

LEGISLATIVE HISTORY CHECKLIST

NJSA: 58:10A-21 to 58:10A-37 (Storage tanks--under-ground-hazardous substances--registration and regulation)

Laws of: 1986

Chapter 102

BILL NO: S1479

Sponsor(s): Dalton

Date Introduced: January 21, 1986

Committee: Assembly: -----

Senate: Energy and Environment; Revenue, Finance and Appropriations

Amended during passage: Yes Substituted for A2155 (not attached since identical to S1479)

Date of Passage: Assembly: June 26, 1986

Senate: June 12, 1986

Date of Approval: Sept. 3, 1986

Following statements are attached if available:

Sponsor statement: Yes Attached: Assembly amendments adopted 6-19-86 (with statement) and Senate amendment, adopted 6-2-86 (with statement)

Committee statement: Assembly No

Senate Yes 1-23-86 & 5-19-86

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

(over)

Bill and veto, mentioned in statements: A667--attached.

974.90 New Jersey. Legislature. General Assembly. Committee on Agriculture and
P777 Environment.
1982 Public hearing. . . on water pollution and related issues, held 3-4-82,
3-10-82, 3-25-82, Trenton, Rockaway Township, Toms River, 1982.

[FOURTH OFFICIAL COPY REPRINT]

SENATE, No. 1479

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1986

By Senator DALTON

Referred to Committee on Energy and Environment

AN ACT regulating the underground storage of hazardous substances, supplementing Title 58 of the Revised Statutes, and making ******[appropriations]****** *****an appropriation*****.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature finds and declares that millions of gallons
2 of gasoline and other hazardous substances are stored prior to use
3 or disposal, in underground storage tanks; that a significant per-
4 centage of these underground storage tanks are leaking due to
5 corrosion or structural defect; that this leakage of hazardous sub-
6 stances from underground storage tanks is among the most com-
7 mon causes of groundwater pollution in the State; and that it is
8 thus necessary to provide for the registration and the systematic
9 testing and monitoring of underground storage tanks to detect
10 leaks and discharges as early as possible and thus minimize further
11 degradation of potable water supplies. The Legislature further
12 finds and declares that with the enactment by the United States
13 Congress of the "Hazardous and Solid Waste Amendments of
14 1984" Pub. L. 98-616 (42 U. S. C. § 6991) it is necessary to autho-
15 rise the Department of Environmental Protection to adopt a regu-
16 latory program that permits the delegation of the authority to
17 carry out the federal act, but also recognizes the need of this State
18 to protect its natural resources in the manner consistent with
19 well-established environmental principles.

1 2. As used in this act:

2 a. "Commissioner" means the Commissioner of the Department
3 of Environmental Protection;

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

- *—Senate committee amendments adopted January 23, 1986.
- **—Senate committee amendment adopted May 19, 1986.
- ***—Senate amendments adopted June 2, 1986.
- ****—Assembly amendments adopted June 19, 1986.

4 b. "Department" means the Department of Environmental Pro-
5 tection;

6 c. "Discharge" means the intentional or unintentional release by
7 any means of hazardous substances from an underground storage
8 tank into the environment;

9 d. "Facility" means one or more underground storage tanks;

10 e. "Hazardous substances" means motor fuel and those elements
11 and compounds, including petroleum products *****which are liquid*
12 *at standard conditions of temperature and pressure (60 degrees*
13 *Fahrenheit and 14.7 pounds per square inch absolute)*****, which
14 are defined as hazardous substances by the department after public
15 hearing, and which shall be consistent to the maximum extent pos-
16 sible with and which shall include, the list of hazardous wastes
17 adopted by the United States Environmental Protection Agency
18 pursuant to section 3001 of the "Resource Conservation and Re-
19 covery Act of 1976," Pub. L. 94-580 (42 U. S. C. § 6921), the list of
20 hazardous substances adopted by the United States Environmental
21 Protection Agency pursuant to section 311 of the "Federal Water
22 Pollution Control Act Amendments of 1972," Pub. L. 92-500 (33
23 U. S. C. § 1321), the list of toxic pollutants designated by Congress
24 or the Environmental Protection Agency pursuant to section 307 of
25 that act (33 U. S. C. § 1317), and any substance defined as a haz-
26 ardous substance pursuant to section 101 (14) of the "Comprehen-
27 sive Environmental Response, Compensation, and Liability Act of
28 1980," Pub. L. 96-510 (42 U. S. C. § 9601); *****[except that sew-**
28A **age and sewage sludge shall not be considered as hazardous sub-**
28B **stances for the purposes of this act;]*****

29 f. "Leak" means the release of a hazardous substance from an
30 underground storage tank into a space created by a method of
31 secondary containment **wherein it can be detected by visual in-*
31A *spection or a monitoring system before it enters the environment**;

32 g. "Monitoring system" means a system capable of detecting
33 leaks or discharges, or both, other than an inventory control
34 system, used in conjunction with an underground storage tank, or
35 a facility, conforming to criteria established pursuant to section 5
36 of this act;

37 h. "Nonoperational storage tank" means any underground stor-
38 age tank in which hazardous substances are not contained, or from
39 which hazardous substances are not dispensed;

40 i. "Operator" means any person in control of, or having respon-
41 sibility for, the daily operation of a facility;

42 j. "Owner" means any person who owns a facility, or in the case
43 of a nonoperational storage tank, the person who owned the non-

44 operational storage tank immediately prior to the discontinuation
45 of its use;

46 k. "Person" means any individual, partnership, company, cor-
47 poration, consortium, joint venture, commercial or any other legal
48 entity, the State of New Jersey, or the United States Government;

49 l. "Residential building" means a single and multi-family dwell-
50 ing, nursing home, trailer, condominium, boarding house, apart-
51 ment house, or other structure designed primarily for use as a
52 dwelling;

53 m. "Secondary containment" means an additional layer of im-
54 pervious material creating a space wherein a leak of hazardous
55 substances from an underground storage tank may be detected
56 before it enters the environment;

57 n. "Substantially modify" means construction at, or restoration,
58 refurbishment or renovation of, an existing facility which increases
59 or decreases the in-place storage capacity of the facility or alters
60 the physical configuration or impairs or affects the physical in-
61 tegrity of the facility or its monitoring systems;

62 o. "Test" or "testing" means the testing of underground storage
63 tanks in accordance with standards adopted by the department;

64 p. "Underground storage tank" means any one or combination of
65 tanks, including appurtenant pipes, lines, fixtures, and other re-
66 lated equipment, used to contain an accumulation of hazardous
67 substances, the volume of which, including the volume of the
68 appurtenant pipes, lines, fixtures and other related equipment, is
69 10% or more below the ground. "Underground storage tank"
70 shall not include:

71 (1) *****[Tanks used to store motor fuel with a capacity of 1,100**
72 **gallons or less]*** ****Farm or residential tanks of 1,100 gallons***
72A ***or less capacity used for storing motor fuel for non-commercial***
72B ***purposes***;***

73 (2) Tanks used to store heating oil for onsite consumption in a
74 nonresidential building with a capacity of 2,000 gallons or less;

75 (3) Tanks used to store heating oil for onsite consumption in a
76 residential building, except that for the purposes of sections 3, 7
77 and 8 of this act, a tank with a capacity of more than 2,000 gallons
78 used to store heating oil for onsite consumption in a residential
79 building shall be considered an "underground storage tank";

80 (4) Septic tanks installed in compliance with regulations
81 adopted by the department pursuant to "The Realty Improvement
82 Sewerage and Facilities Act (1954)," P. L. 1954, c. 199 (C. 58:11-23
83 et seq.);

84 (5) Pipelines, including gathering lines, regulated under the

85 "Natural Gas Pipeline Safety Act of 1968," Pub. L. 90-481 (49
86 U. S. C. § 1671 et seq.), the "Hazardous Liquid Pipeline Safety Act
87 of 1979" Pub. L. 96-129 (49 U. S. C. § 2001 et seq.), or intrastate
88 pipelines regulated under State law;

89 (6) Surface impoundments, pits, ponds, or lagoons, operated
90 in compliance with regulations adopted by the department pur-
91 suant to the "Water Pollution Control Act," P. L. 1977, c. 74 (C.
92 58:10A-1 et seq.);

93 (7) Storm water or wastewater collection systems operated in
94 compliance with regulations adopted by the department pursuant
95 to the "Water Pollution Control Act";

96 (8) Liquid traps or associated gathering lines directly related to
97 oil or gas production and gathering operations;

98 (9) Tanks situated in an underground area including, but not
99 limited to, basements, cellars, mines, drift shafts, or tunnels, if the
100 storage tank is situated upon or above the surface of the floor, or
101 storage tanks located below the surface of the ground which are
102 equipped with secondary containment and are uncovered so as to
103 allow visual inspection of the exterior of the tank; and

104 (10) Any pipes, lines, fixtures, or other equipment connected to
105 any tank exempted from the provisions of this act pursuant to
106 paragraphs (1) through (9) of this subsection.

1 3. a. The owner or operator of a facility shall, within 180 days
2 of the effective date of this act, on forms and in a manner prescribed
3 by the Commissioner, register that facility with the department.
4 The department may extend the registration period for an addi-
5 tional 180 days.

6 b. The commissioner shall, within 120 days of the effective date
7 of this act and pursuant to the "Administrative Procedure Act,"
8 P. L. 1968, c. 410 (C. 52:14B-1 et seq.) adopt rules and regulations
9 to provide for the registration of all facilities in the State, prescrib-
10 ing the forms and procedures therefor.

11 This registration shall require the following:

12 (1) The name and address of the owner and operator of the
13 facility;

14 (2) A site plan of the facility indicating the number and loca-
15 tion of the underground storage tanks;

16 (3) The date of installation of each of the underground storage
17 tanks;

18 (4) Any other relevant information requested by the commis-
19 sioner.

20 These rules and regulations shall provide for the annual cer-
21 tification by the owner or operator of the facility that the infor-

22 mation contained on the registration remains unchanged. The owner
23 or operator of a facility shall, within 30 days of completing the
24 activities for which a permit was acquired pursuant to section 4
25 of this act, register or reregister, as the case may be, in accordance
26 with the provisions of this section.

1 4. An owner or operator of a facility proposing to replace, in-
2 stall, expand or substantially modify the facility shall obtain a
3 permit therefor from the commissioner. The commissioner shall
4 not issue a permit unless the owner or operator demonstrates that:

5 a. The facility is constructed of materials that meet or exceed
6 the standards contained in, and is installed in a manner consistent
7 with, the State Uniform Construction Code adopted pursuant to the
8 "State Uniform Construction Code Act," P. L. 1975, c. 217
9 (C. 52:27D-119 et seq.) and with the rules and regulations adopted
10 pursuant to this act;

11 b. The facility is equipped with either an approved method of
12 secondary containment or a monitoring system;

13 c. The facility utilizes corrosion control features necessary to
14 protect the structural integrity of underground storage tanks sus-
15 ceptible to corrosion.

1 5. a. The commissioner shall, within one year of the effective
2 date of this act, adopt, pursuant to the "Administrative Procedure
3 Act," rules and regulations which:

4 (1) Establish a schedule for the testing of all facilities, taking
5 into account the age of the underground storage tank, the hazardous
6 substance stored therein, the proximity of the underground storage
7 tank to potable water supplies, and the soil resistivity and other
8 corrosive conditions which may precipitate a discharge, and for
9 the periodic testing for structural integrity of facilities utilizing
10 secondary containment which do not incorporate a monitoring sys-
11 tem, and the reporting of results thereof to the department.

12 (2) Identify and require corrosion control features necessary
13 to protect the structural integrity of facilities, including cathodic
14 protection, impressed current or isolative protection or any other
15 measures to counteract or minimize soil resistivity and other
16 corrosive conditions which may precipitate a leak or discharge.

17 (3) Establish standards for monitoring systems which shall in-
18 clude the requirement of at least a warning method indicating a
19 leak or discharge. Monitoring systems may include electric or
20 mechanical devices, monitoring wells, or any other method of mon-
21 itoring approved by the department. Any regulations adopted by
22 the department pursuant to this section requiring the installation

23 of monitoring systems at a facility shall reflect the financial ability
 24 of an owner or operator of a facility, or classes of facilities, to
 25 install the monitoring system required by the department.

26 (4) Require the maintaining of records of any monitoring or
 27 leak detection system, inventory control system or underground
 28 storage tank testing system.

29 (5) Require the reporting of any discharges and the corrective
 30 action taken in response to a discharge from an underground
 31 storage tank.

32 (6) Require the taking of corrective action in response to a
 33 discharge from an underground storage tank by the owner or
 34 operator of the underground storage tank.

35 (7) Require the owner or operator of an underground storage
 36 tank to prepare plans for the closure of an underground storage
 37 tank to prevent the future discharge of hazardous substances into
 38 the environment.

39 (8) Require the maintaining of evidence of financial responsi-
 40 bility for taking corrective action and compensating third parties
 41 for bodily injury and property damage caused by a discharge.

42 (9) Require the development of performance standards for new
 43 and substantially modified existing underground storage tanks.

44 (10) Require the notification of the department and local agen-
 45 cies of the existence of any operational or nonoperational under-
 46 ground storage tanks.

47 h. In developing the regulations required pursuant to this sec-
 48 tion the department shall consider the regulations concerning un-
 49 derground storage tanks adopted by the United States Environ-
 50 mental Protection Agency pursuant to the "Hazardous and Solid
 51 Waste Amendments of 1984," Pub. L. 98-616 (42 U. S. C. § 6991
 52 et al.)***[.]*** *and shall use the recommendations and standard
 53 procedures of the following organizations:*

54 (1) *American Petroleum Institute (API), 1220 L Street, N.W.,
 55 Washington, D. C. 20005;*

56 (2) *American Society for Testing and Materials (ASTM), 1916
 57 Race Street, Philadelphia, Pennsylvania 19103;*

58 (3) *National Association of Corrosion Engineers (NACE), P.O.
 59 Box 218340, Houston, Texas 77218;*

60 (4) *National Fire Protection Association (NFPA), Battery-
 61 march Park, Quincy, Massachusetts 02269; and*

62 (5) *Underwriters Laboratories (UL), 333 Pfingston Road,
 63 Northbrook, Illinois 60062.**

64 c. The Department of Community Affairs shall adopt in the

65 State Uniform Construction Code the rules and regulations adop-
66 ted by the department pursuant to this section within 60 days.

1 6. Monitoring systems shall be installed, maintained, and oper-
2 ated in accordance with the manufacturer's requirements. Each
3 monitoring system shall be inspected at least monthly to determine
4 that it is functionally unimpaired.

1 7. The owner or operator of a facility shall maintain inventory
2 records for each underground storage tank which shall, at a mini-
3 mum, record daily hazardous substance transfers and a ~~*[weekly]*~~
4 **periodic** average. These records shall be maintained at the site
5 of the facility for at least one year.

1 8. a. If the inventory records maintained pursuant to section 7
2 of this act or a monitoring system indicates an unaccountable loss
3 of the equivalent of 1% of the storage capacity of an under-
4 ground storage tank or 40 gallons, whichever is smaller, the owner
5 or operator of the facility shall, within 24 hours of discovery,
6 notify the department and the appropriate local health agencies
7 of the loss of volume.

8 b. Upon notification, the department shall promptly conduct an
9 inspection to determine if the disclosed loss of volume represents
10 a leak or a discharge.

11 c. Upon a finding that the loss of volume represents a leak or
12 a discharge that is not an imminent threat to the proximate ground-
13 water resources of public health or safety, the commissioner shall
14 order the owner of the underground storage tank to remove, re-
15 place, or repair the underground storage tank, establish a date by
16 which the removal, replacement, or repair shall be effected, and
17 take any other action, or require the owner of the tank to take any
18 action, necessary to abate, contain, cleanup, or remove, or any
19 combination thereof, the leak or discharge.

20 d. Upon a finding that the loss of volume represents a discharge
21 which has entered or threatens groundwater resources or public
22 health or safety, the commissioner shall order the immediate re-
23 moval of the contents of the underground storage tank, and shall
24 take, or require the owner of the underground storage tank to
25 take, all other appropriate actions necessary to abate, contain,
26 cleanup, or remove, or any combination thereof, the discharge.

27 e. If the commissioner provides for the removal, replacement
28 or repair of an underground storage tank by any person other
29 than the owner, or takes other appropriate actions necessary to
30 mitigate the adverse effects of a leak or discharge, the costs of
31 these measures shall be borne by the owner of the underground
32 storage tank.

1 9. Within five years of the effective date of this act, all facilities
 2 shall be equipped with an approved method of secondary contain-
 3 ment or a monitoring system. This section shall not apply to facil-
 4 ities used principally for agricultural purposes on land qualified
 5 for a special tax assessment pursuant to the "Farmland Assess-
 6 ment Act of 1964," P. L. 1964, c. 48 (C. 54:4-23.1 et seq.) and
 7 installed prior to the effective date of this act.

1 10. The department shall have the authority to enter, at rea-
 2 sonable hours, any property or place of business where under-
 3 ground storage tanks or nonoperational storage tanks are or may
 4 be located to inspect any underground storage tank or nonopera-
 5 tional storage tank, and to photograph any records related to the
 6 operation of an underground storage tank or a nonoperational
 7 storage tank; to obtain samples or evidence of a discharge from
 8 any underground storage tank or nonoperational storage tank, or
 9 from the surrounding air, soil, or surface of groundwater; and to
 10 conduct monitoring or testing of any underground storage tank
 11 or nonoperational storage tank or the surrounding air, soil or
 12 surface or groundwater. The owner or operator of a facility or
 13 a nonoperational storage tank shall allow and cooperate with any
 14 action taken by the department pursuant to the provisions of
 15 this section.

1 11. The commissioner may adopt, pursuant to the "Administra-
 2 tive Procedure Act," any rules and regulations in addition to those
 3 required pursuant to this act, necessary to carry out the provisions
 4 of this act, including rules and regulations imposing fees for the
 5 processing of initial registrations pursuant to section 3 of this act
 6 and for any renewal thereof, and for processing permits required
 7 pursuant to section 4 of this act.

8 ****Registration fees shall be established for subsequent registra-*
 9 *tions and shall not exceed the estimated yearly cost of implement-*
 10 *ing the provisions of this act. The commissioner may consider*
 11 *the size, contents and the location of the underground storage*
 12 *tanks in establishing these fees. The commissioner shall provide*
 13 *for the recovery of the amount appropriated in section*
 14 *****[20]**** ****19**** of this act within four years from the*
 15 *date these fees are first imposed. These fees shall be deposited in*
 16 *the General Fund. The Legislature shall annually appropriate to*
 17 *the department an amount equivalent to the amount anticipated to*
 18 *be collected as fees charged under this section for the purposes of*
 19 *administering the provisions of this act. No fee shall be charged*
 20 *for six months after the effective date of this act.****

1 12. A person violating the provisions of this act is liable to the
2 penalties prescribed in section 10 of P. L. 1977, c. 74 (C. 58:10A-10).

1 13. The owner or operator of a facility equipped with a monitor-
2 ing system who has obtained a permit for groundwater discharges
3 pursuant to section 6 of P. L. 1977, c. 74 (C. 58:10A-6) is exempt
4 from the *****[provisions]***** *****requirements of section 9***** of
5 this act.

1 14. Nothing in this act shall be construed to limit the depart-
2 ment's authority to respond to, or remove or cleanup, a discharge
3 pursuant to the provisions of any other state or federal law.

1 15. Within two years of the effective date of this act the depart-
2 ment shall prepare and submit to the Legislature a report sum-
3 marizing the progress in implementing the provisions of this act
4 and outlining the economic impact on owners or operators of
5 facilities in complying with the provisions of this act.

1 16. It is the intent of the Legislature that the program estab-
2 lished by this act for the regulation of underground storage tanks
3 constitute the only program regulating underground storage tanks
4 in this State. To this end no municipality, county, or political sub-
5 division thereof, shall enact any law or ordinance regulating un-
6 derground storage tanks, and, further, the enactment of this act
7 shall supersede any law or ordinance regulating underground
8 storage tanks enacted by a municipality, county or political sub-
9 division thereof prior to the enactment of this act.

10 *****b.** *However, the department shall develop criteria for deter-*
11 *mining in which case a municipal ordinance more stringent than*
12 *the provisions of this act is warranted. If the conditions in the*
13 *municipality are deemed to meet the criteria developed pursuant*
14 *to this subsection, the ordinance is hereby deemed to be effective*
15 *and not preempted and the municipality may enforce and admin-*
16 *ister its provisions. The department shall have 180 days to deter-*
17 *mine whether an ordinance meets the criteria developed pursuant*
18 *to this section.*

19 *c. Any municipality, county or political subdivision may petition*
20 *the department for a modification of any rule adopted under this*
21 *act. The petition shall be forwarded to the department together*
22 *with a written statement setting forth all provisions of the municip-*
23 *al ordinance which differ from the criteria identified, the reasons*
24 *for the differences, and all supporting facts and data. The de-*
25 *partment shall evaluate the petition using the criteria adopted*
26 *under subsection b. of this section and accept or reject the petition*
27 *in a written statement which shall include the basis for the depart-*
28 *ment's determination.*

29 *When the department determines that a rule change is justified*
 30 *it shall evaluate the applicability of that rule change on a regional*
 31 *or areawide basis and modify the rules to provide areawide require-*
 32 *ments as appropriate.****

1 17. a. The State Underground Storage Tank Improvement Fund,
 2 hereinafter referred to as the "fund," is established in the depart-
 3 ment as a revolving fund. The fund shall be administered by the
 4 department and shall be credited with the ***[revenue provided]***
 5 *****such**** moneys ****as are**** appropriated* ****[pur-*
 6 *suant to *section 19 of* this act]**** ****by the Legislature*****
 7 and sums received as repayment of principal and interest on out-
 7A standing loans made from the fund except as otherwise provided
 7B herein.

8 b. Moneys in the fund shall be allocated and used to provide
 9 loans which shall bear interest of not more than 6% per year, and
 10 shall be for a term of not more than 10 years. These loans shall
 11 be made to owners of facilities who have been directed pursuant
 12 to law by the Commissioner of the Department of Environmental
 13 Protection to replace or repair one or more underground storage
 14 tanks. These loans shall also be made to owners of facilities for
 15 the purpose of installing monitoring systems. These loans shall be
 16 made in accordance with criteria developed and adopted by the
 17 commissioner pursuant to section 18 of this act.

18 c. No loan shall be made after December 31 of the fifth full
 19 calendar year subsequent to the effective date of this act. All
 20 moneys remaining in the fund or received by the fund after that
 21 date as repayment for loans made by the fund shall immediately
 22 revert to the General Fund.

1 18. The commissioner shall, within 180 days of the effective date
 2 of this act, and pursuant to the "Administrative Procedure Act,"
 3 P. L. 1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and regulations
 4 to administer the fund. These rules and regulations shall include,
 5 but need not be limited to, the following:

6 a. The establishment of criteria for determining degrees of eco-
 7 nomic hardship which shall take into account, among other relevant
 8 factors, the annual gross receipts derived from the operation of
 9 the facility, its net profit and the contractual relationship between
 10 the owner and the operator of the facility.

11 b. A schedule establishing percentages up to and including 100%
 12 of the total cost of repair or replacement of underground storage
 13 tanks or installation of monitoring systems, or both, which per-
 14 centages shall reflect the degree of economic hardship of loan
 15 recipients.

1 ****[19. There is appropriated to the fund from the General
2 Fund the sum of \$5,000,000.00.]****

1 ****[20.]**** ****19.**** There is appropriated to the depart-
2 ment from the General Fund the sum of **[\$2,000,000.00]****
3 **\$700,000.00** to implement the provisions of this act.

1 ****[21.]**** ****20.**** This act shall take effect immediately.

HAZARDOUS SUBSTANCES (CONTROL)

Establishes a program for the registration, regulation, and monitoring of underground storage tanks used to store hazardous substances; appropriates \$700,000.00.

8 b. Moneys in the fund shall be allocated and used to provide
 9 loans which shall bear interest of not more than 6% per year, and
 10 shall be for a term of not more than 10 years. These loans shall
 11 be made to owners of facilities who have been directed pursuant
 12 to law by the Commissioner of the Department of Environmental
 13 Protection to replace or repair one or more underground storage
 14 tanks. These loans shall also be made to owners of facilities for
 15 the purpose of installing monitoring systems. These loans shall be
 16 made in accordance with criteria developed and adopted by the
 17 commissioner pursuant to section 18 of this act.

18 c. No loan shall be made after December 31 of the fifth full
 19 calendar year subsequent to the effective date of this act. All
 20 moneys remaining in the fund or received by the fund after that
 21 date as repayment for loans made by the fund shall immediately
 22 revert to the General Fund.

1 18. The commissioner shall, within 180 days of the effective date
 2 of this act, and pursuant to the "Administrative Procedure Act,"
 3 P. L. 1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and regulations
 4 to administer the fund. These rules and regulations shall include,
 5 but need not be limited to, the following:

6 a. The establishment of criteria for determining degrees of eco-
 7 nomic hardship which shall take into account, among other relevant
 8 factors, the annual gross receipts derived from the operation of
 9 the facility, its net profit and the contractual relationship between
 10 the owner and the operator of the facility.

11 b. A schedule establishing percentages up to and including 100%
 12 of the total cost of repair or replacement of underground storage
 13 tanks or installation of monitoring systems, or both, which per-
 14 centages shall reflect the degree of economic hardship of loan
 15 recipients.

1 19. There is appropriated to the fund from the General Fund the
 2 sum of \$5,000,000.00.

1 20. There is appropriated to the department from the General
 2 Fund the sum of \$2,000,000.00 to implement the provisions of this
 3 act.

1 21. This act shall take effect immediately.

51479 (1986) _____
 STATEMENT

This bill would establish a comprehensive program for the regis-
 tration, regulation, and monitoring of underground storage tanks
 used to store chemical and petroleum hazardous substances. The

51479 (1986)

purpose of the program is the detection, prevention, and mitigation of serious leaks of these hazardous substances which could contaminate groundwater resources. In November, 1984, the federal "Hazardous and Solid Waste Amendments of 1984," Pub. L. 98-616 (42 U. S. C. § 6901 et al.) were enacted, which established a national regulatory framework for the regulation of underground storage tanks. This bill would provide New Jersey with statutory authority to implement the federal program.

This bill would apply to all underground storage tanks containing chemical hazardous substances, tanks with a capacity of more than 1,000 gallons containing motor fuel, and tanks with a capacity of more than 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building. Underground storage tanks used to store heating oil for onsite consumption in residential buildings are exempt from the provisions of this bill, except for such tanks with a capacity of 2,000 or more gallons, the owners of which must comply with the registration, inventory control, and discharge reporting requirements of this bill. Septic tanks, pipelines, surface impoundments, stormwater or wastewater collection systems, or tanks located in underground or below ground areas where the tank is visible are also exempt from the provisions of this act.

Owners of underground storage tanks covered under this bill would be required to register each tank with the Department of Environmental Protection, including the location and age of the tank. If a tank is repaired, or if a new tank is installed, the owner must install a tank which meets advanced structural criteria, and which is equipped with a secondary containment system (which allows leaks to be detected before the substance enters the surrounding soil) or a monitoring system for leaks. Owners of underground storage tanks would also be required to monitor the contents of their tanks through a system of inventory control and, if the inventory control indicates a loss of contents, the owner must notify the department. Upon such a notification, the department may order either an immediate or future removal and repair of the tank, depending on the degree of the environmental threat posed by the suspected leak. This bill also provides that within five years of the effective date of the bill, all underground storage tanks must be equipped with a method of secondary containment or a monitoring system to detect leaks. (This five year deadline does not apply to underground storage tanks used primarily for agricultural purposes on land assessed under the "Farmland Assessment Act

of 1964," P. L. 1964, c. 48 (C. 54:4-23.1 et seq.)). Monitoring systems could include electronic monitoring systems or monitoring wells from which water samples would be regularly drawn and tested to determine the presence of contaminants. If the department orders an owner or operator of an underground storage tank to install a monitoring system, the department, in designating the monitoring technology to be installed, must take into account the financial ability of the owner of the underground storage tank to comply with the department's order.

This bill also directs the Department of Environmental Protection to adopt regulations which would (1) establish a schedule for the testing of the structural integrity of underground storage tanks; (2) require anticorrosion devices to be installed in certain circumstances; (3) require owners of underground storage tanks to retain monitoring and inventory control records; (4) require owners of underground storage tanks to maintain evidence of financial ability to assume liability for personal and property damage caused by a discharge from the tank; and, (5) require owners of non-operational underground storage tanks to notify the department of the location of such tanks.

To insure uniformity in the regulation of underground storage tanks throughout the State, this bill preempts existing local laws or ordinances regulating underground storage tanks, and prohibits local governments from enacting such ordinances.

This bill also establishes the "State Underground Storage Tank Improvement Fund," and would appropriate \$5,000,000.00 to the fund from the General Fund. The fund would be administered by the Department of Environmental Protection, and would be used to make low interest loans to owners of underground storage tanks who have been ordered by the department to replace, or repair leaking tanks, or to install monitoring systems for leaks.

Finally, this bill appropriates to the department from the General Fund the sum of \$2,000,000.00 to implement the provisions of this bill.

(Subject) Hazardous substances (control).
 (Description) Underground storage tanks.
 (Synopsis) Establishes a program for the registration, regulation, and monitoring of underground storage tanks used to store hazardous substances; appropriates \$2 million for administration, and \$5 million for low interest loans.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO

SENATE, No. 1479

[OFFICIAL COPY REPRINT]

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 1986

The Senate Revenue, Finance and Appropriations Committee reported this bill favorably, with amendments.

The bill establishes a comprehensive program within the Department of Environmental Protection to register, regulate and monitor underground storage tanks used to store chemical and petroleum hazardous substances. The purpose of the program is the detection, prevention and mitigation of serious leaks of these hazardous substances which could contaminate groundwater resources. This bill would provide the State with stricter regulatory standards than under the federal "Hazardous and Solid Waste Amendments of 1984," Pub. L. 98-616 (42 U. S. C. § 6991 et al.), and therefore provides the State with the statutory authority to implement on its own the federally mandated national regulatory program. Certain underground storage tanks of certain capacities and for certain uses are excluded from the regulatory program. The bill also preempts local laws or ordinances regulating underground storage tanks to ensure Statewide uniformity in regulatory standards.

This bill also establishes the "State Underground Storage Tank Improvement Fund," and would appropriate \$5,000,000.00 to the fund from the General Fund. The fund would be administered by the Department of Environmental Protection, and would be used to make low interest loans to owners of underground storage tanks, who have been ordered by the department to replace or repair leaking tanks, or to install monitoring systems for leaks.

COMMITTEE AMENDMENTS:

The committee amended the bill to reduce from \$2,000,000.00 to \$700,000.00 the appropriation to the department for its initial administrative expenses. This amount was recommended by the Governor, in his veto message to a similar bill in the last legislative session (Assembly Bill No. 667 (OCR) of 1984), as sufficient to cover the department's initial expenses.

FISCAL IMPACT:

The total amount appropriated by this bill is \$5,700,000.00.

- 4 b. "Department" means the Department of Environmental Pro-
5 tection;
- 6 c. "Discharge" means the intentional or unintentional release by
7 any means of hazardous substances from an underground storage
8 tank into the environment;
- 9 d. "Facility" means one or more underground storage tanks;
- 10 e. "Hazardous substances" means motor fuel and those elements
11 and compounds, including petroleum products, which are defined
12 as hazardous substances by the department after public hearing,
13 and which shall be consistent to the maximum extent possible with
14 and which shall include, the list of hazardous wastes adopted by the
15 United States Environmental Protection Agency pursuant to
16 section 3001 of the "Resource Conservation and Recovery Act of
17 1976," Pub. L. 94-580 (42 U. S. C. § 6921), the list of hazardous
18 substances adopted by the United States Environmental Protection
19 Agency pursuant to section 311 of the "Federal Water Pollution
20 Control Act Amendments of 1972," Pub. L. 92-500 (33 U. S. C.
21 § 1321), the list of toxic pollutants designated by Congress or the
22 Environmental Protection Agency pursuant to section 307 of that
23 act (33 U. S. C. § 1317), and any substance defined as a hazardous
24 substance pursuant to section 101 (14) of the "Comprehensive
25 Environmental Response, Compensation, and Liability Act of
26 1980," Pub. L. 96-510 (42 U. S. C. § 9601); except that sewage and
27 sewage sludge shall not be considered as hazardous substances for
28 the purposes of this act;
- 29 f. "Leak" means the release of a hazardous substance from an
30 underground storage tank into a space created by a method of
31 secondary containment **wherein it can be detected by visual in-*
31A *spection or a monitoring system before it enters the environment**;
- 32 g. "Monitoring system" means a system capable of detecting
33 leaks or discharges, or both, other than an inventory control
34 system, used in conjunction with an underground storage tank, or
35 a facility, conforming to criteria established pursuant to section 5
36 of this act;
- 37 h. "Nonoperational storage tank" means any underground stor-
38 age tank in which hazardous substances are not contained, or from
39 which hazardous substances are not dispensed;
- 40 i. "Operator" means any person in control of, or having respon-
41 sibility for, the daily operation of a facility;
- 42 j. "Owner" means any person who owns a facility, or in the case
43 of a nonoperational storage tank, the person who owned the non-
44 operational storage tank immediately prior to the discontinuation
45 of its use;

46 k. "Person" means any individual, partnership, company, cor-
47 poration, consortium, joint venture, commercial or any other legal
48 entity, the State of New Jersey, or the United States Government;

49 l. "Residential building" means a single and multi-family dwell-
50 ing, nursing home, trailer, condominium, boarding house, apart-
51 ment house, or other structure designed primarily for use as a
52 dwelling;

53 m. "Secondary containment" means an additional layer of im-
54 pervious material creating a space wherein a leak of hazardous
55 substances from an underground storage tank may be detected
56 before it enters the environment;

57 n. "Substantially modify" means construction at, or restoration,
58 refurbishment or renovation of, an existing facility which increases
59 or decreases the in-place storage capacity of the facility or alters
60 the physical configuration or impairs or affects the physical in-
61 tegrity of the facility or its monitoring systems;

62 o. "Test" or "testing" means the testing of underground storage
63 tanks in accordance with standards adopted by the department;

64 p. "Underground storage tank" means any one or combination of
65 tanks, including appurtenant pipes, lines, fixtures, and other re-
66 lated equipment, used to contain an accumulation of hazardous
67 substances, the volume of which, including the volume of the
68 appurtenant pipes, lines, fixtures and other related equipment, is
69 10% or more below the ground. "Underground storage tank"
70 shall not include:

71 (1) Tanks used to store motor fuel with a capacity of 1,100
72 gallons or less;

73 (2) Tanks used to store heating oil for onsite consumption in a
74 nonresidential building with a capacity of 2,000 gallons or less;

75 (3) Tanks used to store heating oil for onsite consumption in a
76 residential building, except that for the purposes of sections 3, 7
77 and 8 of this act, a tank with a capacity of more than 2,000 gallons
78 used to store heating oil for onsite consumption is a residential
79 building shall be considered an "underground storage tank";

80 (4) Septic tanks installed in compliance with regulations
81 adopted by the department pursuant to "The Realty Improvement
82 Sewerage and Facilities Act (1954)," P. L. 1954, c. 199 (C. 58:11-23
83 et seq.);

84 (5) Pipelines, including gathering lines, regulated under the
85 "Natural Gas Pipeline Safety Act of 1968," Pub. L. 90-481 (49
86 U. S. C. § 1671 et seq.), the "Hazardous Liquid Pipeline Safety Act
87 of 1979" Pub. L. 96-129 (49 U. S. C. § 2001 et seq.), or intrastate
88 pipelines regulated under State law;

89 (6) Surface impoundments, pits, ponds, or lagoons, operated
90 in compliance with regulations adopted by the department pur-
91 suant to the "Water Pollution Control Act," P. L. 1977, c. 74 (C.
92 58:10A-1 et seq.);

93 (7) Storm water or wastewater collection systems operated in
94 compliance with regulations adopted by the department pursuant
95 to the "Water Pollution Control Act";

96 (8) Liquid traps or associated gathering lines directly related to
97 oil or gas production and gathering operations;

98 (9) Tanks situated in an underground area including, but not
99 limited to, basements, cellars, mines, drift shafts, or tunnels, if the
100 storage tank is situated upon or above the surface of the floor, or
101 storage tanks located below the surface of the ground which are
102 equipped with secondary containment and are uncovered so as to
103 allow visual inspection of the exterior of the tank; and

104 (10) Any pipes, lines, fixtures, or other equipment connected to
105 any tank exempted from the provisions of this act pursuant to
106 paragraphs (1) through (9) of this subsection.

1 3. a. The owner or operator of a facility shall, within 180 days
2 of the effective date of this act, on forms and in a manner prescribed
3 by the Commissioner, register that facility with the department.
4 The department may extend the registration period for an addi-
5 tional 180 days.

6 b. The commissioner shall, within 120 days of the effective date
7 of this act and pursuant to the "Administrative Procedure Act,"
8 P. L. 1968, c. 410 (C. 52:14B-1 et seq.) adopt rules and regulations
9 to provide for the registration of all facilities in the State, prescrib-
10 ing the forms and procedures therefor.

11 This registration shall require the following:

12 (1) The name and address of the owner and operator of the
13 facility;

14 (2) A site plan of the facility indicating the number and loca-
15 tion of the underground storage tanks;

16 (3) The date of installation of each of the underground storage
17 tanks;

18 (4) Any other relevant information requested by the commis-
19 sioner.

20 These rules and regulations shall provide for the annual cer-
21 tification by the owner or operator of the facility that the infor-
22 mation contained on the registration remains unchanged. The owner
23 or operator of a facility shall, within 30 days of completing the
24 activities for which a permit was acquired pursuant to section 4
25 of this act, register or reregister, as the case may be, in accordance
26 with the provisions of this section.

1 4. An owner or operator of a facility proposing to replace, in-
2 stall, expand or substantially modify the facility shall obtain a
3 permit therefor from the commissioner. The commissioner shall
4 not issue a permit unless the owner or operator demonstrates that:

5 a. The facility is constructed of materials that meet or exceed
6 the standards contained in, and is installed in a manner consistent
7 with, the State Uniform Construction Code adopted pursuant to the
8 "State Uniform Construction Code Act," P. L. 1975, c. 217
9 (C. 52:27D-119 et seq.) and with the rules and regulations adopted
10 pursuant to this act;

11 b. The facility is equipped with either an approved method of
12 secondary containment or a monitoring system;

13 c. The facility utilizes corrosion control features necessary to
14 protect the structural integrity of underground storage tanks sus-
15 ceptible to corrosion.

1 5. a. The commissioner shall, within one year of the effective
2 date of this act, adopt, pursuant to the "Administrative Procedure
3 Act," rules and regulations which:

4 (1) Establish a schedule for the testing of all facilities, taking
5 into account the age of the underground storage tank, the hazardous
6 substance stored therein, the proximity of the underground storage
7 tank to potable water supplies, and the soil resistivity and other
8 corrosive conditions which may precipitate a discharge, and for
9 the periodic testing for structural integrity of facilities utilizing
10 secondary containment which do not incorporate a monitoring sys-
11 tem, and the reporting of results thereof to the department.

12 (2) Identify and require corrosion control features necessary
13 to protect the structural integrity of facilities, including cathodic
14 protection, impressed current or isolative protection or any other
15 measures to counteract or minimize soil resistivity and other
16 corrosive conditions which may precipitate a leak or discharge.

17 (3) Establish standards for monitoring systems which shall in-
18 clude the requirement of at least a warning method indicating a
19 leak or discharge. Monitoring systems may include electric or
20 mechanical devices, monitoring wells, or any other method of mon-
21 itoring approved by the department. Any regulations adopted by
22 the department pursuant to this section requiring the installation
23 of monitoring systems at a facility shall reflect the financial ability
24 of an owner or operator of a facility, or classes of facilities, to
25 install the monitoring system required by the department.

26 (4) Require the maintaining of records of any monitoring or
27 leak detection system, inventory control system or underground
28 storage tank testing system.

29 (5) Require the reporting of any discharges and the corrective
30 action taken in response to a discharge from an underground
31 storage tank.

32 (6) Require the taking of corrective action in response to a
33 discharge from an underground storage tank by the owner or
34 operator of the underground storage tank.

35 (7) Require the owner or operator of an underground storage
36 tank to prepare plans for the closure of an underground storage
37 tank to prevent the future discharge of hazardous substances into
38 the environment.

39 (8) Require the maintaining of evidence of financial responsi-
40 bility for taking corrective action and compensating third parties
41 for bodily injury and property damage caused by a discharge.

42 (9) Require the development of performance standards for new
43 and substantially modified existing underground storage tanks.

44 (10) Require the notification of the department and local agen-
45 cies of the existence of any operational or nonoperational under-
46 ground storage tanks.

47 b. In developing the regulations required pursuant to this sec-
48 tion the department shall consider the regulations concerning un-
49 derground storage tanks adopted by the United States Environ-
50 mental Protection Agency pursuant to the "Hazardous and Solid
51 Waste Amendments of 1984," Pub. L. 98-616 (42 U. S. C. § 6991
52 et al.)***[.]*** *and shall use the recommendations and standard*
53 *procedures of the following organizations:*

54 (1) *American Petroleum Institute (API), 1220 L Street, N.W.,*
55 *Washington, D. C. 20005;*

56 (2) *Americian Society for Testing and Materials (ASTM), 1916*
57 *Race Street, Philadelphia, Pennsylvania 19103;*

58 (3) *National Association of Corrosion Engineers (NACE), P.O.*
59 *Box 218340, Houston, Texas 77218;*

60 (4) *National Fire Protection Association (NFPA), Battery-*
61 *march Park, Quincy, Massachusetts 02269; and*

62 (5) *Underwriters Laboratories (UL), 333 Pfngston Road,*
63 *Northbrook, Illinois 60062.**

64 c. The Department of Community Affairs shall adopt in the
65 State Uniform Construction Code the rules and regulations adop-
66 ted by the department pursuant to this section within 60 days.

1 6. Monitoring systems shall be installed, maintained, and oper-
2 ated in accordance with the manufacturer's requirements. Each
3 monitoring system shall be inspected at least monthly to determine
4 that it is functionally unimpaired.

1 7. The owner or operator of a facility shall maintain inventory

2 records for each underground storage tank which shall, at a mini-
3 mum, record daily hazardous substance transfers and a ***weekly***
4 **periodic** average. These records shall be maintained at the site
5 of the facility for at least one year.

1 8. a. If the inventory records maintained pursuant to section 7
2 of this act or a monitoring system indicates an unaccountable loss
3 of the equivalent of 1% of the storage capacity of an under-
4 ground storage tank or 40 gallons, whichever is smaller, the owner
5 or operator of the facility shall, within 24 hours of discovery,
6 notify the department and the appropriate local health agencies
7 of the loss of volume.

8 b. Upon notification, the department shall promptly conduct an
9 inspection to determine if the disclosed loss of volume represents
10 a leak or a discharge.

11 c. Upon a finding that the loss of volume represents a leak or
12 a discharge that is not an imminent threat to the proximate ground-
13 water resources of public health or safety, the commissioner shall
14 order the owner of the underground storage tank to remove, re-
15 place, or repair the underground storage tank, establish a date by
16 which the removal, replacement, or repair shall be effected, and
17 take any other action, or require the owner of the tank to take any
18 action, necessary to abate, contain, cleanup, or remove, or any
19 combination thereof, the leak or discharge.

20 d. Upon a finding that the loss of volume represents a discharge
21 which has entered or threatens groundwater resources or public
22 health or safety, the commissioner shall order the immediate re-
23 moval of the contents of the underground storage tank, and shall
24 take, or require the owner of the underground storage tank to
25 take, all other appropriate actions necessary to abate, contain,
26 cleanup, or remove, or any combination thereof, the discharge.

27 e. If the commissioner provides for the removal, replacement
28 or repair of an underground storage tank by any person other
29 than the owner, or takes other appropriate actions necessary to
30 mitigate the adverse effects of a leak or discharge, the costs of
31 these measures shall be borne by the owner of the underground
32 storage tank.

1 9. Within five years of the effective date of this act, all facilities
2 shall be equipped with an approved method of secondary contain-
3 ment or a monitoring system. This section shall not apply to facil-
4 ities used principally for agricultural purposes on land qualified
5 for a special tax assessment pursuant to the "Farmland Assess-
6 ment Act of 1964," P. L. 1964, c. 48 (C. 54:4-23.1 et seq.) and
7 installed prior to the effective date of this act.

1 10. The department shall have the authority to enter, at rea-

2 sonable hours, any property or place of business where under-
3 ground storage tanks or nonoperational storage tanks are or may
4 be located to inspect any underground storage tank or nonopera-
5 tional storage tank, and to photograph any records related to the
6 operation of an underground storage tank or a nonoperational
7 storage tank; to obtain samples or evidence of a discharge from
8 any underground storage tank or nonoperational storage tank, or
9 from the surrounding air, soil, or surface of groundwater; and to
10 conduct monitoring or testing of any underground storage tank
11 or nonoperational storage tank or the surrounding air, soil or
12 surface or groundwater. The owner or operator of a facility or
13 a nonoperational storage tank shall allow and cooperate with any
14 action taken by the department pursuant to the provisions of
15 this section.

1 11. The commissioner may adopt, pursuant to the "Administra-
2 tive Procedure Act," any rules and regulations in addition to those
3 required pursuant to this act, necessary to carry out the provisions
4 of this act, including rules and regulations imposing fees for the
5 processing of initial registrations pursuant to section 3 of this act
6 and for any renewal thereof, and for processing permits required
7 pursuant to section 4 of this act.

1 12. A person violating the provisions of this act is liable to the
2 penalties prescribed in section 10 of P. L. 1977, c. 74 (C. 58:10A-10).

1 13. The owner or operator of a facility equipped with a monitor-
2 ing system who has obtained a permit for groundwater discharges
3 pursuant to section 6 of P. L. 1977, c. 74 (C. 58:10A-6) is exempt
4 from the provisions of this act.

1 14. Nothing in this act shall be construed to limit the depart-
2 ment's authority to respond to, or remove or cleanup, a discharge
3 pursuant to the provisions of any other state or federal law.

1 15. Within two years of the effective date of this act the depart-
2 ment shall prepare and submit to the Legislature a report sum-
3 marizing the progress in implementing the provisions of this act
4 and outlining the economic impact on owners or operators of
5 facilities in complying with the provisions of this act.

1 16. It is the intent of the Legislature that the program estab-
2 lished by this act for the regulation of underground storage tanks
3 constitute the only program regulating underground storage tanks
4 in this State. To this end no municipality, county, or political sub-
5 division thereof, shall enact any law or ordinance regulating un-
6 derground storage tanks, and, further, the enactment of this act
7 shall supersede any law or ordinance regulating underground
8 storage tanks enacted by a municipality, county or political sub-
9 division thereof prior to the enactment of this act.

1 17. a. The State Underground Storage Tank Improvement Fund,
 2 hereinafter referred to as the "fund," is established in the depart-
 3 ment as a revolving fund. The fund shall be administered by the
 4 department and shall be credited with the ***[revenue provided]***
 5 **moneys appropriated** pursuant to **section 19 of** this act and
 6 sums received as repayment of principal and interest on outstand-
 7 ing loans made from the fund except as otherwise provided herein.

8 b. Moneys in the fund shall be allocated and used to provide
 9 loans which shall bear interest of not more than 6% per year, and
 10 shall be for a term of not more than 10 years. These loans shall
 11 be made to owners of facilities who have been directed pursuant
 12 to law by the Commissioner of the Department of Environmental
 13 Protection to replace or repair one or more underground storage
 14 tanks. These loans shall also be made to owners of facilities for
 15 the purpose of installing monitoring systems. These loans shall be
 16 made in accordance with criteria developed and adopted by the
 17 commissioner pursuant to section 18 of this act.

18 c. No loan shall be made after December 31 of the fifth full
 19 calendar year subsequent to the effective date of this act. All
 20 moneys remaining in the fund or received by the fund after that
 21 date as repayment for loans made by the fund shall immediately
 22 revert to the General Fund.

1 18. The commissioner shall, within 180 days of the effective date
 2 of this act, and pursuant to the "Administrative Procedure Act,"
 3 P. L. 1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and regulations
 4 to administer the fund. These rules and regulations shall include,
 5 but need not be limited to, the following:

6 a. The establishment of criteria for determining degrees of eco-
 7 nomic hardship which shall take into account, among other relevant
 8 factors, the annual gross receipts derived from the operation of
 9 the facility, its net profit and the contractual relationship between
 10 the owner and the operator of the facility.

11 b. A schedule establishing percentages up to and including 100%
 12 of the total cost of repair or replacement of underground storage
 13 tanks or installation of monitoring systems, or both, which per-
 14 centages shall reflect the degree of economic hardship of loan
 15 recipients.

1 19. There is appropriated to the fund from the General Fund the
 2 sum of \$5,000,000.00.

1 20. There is appropriated to the department from the General
 2 Fund the sum of \$2,000,000.00 to implement the provisions of this
 3 act.

1 21. This act shall take effect immediately.

- (Subject) Hazardous substances (control).
- (Description) Underground storage tanks.
- (Synopsis) Establishes a program for the registration, regulation, and monitoring of underground storage tanks used to store hazardous substances; appropriates \$2 million for administration, and \$5 million for low interest loans.
-

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1479

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 23, 1986

The Senate Energy and Environment Committee favorably reports Senate Bill No. 1479 with Senate Committee Amendments.

Senate Bill No. 1479 would establish a comprehensive program for the registration, regulation, and monitoring of underground storage tanks used to store chemical and petroleum hazardous substances. The purpose of the program is the detection, prevention, and mitigation of serious leaks of these hazardous substances which could contaminate groundwater resources. In November, 1984, the federal "Hazardous and Solid Waste Amendments of 1984," Pub. L. 98-616 (42 U. S. C. § 6901 et al.) were enacted, which established a national regulatory framework for the regulation of underground storage tanks. This bill would provide New Jersey with statutory authority to implement the federal program.

Senate Bill No. 1479 would apply to all underground storage tanks containing chemical hazardous substances, tanks with a capacity of more than 1,000 gallons containing motor fuel, and tanks with a capacity of more than 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building. Underground storage tanks used to store heating oil for onsite consumption in residential buildings are exempt from the provisions of this bill, except for such tanks with a capacity of 2,000 or more gallons, the owners of which must comply with the registration, inventory control, and discharge reporting requirements of this bill. Septic tanks pipelines, surface impoundments, stormwater or wastewater collection systems, or tanks located in underground or below ground areas where the tank is visible are also exempt from the provisions of this bill.

Owners of underground storage tanks covered under this bill would be required to register each tank with the Department of Environmental Protection, including the location and age of the tank. If a tank is repaired, or if a new tank is installed, the owner must install a tank which meets advanced structural criteria, and which is equipped with a secondary containment system (which allows leaks to be detected be-

fore the substance enters the surrounding soil) or a monitoring system for leaks. Owners of underground storage tanks would also be required to monitor the contents of their tanks through a system of inventory control and, if the inventory control indicates a loss of contents, the owner must notify the department. Upon such a notification, the department may order either an immediate or future removal and repair of the tank, depending on the degree of the environmental threat posed by the suspected leak. This bill also provides that within five years of the effective date of the bill, all underground storage tanks must be equipped with a method of secondary containment or a monitoring system to detect leaks. (This five year deadline does not apply to underground storage tanks used primarily for agricultural purposes on land assessed under the "Farmland Assessment Act of 1964," P. L. 1964, c. 48 (C. 54:4-23.1 et seq.)). Monitoring systems could include electronic monitoring systems or monitoring wells from which water samples would be regularly drawn and tested to determine the presence of contaminants. If the department orders an owner or operator of an underground storage tank to install a monitoring system, the department, in designating the monitoring technology to be installed, must take into account the financial ability of the owner of the underground storage tank to comply with the department's order.

This bill also directs the Department of Environmental Protection to adopt regulations which would (1) establish a schedule for the testing of the structural integrity of underground storage tanks; (2) require anti-corrosion devices to be installed in certain circumstances; (3) require owners of underground storage tanks to retain monitoring and inventory control records; (4) require owners of underground storage tanks to maintain evidence of financial ability to assume liability for personal and property damage caused by a discharge from the tank; and, (5) require owners of nonoperational underground storage tanks to notify the department of the location of such tanks.

To insure uniforming in the regulation of underground storage tanks throughout the State, this bill preempts existing local laws or ordinances regulating underground storage tanks, and prohibits local governments from enacting such ordinances.

This bill also establishes the "State Underground Storage Tank Improvement Fund," and would appropriate \$5,000,000.00 to the fund from the General Fund. The fund would be administered by the Department of Environmental Protection, and would be used to make low interest loans to owners of underground storage tanks who have been ordered by the department to replace, or repair leaking tanks, or to install monitoring systems for leaks.

Finally, Senate Bill No. 1479 appropriates to the department from

the General Fund the sum of \$2,000,000.00 to implement the provisions of this bill.

The committee amended the bill to clarify the definition of "leak," to provide that in adopting technical regulations for underground storage tank testing the department should use procedures developed by recognized industrial and engineering associations, to provide that periodic, instead of weekly, inventory averages must be kept by owners of underground storage tanks, and to specify the revenues to be deposited in the "State Underground Storage Tank Improvement Fund."

SENATE Amendments

PROPOSED BY SENATOR DALTON
to

SENATE Bill-No. 1479 2nd OCR

Sponsored by Senator Dalton

Sec. Line

underground storage tank program would be repaid to the General Fund from the proceeds of the fees charged by the department; and, 3) allow municipalities to adopt underground storage tank regulations more stringent than the State's if they receive the permission of the Department of Environmental Protection. These amendments also make technical amendments to S-1479 to conform it with the appropriate provisions of federal law.

6-2-86

SENATE Amendments
Proposed by Senator Dalton
to

SENATE Bill No. 1479 2nd OC
Sponsored by Senator Dalton

Amend:

Page Sec. Line

8 13 4

8 16 After

9

Omit "provisions" insert "requirements of section 5"
Insert new subsections "b." and "c." as follows:

" b. However, the department shall develop criteria for determining in which case a municipal ordinance more stringent than the provisions of this act is warranted. If the conditions in the municipality are deemed to meet the criteria developed pursuant to this subsection, the ordinance is hereby deemed to be effective and not preempted and the municipality may enforce and administer its provisions. The department shall have no authority to determine whether an ordinance meets the criteria developed pursuant to this section.

c. Any municipality, county or political subdivision may petition the department for a modification of any rule adopted under this act. The petition shall be forwarded to the department together with a written statement setting forth all provisions of the municipal ordinance which differ from the criteria identified, the reasons for the differences, and all supporting facts and data. The department shall evaluate the petition using the criteria adopted under subsection b. of this section and accept or reject the petition in a written statement which shall include the basis for the department's determination.

When the department determines that a rule change is justified it shall evaluate the applicability of that rule change on a regional or areawide basis and modify the rules to provide areawide requirements as appropriate."

STATEMENT

These amendments would 1) provide that fees charged by the Department of Environmental Protection for the registration of underground storage tanks would not exceed the cost of implementing the act; 2) provide that the \$700,000.00 appropriated from the General Fund to the Department of Environmental Protection to implement the

19 JUN 23 1986

6/17/86/sl6/18/86/sl

EA 0074
SR EA 0050
TR EA 0050

Note to Printer: Amends S-1479
2nd OCR with typed copy of
Senate Amendments

Assembly Amendments
Proposed by Assemblyman Bennett

to

Senate Bill No. 1479 2nd OCR
Sponsored by Senator Dalton

ADOPTED

JUN 19 1986

Amend:

Page	Sec	Line
1	Title	3
2	2	11

Omit "appropriations", insert "an appropriation"

After "products" insert "which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute)"

8 11 13

Omit "20" insert "19"

9 17 5

Before "moneys" insert "such", after "moneys" insert "as are", after "appropriated" omit "pursuant to section 19 of this act" insert "by the Legislature"

9 19 1-2

Omit entirely

9 20 1

Omit "20" insert "19"

9 21 1

Omit "21" insert "20"

Statement

These amendments would eliminate LP-Gas from the category of hazardous substances. LP-Gas is also excluded from the purview of the federal regulations on underground storage of hazardous substances. These amendments would also delete the \$5,000,000.00 appropriation for the State Underground Storage Tank Improvement Fund; provide that moneys for the fund be appropriated by the Legislature; and make other technical changes to conform the bill with the provisions of ACS-2155, 1795 & 74 OCR.

Note To Printer: Amend Synopsis to read as follows:

[SENATE REPRINT]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 667
[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED JUNE 25, 1984

AN ACT regulating the underground storage of hazardous substances, and supplementing Title 58 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature finds and declares that millions of gallons of
2 gasoline and other hazardous substances are stored, prior to use
3 or disposal, in underground storage tanks; that a significant per-
4 centage of *****[the]***** ****these underground storage**** tanks are
5 leaking due to corrosion or structural defect; that this leakage of
6 hazardous substances from underground storage tanks is among
7 the most common causes of groundwater pollution in the State; and
8 that it is thus necessary to provide for the ****registration and****
9 systematic testing and monitoring of underground storage tanks to
10 detect leaks *****[at the earliest]***** ****and discharges as early*
11 *as**** possible *****[stage]***** and thus minimize further degrada-
12 tion of potable water supplies.

1 2. As used in this act:

2 ****a. "Commissioner" means the Commissioner of the Depart-*
3 *ment of Environmental Protection.*

4 *b. "Department" means the Department of Environmental*
5 *Protection.****

6 *****[a.]***** ****c.**** "Discharge" means the intentional or un-
7 intentional release by any means of hazardous substances ****from*
8 *an underground storage tank**** into the environment;

9 *****[b.]***** ****d.**** "Facility" means ***one or more under-*
10 *ground storage tanks ***[in which is stored nonpetroleum hazard-*
11 *ous substances or*** one or more underground storage tanks with a
12 combined storage capacity of 1,100 gallons or more in which

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly amendment adopted September 20, 1984.

**—Assembly amendments adopted October 11, 1984.

***—Senate committee amendments adopted September 9, 1985.

13 ***other*** hazardous substances are stored, and all appurtenant
 14 pipes, lines, fixtures and other equipment **except that "facility"*
 15 *shall not mean underground storage tanks **[with a combined*
 16 *storage capacity of 2,000 gallons or less serving farms, single family*
 17 *residences, or multifamily dwellings of four units or less**]* ***in*
 18 *which is stored heating oil for onsite consumption**]****;

19 ***[c.]*** *e.* *** "Hazardous substances" means motor fuel
 20 and those elements and compounds, including petroleum products,
 21 which are defined as hazardous substances by the ***[Department
 22 of Environmental Protection]*** *department****, after public
 23 hearing, and which shall be consistent to the maximum extent
 24 possible with and which shall include, the list of hazardous wastes
 25 adopted by the United States Environmental Protection Agency
 26 pursuant to section 3001 of the "Resource Conservation and Re-
 27 covery Act of 1976," Pub.L. ***[No.]*** 94-580 (42 U. S. C. § 6921),
 28 the list of hazardous substances adopted by the United States
 29 Environmental Protection Agency pursuant to section 311 of the
 30 "Federal Water Pollution Control Act Amendments of 1972,"
 31 Pub. L. ***[No.]*** 92-500 (33 U. S. C. § 1321) ***[and]***
 32 ****,*** the list of toxic pollutants designated by Congress or the
 33 Environmental Protection Agency pursuant to section 307 of that
 34 act (33 U. S. C. § 1317)***, and any substance defined as a hazardous
 35 substance pursuant to section 101 (14) of the "Comprehensive
 36 Environmental Response, Compensation, and Liability Act of
 37 1980," Pub. L. 96-510 (42 U. S. C. § 9601)***; except that sewage
 38 and sewage sludge shall not be considered as hazardous substances
 39 for the purposes of this act;*

40 ***[d.]*** *f.* *** "Leak" means the release of a hazardous
 41 substance from ***[its primary container]*** *an underground*
 42 *storage tank**** into a space ***[wherein it may be detected before
 43 it enters the environment]*** *created by a method of secondary*
 44 *containment***;*

45 ***[e.]*** *g.* *** "Monitoring system" means a ***[contin-
 46 uous leak detection]*** system *capable of detecting leaks or*
 47 *discharges, or both, other than an inventory control system,**** used
 48 in conjunction with an underground storage tank, or a facility,
 49 conforming to criteria established pursuant to section 5 of this act;

50 ***[f.]*** "Primary container" means an underground storage tank
 51 constructed of one layer of impervious material, including, but
 52 not limited to, laminated, coated, or clad materials;]***

53 ***h. "Nonoperational storage tank" means any underground
 54 storage tank in which hazardous substances are not contained, or
 55 from which hazardous substances are not dispensed;

56 i. "Operator" means any person in control of, or having responsi-
57 bility for, the daily operation of a facility;

58 j. "Owner" means any person who owns a facility, or in the case
59 of a nonoperational storage tank, the person who owned the non-
60 operational storage tank immediately prior to the discontinuation
61 of its use.

62 k. "Person" means any individual, partnership, company, corpo-
63 ration, consortium, joint venture, commercial or any other legal
64 entity, the State of New Jersey, or the United States Government;

65 l. "Residential building" means a single and multifamily dwel-
66 ling, nursing home, trailer, condominium, boarding house, apart-
67 ment house, or other structure designed primarily for use as a
68 dwelling;***

69 ***[g.]*** ***m.*** "Secondary containment" means an addi-
70 tional layer of impervious material creating a space wherein a leak
71 of hazardous substances from ***[a primary container]*** ***an
72 underground storage tank*** may be detected before it enters the
73 environment;

74 ***[h.]*** ***n.*** "Substantially modify" means construction
75 at, or restoration, refurbishment or renovation, of an existing
76 facility which increases or decreases the in-place storage capacity
77 of the facility or alters the physical configuration or impairs or
78 affects the physical integrity of the facility or its monitoring sys-
79 tems;

08 ***[i.]*** ***o.*** "Test" or "testing" means ***[that]***
81 ***the*** testing of underground storage tanks ***[and appurte-
82 nant pipes, lines, fixtures and other equipment]*** in accordance
83 with standards adopted by the department;

84 ***[j.]*** ***p.*** "Underground storage tank" ***[or "tank"]
85 means a container, with 10% or more of its enclosed volume below
86 the surface of the ground, in which hazardous substances are
87 stored]*** ***means any one or combination of tanks, including
88 appurtenant pipes, lines, fixtures, and other related equipment, used
89 to contain an accumulation of hazardous substances, the volume of
90 which, including the volume of the appurtenant pipes, lines, fixtures
91 and other related equipment, is 10% or more below the ground.
92 "Underground storage tank" shall not include:

93 (1) Tanks used to store motor fuel with a capacity of 1,100 gal-
94 lons or less;

95 (2) Tanks used to store heating oil for on-site consumption in a
96 nonresidential building with a capacity of 2,000 gallons or less;

97 (3) Tanks used to store heating oil for onsite consumption in a
98 residential building, except that for the purposes of sections 3, 7

99 and 8 of this act, a tank with a capacity of more than 2,000 gallons
 100 used to store heating oil for onsite consumption in a residential
 101 building shall be considered an "underground storage tank";

102 (4) Septic tanks installed in compliance with regulations adopted
 103 by the department pursuant to "The Realty Improvement Sewerage
 104 and Facilities Act (1954)," P. L. 1954, c. 199 (C. 58:11-23 et seq.);

105 (5) Pipelines, including gathering lines, regulated under the
 106 "Natural Gas Pipeline Safety Act of 1968," Pub. L. 90-481 (49
 107 U. S. C. § 1671 et seq.), the "Hazardous Liquid Pipeline Safety Act
 108 of 1979" Pub. L. 96-129 (49 U. S. C. § 2001 et seq.), or intrastate
 109 pipelines regulated under State law;

110 (6) Surface impoundments, pits, ponds, or lagoons, operated in
 111 compliance with regulations adopted by the department pursuant
 112 to the "Water Pollution Control Act," P. L. 1977, c. 74 (C. 58:10A-1
 113 et seq.);

114 (7) Storm water or wastewater collection systems operated in
 115 compliance with regulations adopted by the department pursuant
 116 to the "Water Pollution Control Act";

117 (8) Liquid traps or associated gathering lines directly related to
 118 oil or gas production and gathering operations;

119 (9) Tanks situated in an underground area including, but not
 120 limited to, basements, cellars, mines, drift shafts, or tunnels, if the
 121 storage tank is situated upon or above the surface of the floor, or
 122 storage tanks located below the surface of the ground which are
 123 equipped with secondary containment and are uncovered so as to
 124 allow visual inspection of the exterior of the tank; and

125 (10) Any pipes, lines, fixtures, or other equipment connected to
 126 any tank exempted from the provisions of this act pursuant to
 127 paragraphs (1) through (9) of this subsection***.

128 3. a. The owner or operator of a facility shall, within 180 days
 129 of the effective date of this act, on forms and in a manner prescribed
 130 by the Commissioner ***[of the Department of Environmental
 131 Protection]***, register that facility with the department. The
 132 department may extend the registration period for an additional
 133 180 days.

134 b. The commissioner shall, within ***[90]*** ***120*** days of
 135 the effective date of this act and pursuant to the "Administrative
 136 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) adopt rules
 137 and regulations to provide for the registration of all facilities in
 138 the State, prescribing the forms and procedures therefor.

139 This registration shall require the following:

140 (1) The name and address of the owner and operator of the
 141 facility;

14 (2) A site plan of the facility indicating the number and loca-
15 tion of the underground storage tanks;

16 (3) The date of installation of each of the underground storage
17 tanks ***[and appurtenant pipes, lines, fixtures and other equip-
17A ment]***;

18 (4) Any other relevant information requested by the commis-
19 sioner.

20 These rules and regulations shall provide for the annual certifi-
21 cation by the owner or operator of the facility that the information
22 contained on the registration remains unchanged. The owner or
23 operator of a facility shall, within 30 days of completing the activi-
24 ties for which a permit was acquired pursuant to section 4 of this
25 act, register or reregister, as the case may be, in accordance with
26 the provisions of this section.

1 4. ***[A person]*** ****An owner or operator of a facility****
2 proposing to replace, install, expand or substantially modify
2A ***[a]*** ****the**** facility shall obtain a permit therefor from the
3 commissioner. The commissioner shall not issue a permit unless
4 the owner or operator demonstrates that:

5 a. The facility is constructed of materials that meet or exceed
6 the standards contained in, and is installed in a manner consistent
7 with, the State Uniform Construction Code adopted pursuant to
8 the "State Uniform Construction Code Act," P. L. 1975, c. 217
9 (C. 52:27D-119 et seq.) and with the rules and regulations adopted
10 pursuant to this act;

11 b. The facility is equipped with either an approved method of
12 secondary containment or a monitoring system;

13 c. The facility utilizes corrosion control features necessary to
14 protect the structural integrity of underground storage tanks
15 ***[and the pipes, lines, fixtures and other equipment]*** suscep-
16 tible to corrosion.

1 5. a. The commissioner shall, within ***[180 days]*** ****one****
2 *year**** of the effective date of this act, adopt, pursuant to the
3 "Administrative Procedure Act," rules and regulations which:

4 (1) Establish a schedule for the testing of all facilities, taking
5 into account the age of the ****underground storage**** tank, the
6 hazardous substance stored therein, the proximity of the ****under-*
7 *ground storage**** tank to potable water supplies, and the soil
8 resistivity and other corrosive conditions which may precipitate a
9 discharge, and for the periodic testing for structural integrity of
10 facilities utilizing secondary containment which do not incorporate
11 ***[continuous]*** ****a**** monitoring ****system****, and the
12 reporting of results thereof to the department.

13 (2) Identify ****and require**** corrosion control features neces-
14 sary to protect the structural integrity of facilities, including catho-
15 dic protection, impressed current or isolative protection or any
16 other measures to counteract or minimize soil resistivity and other
17 corrosive conditions which may precipitate ****[tank leakage]****
18 ****a leak**** or discharge.

19 (3) Establish standards for monitoring systems which shall in-
20 clude the requirement of at least a warning ****[device]****
21 ****method**** indicating a ****[breach of tank integrity which may*
22 *precipitate a]**** leak or discharge. Monitoring systems may in-
23 clude electric or mechanical devices, monitoring wells, or any other
24 method ****[which provides for continuous]*** ***of**** monitoring
25 approved by the department. ****Any regulations adopted by the*
26 *department pursuant to this section requiring the installation of*
27 *monitoring systems at a facility shall reflect the financial ability of*
28 *an owner or operator of a facility, or classes of facilities, to install*
29 *the monitoring system required by the department.****

30 **** (4) Require the maintaining of records of any monitoring or*
31 *leak detection system, inventory control system or underground*
32 *storage tank testing system.*

33 (5) *Require the reporting of any discharges and the corrective*
34 *action taken in response to a discharge from an underground*
35 *storage tank.*

36 (6) *Require the taking of corrective action in response to a*
37 *discharge from an underground storage tank by the owner or*
38 *operator of the underground storage tank.*

39 (7) *Require the owner or operator of an underground storage*
40 *tank to prepare plans for the closure of an underground storage*
41 *tank to prevent the future discharge of hazardous substances into*
42 *the environment.*

43 (8) *Require the maintaining of evidence of financial responsibility*
44 *for taking corrective action and compensating third parties for*
45 *bodily injury and property damage caused by a discharge.*

46 (9) *Require the development of performance standards for new*
47 *and substantially modified existing underground storage tanks.*

48 (10) *Require the notification of the department and local agencies*
49 *of the existence of any operational or nonoperational underground*
50 *storage tanks.****

51 b. ****[The]*** ***In developing the regulations required pur-*
52 *suant to this section the**** department shall ****consider the regu-*
53 *lations concerning underground storage tanks adopted by the*
54 *United States Environmental Protection Agency pursuant to the*
55 *“Hazardous and Solid Waste Amendments of 1984,” Pub. L. 98-616*

56 (42 U. S. C. § 6901 et al.) and shall*** use the recommendations
 57 and standard procedures of the following organizations ***[in
 58 developing the regulations required by this section]***:

59 (1) American Petroleum Institute (API), 1220 L Street, N.W.,
 60 Washington, D. C. 20005;

61 (2) American Society for Testing and Materials (ASTM), 1916
 62 Race Street, Philadelphia, Pennsylvania 19103;

63 (3) National Association of Corrosion Engineers (NACE), P.O.
 64 Box 218340, Houston, Texas 77218;

65 (4) National Fire Protection Association (NFPA), Battery-
 66 march Park, Quincy, Massachusetts 02269; and

67 (5) Underwriters Laboratories (UL), 333 Pfingston Road, North-
 68 brook, Illinois 60062.

69 c. The Department of Community Affairs shall adopt in the
 70 State Uniform Construction Code the rules and regulations adopted
 71 by the ***[Department of Environmental Protection]*** ***de-
 72 partment*** pursuant to this section within 60 days.

1 6. Monitoring systems shall be installed, maintained, and op-
 2 erated in accordance with the manufacturer's requirements. Each
 3 monitoring system shall be inspected at least monthly to deter-
 4 mine that it is functionally unimpaired.

1 7. The owner or operator of a facility shall maintain inventory
 2 records for each underground storage tank which shall, at a mini-
 3 mum, record daily hazardous substance transfers and a weekly
 4 average. These records shall be maintained ***[on the pre-
 5 mises]*** ***at the site of the facility*** for at least one year.

1 8. a. If the inventory records ***maintained pursuant to section 7
 2 of this act*** or a monitoring system indicates an unaccountable
 3 loss of the equivalent of 1% of the storage capacity of an under-
 4 ground storage tank or 40 gallons, whichever is smaller, the owner
 5 or operator of the facility shall, within 24 hours of discovery, notify
 6 the department and the appropriate local health agencies of the
 6A ***[occurrence]*** ***loss of volume***.

7 b. Upon notification, the department shall promptly conduct an
 8 inspection to determine if the disclosed loss of volume represents
 9 a leak or a discharge ***[of a hazardous substances contained in the
 10 underground storage tank]***.

11 c. Upon a finding that the loss of volume represents a leak or
 12 a discharge that is not an imminent threat to the proximate ground-
 13 water resources or public health or safety, the commissioner shall
 14 order the owner of the ***underground storage*** tank to remove,
 15 replace, or repair the underground storage tank, establish a date by
 16 which the removal, replacement, or repair shall be effected, and take

17 any other action, or require the owner of the ****underground*
 18 *storage**** tank to take any action, necessary to ****[mitigate]****
 19 ****abate, contain, cleanup, or remove, or any combination there-*
 20 *of,**** the leak or discharge.

21 d. Upon a finding that the loss of volume represents a discharge
 22 ****[of hazardous substances and]*** ***which**** has entered or
 23 threatens groundwater resources ****or public health or safety****,
 24 the commissioner shall order the immediate removal of the contents
 25 of the ****underground storage**** tank, and shall take, or require
 26 the owner of the ****underground storage**** tank to take, all other
 27 appropriate actions necessary to ****[mitigate]*** ***abate, con-*
 28 *tain, cleanup, or remove, or any combination thereof,**** the dis-
 29 charge.

30 e. If the commissioner provides for the removal, replacement or
 31 repair of ****[the]*** ***an underground storage**** tank by any
 32 person other than the owner, or takes other appropriate actions
 33 necessary to mitigate the adverse effects of ****[the]*** ***a****
 34 *leak ***or discharge****, the costs ****[for those actions]*** ***of*
 35 *these measures**** shall be borne by the owner of the ****[tanks]****
 36 ****underground storage tank****.

1 9. Within five years of the effective date of this act, all facilities
 2 shall be equipped with an approved method of secondary contain-
 3 ment or a monitoring system. This section shall not apply to
 4 facilities used principally for agricultural purposes on land qualified
 5 for a ****[different]*** ***special**** tax assessment pursuant to
 6 the "Farmland Assessment Act of 1964," P. L. 1964, c. 48 (C.
 7 54:4-23.1 et seq.) and installed prior to the effective date of this act.

1 ****10. The department shall have the authority to enter, at*
 2 *reasonable hours, any property or place of business where under-*
 3 *ground storage tanks or nonoperational storage tanks or non-*
 4 *operational storage tanks are or may be located to inspect any*
 5 *underground storage tank or nonoperational storage tank, and to*
 6 *photograph any records related to the operation of an underground*
 7 *storage tank or a nonoperational storage tank; to obtain samples or*
 8 *evidence of a discharge from any underground storage tank or*
 9 *nonoperational storage tank, or from the surrounding air, soil, or*
 10 *surface or ground water; and to conduct monitoring or testing of*
 11 *any underground storage tank or nonoperational storage tank of*
 12 *the surrounding air, soil, or surface or ground water. The owner*
 13 *or operator of a facility or a nonoperational storage tank shall*
 14 *allow and cooperate with any action taken by the department pur-*
 15 *suant to the provisions of this section.****

1 ****[10.]*** ***11.**** The commissioner may adopt, pursuant to

2 the "Administrative Procedure Act," any ***[other]*** rules and
 3 regulations***, *in addition to those required pursuant to this act,****
 4 necessary to carry out the provisions of this act, including ***rules
 5 and regulations imposing*** fees for the processing of initial regis-
 6 trations pursuant to section 3 of this act and for any renewal there-
 7 of, and for processing permits required pursuant to section 4 of
 8 this act.

1 ***[11.]*** ***12.*** A person violating the provisions of this
 2 act is liable to the penalties prescribed in section 10 of P. L. 1977,
 3 c. 74 (C. 58:10A-10).

1 ***[12.]*** ***13.*** The owner or operator of a facility
 2 equipped with a monitoring system who has obtained a permit for
 3 groundwater discharges pursuant to section 6 of P. L. 1977, c. 74
 4 (C. 58:10A-6) is exempt from the provisions of this act.

1 ***14. Nothing in this act shall be construed to limit the depart-
 2 ment's authority to respond to, or remove or cleanup, a discharge
 3 pursuant to the provisions of any other state or federal law.

1 15. Within two years of the effective date of this act the depart-
 2 ment shall prepare and submit to the Legislature a report sum-
 3 marizing the progress in implementing the provisions of this act
 4 and outlining the economic impact on owners or operators of
 5 facilities in complying with the provisions of this act.

1 16. It is the intent of the Legislature that the program established
 2 by this act for the regulation of underground storage tanks consti-
 3 tute the only program regulating underground storage tanks in this
 4 state. To this end no municipality, county, or political subdivision
 5 thereof, shall enact any law or ordinance regulating underground
 6 storage tanks, and, further, the enactment of this act shall supersede
 7 any law or ordinance regulating underground storage tanks enacted
 8 by a municipality, county or political subdivision thereof prior to
 9 the enactment of this act.***

1 ***[13.]*** ***17.*** This act shall take effect upon the enact-
 2 ment into law of P. L. 198 , c. . . . (C.) (now pending
 3 before the Legislature as Assembly Bill No. 2074 of 1984) except
 4 that the ***[Department of Environmental Protection]*** ***de-
 5 partment*** shall take anticipatory action by developing regula-
 6 tions prior to the effective date of this act.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 13, 1986

ASSEMBLY COMMITTEE SUBSTITUTE
FOR ASSEMBLY BILL NO. 667 (SR)

To the Assembly:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Committee Substitute for Assembly Bill No. 667 (SR) with my recommendations for reconsideration.

This bill establishes a comprehensive regulatory program, to be administered by the Department of Environmental Protection, for the registering, permitting and systematic testing and monitoring of underground storage tanks for petroleum and chemical hazardous substances. In November, 1984, the federal "Hazardous and Solid Waste Amendments of 1984" (42 U.S.C. § 6901 et al.) were enacted, which established a national regulatory framework for the regulation of underground storage tanks. This bill would distinguish New Jersey as one of the first states in the country with statutory authority to implement the federal program.

This new State program, which would require the annual certified registration of underground storage tanks - with the exception of those used to store heating oil for onsite consumption in residential buildings, will establish the first Statewide data base of information useful in identifying the source of underground spills. Generally, the owners or operators of all underground storage tanks would be required to (1) periodically test them for leakage, (2) maintain inventory records of such tests and (3) adhere to State reporting requirements.

The establishment of a comprehensive regulatory program which will enable us to detect, prevent and mitigate underground leaks of hazardous substances is clearly necessary if we are ever to effectively control the potentially large levels of chemicals which are seeping from unmonitored and deteriorating underground storage tanks across the State. Specifically, the urgent importance of expanding our capacity to protect the State's precious groundwater supplies from such leaking chemicals is evidenced by the fact that over half of the State's citizenry are dependent upon groundwater for their potable water.

I have long espoused my strong conceptual support for the program established in this particular bill. Evidencing this support, I specifically called upon

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the Legislature in my January, 1985 State-of-the-State message to "work with affected individuals and groups to come up with final legislation, which would protect us from leaking tanks without placing undue burdens on homeowners and minor storage facilities, so that we can enact it quickly." I cannot overstate my strong belief that a technically sound program for regulation of underground storage tanks is a mandatory component of our State's overall hazardous waste cleanup efforts - particularly our drive to implement the most comprehensive safe drinking water program in the country.

As an example of our continuous efforts, over the last few years I have signed legislation which establishes stringent new testing requirements and water quality standards for potable water supplies. In addition, New Jersey recently instituted nationally recognized regulations which govern the management practices of municipal and private water suppliers to further protect the environmental integrity of our groundwater aquifers. I am proud that we are making positive strides, but our task will not be complete until we are assured that all of New Jersey's citizenry have an adequate supply of safe and clean drinking water. Accordingly, I congratulate the Legislature for following my recommendation during the past year in passing a program for regulation of underground storage tanks. This particular program generally appears programmatically capable of achieving our critically important environmental goals, yet is also sensitive to all reasonable requests of the affected industries.

Notwithstanding my strong conceptual support for this bill, I am concerned that it contains certain technical deficiencies, which, if not corrected, would seriously undermine the effective implementation of the program. For example, I am advised that the legislation was intended to enable the Department of Environmental Protection to defray its expenses of administering the program by using the annual revenues the department would collect through imposition of reasonable registration and permitting fees on owners or operators of underground storage tanks. Despite this intent, the technical language of the bill, as passed by the Legislature, could be construed as only authorizing the department to utilize fee revenues for the "processing" of registrations and permits.

At this critically important environmental crossroads in our State's relentless assault on air, land and water pollution, we have countless "first

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priority" environmental initiatives, most of which are similar in that they are all extremely expensive to administer. With respect to those specific programs which establish a new revenue source generated by a fair and "rationally related" fee on the affected industries, I believe that it is both equitable and prudent fiscal policy to dedicate that revenue stream to the administrative expenses of the program. Accordingly, I am recommending amendments which clarify that that fee revenues of this regulatory program shall be used to defray the Department of Environmental Protection's administrative expenses.

Also, it appears that the bill envisions the imposition of fees beginning with initial registrations of, and permits for, underground storage tanks. This interpretation notwithstanding, I am advised that the Department of Environmental Protection has agreed with the affected industries and certain interested legislators to refrain from imposing any fees on initial registrations and permits. Rather, the fee schedule would be initiated beginning with the registration and permit "renewal" process during the second year of the program. I support this arrangement to the extent that it is intended to encourage rapid compliance with the program, but I am also recommending an amendment which clarifies that fees shall be imposed after the deferrment period. Accordingly, I strongly encourage the department to rigorously implement the bill's regulatory framework and effectuate immediate compliance by the affected industries.

In light of the above-described agreement, however, this crucially important environmental program will not generate any fee revenues during the first two fiscal years that it is in operation, and will therefore not be fiscally self-sustaining during that time. Accordingly, the department had repeatedly, but unsuccessfully, requested that an appropriation be added to the bill during the legislative process in an amount sufficient to cover its "up front" expenses for implementation and administration of the program for FY 87 and the remainder of FY 86. I am hesitant to recommend an unconditional General Fund appropriation for these expenses, given the State's current fiscal constraints, and in view of the fact that this program has the capacity to become fiscally self-sustaining once reasonable registration and permit fees are imposed. Therefore, I am recommending a General Fund appropriation of \$700,000.00 as a "loan" for the department's initial administrative expenses.

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Specifically, I am recommending amendments which (1) memorialize the one-year deferrment agreement on imposition of registration and permit fees; (2) appropriate \$700,000.00 from the General Fund to the Department of Environmental Protection to cover its initial administrative expenses, as a loan repayable to the General Fund from subsequent fee revenues collected in future fiscal years; and (3) provide that fees shall be established at a level sufficient to defray the program's annual administrative expenses and repay the loan within three years from the date when fees are first imposed.

This bill also stipulates that local governments and political subdivisions are prohibited from enacting any laws regulating underground storage tanks and that any such laws currently in effect are superseded. Given the potential threat to the public health and safety posed by leaking underground storage tanks, I am concerned that total elimination of local regulatory authority is not in the best interest of the citizens of this State. Accordingly, I have deleted the preemption language contained in this bill.

Lastly, I am concerned that the effective date of this bill - although the regulatory program it establishes is technically capable of effective implementation solely through its own provisions - is dependent upon the enactment of another bill presently in the Legislature, namely Assembly Bill No. 2074. That bill, A-2074, would appropriate \$5 million from the General Fund for a low-interest, "compliance" loan program to cushion the financial dislocation which may be experienced by owners or operator of severely deficient underground storage tanks.

I generally support the concept of such a loan program to the extent that it will facilitate rapid compliance with the environmentally critical, regulatory program established in A-667. Despite the laudable purpose of A-2074, however, I am concerned that at this juncture it would be imprudent fiscal policy to approve such a major State funding program which requires a substantial appropriation from the General Fund. Specifically, the unanticipated \$5 million appropriation contained in A-2074 would further reduce the State's projected ending balance for FY 86, which is already below the minimum level recommended by the State Treasurer.

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We are quickly approaching the time when the many and diverse fiscal needs of this State, and my recommendations regarding their relative merit, will be considered and evaluated by the Legislature through the FY 87 appropriations process. Rather than force the disposition of this bill at an inappropriate time, I would hope that the Legislature will evaluate the program contained in A-2074 within the context of FY 87 Budget deliberations. Specifically, I am recommending that the Legislature work within the fiscal framework of the FY 87 Budget towards passage of "compliance" loan legislation by July 1, 1986. The enactment of such legislation by that time would enable the underground storage tank regulatory and compliance loans programs to be implemented simultaneously.

Given the present time-period and related fiscal constraints, in addition to the fact that the fee schedule established in A-667 will be delayed for a year, I am recommending amendments which provide that A-667 would take effect immediately upon enactment. In final analysis, the potential environmental benefits of this critical component of the State's clean drinking water program, and its positive impact on the health, safety and welfare of the State citizenry clearly warrant that this bill should take effect immediately. To unnecessarily delay implementation of the underground storage tank regulatory program because of the untimely disposition of A-2074 is unacceptable to me.

Accordingly, I herewith return Assembly Committee Substitute for Assembly Bill No. 667 (SR) and recommend that it be amended as follows:

Page 9, Section 11, Lines 4-5: On Line 4, DELETE "act, including" INSERT "act. The commissioner shall adopt"; on Line 5, DELETE "the processing of"

Page 9, Section 11, Lines 7-8: On Line 7, DELETE "processing"; on Line 8, after "act." INSERT "However, no fees shall be required for registrations or permits for a period of eighteen months from the effective date of this act. Thereafter, fees shall be established at a level to provide sufficient revenue to defray the costs of the administration of this act, and to recover within three years from the date fees are first imposed the amount of the appropriation made herein."

Page 9, Section 16, Lines 1-9: DELETE in entirety.

Page 9, Section 16, After Line 9: Insert new section as follows:

"17. There is hereby appropriated \$700,000.00 from the General Fund to the Department of Environmental Protection for the purpose of implementing this act."

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Page 9, Section 17, Lines 1-6: On Line 1, DELETE "upon the enact-";
DELETE Lines 2 through 6 in entirety, INSERT "immediately"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

Attest:

Amy R. Piro

Deputy Chief Counsel