

1 AN ACT concerning health.

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
15 contamination as well as the significant physical features
16 of the site and surrounding area that may affect
17 contaminant transport and risk to human health and safety
18 and the environment.

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

1 plan.

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

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

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

20 (A) Executive summary.

21 (B) Site history.

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

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

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

1 (F) Interpretation of results.

2 (G) Conclusions.

3 (b) Corrective action.

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

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

22 (A) Executive summary.

23 (B) Statement of remediation objectives.

24 (C) Remedial technologies selected.

25 (D) Confirmation sampling plan.

26 (E) Current and projected future use of the

1 property.

2 (F) Applicable preventive, engineering, and
3 institutional controls including long-term
4 reliability, operating, and maintenance plans, and
5 monitoring procedures.

6 (G) A schedule for implementation and completion
7 of the plan.

8 (3) Any owner or operator intending to seek payment
9 from the Fund shall submit to the Agency for approval a
10 corrective action budget that includes, but is not limited
11 to, an accounting of all costs associated with the
12 implementation and completion of the corrective action
13 plan.

14 (4) Upon the Agency's approval of a corrective action
15 plan, or as otherwise directed by the Agency, the owner or
16 operator shall proceed with corrective action in
17 accordance with the plan.

18 (5) Within 30 days after the completion of a
19 corrective action plan that achieves applicable
20 remediation objectives the owner or operator shall submit
21 to the Agency for approval a corrective action completion
22 report. The report shall demonstrate whether corrective
23 action was completed in accordance with the approved
24 corrective action plan and whether the remediation
25 objectives approved for the site, as well as any other
26 requirements of the plan, have been achieved.

1 (6) If within 4 years after the approval of any
2 corrective action plan the applicable remediation
3 objectives have not been achieved and the owner or
4 operator has not submitted a corrective action completion
5 report, the owner or operator must submit a status report
6 for Agency review. The status report must include, but is
7 not limited to, a description of the remediation
8 activities taken to date, the effectiveness of the method
9 of remediation being used, the likelihood of meeting the
10 applicable remediation objectives using the current method
11 of remediation, and the date the applicable remediation
12 objectives are expected to be achieved.

13 (7) If the Agency determines any approved corrective
14 action plan will not achieve applicable remediation
15 objectives within a reasonable time, based upon the method
16 of remediation and site specific circumstances, the Agency
17 may require the owner or operator to submit to the Agency
18 for approval a revised corrective action plan. If the
19 owner or operator intends to seek payment from the Fund,
20 the owner or operator must also submit a revised budget.

21 (c) Agency review and approval.

22 (1) Agency approval of any plan and associated budget,
23 as described in this subsection (c), shall be considered
24 final approval for purposes of seeking and obtaining
25 payment from the Underground Storage Tank Fund if the
26 costs associated with the completion of any such plan are

1 less than or equal to the amounts approved in such budget.

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

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

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

26 (3) In approving any plan submitted pursuant to

1 subsection (a) or (b) of this Section, the Agency shall
2 determine, by a procedure promulgated by the Board under
3 Section 57.14, that the costs associated with the plan are
4 reasonable, will be incurred in the performance of site
5 investigation or corrective action, and will not be used
6 for site investigation or corrective action activities in
7 excess of those required to meet the minimum requirements
8 of this Title. The Agency shall also determine, pursuant
9 to the Project Labor Agreements Act, whether the
10 corrective action shall include a project labor agreement
11 if payment from the Underground Storage Tank Fund is to be
12 requested.

13 (A) For purposes of payment from the Fund,
14 corrective action activities required to meet the
15 minimum requirements of this Title shall include, but
16 not be limited to, the following use of the Board's
17 Tiered Approach to Corrective Action Objectives rules
18 adopted under Title XVII of this Act:

19 (i) For the site where the release occurred,
20 the use of Tier 2 remediation objectives that are
21 no more stringent than Tier 1 remediation
22 objectives.

23 (ii) The use of industrial/commercial property
24 remediation objectives, unless the owner or
25 operator demonstrates that the property being
26 remediated is residential property or being

1 developed into residential property.

2 (iii) The use of groundwater ordinances as
3 institutional controls in accordance with Board
4 rules.

5 (iv) The use of on-site groundwater use
6 restrictions as institutional controls in
7 accordance with Board rules.

8 (B) Any bidding process adopted under Board rules
9 to determine the reasonableness of costs of corrective
10 action must provide for a publicly-noticed,
11 competitive, and sealed bidding process that includes,
12 at a minimum, the following:

13 (i) The owner or operator must issue
14 invitations for bids that include, at a minimum, a
15 description of the work being bid and applicable
16 contractual terms and conditions. The criteria on
17 which the bids will be evaluated must be set forth
18 in the invitation for bids. The criteria may
19 include, but shall not be limited to, criteria for
20 determining acceptability, such as inspection,
21 testing, quality, workmanship, delivery, and
22 suitability for a particular purpose. Criteria
23 that will affect the bid price and be considered
24 in the evaluation of a bid, such as discounts,
25 shall be objectively measurable.

26 (ii) At least 14 days prior to the date set in

1 the invitation for the opening of bids, public
2 notice of the invitation for bids must be
3 published in a local paper of general circulation
4 for the area in which the site is located or on an
5 electronic procurement website approved by the
6 Agency.

7 (iii) Bids must be opened publicly in the
8 presence of one or more witnesses at the time and
9 place designated in the invitation for bids. The
10 name of each bidder, the amount of each bid, and
11 other relevant information as specified in Board
12 rules must be recorded and submitted to the Agency
13 in the applicable budget. After selection of the
14 winning bid, the winning bid and the record of
15 each unsuccessful bid shall be open to public
16 inspection.

17 (iv) Bids must be unconditionally accepted
18 without alteration or correction. Bids must be
19 evaluated based on the requirements set forth in
20 the invitation for bids, which may include
21 criteria for determining acceptability, such as
22 inspection, testing, quality, workmanship,
23 delivery, and suitability for a particular
24 purpose. Criteria that will affect the bid price
25 and be considered in the evaluation of a bid, such
26 as discounts, shall be objectively measurable. The

1 invitation for bids shall set forth the evaluation
2 criteria to be used.

3 (v) Correction or withdrawal of inadvertently
4 erroneous bids before or after selection of the
5 winning bid, or cancellation of winning bids based
6 on bid mistakes, shall be allowed in accordance
7 with Board rules. After bid opening, no changes in
8 bid prices or other provisions of bids prejudicial
9 to the owner or operator or fair competition shall
10 be allowed. All decisions to allow the correction
11 or withdrawal of bids based on bid mistakes shall
12 be supported by a written determination made by
13 the owner or operator.

14 (vi) The owner or operator shall select the
15 winning bid with reasonable promptness by written
16 notice to the lowest responsible and responsive
17 bidder whose bid meets the requirements and
18 criteria set forth in the invitation for bids. The
19 winning bid and other relevant information as
20 specified in Board rules must be recorded and
21 submitted to the Agency in the applicable budget.

22 (vii) All bidding documentation must be
23 retained by the owner or operator for a minimum of
24 3 years after the costs bid are submitted in an
25 application for payment, except that documentation
26 relating to an appeal, litigation, or other

1 disputed claim must be maintained until at least 3
2 years after the date of the final disposition of
3 the appeal, litigation, or other disputed claim.
4 All bidding documentation must be made available
5 to the Agency for inspection and copying during
6 normal business hours.

7 (C) Any bidding process adopted under Board rules
8 to determine the reasonableness of costs of corrective
9 action shall (i) be optional and (ii) allow bidding
10 only if the owner or operator demonstrates that
11 corrective action cannot be performed for amounts less
12 than or equal to maximum payment amounts adopted by
13 the Board.

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

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

26 (B) an explanation of the provisions of the

1 regulations, promulgated under this Act, which may be
2 violated if the plan were approved;

3 (C) an explanation of the specific type of
4 information, if any, which the Agency deems the
5 applicant did not provide the Agency; and

6 (D) a statement of specific reasons why the Act
7 and the regulations might not be met if the plan were
8 approved.

9 Any action by the Agency to disapprove or modify a
10 plan or report or the rejection of any plan or report by
11 operation of law shall be subject to appeal to the Board in
12 accordance with the procedures of Section 40. If the owner
13 or operator elects to incorporate modifications required
14 by the Agency rather than appeal, an amended plan shall be
15 submitted to the Agency within 35 days of receipt of the
16 Agency's written notification.

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

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

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

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

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

1 (d) For purposes of this Title, the term "indicator
2 contaminant" shall mean, unless and until the Board
3 promulgates regulations to the contrary, the following: (i) if
4 an underground storage tank contains gasoline, the indicator
5 parameter shall be BTEX and Benzene; (ii) if the tank
6 contained petroleum products consisting of middle distillate
7 or heavy ends, then the indicator parameter shall be
8 determined by a scan of PNA's taken from the location where
9 contamination is most likely to be present; and (iii) if the
10 tank contained used oil, then the indicator contaminant shall
11 be those chemical constituents which indicate the type of
12 petroleum stored in an underground storage tank. All
13 references in this Title to groundwater objectives shall mean
14 Class I groundwater standards or objectives as applicable.

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

26 (2) Upon receipt of a plan submitted after activities

1 have commenced at a site, the Agency shall proceed to
2 review in the same manner as required under this Title. In
3 the event the Agency disapproves all or part of the costs,
4 the owner or operator may appeal such decision to the
5 Board. The owner or operator shall not be eligible to be
6 reimbursed for such disapproved costs unless and until the
7 Board determines that such costs were eligible for
8 payment.

9 (f) All investigations, plans, and reports conducted or
10 prepared under this Section shall be conducted or prepared
11 under the supervision of a licensed professional engineer and
12 in accordance with the requirements of this Title.

13 (Source: P.A. 98-109, eff. 7-25-13.)