

58:10-12.11b

LEGISLATIVE HISTORY CHECKLIST
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(Heating oil--storage exempt
from certain requirements)

NJSA: 58:10-12.11b

LAWS OF: 1992 CHAPTER: 147

BILL NO: S503

SPONSOR(S) Connors

DATE INTRODUCED: March 5, 1992

COMMITTEE: ASSEMBLY: ---
SENATE: Environment

AMENDED DURING PASSAGE: Yes Amendments during passage
denoted by asterisks

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

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[FIRST REPRINT]

SENATE, No. 503

STATE OF NEW JERSEY

INTRODUCED MARCH 5, 1992

By Senator CONNORS

1 AN ACT concerning underground storage tanks used for storing
2 heating oil, and amending P.L.1976, c.141 and P.L.1986, c.102.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. Section 3 of P.L.1976, c.141 (C.58:10-23.11b) is amended to
7 read as follows:

8 3. Unless the context clearly indicates otherwise, the
9 following terms shall have the following meanings:

10 a. "Administrator" means the chief executive of the New
11 Jersey Spill Compensation Fund;

12 b. "Barrel" means 42 United States gallons or 159.09 liters or
13 an appropriate equivalent measure set by the director for
14 hazardous substances which are other than fluid or which are not
15 commonly measured by the barrel;

16 c. "Board" means a board of arbitration convened by the
17 administrator to settle disputed disbursements from the fund;

18 d. "Cleanup and removal costs" means all costs associated
19 with a discharge, incurred by the State or its political
20 subdivisions or their agents or any person with written approval
21 from the department in the: (1) removal or attempted removal of
22 hazardous substances, or (2) taking of reasonable measures to
23 prevent or mitigate damage to the public health, safety, or
24 welfare, including, but not limited to, public and private
25 property, shorelines, beaches, surface waters, water columns and
26 bottom sediments, soils and other affected property, including
27 wildlife and other natural resources, and shall include costs
28 incurred by the State for the indemnification and legal defense of
29 contractors pursuant to section 1 through 11 of P.L.1991, c.373
30 (C.58:10-23.11f8 et seq.);

31 e. "Commissioner" means the Commissioner of Environmental
32 Protection;

33 f. "Department" means the Department of Environmental
34 Protection;

35 g. "Director" means the Director of the Division of Taxation
36 in the Department of the Treasury;

37 h. "Discharge" means any intentional or unintentional action
38 or omission resulting in the releasing, spilling, leaking, pumping,
39 pouring, emitting, emptying or dumping of hazardous substances
40 into the waters or onto the lands of the State, or into waters
41 outside the jurisdiction of the State when damage may result to
42 the lands, waters or natural resources within the jurisdiction of

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted June 1, 1992.

1 the State;

2 i. "Fair market value" means the invoice price of the
3 hazardous substances transferred, including transportation
4 charges; but where no price is so fixed, "fair market value" shall
5 mean the market price as of the close of the nearest day to the
6 transfer, paid for similar hazardous substances, as shall be
7 determined by the taxpayer pursuant to rules of the director;

8 j. "Fund" means the New Jersey Spill Compensation Fund;

9 k. "Hazardous substances" means the "environmental
10 hazardous substances" on the environmental hazardous substance
11 list adopted by the department pursuant to section 4 of P.L.1983,
12 c.315 (C.34:5A-4); such elements and compounds, including
13 petroleum products, which are defined as such by the department,
14 after public hearing, and which shall be consistent to the
15 maximum extent possible with, and which shall include, the list of
16 hazardous substances adopted by the federal Environmental
17 Protection Agency pursuant to section 311 of the federal Water
18 Pollution Control Act Amendments of 1972, Pub.L.92-500, as
19 amended by the Clean Water Act of 1977, Pub.L.95-217
20 (33 U.S.C. §1251 et seq.); the list of toxic pollutants designated
21 by Congress or the EPA pursuant to section 307 of that act; and
22 the list of hazardous substances adopted by the federal
23 Environmental Protection Agency pursuant to section 101 of the
24 "Comprehensive Environmental Response, Compensation and
25 Liability Act of 1980," Pub.L.96-510 (42 U.S.C. §9601 et seq.);
26 provided, however, that sewage and sewage sludge shall not be
27 considered as hazardous substances for the purposes of this act;

28 l. "Major facility" includes, but is not limited to, any refinery,
29 storage or transfer terminal, pipeline, deep-water port, drilling
30 platform or any appurtenance related to any of the preceding
31 that is used or is capable of being used to refine, produce, store,
32 handle, transfer, process or transport hazardous substances. A
33 vessel shall be considered a major facility only when hazardous
34 substances are transferred between vessels.

35 A facility shall not be considered a major facility for the
36 purpose of this act unless it has total combined aboveground or
37 buried storage capacity of:

38 (1) 20,000 gallons or more for hazardous substances which are
39 other than petroleum or petroleum products, or

40 (2) 200,000 gallons or more for hazardous substances of all
41 kinds.

42 In determining whether a facility is a major facility for the
43 purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.), any
44 underground storage tank at the facility used solely to store
45 heating oil for on-site consumption shall not be considered when
46 determining the combined storage capacity of the facility.

47 For the purposes of this definition, "storage capacity" shall
48 mean only that total combined capacity which is dedicated to,
49 used for or intended to be used for storage of hazardous
50 substances of all kinds. Where appropriate to the nature of the
51 facility, storage capacity may be determined by the intended or
52 actual use of open land or unenclosed space as well as by the
53 capacities of tanks or other enclosed storage spaces;

54 m. "Natural resources" means all land, fish, shellfish, wildlife.

1 biota, air, waters and other such resources owned, managed, held
2 in trust or otherwise controlled by the State;

3 n. "Owner" or "operator" means, with respect to a vessel, any
4 person owning, operating or chartering by demise such vessel;
5 with respect to any major facility, any person owning such
6 facility, or operating it by lease, contract or other form of
7 agreement; with respect to abandoned or derelict major
8 facilities, the person who owned or operated such facility
9 immediately prior to such abandonment, or the owner at the time
10 of discharge;

11 o. "Person" means public or private corporations, companies,
12 associations, societies, firms, partnerships, joint stock companies,
13 individuals, the United States, the State of New Jersey and any of
14 its political subdivisions or agents;

15 p. "Petroleum" or "petroleum products" means oil or
16 petroleum of any kind and in any form, including, but not limited
17 to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil
18 refuse, oil mixed with other wastes, crude oils, and substances or
19 additives to be utilized in the refining or blending of crude
20 petroleum or petroleum stock in this State; however, any
21 compound designated by specific chemical name on the list of
22 hazardous substances adopted by the department pursuant to
23 subsection 3k. shall not be considered petroleum or a petroleum
24 product for the purposes of this act, unless such compound is to
25 be utilized in the refining or blending of crude petroleum or
26 petroleum stock in this State;

27 q. "Taxpayer" means the owner or operator of a major facility
28 subject to the tax provisions of this act;

29 r. "Tax period" means every calendar month on the basis of
30 which the taxpayer is required to report under this act;

31 s. "Transfer" means onloading or offloading between major
32 facilities and vessels, or vessels and major facilities, and from
33 vessel to vessel or major facility to major facility, except for
34 fueling or refueling operations and except that with regard to the
35 movement of hazardous substances other than petroleum, it shall
36 also include any onloading of or offloading from a major facility;

37 t. "Vessel" means every description of watercraft or other
38 contrivance that is practically capable of being used as a means
39 of commercial transportation of hazardous substances upon the
40 water, whether or not self-propelled;

41 u. "Waters" means the ocean and its estuaries to the seaward
42 limit of the State's jurisdiction, all springs, streams and bodies of
43 surface or groundwater, whether natural or artificial, within the
44 boundaries of this State;

45 v. "Act of God" means an act exclusively occasioned by an
46 unanticipated, grave natural disaster without the interference of
47 any human agency;

48 w. "Emergency response action" means those activities
49 conducted by a local unit to clean up, remove, prevent, contain,
50 or mitigate a discharge that poses an immediate threat to the
51 environment or to the public health, safety, or welfare;

52 x. "Local unit" means any county or municipality, or any
53 agency or other instrumentality thereof, or a duly incorporated
54 volunteer fire, ambulance, first aid, emergency, or rescue

1 company or squad.

2 (cf: P.L.1991, c.373, s.13)

3 ¹[2. Section 2 of P.L.1986, c.102 (C.58:10A-22) is amended to
4 read as follows:

5 2. As used in this act:

6 a. "Commissioner" means the Commissioner of the
7 Department of Environmental Protection;

8 b. "Department" means the Department of Environmental
9 Protection;

10 c. "Discharge" means the intentional or unintentional release
11 by any means of hazardous substances from an underground
12 storage tank into the environment;

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

14 e. "Hazardous substances" means motor fuels and those
15 elements and compounds, including petroleum products which are
16 liquid at standard conditions of temperature and pressure
17 (60 degrees Fahrenheit and 14.7 pounds per square inch absolute),
18 which are defined as hazardous substances by the department
19 after public hearing, and which shall be consistent to the
20 maximum extent possible with and which shall include the list of
21 hazardous wastes adopted by the United States Environmental
22 Protection Agency pursuant to section 3001 of the "Resource
23 Conservation and Recovery Act of 1976," Pub.L.94-580
24 (42 U.S.C. §6921), the list of hazardous substances adopted by the
25 United States Environmental Protection Agency pursuant to
26 section 311 of the "Federal Water Pollution Control Act
27 Amendments of 1972," Pub.L.92-500 (33 U.S.C. §1321), the list of
28 toxic pollutants designated by Congress or the Environmental
29 Protection Agency pursuant to section 307 of that act (33 U.S.C.
30 §1317), and any substance defined as a hazardous substance
31 pursuant to section 101(14) of the "Comprehensive Environmental
32 Response, Compensation, and Liability Act of 1980,"
33 Pub.L.96-510 (42 U.S.C. §9601);

34 f. "Leak" means the release of a hazardous substance from an
35 underground storage tank into a space created by a method of
36 secondary containment wherein it can be detected by visual
37 inspection or a monitoring system before it enters the
38 environment;

39 g. "Monitoring system" means a system capable of detecting
40 leaks or discharges, or both, other than an inventory control
41 system, used in conjunction with an underground storage tank, or
42 a facility, conforming to criteria established pursuant to section
43 5 of this act;

44 h. "Nonoperational storage tank" means any underground
45 storage tank in which hazardous substances are not contained, or
46 from which hazardous substances are not dispensed;

47 i. "Operator" means any person in control of, or having
48 responsibility for, the daily operation of a facility;

49 j. "Owner" means any person who owns a facility, or in the
50 case of a nonoperational storage tank, the person who owned the
51 nonoperational storage tank immediately prior to the
52 discontinuation of its use;

53 k. "Person" means any individual, partnership, company,
54 corporation, consortium, joint venture, commercial or any other

1 legal entity, the State of New Jersey, or the United States
2 Government;

3 l. "Residential building" means a single and multi-family
4 dwelling, nursing home, trailer, condominium, boarding house,
5 apartment house, or other structure designed primarily for use as
6 a dwelling;

7 m. "Secondary containment" means an additional layer of
8 impervious material creating a space wherein a leak of hazardous
9 substances from an underground storage tank may be detected
10 before it enters the environment;

11 n. "Substantially modify" means construction at, or
12 restoration, refurbishment or renovation of, an existing facility
13 which increases or decreases the in-place storage capacity of the
14 facility or alters the physical configuration or impairs or affects
15 the physical integrity of the facility or its monitoring systems;

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

19 p. "Underground storage tank" means any one or combination
20 of tanks, including appurtenant pipes, lines, fixtures, and other
21 related equipment, used to contain an accumulation of hazardous
22 substances, the volume of which, including the volume of the
23 appurtenant pipes, lines, fixtures and other related equipment, is
24 10% or more below the ground. "Underground storage tank" shall
25 not include:

26 (1) Farm or residential tanks of 1,100 gallons or less capacity
27 used for storing motor fuel for noncommercial purposes;

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

30 (3) Tanks used to store heating oil for on-site consumption in a
31 residential building, except that for the purposes of sections 3, 7
32 and 8 of this act, a tank with a capacity of more than 2,000
33 gallons used to store heating oil for on-site consumption in a
34 residential building shall be considered an "underground storage
35 tank". For the purposes of this paragraph no tank with a storage
36 capacity of 2,000 gallons or less may individually or in
37 combination with any other tank or tanks be considered an
38 "underground storage tank";

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

43 (5) Pipelines, including gathering lines, regulated under the
44 "Natural Gas Pipeline Safety Act of 1968," Pub.L.90-481
45 (49 U.S.C. §1671 et seq.), the "Hazardous Liquid Pipeline Safety
46 Act of 1979," Pub.L.96-129 (49 U.S.C. §2001 et seq.), or
47 intrastate pipelines regulated under State law;

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

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

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

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

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

13 (cf: P.L.1986, c.102, s.2)]¹

14 12. Section 11 of P.L.1986, c.102 (C.58:10A-31) is amended to
15 read as follows:

16 11. The commissioner may adopt, pursuant to the
17 "Administrative Procedure Act," any rules and regulations in
18 addition to those required pursuant to this act, necessary to carry
19 out the provisions of this act, including rules and regulations
20 imposing fees for the processing of initial registrations pursuant
21 to section 3 of this act and for any renewal thereof, and for
22 processing permits required pursuant to section 4 of this act.

23 Registration fees shall be established for subsequent
24 registrations and shall not exceed the estimated yearly cost of
25 implementing the provisions of this act. The commissioner may
26 consider the size, contents and the location of the underground
27 storage tanks in establishing these fees. [The commissioner shall
28 provide for the recovery of the amount appropriated in section 19
29 of this act within four years from the date these fees are first
30 imposed.] The fee that may be imposed upon the owner or
31 operator of a facility which comprises only two or more tanks
32 used to store heating oil for on-site consumption in a residential
33 building, where no individual tank has a capacity of more than
34 2,000 gallons, may not exceed \$100 for that facility for an initial
35 registration or a renewal thereof. These fees shall be deposited
36 in the General Fund. The Legislature shall annually appropriate
37 to the department an amount equivalent to the amount
38 anticipated to be collected as fees charged under this section for
39 the purposes of administering the provisions of this act. [No fee
40 shall be charged for six months after the effective date of this
41 act.]¹

42 (cf: P.L.1986, c.102, s.11)

43 3. This act shall take effect immediately.

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47
48 Exempts certain underground storage tanks containing heating oil
49 from certain environmental regulations.

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

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

11 (cf: P.L.1986, c.102, s.2)

12 3. This act shall take effect immediately.

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15 STATEMENT

16
17 This bill would exempt certain underground storage tanks
18 containing heating oil used for the on-site heating of a building or
19 buildings from the registration, inventory and reporting
20 requirements of the State's underground storage tank act
21 (P.L.1986, c.102 (C.58:10A-21 et seq.)), and from use in
22 determining whether or not a facility is a major facility for
23 purposes of taxation and regulation pursuant to the Spill
24 Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et
25 seq.). The primary objective of this bill is to deal with the
26 regulation or possible regulation under the two acts of
27 underground storage tanks used to store home fuel in mobile
28 home parks or like-circumstanced tanks.

29 Under the current definition in the Spill Compensation and
30 Control Act, a major facility is one engaged in the refining,
31 storage or transfer of hazardous substances, including petroleum,
32 which has a storage capacity of 200,000 gallons or more. Section
33 1 amends the definition of major facility so as to exempt from
34 the calculation of total facility storage capacity any underground
35 storage tank used solely to store heating oil for on-site
36 consumption.

37 Under the current provisions of the State underground storage
38 tank act, an underground storage tank, or any combination of
39 such tanks, used to store heating oil for on-site consumption in a
40 residential building is exempt from the requirements of that act
41 unless "a tank" has a capacity of more than 2,000 gallons. This
42 "tank" capacity language has been construed by the Department
43 of Environmental Protection (DEP) to apply not only to a single
44 tank, but also to the cumulative capacity of two or more tanks
45 that are part of a single system or are located on the same
46 premises. If the capacity of the tank or tank system exceeds
47 2,000 gallons, the tank or system is then subject to the
48 registration, inventory and reporting provisions of the
49 underground storage tank act, but not to the act's other
50 provisions. Section 2 of the bill prohibits DEP from aggregating
51 the storage capacity of an underground storage tank storing
52 heating oil for on-site consumption in a residential building when
53 the tank has a capacity of 2000 gallons or less, with any other
54 underground storage tank for purposes of subjecting that tank to

1 regulation under the State's underground storage tank act.

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6 Exempts certain underground storage tanks containing heating oil
7 from certain environmental regulations.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 503

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 1, 1992

The Senate Environment Committee favorably reports Senate Bill No. 503 with committee amendments.

Senate Bill No. 503, as amended, would clarify the definition of "major facility" to exclude the storage capacity of underground storage tanks used to store heating oil for on-site consumption from calculations of total storage capacity to determine whether or not a facility is a major facility for purposes of taxation and regulation pursuant to the Spill Compensation and Control Act, P.L.1976, c.141 (C.58:10-23.11 et seq.). The bill, as amended, would also change the registration requirements imposed under the State's underground storage tank act, P.L. 1986, c. 102 (C.58:10A-21 et seq.), for the owner or operator of a facility that comprises only two or more tanks used to store heating oil for on-site consumption in a residential building where no individual tank has a capacity of more than 2,000 gallons. As introduced, the bill exempted the owner or operator of those facilities from registration, reporting, inventory and fee requirements of P.L.1986, c.102. The committee amended the bill to maintain the registration requirement for those facilities, but limited the fee that may be imposed to \$100 for the facility.

The primary objective of this bill is to limit the regulation or possible regulation under the Spill Compensation and Control Act of underground storage tanks used to store heating oil in mobile home parks or in similar situations. This bill would also ensure that heating oil tanks regulated under the underground storage tank act do not pay a fee that is excessive given the nature and use of those tanks.

The Spill Compensation and Control Act defines a major facility as one engaged in the refining, storage or transfer of hazardous substances, including petroleum, which has a storage capacity of 200,000 gallons or more. Major facilities are often refineries or tank farms. Section 1 of this bill amends the definition of major facility to exempt from the calculation of total facility storage capacity any underground storage tank used solely to store heating oil for on-site consumption.

Under the current provisions of the State underground storage tank act, an underground storage tank, or any combination of such tanks, used to store heating oil for on-site consumption in a residential building is exempt from the requirements of that act unless "a tank" has a capacity of more than 2,000 gallons. This "tank" capacity language has been construed by the Department of Environmental Protection and Energy (DEPE) to apply not only to a single tank, but also to the cumulative capacity of two or more

tanks that are part of a single system or are located on the same premises. If the capacity of the tank or tank system exceeds 2,000 gallons, the tank or system is then subject to the registration, inventory and reporting provisions of the underground storage tank act, but not to the act's other provisions.