant to this Title shall be provided to
10 the owner or operator in writing within 120 days of the
11 receipt by the Agency or, in the case of a site
12 investigation plan or corrective action plan for which
13 payment is not being sought, within 120 days of receipt of
14 the site investigation completion report or corrective
15 action completion report, respectively, and shall be
16 accompanied by:

17 (A) an explanation of the Sections of this Act
18 which may be violated if the plans were approved;

19 (B) an explanation of the provisions of the
20 regulations, promulgated under this Act, which may be
21 violated if the plan were approved;

22 (C) an explanation of the specific type of
23 information, if any, which the Agency deems the
24 applicant did not provide the Agency; and

25 (D) a statement of specific reasons why the Act and
26 the regulations might not be met if the plan were

1 approved.

2 Any action by the Agency to disapprove or modify a plan
3 or report or the rejection of any plan or report by
4 operation of law shall be subject to appeal to the Board in
5 accordance with the procedures of Section 40. If the owner
6 or operator elects to incorporate modifications required
7 by the Agency rather than appeal, an amended plan shall be
8 submitted to the Agency within 35 days of receipt of the
9 Agency's written notification.

10 (5) For purposes of this Title, the term "plan" shall
11 include:

12 (A) Any site investigation plan submitted pursuant
13 to subsection (a) of this Section;

14 (B) Any site investigation budget submitted
15 pursuant to subsection (a) of this Section;

16 (C) Any corrective action plan submitted pursuant
17 to subsection (b) of this Section; or

18 (D) Any corrective action plan budget submitted
19 pursuant to subsection (b) of this Section.

20 (d) For purposes of this Title, the term "indicator
21 contaminant" shall mean, unless and until the Board promulgates
22 regulations to the contrary, the following: (i) if an
23 underground storage tank contains gasoline, the indicator
24 parameter shall be BTEX and Benzene; (ii) if the tank contained
25 petroleum products consisting of middle distillate or heavy
26 ends, then the indicator parameter shall be determined by a

1 scan of PNA's taken from the location where contamination is
2 most likely to be present; and (iii) if the tank contained used
3 oil, then the indicator contaminant shall be those chemical
4 constituents which indicate the type of petroleum stored in an
5 underground storage tank. All references in this Title to
6 groundwater objectives shall mean Class I groundwater
7 standards or objectives as applicable.

8 (e) (1) Notwithstanding the provisions of this Section, an
9 owner or operator may proceed to conduct site investigation
10 or corrective action prior to the submittal or approval of
11 an otherwise required plan. If the owner or operator elects
12 to so proceed, an applicable plan shall be filed with the
13 Agency at any time. Such plan shall detail the steps taken
14 to determine the type of site investigation or corrective
15 action which was necessary at the site along with the site
16 investigation or corrective action taken or to be taken, in
17 addition to costs associated with activities to date and
18 anticipated costs.

19 (2) Upon receipt of a plan submitted after activities
20 have commenced at a site, the Agency shall proceed to
21 review in the same manner as required under this Title. In
22 the event the Agency disapproves all or part of the costs,
23 the owner or operator may appeal such decision to the
24 Board. The owner or operator shall not be eligible to be
25 reimbursed for such disapproved costs unless and until the
26 Board determines that such costs were eligible for payment.

1 (f) All investigations, plans, and reports conducted or
2 prepared under this Section shall be conducted or prepared
3 under the supervision of a licensed professional engineer and
4 in accordance with the requirements of this Title.

5 (Source: P.A. 95-331, eff. 8-21-07.)

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