

# SB1676



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1676

Introduced 2/19/2009, 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.

LRB096 10730 JDS 20914 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 a reasonable time, based upon the method  
2 of remediation and site specific circumstances, the Agency  
3 may require the owner or operator to submit to the Agency  
4 for approval a revised corrective action plan. If the owner  
5 or operator intends to seek payment from the Fund, the  
6 owner or operator must also submit a revised budget.

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

18 (c) Agency review and approval.

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

25 (2) In the event the Agency fails to approve,  
26 disapprove, or modify any plan or report submitted pursuant

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

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

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

23 (3) In approving any plan submitted pursuant to  
24 subsection (a) or (b) of this Section, the Agency shall  
25 determine, by a procedure promulgated by the Board under  
26 Section 57.14, that the costs associated with the plan are



1 reasonable, will be incurred in the performance of site  
2 investigation or corrective action, and will not be used  
3 for site investigation or corrective action activities in  
4 excess of those required to meet the minimum requirements  
5 of this Title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (f) All investigations, plans, and reports conducted or

1 prepared under this Section shall be conducted or prepared  
2 under the supervision of a licensed professional engineer and  
3 in accordance with the requirements of this Title.

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

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