

§§1 - 22,24
C. 58:10A-37.1
To
58:10A-37.23
§23
Repealer
§25
Approp.

P.L. 1997, CHAPTER 235, *approved August 30, 1997*
Senate, No. 1756 (*Third Reprint*)

1 **AN ACT** concerning the upgrade, remediation, and closure of certain
2 underground storage tanks, supplementing Title 58 of the Revised
3 Statutes, repealing sections 17 and 18 of P.L.1986, c.102, and
4 making an appropriation.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. This act shall be known and may be cited as the "Underground
10 Storage Tank Finance Act."

11

12 2. As used in this act:

13 "Applicant" means a person who files an application for financial
14 assistance from the Petroleum Underground Storage Tank
15 Remediation, Upgrade, and Closure Fund for payment of eligible
16 project costs of a remediation due to a discharge of petroleum from
17 a petroleum underground storage tank and for payment of eligible
18 project costs of an upgrade or closure of a regulated tank;

19 "Authority" means the New Jersey Economic Development
20 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

21 "Closure" means the proper closure or removal of a petroleum
22 underground storage tank necessary to meet all regulatory
23 requirements of federal, State, or local law ¹[:] ¹

24 "Commissioner" means the Commissioner of Environmental
25 Protection;

26 "Department" means the Department of Environmental Protection;

27 "Discharge" means the intentional or unintentional release by any
28 means of petroleum from a petroleum underground storage tank into
29 the environment;

30 "Eligible owner or operator" means ¹(1)¹ any owner or operator

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted February 10, 1997.

² Senate SBA committee amendments adopted March 10, 1997.

³ Assembly AAP committee amendments adopted June 9, 1997.

1 ¹other than the owner or operator of a petroleum underground storage
2 tank storing heating oil for onsite consumption in a residential
3 building¹ who owns or operates less than ¹[25] 10¹ petroleum
4 underground storage tanks in New Jersey, who has a net worth of less
5 than ¹[\$10,000,000] \$2,000,000¹ and who demonstrates to the
6 satisfaction of the authority, the inability to qualify for and obtain a
7 commercial loan for all or part of the eligible project costs ¹, (2) the
8 owner or operator of a petroleum underground storage tank storing
9 heating oil for onsite consumption in a residential building, or (3) a
10 public entity who owns or operates a petroleum underground storage
11 tank in New Jersey¹;

12 "Eligible project costs" means the reasonable costs for equipment,
13 work or services required to effectuate a remediation, an upgrade, or
14 a closure which equipment, work or services are eligible for payment
15 from the Petroleum Underground Storage Tank Remediation,
16 Upgrade, and Closure Fund. In the case of an upgrade or closure of
17 a regulated tank, eligible project costs shall be limited to the cost of
18 the minimal effective system necessary to meet all the regulatory
19 requirements of federal and State law. The limitation of eligible
20 project costs to the minimal effective system shall not be construed to
21 deem ineligible those project costs expended to replace a regulated
22 tank rather than to improve the regulated tank. An owner or operator
23 may perform an upgrade or a closure beyond the minimal effective
24 system in which case the eligible project costs that may be awarded
25 from the fund as financial assistance shall be that amount that would
26 represent the cost of a minimal effective system. ²In the case of a
27 remediation, eligible project costs shall not include the cost to
28 remediate a site to meet residential soil remediation standards if the
29 local zoning ordinances adopted pursuant to the "Municipal Land Use
30 Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for
31 residential use.² Eligible project costs shall include the cost of a
32 preliminary assessment and site investigation, even if performed prior
33 to the award of financial assistance from the fund if the preliminary
34 assessment and site investigation were performed after the effective
35 date of P.L. , c. (now before the Legislature as this bill) ¹. Eligible
36 project costs shall not include the costs of any remediation performed
37 at a site where the petroleum underground storage tank was removed
38 prior to December 1, 1996¹;

39 "Facility" means one or more operational or nonoperational
40 petroleum underground storage tanks under single ownership at a
41 common site;

42 "Financial assistance" means a grant or loan or a combination of
43 both that may be awarded by the authority from the fund to an eligible
44 owner or operator as provided in section 5 of P.L. , c. (C.)(now
45 before the Legislature as this bill);

46 "Operator" means any person in control of, or having responsibility

1 for, the daily operation of a facility;

2 "Owner" means any person who owns a facility;

3 "Person" means any individual, partnership, corporation, society,
4 association, consortium, joint venture, commercial entity, or public
5 entity, but does not include the State or any of its departments,
6 agencies or authorities;

7 "Petroleum" means all hydrocarbons which are liquid at one
8 atmosphere pressure (760 millimeters or 29.92 inches Hg) and
9 temperatures between -20°F and 120°F (-29°C and 49°C), and all
10 hydrocarbons which are discharged in a liquid state at or nearly at
11 atmospheric pressure at temperatures in excess of 120°F (49°C)
12 including, but not limited to, gasoline, kerosene, fuel oil, oil sludge, oil
13 refuse, oil mixed with other wastes, crude oil, and purified
14 hydrocarbons that have been refined, re-refined, or otherwise
15 processed for the purpose of being burned as a fuel to produce heat or
16 usable energy or which is suitable for use as a motor fuel or lubricant
17 in the operation or maintenance of an engine;

18 "Petroleum Underground Storage Tank Remediation, Upgrade and
19 Closure Fund" or "fund" means the fund established pursuant to
20 section 3 of P.L. , c. (C.) (now before the Legislature as this
21 bill);

22 "Petroleum underground storage tank" means a tank of any size,
23 including appurtenant pipes, lines, fixtures, and other related
24 equipment, that normally and primarily stores petroleum, the volume
25 of which, including the volume of the appurtenant pipes, lines, fixtures
26 and other related equipment, is 10% or more below the ground.

27 "Petroleum underground storage tank" does not include:

28 (1) Septic tanks installed or regulated pursuant to regulations
29 adopted by the department pursuant to "The Realty Improvement
30 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et
31 seq.) or ¹["The] the ¹ Water Pollution Control Act," P.L.1977, c.74
32 (C.58:10A-1 et seq.);

33 (2) Pipelines, including gathering lines, regulated under ¹[the
34 "Natural Gas Pipeline Safety Act of 1968," Pub.L.90-481
35 (49 U.S.C.§1671 et seq.), the "Hazardous Liquid Pipeline Safety Act
36 of 1979," Pub.L.96-129 (49 U.S.C.§2001 et seq.)] 49 U.S.C.§60101
37 et seq.¹, or intrastate pipelines regulated under State law;

38 (3) Surface impoundments, pits, ponds, or lagoons, operated in or
39 regulated pursuant to regulations adopted by the department pursuant
40 to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et
41 seq.);

42 (4) Storm water or wastewater collection systems operated or
43 regulated pursuant to regulations adopted by the department pursuant
44 to the "Water Pollution Control Act";

45 (5) Liquid traps or associated gathering lines directly related to oil
46 or gas production and gathering operations;

1 (6) Tanks situated in an underground area, including, but not
2 limited to, basements, cellars, mines, drift shafts, or tunnels, if the
3 storage tank is situated upon or above the surface of the floor, or
4 storage tanks located below the surface of the ground which are
5 equipped with secondary containment and are uncovered so as to
6 allow visual inspection of the exterior of the tank; and

7 (7) Any pipes, lines, fixtures, or other equipment connected to any
8 tank exempted from the provisions of this definition pursuant to
9 paragraphs (1) through (6) above;

10 "Public entity" means any county, municipality, or public school
11 district, but shall not include any authority created by those entities;

12 "Regulated tank" means a petroleum underground storage tank that
13 is required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21
14 et seq.) or 42 U.S.C.§6991 et seq.;

15 "Remediation" means all necessary actions to investigate and clean
16 up any known, suspected, or threatened discharge of petroleum,
17 including, as necessary, the preliminary assessment, site investigation,
18 remedial investigation, and remedial action, as those terms are defined
19 in section 23 of P.L.1993, c.139 (C.58:10B-1);

20 "Upgrade" means the replacement of a regulated tank, the
21 installation of secondary containment, monitoring systems, release
22 detection systems, corrosion protection, spill prevention, or overfill
23 prevention therefor, or any other necessary improvement to the
24 regulated tank in order to meet the standards for regulated tanks
25 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and
26 42 U.S.C.§6991 et seq.

27

28 3. a. The Petroleum Underground Storage Tank Remediation,
29 Upgrade, and Closure Fund is established in the authority as a special,
30 revolving fund. The fund shall be administered by the authority and
31 shall be credited with:

32 (1) such moneys as are appropriated by the Legislature;

33 (2) sums received as repayment of principal and interest on
34 outstanding loans made from the State Underground Storage Tank
35 Improvement Fund established pursuant to P.L.1986, c.102
36 (C.58:10A-21 et seq.);

37 (3) such monies as are appropriated pursuant to section 21
38 of P.L. , c. (C.)(pending in the Legislature as this bill);

39 (4) all non-refundable application fees collected pursuant to section
40 6 of P.L. , c. (C.)(now before the Legislature as this bill);

41 (5) sums received as repayment of principal and interest on
42 outstanding loans made from the fund;

43 (6) any monies recovered by the authority pursuant to sections 14
44 and 15 of P.L. , c. (C.)(now before the Legislature as this
45 bill);

46 (7) any return on investment of monies deposited in the fund;

1 (8) any monies recovered through liens pursuant to section 10 or
2 16 of P.L. , c. (C.)(now before the Legislature as this bill);
3 and

4 (9) payments of the annual surcharge imposed pursuant to section
5 18 of P.L. , c. (C.)(now before the Legislature as this bill).

6 b. Monies in the fund shall be used by the authority solely for
7 providing financial assistance pursuant to section 4 of P.L. , c.
8 (C.)(now before the Legislature as this bill) except that the
9 authority may use ²any return on investment of monies deposited in
10 the fund.² application fees collected pursuant to section 6 of P.L. ,
11 c. (C.), moneys recovered by the authority pursuant to sections 14
12 and 15 of P.L. , c. (C.), and payments of the annual surcharge
13 imposed pursuant to section 18 of P.L. , c. (C.) for actual costs
14 incurred in administering the fund, and for costs of any action to
15 recover monies owing to the fund.

16

17 4. a. Monies in the fund shall be allocated and used to provide
18 financial assistance only to (1) eligible owners or operators of
19 regulated tanks in this State in order to finance the eligible project
20 costs of the upgrade or closure of those regulated tanks as may be
21 required pursuant to 42 U.S.C.§6991 et seq. or P.L.1986, c.102
22 (C.58:10A-21 et seq.); and (2) eligible owners and operators of
23 petroleum underground storage tanks in this State in order to finance
24 the eligible project costs of remediations that are necessary due to the
25 discharge of petroleum from one or more of those petroleum
26 underground storage tanks. Priority for the issuance of financial
27 assistance from the fund, and the terms and conditions of that financial
28 assistance, shall be based upon the criteria set forth in this section.

29 b. Upon a determination that an application for financial assistance
30 meets all established criteria for the award of financial assistance from
31 the fund, the authority shall approve the application. Prior to
32 December 22, 1998, the authority may approve only those applications
33 given priority pursuant to ²[paragraph] paragraphs² (1) ²and (2)² of
34 this subsection or pursuant to ¹[subsection] subsections¹ c. ¹and f.¹ of
35 this section, but the authority may receive, file, and deem complete
36 any application for financial assistance its receives prior to that date.

37 Upon the authority's approval of an application for financial
38 assistance, the authority shall award financial assistance to an applicant
39 upon the availability of sufficient monies in the fund. When monies in
40 the fund are not sufficient at any point in time to fully fund all
41 applications for financial assistance that have been approved by the
42 authority, the authority shall award financial assistance to approved
43 applicants, notwithstanding the date of approval of the application, in
44 the following order of priority:

45 (1) Upgrades of regulated tanks required to be upgraded pursuant
46 to 42 U.S.C.§6991 et seq., and including any necessary remediation at

1 the site of the regulated tank, shall be given first priority;

2 (2) ¹Closure of any regulated tank required to be upgraded
3 pursuant to 42 U.S.C. §6991 et seq., and including any necessary
4 remediation at the site of the regulated tank, shall be given second
5 priority:

6 (3)¹ Upgrades of regulated tanks required to be upgraded pursuant
7 to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to 42
8 U.S.C. §6991 et seq., and including any necessary remediation at the
9 site of the regulated tank, shall be given ¹[second] third¹ priority;

10 ¹[(3)] (4)¹ Any necessary remediations at the sites of petroleum
11 underground storage tanks other than those given priority pursuant to
12 paragraphs (1) ¹[or] ¹(2)¹, or (3)¹ of this subsection shall be given
13 ¹[third] fourth¹ priority;

14 ¹[(4)] (5)¹ Closure of any regulated tank ¹required to be upgraded
15 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant
16 to 42 U.S.C. §6991 et seq.,¹ shall be given last priority.

17 c. Notwithstanding the priority for the award of financial assistance
18 set forth in subsection b. of this section, whenever there has been a
19 discharge, and the discharge poses an imminent and significant threat
20 to a drinking water source, to human health, or to a sensitive or
21 significant ecological area, an approved application for the award of
22 financial assistance for the remediation and upgrade or closure, if
23 necessary, shall be given priority over all other applications for
24 financial assistance.

25 d. The priority ranking of applicants within any priority category
26 enumerated in paragraphs (1), (2), (3), ¹[and] ¹(4) ¹, and (5)¹ of
27 subsection b. and in subsection c. of this section shall be based upon
28 the date an application for financial assistance is filed with the
29 authority as determined pursuant to section 6 of P.L. , c. (C.)
30 (now before the Legislature as this bill).

31 e. Whenever a facility consists of petroleum underground storage
32 tanks from more than one priority category as enumerated in
33 paragraphs (1) through ¹[(4)] (5)¹ of subsection b. of this section, ²and
34 subsection c. of this section,² all the petroleum underground storage
35 tanks at that facility shall be accorded the priority that would be
36 accorded the highest priority petroleum underground storage tank at
37 that facility.

38 ¹f. Notwithstanding the priority rankings established in this section,
39 one tenth of the amount annually appropriated to the Petroleum
40 Underground Storage Tank Remediation, Upgrade and Closure Fund
41 shall be used to provide financial assistance to owners or operators of
42 petroleum underground storage tanks used to store heating oil for
43 onsite consumption in a residential building, in order to finance the
44 eligible project costs of remediations that are necessary due to the
45 discharge of heating oil from those petroleum underground storage
46 tanks. The authority shall provide financial assistance pursuant to this

1 subsection notwithstanding the owner or operator's ability to obtain
2 commercial loans for all or part of the financing. The priority ranking
3 of applicants for these funds shall be based upon the date an
4 application for financial assistance is filed with the authority as
5 determined pursuant to subsection 6 of P.L. , c. (C.) (now in the
6 Legislature as this bill).¹ ²If the authority does not receive qualified
7 applications for financial assistance from owners and operators of
8 petroleum underground storage tanks used to store heating oil for
9 onsite consumption that meet the criteria set forth in this act and in
10 any rules or regulations issued pursuant thereto, sufficient to enable
11 the award of financial assistance an amount equal to one tenth of the
12 amount annually appropriated to the fund in any one year as required
13 pursuant to this subsection, the authority may award that financial
14 assistance in the order of priority as provided in this section. In
15 addition to the monies dedicated pursuant to this subsection, the
16 authority may award financial assistance to an owner or operator of a
17 petroleum underground storage tank used to store heating for onsite
18 consumption when the criteria enumerated in subsection c. of this
19 section are met.²

20

21 5. a. The authority may award financial assistance from the fund
22 to an eligible owner or operator in the form of a loan or a conditional
23 hardship grant as provided in this section. An award of financial
24 assistance, either as a loan or a grant, or a combination of both,
25 ¹[shall] may¹, upon application therefore, be for 100% of the eligible
26 project costs. However, ²[an award of financial assistance]a loan² that
27 any applicant may receive from the fund for an upgrade, remediation,
28 or closure, or any combination thereof, for any one facility, may not
29 exceed \$1,000,000 ²and a grant that any applicant may receive from
30 the fund for any one facility, may not exceed \$250,000. The total
31 amount of financial assistance awarded as grants in any one year may
32 not exceed 10% of the total amount of financial assistance awarded in
33 that year².

34 b. A public entity applying for financial assistance from the fund
35 may only be awarded financial assistance in the form of an interest
36 free loan.

37 c. An applicant, other than a public entity, may apply for and
38 receive a conditional hardship grant as provided in paragraph (1) of
39 this subsection, or a loan for an upgrade, closure, or remediation as
40 provided in paragraph (2) of this subsection. Financial assistance
41 awarded an applicant pursuant to this subsection may consist entirely
42 of a conditional hardship grant, a loan for an upgrade, or loan for a
43 closure, or a loan for a remediation, or any combination thereof,
44 except that the total amount of the award of financial assistance shall
45 be subject to the per facility dollar limitation enumerated in subsection
46 a. of this section. Notwithstanding any other provision of this

1 subsection to the contrary, no tax exempt, nonprofit organization,
2 corporation, or association shall be awarded a conditional hardship
3 grant pursuant to paragraph (1) of this subsection.

4 (1) A conditional hardship grant for eligible project costs of an
5 upgrade, closure or remediation shall be awarded by the authority
6 based upon a finding of eligibility and financial hardship and upon a
7 finding that the applicant ¹[is an eligible owner or operator] meets the
8 criteria set forth in this act¹.

9 In order to be eligible for a conditional hardship grant, the applicant
10 shall have owned or operated the subject petroleum underground
11 storage tank as of December 1, 1996 and continually thereafter or shall
12 have inherited the property from a person who owned ¹[or operated]¹
13 the ¹[facility] petroleum underground storage tank¹ as of that date.
14 No applicant shall be eligible for a conditional hardship grant if the
15 applicant has a taxable income of more than \$100,000 or a net worth,
16 exclusive of the applicant's primary residence, of over \$100,000.

17 A finding of financial hardship by the authority shall be based upon
18 a determination that an applicant cannot reasonably be expected to
19 repay all or a portion of the eligible project costs if the financial
20 assistance were to be awarded as a loan. The amount of an award of
21 a conditional hardship grant shall be the amount of that portion of the
22 eligible project costs the authority determines the applicant cannot
23 reasonably be expected to repay.

24 In making a finding of financial hardship for an application for the
25 upgrade, closure, or remediation of a petroleum underground storage
26 tank, where the petroleum underground storage tank is a part of the
27 business property of the owner, the authority shall base its finding
28 upon the cash flow of the applicant's business, whether or not any part
29 of the applicant's business is related to the ownership or operation of
30 that petroleum underground storage tank. In making a finding of
31 financial hardship for an application for the upgrade or remediation of
32 a petroleum underground storage tank, where the petroleum
33 underground storage tank is not a part of the business property of the
34 owner, the authority shall base its finding upon the applicant's taxable
35 income in the year prior to the date of the application being submitted.

36 If the authority awards a conditional hardship grant in combination
37 with a loan pursuant to this subsection, the authority shall release to
38 the applicant the loan monies prior to the release of the conditional
39 hardship grant monies.

40 Conditional hardship grants awarded to an applicant shall be subject
41 to the lien provisions enumerated in section 16 of P.L. , c.
42 (C.)(now before the Legislature as this bill).

43 (2) A loan ¹to an eligible owner or operator¹ for the eligible project
44 costs of an upgrade, closure, ¹[and] or¹ remediation shall be awarded
45 by the authority only upon a finding that the applicant ¹other than a
46 public entity¹ is able to repay the amount of the loan ¹[and that the

1 applicant is an eligible owner or operator]¹.

2 In making a finding of an applicant's ability to repay a loan for the
3 upgrade, closure, and remediation of a regulated tank, or for the
4 remediation of a discharge from a petroleum underground storage
5 tank, the authority shall base its finding, as applicable, upon the cash
6 flow of the applicant's business, the applicant's taxable income and the
7 applicant's personal and business assets, except that the authority may
8 not consider the applicant's primary residence as collateral, except that
9 the authority may consider the applicant's primary residence as
10 collateral with the permission of the applicant or where the subject
11 petroleum underground storage tank or regulated tank is located at
12 the primary residence.

13 d. The authority shall, where applicable, require an applicant
14 applying for financial assistance from the fund to submit to the
15 authority the financial statements of the applicant's business for three
16 years prior to the date of the application, the most recent interim
17 financial statement for the year of the application, the applicant's
18 federal income tax returns, or other relevant documentation.

19 e. Nothing in this section is intended to alter the priority or criteria
20 for awarding financial assistance established pursuant to section 4 of
21 P.L. , c. (C.)(now before the Legislature as this bill.

22 f. An eligible owner or operator may only be awarded that amount
23 of financial assistance 'issued as a loan'¹ for which the applicant
24 demonstrates he could not qualify for and obtain as a commercial loan.
25 ¹The provisions of this subsection shall not apply to an owner or
26 operator or petroleum underground storage tank used to store heating
27 oil for onsite consumption in a residential building.¹

28

29 6. An eligible owner or operator seeking financial assistance from
30 the fund shall file an application on a form to be developed by the
31 authority. The application form shall be submitted with the application
32 fee. The application fee per facility for residential petroleum
33 underground storage tanks shall be \$250. The ²authority may establish
34 the² application fee per facility for nonresidential petroleum
35 underground storage tanks ²[shall be \$500 for facilities with up to six
36 tanks, and \$1,000 for facilities with seven or more tanks]².

37 The authority shall adopt rules and regulations listing the filing
38 requirements for a complete application for financial assistance. If a
39 financial assistance application is determined to be incomplete by the
40 authority, an applicant shall have 30 days from the date of receipt of
41 written notification of incompleteness to file such additional
42 information as may be required by the authority for a completed
43 application. If an applicant fails to file the additional information
44 within the 30 days, the filing date for that application shall be the date
45 that such additional information is received by the authority. If the
46 additional information is filed within the 30 days and is satisfactory to

1 the authority, the filing date for that application shall be the initial date
2 of application with the authority. Notwithstanding the above, if a
3 completed application has been submitted and the applicant fails to
4 submit the filing fee, then the filing date for the application shall not
5 be established until the date on which the authority receives the
6 application fee.

7 An applicant shall have 120 days from receipt of notice of approval
8 of a financial assistance award to submit to the authority an executed
9 contract for the upgrade, closure, or remediation, or all three, as the
10 case may be, that is consistent with the terms and conditions of the
11 financial assistance approval. Failure to submit an executed contract
12 within the allotted time, without good cause, may result in an
13 alteration of an applicant's priority ranking.

14

15 7. a. The authority shall award financial assistance to an owner or
16 operator of a facility only if the facility is properly registered with the
17 department pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23),
18 where applicable, and if all fees or penalties due and payable on the
19 facility to the department pursuant to P.L.1986, c.102 have either been
20 paid or the nature or the amount of the fee or penalty is being
21 contested in accordance with law.

22 b. The authority may deny an application for financial assistance,
23 and any award of financial assistance may be recoverable by the
24 authority, upon a finding that:

25 (1) in the case of financial assistance awarded for a remediation,
26 the discharge was proximately caused by the applicant's knowing
27 conduct;

28 (2) in the case of financial assistance awarded for a remediation,
29 the discharge was proximately caused or exacerbated by knowing
30 conduct by the applicant with regard to any lawful requirement
31 applicable to petroleum underground storage tanks intended to
32 prevent, or to facilitate the early detection of, the discharge;

33 (3) the applicant failed to commence or complete a remediation,
34 closure, or an upgrade for which an award of financial assistance was
35 made ³within the time required by the department in accordance with
36 the applicable rules and regulations.³ within the time prescribed in an
37 administrative order, an administrative consent agreement, a
38 memorandum of agreement, or a court order; or

39 (4) the applicant provided false information or withheld
40 information on a loan or grant application, or other relevant
41 information required to be submitted to the authority, on any matter
42 that would otherwise render the applicant ineligible for financial
43 assistance from the fund, that would alter the priority of the applicant
44 to receive financial assistance from the fund, that resulted in the
45 applicant receiving a larger grant ¹or loan¹ award than the applicant
46 would otherwise be eligible, or that resulted in payments from the fund

1 in excess of the actual eligible project costs incurred by the applicant
2 or the amount to which the applicant is legally eligible.

3 Nothing in this subsection shall be construed to require the
4 authority to undertake an investigation or make any findings
5 concerning the conduct described in this subsection.

6 c. An application for financial assistance from the fund for an
7 upgrade or closure of a regulated tank shall include all regulated tanks
8 at the facility for which the applicant is seeking financial assistance.
9 Once financial assistance for an upgrade, closure or a remediation is
10 awarded for a facility, no additional award of financial assistance may
11 be made for that facility. ²However, if an applicant discovers while
12 performing upgrade or closure activities that a remediation is
13 necessary at the site of a facility, and if financial assistance was
14 previously awarded for that site only for an upgrade or closure of a
15 regulated tank, the applicant may amend his application and apply for
16 financial assistance for the required remediation subject to the
17 limitations enumerated in section 5 of this act.² An application for
18 financial assistance for an upgrade or closure of a regulated tank shall
19 be conditioned upon the applicant ¹[entering into an agreement with
20 the department] agreeing¹ to perform, at the time of the upgrade or
21 closure, any remediation necessary as a result of a discharge from the
22 regulated tank and commencement of the remediation within the time
23 prescribed and in accordance with the rules and regulations of the
24 department.

25 d. No financial assistance shall be awarded for any regulated tank
26 to meet the upgrade or closure requirements pursuant to
27 42 U.S.C. §6991 et seq. or P.L. 1986, c. 102 (C. 58:10A-21 et seq.), or
28 for the remediation of a discharge from any such regulated tank
29 ²except as provided in subsection c. of this section.² unless the
30 application is filed with the authority prior to January 1, 1999 and the
31 application is complete and the application fee is received by
32 ²[February] March² 1, 1999.

33 e. The date of occurrence of a discharge shall not affect eligibility
34 for financial assistance from the fund. Except for a preliminary
35 assessment or a site investigation performed after the effective date of
36 P.L. , c. (C.) (now before the legislature as this bill), and
37 except as provided in subsection g. of this section, no award of
38 financial assistance shall be made from the fund for the otherwise
39 eligible project costs of a remediation, closure, or an upgrade, or
40 parts thereof, completed prior to an award of financial assistance from
41 the fund.

42 f. No financial assistance may be awarded from the fund for the
43 remediation of a discharge from a petroleum underground storage tank
44 if financial assistance from the Hazardous Discharge Site Remediation
45 Fund established pursuant to section 26 of P.L. 1993, c. 139
46 (C. 58:10B-4) has previously been made for a remediation at that site

1 as a result of a discharge from that petroleum underground storage
2 tank. No financial assistance may be awarded from the fund for the
3 remediation of a discharge from a petroleum underground storage tank
4 if the discharge began subsequent to the completion of an upgrade of
5 that petroleum underground storage tank, which upgrade was intended
6 to meet all applicable upgrade regulations of the department, no
7 matter when the upgrade was performed.

8 g. Notwithstanding any provision of P.L. , c. (C.)(now
9 before the Legislature as this bill), where an eligible owner or operator
10 has filed an application for financial assistance from the fund, and there
11 are either insufficient monies in the fund or the authority has not yet
12 acted upon the application or awarded the financial assistance, the
13 eligible owner or operator may expend its own funds for the upgrade,
14 closure, or remediation, and upon approval of the application, the
15 authority shall award the financial assistance as a reimbursement of the
16 monies expended for eligible project costs.

17
18 8. a. The authority shall adopt, pursuant to the ¹Administrative
19 Procedure Act,¹ P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
20 regulations to:

21 (1) ¹[prescribe the application forms for financial assistance and the
22 procedures for filing such forms;

23 (2) require an operator who is applying for financial assistance who
24 is not the owner of the facility to provide a copy of the contractual
25 relations between the operator and the owner, a certification that the
26 owner approves the upgrade, closure, or remediation for which
27 financial assistance is sought and a certification that the owner
28 consents to a lien being placed upon the real property at which the
29 facility is located;

30 (3) if the applicant is an owner who is not the operator, require the
31 owner to provide a copy of the contractual relations between the
32 owner and the operator;

33 (4)]¹ require an applicant:

34 (a) ¹[to solicit at least three bids on the upgrade, closure and the
35 remediation prior to entering into any contract to have any work
36 performed;

37 (b)]¹ to submit documentation or other information on the nature
38 and scope of the work to be performed, cost estimates thereon, and,
39 as available, proofs of the actual costs of all work performed;

40 ¹[(c)] (b)¹ to demonstrate, where applicable, an ability to repay the
41 amount of any loan and to provide adequate collateral to secure the
42 amount of a loan;

43 ¹[(d)] (c)¹ to submit a certification that the applicant has not
44 engaged in any of the conduct described in subsection b. of section
45 ¹[6] ¹ of P.L. , c. (C.)(now before the Legislature as this bill);

46 ¹[(e)] (d)¹ to submit a certification that any upgrade, closure, and

1 remediation being undertaken will be or was completed or was in
2 conformance with rules and regulations of the department;

3 ¹[(f) to submit documentation concerning anticipated and actual
4 upgrade and remediation costs; and]

5 (e) require the loan or grant recipient to provide access at
6 reasonable times to the subject property to determine compliance with
7 the terms and conditions of the loan or grant; and¹

8 ¹[(g)] (f)¹ to submit documentation and a certification ¹, as
9 applicable,¹ that the applicant was unable to qualify for and obtain a
10 commercial loan for all or part of the eligible project costs;

11 ¹[(5)] (2)¹ require any financial assistance awarded to be used only
12 for the purposes for which the award is made ¹and that the applicant
13 is adhering to all of the terms and conditions of the loan agreement¹;
14 and

15 ¹[(6)] (3)¹ adopt such other requirements as may be deemed
16 necessary to carry out its responsibilities pursuant to this act.

17 b. Information submitted as part of an application that results in the
18 award of a grant from the fund shall be a public record subject to the
19 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.). Information
20 submitted as part of an application that results solely in the award of
21 a loan from the fund shall not be a public record subject to the
22 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

23 c. The authority may file a lien on real property ¹[of] owned by¹
24 the applicant ¹[other than] in addition to¹ the property at which the
25 subject facility is located to secure a loan, except that such a filing
26 shall be subject to the restrictions on the use of the applicant's primary
27 residence as collateral, as provided in section 5 of P.L. ¹,¹ c. ¹ [,]¹
28 (C.) (now before the Legislature as this bill) ¹and paragraph (3) of
29 subsection d. of this section¹. Liens filed pursuant to this subsection
30 shall not affect any valid lien, right or interest in the real property filed
31 in accordance with established procedure prior to the filing of this
32 notice of lien.

33 d. In establishing requirements for applications for financial
34 assistance, the authority:

35 (1) may not impose conditions that interfere with the everyday
36 normal operations of a financial assistance recipient's business
37 activities, except to the extent necessary to ¹[prevent intentional
38 actions designed to avoid repayment of any loan, or that significantly
39 diminish] ensure the recipient's ability to repay the loan and to
40 preserve¹ the value of any loan collateral;

41 (2) shall strive to minimize the complexity and costs to applicants
42 or recipients of compliance with such requirements;

43 (3) may not require as collateral for any loan, except with the
44 applicant's consent, the primary residence of the applicant, except that
45 this paragraph shall not apply to a loan issued from the fund for the
46 eligible project costs for a petroleum underground storage tank at the

1 site of the primary residence; and

2 (4) shall expeditiously process all applications in accordance with
3 a schedule established by the authority for the review thereof and the
4 taking of final action, which schedule shall reflect the complexity of an
5 application.

6
7 9. ¹a.¹ The department and the Office of the Attorney General may
8 not take any enforcement action pursuant to section 12 of P.L.1986,
9 c.102 (C.58:10A-32) against the owner or operator of a regulated tank
10 for failure to upgrade or close a regulated tank or for failure to
11 maintain evidence of financial responsibility pursuant to section 5 of
12 P.L.1986, c.102 (C.58:10A-25), if the owner or operator, (1) has
13 submitted an application for financial assistance from the fund prior to
14 the date upon which the upgrade or closure is required by law to be
15 completed, (2) the authority has not yet acted on the application as of
16 that date, (3) the owner or operator agrees to enter into a consent
17 agreement or a memorandum of agreement with the department to
18 comply with the upgrade, closure, remediation, and financial
19 responsibility requirements, ²[and] ²(4) the owner or operator
20 complies with the provisions of the consent agreement or the
21 memorandum of agreement ², and (5) the owner or operator maintains
22 ³[inventory records as required pursuant to section 7 of P.L.1986,
23 c.102 (C.58:10A-27)²] an acceptable method of release detection for
24 the regulated tanks that are the subject of the application for financial
25 assistance as required pursuant to section 5 of P.L.1986, c.102
26 (C.58:10-25)³.

27 ¹b. The provisions of subsection a. of this section shall not apply
28 upon the denial of an application for financial assistance or in the case
29 of a knowing discharge that may result in a serious threat to ²the
30 public health or² the environment. The department shall make an
31 annual report to the Senate Environment Committee and the Assembly
32 Agriculture and Waste Management Committee ²or their successors²
33 listing any enforcement actions taken against an owner or operator of
34 a regulated tank who meets the requirements of subsection a. of this
35 section. The report shall list the name of the violator, the specific
36 statute or regulation alleged to have been violated, the status of the
37 case at the time of the report, and the penalty imposed.¹

38
39 10. a. All loans awarded from the fund shall be for a term not to
40 exceed ten years. Except as provided in subsection b. of section 5 of
41 P.L. , c. (C.)(now before the Legislature as this bill), all loans
42 shall be at a rate between two percent and the ¹[Federal Discount]
43 Prime¹ Rate at the time of approval, or at the time of loan closing if
44 the ¹[discount] prime¹ rate is lower at that time. The authority shall
45 determine the interest rate to be imposed based on the applicant's
46 ability to repay the loan.

1 b. Upon the sale of the facility for which the loan was made, the
2 unpaid balance of the loan shall become immediately payable in full.
3 Upon the sale of a facility for which a conditional hardship grant was
4 made pursuant to section 5 of P.L. , c. (C)(now before the
5 Legislature as this bill), that amount of the conditional hardship grant
6 that must be repaid, as calculated pursuant to section 16 of P.L. ,
7 c. (C.)(now pending before the Legislature as this bill), shall
8 become immediately payable in full.

9
10 11. Notwithstanding any other provision of P.L. , c. (C.)
11 (now before the Legislature as this bill), if an owner or operator
12 maintains environmental liability or other insurance coverage for the
13 remediation of a discharge, the insurance coverage shall be the primary
14 coverage for the costs of a remediation. Eligible owners and operators
15 may apply for financial assistance from the fund for any excess thereof,
16 including any deductible, up to the per facility monetary limits set forth
17 in section 5 of P.L. , c. (C.)(now before the Legislature as
18 this bill). An eligible owner or operator shall file a notice of a claim
19 with its insurance carrier prior to filing an application for financial
20 assistance from the fund. The notice of claim shall list the fund as a
21 beneficiary of the claim to the extent of an award of financial
22 assistance is made from the fund. As a condition of receiving an
23 award of financial assistance from the fund, the eligible owner or
24 operator shall agree to diligently pursue the claim against its insurance
25 carrier.

26
27 12. The authority and the department may enter into a
28 memorandum of agreement whereby any of the powers or
29 responsibilities that the authority may exercise pursuant to P.L. ,
30 c. (C.)(now before the Legislature as this bill), may be exercised
31 by the department. The authority may require an applicant for
32 financial assistance to enter into an agreement with the department
33 prior to an application being deemed complete, which agreement shall
34 provide that any upgrade, closure, or remediation will be performed
35 pursuant to rules and regulations of the department. Any agreement,
36 review of documents, or other powers to be exercised by the
37 department pursuant to this section must be completed by the
38 department within ¹[30] ¹45¹ days of the application being submitted to
39 the department. Pursuant to the memorandum of agreement, the
40 authority and the department may provide that any of the monies in the
41 fund that may be used for administrative expenses by the authority
42 pursuant to section 3 of P.L. , c. (C.)(now before the
43 Legislature as this bill), may be used by the department in carrying out
44 its responsibilities under this section.

45 13. The authority shall establish a joint application filing, review
46 and approval procedure whereby a person who is eligible for financial

1 assistance from the fund, created pursuant to section 3 of P.L. ,
2 c. (C.)(now before the Legislature as this bill) and who is
3 eligible for financial assistance from the Hazardous Discharge Site
4 Remediation Fund, created pursuant to section 26 of P.L.1993, c.139
5 (C.58:10B-4), may file one application for financial assistance from
6 both funds and receive a joint response from the authority that
7 approves or disapproves the application in whole or in part.

8
9 14. a. Payment of any grant from the fund, or of a loan from the
10 fund where the loan is in default and is uncollectible, for any costs
11 relating to a remediation, shall be conditioned upon the authority being
12 subrogated to all of the rights of an owner or operator against any
13 insurance carrier, against any previous owner or operator of the
14 facility where the previous owner or operator engaged in any conduct
15 identified in paragraphs (1) or (2) of subsection b. of section 7 of
16 P.L. , c. (C.)(now before the Legislature as this bill), and
17 against any other person liable for the discharge pursuant to subsection
18 c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), for the costs of
19 the remediation necessitated by the discharge. In an action by the
20 authority to enforce a right of subrogation, the authority shall be
21 entitled to invoke all the rights and defenses available to the grant or
22 loan recipient if the action had been brought by the grant or loan
23 recipient against such other person. Nothing in this subsection shall
24 be construed to affect or limit any right that an owner or operator of
25 a petroleum underground storage tank may have under statutory or
26 common law against any other person concerning a discharge of
27 petroleum from that tank.

28 b. The authority may seek to recover any financial assistance or
29 that part of an award of financial assistance that exceeds the eligible
30 project costs or that was obtained as a result of conduct described in
31 paragraph (4) of subsection b. of section 7 of P.L. , c. (C.)(now
32 before the Legislature as this bill). If the authority is the prevailing
33 party in an action to recover financial assistance payments made from
34 the fund, the authority shall be entitled to all investigative and legal
35 costs incurred by the authority in bringing and prosecuting the action,
36 as well as interest charges which shall accrue as of the date such
37 payments were made from the fund, unless the court makes a finding
38 of a lack of intent to defraud the fund. The rate of interest shall be the
39 interest rate for judgments established pursuant to the Rules
40 Governing the Courts of the State of New Jersey.

41
42 15. a. A person who purposely, knowingly, recklessly, or
43 negligently provides false documents or false information to the
44 authority or to the department, or withholds documents or
45 information, in relation to an application for financial assistance from
46 the fund or in relation to documents or information that may be

1 required as a condition of receiving an award of financial assistance
2 from the fund, shall be subject to a civil penalty not to exceed
3 \$50,000. Any penalty incurred under this subsection may be recovered
4 with costs in a summary proceeding pursuant to "the penalty
5 enforcement law," N.J.S.2A:58-1 et seq. in the Superior Court.

6 b. (1) The authority may commence a civil action in Superior
7 Court to recover any financial assistance awarded to an applicant from
8 the fund if financial assistance was obtained, in whole or in part, as the
9 result of providing false documents or false information to the
10 authority or to the department or by withholding documents or
11 information from the authority or the department. The action to
12 recover money awarded by the authority may be combined with any
13 action to impose penalties provided for in subsection a. of this section.

14 (2) The authority may commence a civil action in Superior Court
15 to recover any financial assistance awarded as a loan where the
16 recipient of the loan has not made loan repayments in accordance with
17 the loan agreement, where any condition or provision of the loan
18 agreement has been violated by the loan recipient, or to enforce any
19 lien filed pursuant to the issuance of financial assistance.

20 c. (1) A person who purposely or knowingly provides false
21 documents or false information to the authority or to the department,
22 or withholds documents or information, in relation to an application
23 for financial assistance from the fund or in relation to documents or
24 information that may be required as a condition of receiving an award
25 of financial assistance from the fund, with the intent to alter the
26 applicant's eligibility for financial assistance from the fund, alter the
27 priority of the applicant's application to receive financial assistance
28 from the fund, cause the applicant to receive a larger grant award than
29 the applicant would otherwise be eligible for, or obtain financial
30 assistance from the fund in excess of the eligible project costs, shall be
31 guilty of a crime of the third degree.

32 (2) A person who recklessly provides false documents or false
33 information to the authority or to the department, or withholds
34 documents or information, in relation to an application for financial
35 assistance from the fund or in relation to documents or information
36 that may be required as a condition of receiving an award of financial
37 assistance from the fund, ¹[with the intent to alter] which results in the
38 alteration of¹ the applicant's eligibility for financial assistance from the
39 fund, ¹[alter] the alteration of¹ the priority of the applicant's
40 application to receive financial assistance from the fund, ¹[cause]
41 which causes¹ the applicant to receive a larger grant award than the
42 applicant would otherwise be eligible for, or obtain financial assistance
43 from the fund in excess of the eligible project costs, shall be guilty of
44 a crime of the fourth degree.

45 16. a. In addition to any other financial assistance requirements
46 imposed by the authority pursuant to P.L. , c. (C.)(now before

1 the Legislature as this bill), any award of financial assistance from the
2 fund shall constitute, in each instance, a debt of the applicant to the
3 fund. The debt shall constitute a lien on the real property at which the
4 subject facility is located. The lien shall be in the amount of the
5 financial assistance awarded the applicant. The lien shall attach when
6 a notice of lien, incorporating ²the name of the property owner,² a
7 description of the real property on which the subject facility is located
8 and an identification of the amount of the financial assurance awarded,
9 is duly filed with the ²[clerk of the Superior Court. The clerk shall
10 promptly enter upon the civil judgment or order docket the name and
11 address of the applicant, the address of the real property on which the
12 subject facility is located, and the amount of the lien as set forth in the
13 notice of lien. Upon entry by the clerk, the lien shall attach to the real
14 property on which the subject facility is located, whether or not the
15 applicant is insolvent] county recording officer in the county in which
16 the property is located².

17 Where financial assistance from the fund is awarded as a
18 combination of a loan and a grant, separate liens for the loan and the
19 grant shall be filed. No lien shall be placed on any real property of an
20 applicant based on a conditional hardship grant awarded pursuant to
21 paragraph (1) of subsection c. of section 5 of P.L. , c. (C.)(now
22 before the Legislature as this bill), for a remediation necessitated by a
23 discharge from a petroleum underground storage tank used to store
24 heating oil at the applicant's primary residence.

25 b. A lien that is filed on real property pursuant to a loan shall be
26 removed upon repayment of the loan.

27 c. The lien that is filed on real property pursuant to a conditional
28 hardship grant shall be removed upon repayment of the amount of the
29 grant that is unsatisfied or upon the end of a 15 year period in which
30 the site for which the financial assistance was awarded continued to be
31 operated in substantially the same manner as it was operated at the
32 time of the award of financial assistance. The period of operation need
33 not run consecutively. Beginning with the 11th year of operating in
34 substantially the same manner, 20% of the conditional hardship grant
35 shall be deemed satisfied with an additional 20% to be satisfied each
36 year until the entire amount of the conditional hardship grant is
37 satisfied at the end of the 15 year period. The owner or operator of
38 the facility claiming to have satisfied a conditional hardship grant due
39 to the 15 year period of operation, shall submit a certification of this
40 fact to the authority. Upon repayment of the unsatisfied grant award
41 or upon submittal of this certification, unless the authority has made
42 a finding that the certification is not correct, the authority shall remove
43 the lien from the property.

44 Where real property for which a conditional hardship grant was
45 awarded is not being operated in substantially the same manner, the 15
46 year period to satisfy the lien shall be tolled. If at any time prior to the

1 satisfaction of the lien the property is developed or operated¹ [, or
2 proposed for development or operation,]¹ for a purpose that is not
3 substantially the same as its operation at the time of the award of the
4 conditional hardship grant, the grant recipient shall so certify to the
5 authority upon the change in operation. Upon receipt of this
6 certification, the authority shall determine, based upon the new
7 operation of the property if the financial assistance shall continue as a
8 conditional hardship grant or if it shall be converted into a loan. In
9 making this determination, the authority shall base its decision on the
10 financial hardship factors used in determining the original eligibility for
11 the conditional hardship grant.

12 The authority may take whatever enforcement actions it deems
13 necessary to verify the operation of any property for which a
14 conditional hardship grant was made. ¹ The terms and conditions of
15 any loan converted from a grant pursuant to this subsection shall be
16 ²[established by the authority] the same as those authorized pursuant
17 to this act^{2, 1}.

18 d. The provisions of this section do not apply to any real property
19 of an applicant who is a public entity.

20

21 17. a. Within 180 days of the effective date of this act, the New
22 Jersey Economic Development Authority shall adopt, pursuant to the
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
24 seq.), rules and regulations for the administration of the Petroleum
25 Underground Storage Tank Remediation, Upgrade, and Closure Fund
26 and the issuance of financial assistance therefrom as necessary to
27 implement this act.

28 b. Within 180 days of the effective date of this act, the Department
29 of Environmental Protection shall adopt, pursuant to the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
31 seq.), rules and regulations for the administration of the Petroleum
32 Underground Storage Tank Remediation, Upgrade, and Closure Fund
33 and the issuance of financial assistance therefrom as necessary to
34 implement this act.

35 ²c. Prior to the adoption of rules and regulations pursuant to this
36 section, the authority and the department may, notwithstanding the
37 provisions of the "Administrative Procedure Act," adopt procedures
38 for the acceptance and review of financial assistance applications from
39 the fund. No financial assistance may be awarded however, until the
40 rules and regulations are adopted pursuant to this section.²

41

42 18. There is imposed upon the owner or operator of a facility who
43 is required to maintain evidence of financial responsibility pursuant to
44 section 5 of P.L.1986, c.102 (C.58:10A-25) or pursuant
45 to 42 U.S.C.§6991 et seq., and any regulations adopted pursuant
46 thereto, and who does not maintain that evidence of financial

1 responsibility, an annual surcharge. The annual surcharge shall be
2 \$1,500 for facilities with one or two petroleum underground storage
3 tanks, \$3,500 for facilities with three to six petroleum underground
4 storage tanks, and \$6,000 for facilities with seven or more petroleum
5 underground storage tanks. The owner or operator shall pay this
6 surcharge to the authority for deposit into the Petroleum Underground
7 Storage Tank Remediation, Upgrade, and Closure Fund. ¹The New
8 Jersey Spill Compensation Fund shall not be considered as evidence of
9 financial responsibility for the purposes of this section.¹

10 Nothing in this section shall be construed to negate the requirement
11 of an owner or operator of a facility to maintain evidence of financial
12 responsibility as may be required pursuant to section 5 of P.L.1986,
13 c.102 (C.58:10A-25) or pursuant to 42 U.S.C.§6991 et seq.

14 The New Jersey Economic Development Authority, in consultation
15 with the Department of Environmental Protection shall adopt,
16 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
17 (C.52:14B-1 et seq.), rules and regulations imposing the surcharge.

18
19 19. a. The New Jersey Economic Development Authority and the
20 Department of Environmental Protection shall present a joint annual
21 report to the presiding officers of the two houses of the Legislature
22 and to the chairmen and members of the Assembly Agriculture and
23 Waste Management Committee and the Senate Environment
24 Committee, or their successors, on the status of the financial assistance
25 program, which shall include: a statement on receipts and expenditures
26 for the Petroleum Underground Storage Tank Remediation, Upgrade,
27 and Closure Fund; the number of applications for financial assistance
28 received and the actions taken on the applications; the amount of
29 financial assistance awarded as loans or as grants for both public
30 entities and other applicants; the identity and location of the facilities
31 receiving the financial assistance; an assessment of the adequacy of
32 current funding levels in meeting the statutory objectives of the fund;
33 an accounting of expenses incurred by the authority in administering
34 the fund; and such other information, including any legislative or
35 administrative recommendations for program changes, as the authority
36 and the department may deem appropriate or useful. The annual
37 reports shall be made not later than March ¹[1] 31¹ of each year
38 beginning one year following the effective date of this act. The first
39 report shall also contain a needs survey, which shall estimate the scope
40 and projected costs of all potentially eligible remediation applications
41 for financial assistance from the fund.

42
43 20. Nothing in P.L. , c. (C.) (pending in the Legislature as
44 this bill) shall be construed to:

45 (1) impose any liability on the State or the authority for any claims
46 made to, or approved from, the Petroleum Underground Storage Tank

1 Remediation, and Closure Upgrade Fund, and the extent of the State's
2 or authority's responsibility for the payment or reimbursement of an
3 approved application shall be limited to the amount of otherwise
4 unobligated moneys available in the fund;

5 (2) impose any liability on the State or the authority for the quality
6 of any work performed pursuant to a remediation, closure or an
7 upgrade for which financial assistance is made; or

8 (3) alter any obligation of an owner or operator of a facility, who
9 is eligible for financial assistance from the fund, to comply in a timely
10 manner with all lawful requirements relating to the facility.

11
12 21. There is appropriated from the special account in the General
13 Fund created pursuant to Article VIII, Section II, paragraph 6 of the
14 New Jersey Constitution ¹[\$8,000,000] \$9,900,000¹ to the New Jersey
15 Economic Development Authority which shall be deposited into the
16 Petroleum Underground Storage Tank Remediation, Upgrade and
17 Closure Fund, established pursuant to section 3 of P.L. , c.
18 (C.) (pending in the Legislature as this bill), for use for any of
19 the purposes for which that fund has been established. Expenditures
20 of moneys in the fund shall be subject to the conditions set forth in
21 Article VIII, Section II, paragraph 6 of the New Jersey Constitution
22 and the provisions in P.L. , c. (C.) (now before the Legislature as
23 this bill).

24
25 22. Any person who has owned or operated an underground
26 storage tank as defined pursuant to section 2 of P.L.1986, c.102
27 (C.58:10A-22) who has not registered that tank pursuant to the
28 provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), shall not be
29 subject to a civil penalty for the failure to register that underground
30 storage tank if the person, within one year of the effective date of this
31 act, registers the tank pursuant to P.L.1986, c.102. The department
32 may require that person to pay any registration fees that would have
33 been paid had the underground storage tank been registered in
34 accordance with law.

35
36 23. Sections 17 and 18 of P.L.1986, c.102 (C.58:10A-36 and
37 C.58:10A-37) are repealed, except that in order to assure the
38 uninterrupted funding of loans for regulated tank upgrades pending the
39 adoption of rules and regulations pursuant to section 17 of P.L. ,
40 c. , (C.)(pending in the Legislature as this bill), rules and
41 regulations adopted pursuant to section 17 of P.L.1986, c.102
42 (C.58:10A-37) that are in effect on the effective date of P.L. ,
43 c. , (C.)(pending in the Legislature as this bill), shall continue in
44 force until the adoption of rules and regulations by the authority
45 pursuant to section 17 of P.L. , c. (C.)(now before the
46 Legislature as this bill). The repayment of any outstanding loans made

1 from the State Underground Storage Tank Improvement Fund shall be
2 made to the New Jersey Economic Development Authority for deposit
3 into the Petroleum Underground Storage Tank Remediation, and
4 Closure Upgrade Fund. Any monies in the State Underground
5 Storage Tank Improvement Fund is transferred to the New Jersey
6 Economic Development Authority for deposit into the Petroleum
7 Underground Storage Tank Remediation, Upgrade, and Closure
8 Fund.

9
10 24. Prior to July 1, 1997, or within six months of an underground
11 storage tank being upgraded and the site remediated as required
12 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), whichever is later,
13 the owner or operator of that underground storage tank shall submit
14 to the department evidence of financial responsibility for taking
15 corrective action and compensating third parties as is required
16 pursuant to section 5 of P.L. 1986, c.102 (C.58:10A-25) or pursuant
17 to 42 U.S.C.§6991 et seq. After a regulated tank is upgraded, the
18 New Jersey Spill Compensation Fund, created pursuant to the "Spill
19 Compensation and Control Act," ¹[P.L.197, C.] P.L.1976, c.141¹
20 (C.58:10-23.11 et seq.) shall no longer serve as the evidence of
21 financial responsibility for the regulated tank.

22
23 25. There is appropriated from the General Fund to the New Jersey
24 Economic Development Authority the sum of \$50,000 for the adoption
25 of rules and regulations for administering the Petroleum Underground
26 Storage Tank Remediation, Upgrade, and Closure Fund, established
27 pursuant to section 3 of P.L. , c. (C.). The authority shall
28 transfer such sums from this appropriation to the Department of
29 Environmental Protection as the authority and the department deem
30 necessary to allow the department to adopt rules and regulations as
31 necessary pursuant to this act. Upon sufficient monies being deposited
32 into the Petroleum Underground Storage Tank Remediation,
33 Upgrade, and Closure Fund that may be used for these purposes, the
34 authority shall reimburse the General Fund the amount of this
35 appropriation.

36
37 26. This act shall take effect immediately ²[, but sections 4 through
38 20 of this act shall remain inoperative until the adoption of appropriate
39 rules and regulations therefor. Upon the effective date of this act, the
40 New Jersey Economic Development Authority, the Department of
41 Environmental Protection, and the Department of the Treasury may
42 take such actions as necessary to carry out the purposes of this act]².

1

2

3 Creates New Jersey Underground Storage Tank Remediation,

4 Upgrade, and Closure Fund; makes an appropriation.