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P.L. 2003, CHAPTER 148, *approved August 15, 2003*
Senate Committee Substitute (*Second Reprint*)for
Senate Bill No. 1948

1 AN ACT concerning underground storage tank financing, and
2 amending and supplementing P.L.1997, c.235.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1997, c.235 (C.58:10A-37.2) is amended to
8 read as follows:

9 2. As used in this act:

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

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

18 "Closure" means the proper closure or removal of a petroleum
19 underground storage tank necessary to meet all regulatory
20 requirements of federal, State, or local law;

21 "Commissioner" means the Commissioner of Environmental
22 Protection;

23 "Department" means the Department of Environmental Protection;

24 "Discharge" means the intentional or unintentional release by any
25 means of petroleum from a petroleum underground storage tank into
26 the environment;

27 "Eligible owner or operator" means (1) any owner or operator ¹ ¹
28 other than the owner or operator of a petroleum underground storage
29 tank storing heating oil for onsite consumption in a residential building
30 ¹ ¹ who owns or operates less than 10 petroleum underground storage
31 tanks in New Jersey, who has a net worth of less than \$2,000,000 and
32 who demonstrates to the satisfaction of the authority, the inability to
33 qualify for and obtain a commercial loan for all or part of the eligible
34 project costs, ¹ or in the case of such an owner or operator of a facility
35 located within an area designated as a Planning Area 1 (Metropolitan),
36 Planning Area 2 (Suburban), or a designated center as designated
37 pursuant to the "State Planning Act," sections 1 through 12 of
38 P.L.1985, c.398 (C.52:18A-196 et seq.), who has a net worth of less

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 Assembly AEN committee amendments adopted March 6, 2003.

² Assembly AAP committee amendments adopted May 5, 2003.

1 than \$3,000,000 and who demonstrates to the satisfaction of the
2 authority, the inability to qualify for and obtain a commercial loan for
3 all or part of the eligible project costs.¹ (2) the owner or operator of
4 a petroleum underground storage tank storing heating oil for onsite
5 consumption in a residential building, [or] (3) a public entity who
6 owns or operates a petroleum underground storage tank in New
7 Jersey, or (4) an independent institution of higher education that owns
8 or operates a petroleum underground storage tank;

9 "Eligible project costs" means the reasonable costs for equipment,
10 work or services required to effectuate a remediation, an upgrade, or
11 a closure which equipment, work or services are eligible for payment
12 from the Petroleum Underground Storage Tank Remediation,
13 Upgrade, and Closure Fund. In the case of an upgrade or closure of
14 a regulated tank, eligible project costs shall be limited to the cost of
15 the minimal effective system necessary to meet all the regulatory
16 requirements of federal and State law. The limitation of eligible
17 project costs to the minimal effective system shall not be construed to
18 deem ineligible those project costs expended to replace a regulated
19 tank rather than to improve the regulated tank. An owner or operator
20 may perform an upgrade or a closure beyond the minimal effective
21 system in which case the eligible project costs that may be awarded
22 from the fund as financial assistance shall be that amount that would
23 represent the cost of a minimal effective system. In the case of a
24 remediation of a petroleum underground storage tank used to store
25 heating oil for onsite consumption in a residential building, eligible
26 project costs shall include the cost to replace a leaking tank with an
27 above-ground or underground storage tank. In the case of a
28 remediation, eligible project costs shall not include the cost to
29 remediate a site to meet residential soil remediation standards if the
30 local zoning ordinances adopted pursuant to the "Municipal Land Use
31 Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for
32 residential use. Eligible project costs shall include the cost of a
33 preliminary assessment and site investigation, even if performed prior
34 to the award of financial assistance from the fund if the preliminary
35 assessment and site investigation were performed after the effective
36 date of P.L.1997, c.235 [Eligible project costs shall not include the
37 costs of any remediation performed at a site where the petroleum
38 underground storage tank was removed prior to December 1, 1996];

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

42 "Financial assistance" means a grant or loan or a combination of
43 both that may be awarded by the authority from the fund to an eligible
44 owner or operator as provided in section 5 of P.L.1997, c.235
45 (C.58:10A-37.5);

46 "Independent institution of higher education" means those
47 institutions of higher education incorporated and located in this State.

1 which, by virtue of law or character or license, are nonprofit
2 educational institutions empowered to grant academic degrees and
3 which provide a level of education which is equivalent to the education
4 provided by the State's public institutions of higher education as
5 attested by the receipt of and continuation of regional accreditation by
6 the Middle States Association of Colleges and Schools, and which are
7 eligible to receive State aid under the provisions of the Constitution of
8 the United States and the Constitution of the State of New Jersey.
9 "Independent institution of higher education" does not include any
10 educational institution dedicated primarily to the preparation or
11 training of ministers, priests, rabbis, or other professional persons in
12 the field of religion;

13 "Operator" means any person in control of, or having responsibility
14 for, the daily operation of a facility;

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

16 "Person" means any individual, partnership, corporation, society,
17 association, consortium, joint venture, commercial entity, or public
18 entity, but does not include the State or any of its departments,
19 agencies or authorities;

20 "Petroleum" means all hydrocarbons which are liquid at one
21 atmosphere pressure (760 millimeters or 29.92 inches Hg) and
22 temperatures between -20 F and 120 F (-29 C and 49 C), and all
23 hydrocarbons which are discharged in a liquid state at or nearly at
24 atmospheric pressure at temperatures in excess of 120 F (49 C)
25 including, but not limited to, gasoline, kerosene, fuel oil, oil sludge, oil
26 refuse, oil mixed with other wastes, crude oil, and purified
27 hydrocarbons that have been refined, re-refined, or otherwise
28 processed for the purpose of being burned as a fuel to produce heat or
29 usable energy or which is suitable for use as a motor fuel or lubricant
30 in the operation or maintenance of an engine;

31 "Petroleum Underground Storage Tank Remediation, Upgrade and
32 Closure Fund" or "fund" means the fund established pursuant to
33 section 3 of P.L.1997, c.235 (C.58:10A-37.3);

34 "Petroleum underground storage tank" means a tank of any size,
35 including appurtenant pipes, lines, fixtures, and other related
36 equipment, that normally and primarily stores petroleum, the volume
37 of which, including the volume of the appurtenant pipes, lines, fixtures
38 and other related equipment, is 10% or more below the ground.

39 "Petroleum underground storage tank" does not include:

40 (1) Septic tanks installed or regulated pursuant to regulations
41 adopted by the department pursuant to "The Realty Improvement
42 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et
43 seq.) or the "Water Pollution Control Act," P.L.1977, c.74
44 (C.58:10A-1 et seq.);

45 (2) Pipelines, including gathering lines, regulated under 49 U.S.C.
46 s.60101 et seq., or intrastate pipelines regulated under State law;

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

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

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

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

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

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

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

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

29 "Upgrade" means the replacement of a regulated tank, the
30 installation of secondary containment, monitoring systems, release
31 detection systems, corrosion protection, spill prevention, or overfill
32 prevention therefor, or any other necessary improvement to the
33 regulated tank in order to meet the standards for regulated tanks
34 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and
35 42 U.S.C. s.6991 et seq.

36 (cf: P.L.1997, c.235, s.2)

37
38 ¹2. Section 4 of P.L.1997, c.235 (C.58:10A-37.4) is amended to
39 read as follows:

40 4. a. Monies in the fund shall be allocated and used to provide
41 financial assistance only to (1) eligible owners or operators of
42 regulated tanks in this State in order to finance the eligible project
43 costs of the upgrade or closure of those regulated tanks as may be
44 required pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102
45 (C.58:10A-21 et seq.); and (2) eligible owners and operators of
46 petroleum underground storage tanks in this State in order to finance

1 the eligible project costs of remediations that are necessary due to the
2 discharge of petroleum from one or more of those petroleum
3 underground storage tanks. Priority for the issuance of financial
4 assistance from the fund, and the terms and conditions of that financial
5 assistance, shall be based upon the criteria set forth in this section.

6 b. Upon a determination that an application for financial assistance
7 meets all established criteria for the award of financial assistance from
8 the fund, the authority shall approve the application. Prior to
9 December 22, 1998, the authority may approve only those applications
10 given priority pursuant to paragraphs (1) and (2) of this subsection or
11 pursuant to subsections c. and f. of this section, but the authority may
12 receive, file, and deem complete any application for financial
13 assistance it receives prior to that date.

14 Upon the authority's approval of an application for financial
15 assistance, the authority shall award financial assistance to an applicant
16 upon the availability of sufficient monies in the fund. When monies in
17 the fund are not sufficient at any point in time to fully fund all
18 applications for financial assistance that have been approved by the
19 authority, the authority shall award financial assistance to approved
20 applicants, notwithstanding the date of approval of the application, in
21 the following order of priority:

22 (1) Upgrades of regulated tanks required to be upgraded pursuant
23 to 42 U.S.C. s.6991 et seq., and including any necessary remediation
24 at the site of the regulated tank, shall be given first priority;

25 (2) Closure of any regulated tank required to be upgraded
26 pursuant to 42 U.S.C. s.6991 et seq., and including any necessary
27 remediation at the site of the regulated tank, shall be given second
28 priority;

29 (3) Upgrades of regulated tanks required to be upgraded pursuant
30 to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to 42
31 U.S.C. s.6991 et seq., and including any necessary remediation at the
32 site of the regulated tank, shall be given third priority;

33 (4) Any necessary remediations at the sites of petroleum
34 underground storage tanks other than those given priority pursuant to
35 paragraph (1), (2), or (3) of this subsection shall be given fourth
36 priority;

37 (5) Closure of any regulated tank required to be upgraded
38 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant
39 to 42 U.S.C. s.6991 et seq., shall be given last priority.

40 c. Notwithstanding the priority for the award of financial
41 assistance set forth in subsection b. of this section, whenever there has
42 been a discharge, and the discharge poses [an imminent and
43 significant] a threat to a drinking water source, to human health, or to
44 a sensitive or significant ecological area, an approved application for
45 the award of financial assistance for the remediation and upgrade or
46 closure, if necessary, shall be given priority over all other applications

1 for financial assistance.

2 d. The priority ranking of applicants within any priority category
3 enumerated in paragraphs (1), (2), (3), (4), and (5) of subsection b.
4 and in subsection c. of this section shall be based upon the date an
5 application for financial assistance is filed with the authority as
6 determined pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6).

7 e. Whenever a facility consists of petroleum underground storage
8 tanks from more than one priority category as enumerated in
9 paragraphs (1) through (5) of subsection b. of this section, and
10 subsection c. of this section, all the petroleum underground storage
11 tanks at that facility shall be accorded the priority that would be
12 accorded the highest priority petroleum underground storage tank at
13 that facility.

14 f. Notwithstanding the priority rankings established in this section,
15 one-tenth of the amount annually appropriated to the Petroleum
16 Underground Storage Tank Remediation, Upgrade and Closure Fund
17 shall be used to provide financial assistance to owners or operators of
18 petroleum underground storage tanks used to store heating oil for
19 onsite consumption in a residential building, in order to finance the
20 eligible project costs of remediations that are necessary due to the
21 discharge of heating oil from those petroleum underground storage
22 tanks. The authority shall provide financial assistance pursuant to this
23 subsection notwithstanding the owner or operator's ability to obtain
24 commercial loans for all or part of the financing. The priority ranking
25 of applicants for these funds shall be based upon the date an
26 application for financial assistance is filed with the authority as
27 determined pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6).
28 If the authority does not receive qualified applications for financial
29 assistance from owners and operators of petroleum underground
30 storage tanks used to store heating oil for onsite consumption that
31 meet the criteria set forth in this act and in any rules or regulations
32 issued pursuant thereto, sufficient to enable the award of financial
33 assistance an amount equal to one-tenth of the amount annually
34 appropriated to the fund in any one year as required pursuant to this
35 subsection, the authority may award that financial assistance in the
36 order of priority as provided in this section. In addition to the monies
37 dedicated pursuant to this subsection, the authority may award
38 financial assistance to an owner or operator of a petroleum
39 underground storage tank used to store heating for onsite consumption
40 when the criteria enumerated in subsection c. of this section are met.¹
41 (cf: P.L.1997, c.235, s.4)

42

43 ¹[2.] 3.¹ Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is
44 amended to read as follows:

45 5. a. ¹(1)¹ The authority may award financial assistance from the
46 fund to an eligible owner or operator in the form of a loan or a

1 conditional hardship grant as provided in this section. An award of
2 financial assistance, either as a loan or a grant, or a combination of
3 both, may, upon application therefor, be for 100% of the eligible
4 project costs. However, a loan that any applicant may receive from
5 the fund for an upgrade, remediation, or closure, or any combination
6 thereof, for any one facility, may not exceed ~~[\$1,000,000]~~
7 ~~\$2,000,000, except as provided below.~~ and a grant that any applicant
8 may receive from the fund for any one facility, may not exceed
9 ~~[\$250,000].~~ The total amount of financial assistance awarded as grants
10 in any one year may not exceed one third of the total amount of
11 financial assistance awarded in that year except that this limitation
12 upon the award of grants shall not apply to financial assistance
13 awarded between January 1, 1999 and March 31, 2004] ~~\$500,000.~~ A
14 loan that an applicant may receive from the fund for a remediation of
15 a discharge that poses ¹[an imminent and significant threat] a¹ to a
16 drinking water source may not exceed \$3,000,000.

17 ¹(2) Notwithstanding the provisions of paragraph (1) of this
18 subsection to the contrary, an eligible owner or operator of a facility
19 located within an area designated as a Planning Area 1 (Metropolitan),
20 Planning Area 2 (Suburban), or a designated center as designated
21 pursuant to the "State Planning Act," sections 1 through 12 of
22 P.L.1985, c.398 (C.52:18A-196 et seq.), may receive a loan in an
23 amount not to exceed \$3,000,000 and a grant in an amount not to
24 exceed \$750,000 for each facility so located.¹

25 b. A public entity applying for financial assistance from the fund
26 may only be awarded financial assistance in the form of an interest free
27 loan.

28 c. An applicant, other than a public entity, may apply for and
29 receive a conditional hardship grant ¹for the upgrade, closure or
30 remediation¹ as provided in paragraph (1) of this subsection, or a loan
31 for an upgrade[,]¹ closure or remediation as provided in paragraph
32 (2) of this subsection, provided that an applicant for a conditional
33 hardship grant or a loan for an upgrade may be eligible for financial
34 assistance only¹ for any underground storage tank with a capacity of
35 over 2,000 gallons used to store heating oil for onsite consumption in
36 a nonresidential building that has received an extension ¹of the
37 deadline for compliance with the standards¹ pursuant to subsection b.
38 of section 9 of P.L.1986, c.102 (C.58:10A-29) ¹[. the closure[,] or
39 remediation as provided in paragraph (2) of this subsection]¹.
40 Financial assistance awarded an applicant pursuant to this subsection
41 may consist entirely of a conditional hardship grant, a [loan for an
42 upgrade, or]¹ loan for an upgrade, a¹ loan for a closure, or a loan for
43 a remediation, or any combination thereof, except that the total
44 amount of the award of financial assistance shall be subject to the per
45 facility dollar limitation enumerated in subsection a. of this section.

1 Notwithstanding any other provision of this subsection to the contrary,
2 no tax exempt, nonprofit organization, corporation, or association
3 shall be awarded a conditional hardship grant pursuant to paragraph
4 (1) of this subsection, provided that ¹an independent institution of
5 higher education,¹ a ¹[tax exempt,]¹ nonprofit organization,
6 corporation, or association with not more than 100 paid individuals
7 ¹that is qualified for exemption from federal taxation pursuant to
8 section 501 (c)(3) of the federal Internal Revenue Code, 26 U.S.C.
9 s.501 (c)(3)¹ , or a duly incorporated volunteer fire, ambulance, first
10 aid, emergency, or rescue company or squad, may be awarded a
11 conditional hardship grant pursuant to paragraph (1) of this
12 subsection.

13 (1) A conditional hardship grant for eligible project costs of an
14 upgrade, closure or remediation shall be awarded by the authority
15 based upon a finding of eligibility and financial hardship and upon a
16 finding that the applicant meets the criteria set forth in this act.

17 In order to be eligible for a conditional hardship grant for closure
18 or upgrade, in the case of a regulated tank, the applicant shall have
19 owned or operated the subject [petroleum underground storage]
20 regulated tank as of [December 1, 1996] December 1, 2002 and
21 continually thereafter or shall have inherited the property from a
22 person who owned the [petroleum underground storage] regulated
23 tank as of that date. In order to be eligible for a conditional hardship
24 grant for remediation, in the case of a regulated tank, the applicant
25 shall have owned or operated the subject regulated tank at the time of
26 tank closure. No applicant shall be eligible for a conditional hardship
27 grant if the applicant has a taxable income of more than [\$100,000]
28 ¹[\$250,000] \$200,000¹ or a net worth, exclusive of the applicant's
29 primary residence ¹and pension¹ , of over [\$100,000] ¹[\$500,000]
30 \$200,000¹ .

31 Notwithstanding the eligibility requirements for net worth and
32 income, an independent institution of higher education, a ¹[tax
33 exempt,]¹ nonprofit organization, corporation, or association with not
34 more than 100 paid individuals ¹that is qualified for exemption from
35 federal taxation pursuant to section 501 (c)(3) of the federal Internal
36 Revenue Code, 26 U.S.C. s.501 (c)(3)¹ , or a duly incorporated
37 volunteer fire, ambulance, first aid, emergency, or rescue company or
38 squad shall be eligible for a conditional hardship grant for eligible
39 project costs of a closure or remediation of a petroleum underground
40 storage tank.

41 A finding of financial hardship by the authority shall be based upon
42 a determination that an applicant cannot reasonably be expected to
43 repay all or a portion of the eligible project costs if the financial
44 assistance were to be awarded as a loan. The amount of an award of
45 a conditional hardship grant shall be the amount of that portion of the

1 eligible project costs the authority determines the applicant cannot
2 reasonably be expected to repay.

3 In making a finding of financial hardship for an application for the
4 upgrade, closure, or remediation of a petroleum underground storage
5 tank, where the petroleum underground storage tank is a part of the
6 business property of the owner, the authority shall base its finding
7 upon the cash flow of the applicant's business, whether or not any part
8 of the applicant's business is related to the ownership or operation of
9 that petroleum underground storage tank. In making a finding of
10 financial hardship for an application for the upgrade or remediation of
11 a petroleum underground storage tank, where the petroleum
12 underground storage tank is not a part of the business property of the
13 owner, the authority shall base its finding upon the applicant's taxable
14 income in the year prior to the date of the application being submitted.

15 If the authority awards a conditional hardship grant in combination
16 with a loan pursuant to this subsection, the authority shall release to
17 the applicant the loan monies prior to the release of the conditional
18 hardship grant monies.

19 Conditional hardship grants awarded to an applicant shall be
20 subject to the lien provisions enumerated in section 16 of P.L.1997,
21 c.235 (C.58:10A-37.16).

22 (2) A loan to an eligible owner or operator for the eligible project
23 costs of an upgrade, closure, or remediation shall be awarded by the
24 authority only upon a finding that the applicant other than a public
25 entity is able to repay the amount of the loan.

26 In making a finding of an applicant's ability to repay a loan for the
27 upgrade, closure, and remediation of a regulated tank, or for the
28 remediation of a discharge from a petroleum underground storage
29 tank, the authority shall base its finding, as applicable, upon the cash
30 flow of the applicant's business, the applicant's taxable income and the
31 applicant's personal and business assets, except that the authority may
32 not consider the applicant's primary residence as collateral, except that
33 the authority may consider the applicant's primary residence as
34 collateral with the permission of the applicant or where the subject
35 petroleum underground storage tank or regulated tank is located at the
36 primary residence.

37 d. The authority shall, where applicable, require an applicant
38 applying for financial assistance from the fund to submit to the
39 authority the financial statements of the applicant's business for three
40 years prior to the date of the application, the most recent interim
41 financial statement for the year of the application, the applicant's
42 federal income tax returns, or other relevant documentation.

43 e. Nothing in this section is intended to alter the priority or criteria
44 for awarding financial assistance established pursuant to section 4 of
45 P.L.1997, c.235 (C.58:10A-37.4).

46 f. An eligible owner or operator may only be awarded that amount

1 of financial assistance issued as a loan for which the applicant
2 demonstrates he could not qualify for and obtain as a commercial loan.
3 The provisions of this subsection shall not apply to an owner or
4 operator or petroleum underground storage tank used to store heating
5 oil for onsite consumption in a residential building , to an independent
6 institution of higher education, or to a duly incorporated volunteer
7 fire, ambulance, first aid, emergency, or rescue company or squad.
8 (cf: P.L.2001, c.22, s.1)

9
10 ¹[3.] 4.¹ Section 6 of P.L.1997, c.235 (C.58:10A-37.6) is
11 amended to read as follows:

12 6. An eligible owner or operator seeking financial assistance from
13 the fund shall file an application on a form to be developed by the
14 authority. The application form shall be submitted with the application
15 fee. The application fee per facility for residential petroleum
16 underground storage tanks shall be \$250. The authority may establish
17 the application fee per facility for nonresidential petroleum
18 underground storage tanks.

19 The authority shall adopt rules and regulations listing the filing
20 requirements for a complete application for financial assistance. If a
21 financial assistance application is determined to be incomplete by the
22 authority, an applicant shall have 30 days from the date of receipt of
23 written notification of incompleteness to file such additional
24 information as may be required by the authority for a completed
25 application. If an applicant fails to file the additional information
26 within the 30 days, the filing date for that application shall be the date
27 that such additional information is received by the authority. If the
28 additional information is filed within the 30 days and is satisfactory to
29 the authority, the filing date for that application shall be the initial date
30 of application with the authority. Notwithstanding the above, if a
31 completed application has been submitted and the applicant fails to
32 submit the filing fee, then the filing date for the application shall not
33 be established until the date on which the authority receives the
34 application fee. A change in the filing date resulting from failure to
35 submit a completed application or from failure to submit the
36 application fee in a timely fashion for applications filed for financial
37 assistance for a regulated tank to meet the upgrade or closure
38 requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102
39 (C.58:10A-21 et seq.) or for the remediation of a discharge from any
40 such regulated tank shall not render the application ineligible for
41 financial assistance as long as the initial date of application is prior to
42 [January 1, 1999, or prior to August 31, 1999, as applicable] ²[June
43 30, 2004] June 30, 2005² , or for a regulated tank that is not
44 operational, 18 months from the date of discovery of the tank or 18
45 months from the effective date of P.L. , c. (C.) (now in the
46 Legislature as this bill), whichever is later .

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

8 (cf: P.L.1999, c.89, s.2)

9
10 ¹[4.] 5.¹ Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is
11 amended to read as follows:

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

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

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

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

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

36 (4) the applicant provided false information or withheld
37 information on a loan or grant application, or other relevant
38 information required to be submitted to the authority, on any matter
39 that would otherwise render the applicant ineligible for financial
40 assistance from the fund, that would alter the priority of the applicant
41 to receive financial assistance from the fund, that resulted in the
42 applicant receiving a larger grant or loan award than the applicant
43 would otherwise be eligible, or that resulted in payments from the fund
44 in excess of the actual eligible project costs incurred by the applicant
45 or the amount to which the applicant is legally eligible.

46 Nothing in this subsection shall be construed to require the

1 authority to undertake an investigation or make any findings
2 concerning the conduct described in this subsection.

3 c. An application for financial assistance from the fund for an
4 upgrade or closure of a regulated tank shall include all regulated tanks
5 at the facility for which the applicant is seeking financial assistance.
6 Once financial assistance for an upgrade[,] or closure [or a
7 remediation] is awarded for a facility, no additional award of financial
8 assistance for upgrade or closure costs may be made for that facility.
9 However, if an applicant discovers while performing upgrade or
10 closure activities that a remediation is necessary at the site of a facility,
11 and if financial assistance was previously awarded for that site only for
12 an upgrade or closure of a regulated tank, the applicant may amend his
13 application and apply for financial assistance for the required
14 remediation subject to the limitations enumerated in section 5 of [this
15 act] P.L.1997, c.235 (C.58:10A-37.5). An application for financial
16 assistance for an upgrade or closure of a regulated tank shall be
17 conditioned upon the applicant agreeing to perform, at the time of the
18 upgrade or closure, any remediation necessary as a result of a
19 discharge from the regulated tank and commencement of the
20 remediation within the time prescribed and in accordance with the
21 rules and regulations of the department.

22 d. Except as provided below, no financial assistance for upgrade
23 [or closure] shall be awarded for any regulated tank required to meet
24 the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et
25 seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), [or for the remediation
26 of a discharge from any such regulated tank except as provided in
27 subsection c. of this section,] unless the application is filed with the
28 authority prior to January 1, 1999 and the application is complete and
29 the application fee is received by August 1, 1999. No financial
30 assistance for upgrade [or closure] shall be awarded for any
31 underground storage tank with a capacity of over 2,000 gallons used
32 to store heating oil for onsite consumption in a nonresidential building
33 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et
34 seq.) but not pursuant to 42 U.S.C.s.6991 et seq. [or for the
35 remediation of a discharge from any such regulated tank except as
36 provided in subsection c. of this section] , unless ¹the applicant has
37 received an extension of the deadline for compliance with the
38 standards pursuant to subsection b. of section 9 of P.L.1986, c.102
39 (C.58:10A-29),¹ the application is filed with the authority prior to
40 ¹[August 31, 1999] ²[June 30, 2004¹] June 30, 2005² and the
41 application is complete and the application fee is received by ¹[March
42 31, 2000] ²[December 31, 2004¹] December 31, 2005² .

43 No financial assistance for closure shall be awarded for any
44 regulated tank required to meet the upgrade or closure requirements
45 pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21

1 et seq.), or for the remediation of a discharge from any such regulated
2 tank except as provided in subsection c. of this section, unless the
3 application is filed with the authority prior to ²[June 30, 2004] June
4 30, 2005² and the application is complete and the application fee is
5 received by ²[December 31, 2004] December 31, 2005² .

6 ¹[No financial assistance for upgrade or closure shall be awarded for
7 any underground storage tank with a capacity of over 2,000 gallons
8 used to store heating oil for onsite consumption in a nonresidential
9 building required to be upgraded pursuant to P.L.1986, c.102
10 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C.s.6991 et seq. or
11 for the remediation of a discharge from any such regulated tank except
12 as provided in subsection c. of this section, unless the application is
13 filed with the authority prior to June 30, 2004 and the application is
14 complete and the application fee is received by December 31, 2004.]¹

15 In the case of a regulated tank that is not operational, financial
16 assistance for the closure or the remediation of any discharge
17 therefrom may be awarded if the application is filed with the authority
18 no more than 18 months after the date of discovery of the existence of
19 the regulated tank, or 18 months from the effective date of P.L. .c.
20 (C. _____) (now in the Legislature as this bill), whichever is later.

21 e. The date of occurrence of a discharge shall not affect eligibility
22 for financial assistance from the fund. Except for a preliminary
23 assessment or a site investigation performed after the effective date of
24 P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in
25 subsections g. ¹[and h.] through j.¹ of this section, no award of
26 financial assistance shall be made from the fund for the otherwise
27 eligible project costs of a remediation, closure, or an upgrade, or parts
28 thereof, completed prior to an award of financial assistance from the
29 fund.

30 f. No financial assistance may be awarded from the fund for the
31 remediation of a discharge from a petroleum underground storage tank
32 if financial assistance from the Hazardous Discharge Site Remediation
33 Fund established pursuant to section 26 of P.L.1993, c.139
34 (C.58:10B-4) has previously been made for a remediation at that site
35 as a result of a discharge from that petroleum underground storage
36 tank. No financial assistance may be awarded from the fund for the
37 remediation of a discharge from a petroleum underground storage tank
38 if the discharge began subsequent to the completion of an upgrade of
39 that petroleum underground storage tank, which upgrade was intended
40 to meet all applicable upgrade regulations of the department, no matter
41 when the upgrade was performed.

42 g. Notwithstanding any provision of P.L.1997, c.235
43 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed
44 an application for financial assistance from the fund, and there are
45 either insufficient monies in the fund or the authority has not yet acted
46 upon the application or awarded the financial assistance, the eligible

1 owner or operator may expend its own funds for the upgrade, closure,
2 or remediation, and upon approval of the application, the authority
3 shall award the financial assistance as a reimbursement of the monies
4 expended for eligible project costs.

5 h. Notwithstanding any provision ¹[to the contrary]¹ of P.L.1997,
6 c.235 (C.58:10A-37.1 et seq.) ¹to the contrary¹, if an applicant has
7 expended the applicant's own funds on a remediation ¹[prior to] after¹
8 filing an application for financial assistance from the fund for the
9 eligible project costs of the remediation, the authority, upon approval
10 of the application, may make a grant from the fund pursuant to
11 paragraph (1) of subsection c. of section 5 of P.L.1997, c.235
12 (C.58:10A-37.5) to reimburse the eligible owner or operator for the
13 eligible project costs of the remediation.

14 ¹i. Notwithstanding any provision of P.L.1997, c.235
15 (C.58:10A-37.1 et seq.) to the contrary, if an applicant that is an
16 independent institution of higher education has expended the
17 applicant's own funds on a remediation prior to filing an application
18 for financial assistance from the fund for the eligible project costs of
19 the remediation, the authority, upon approval of the application, may
20 make a grant from the fund pursuant to paragraph (1) of subsection c.
21 of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the
22 applicant for expenditures for the eligible project costs of the
23 remediation made on or after December 1, 1996 in an amount not to
24 exceed \$500,000 for each independent institution of higher education.

25 j. Notwithstanding any provision of P.L.1997, c.235
26 (C.58:10A-37.1 et seq.) to the contrary, if an applicant has expended
27 the applicant's own funds for a remediation of a petroleum
28 underground storage tank used to store heating oil at the applicant's
29 primary residence prior to filing an application for financial assistance
30 from the fund for the eligible project costs of the remediation, the
31 authority, upon approval of the application, may make a grant from the
32 fund pursuant to paragraph (1) of subsection c. of section 5 of
33 P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant for the
34 eligible project costs of the remediation.¹

35 (cf: P.L.2001, c.22, s.2)

36
37 ¹[5.] 6.¹ Section 24 of P.L.1997, c.235 (C.58:10A-37.23) is
38 amended to read as follows:

39 24. Prior to July 1, 1997, or **[within six months]** upon completion
40 of the upgrade of an underground storage tank **[being upgraded and**
41 **the site remediated]** as required pursuant to P.L.1986, c.102
42 (C.58:10A-21 et seq.), **[whichever is later,]** the owner or operator of
43 that underground storage tank shall submit to the department evidence
44 of financial responsibility for taking corrective action and
45 compensating third parties as is required pursuant to section 5 of
46 P.L.1986, c.102 (C.58:10A-25) or pursuant to 42 U.S.C. s.6991 et

1 seq. The department may require that evidence of financial
2 responsibility be submitted prior to the last disbursement of financial
3 assistance from the fund. After a regulated tank is upgraded, the New
4 Jersey Spill Compensation Fund, created pursuant to the "Spill
5 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et
6 seq.) shall no longer serve as the evidence of financial responsibility
7 for the regulated tank.

8 (cf: P.L.1997, c.235, s.24)

9

10 ¹[6.] 7.¹ (New Section) Within 12 months of the effective date
11 of this act, the Department of Environmental Protection shall conduct
12 a public education and information program to inform owners and
13 operators of petroleum underground storage tanks of the changes in
14 the eligibility criteria, changes in the grant and loan limits and changes
15 in the application deadlines adopted pursuant to this act. The public
16 education program shall, among other things, inform those owners or
17 operators of regulated tanks that have not closed or upgraded their
18 tanks, and any person whose application for financial assistance from
19 the fund has been denied because of the failure to meet the previous
20 application deadline of the changes adopted pursuant to this act.

21

22 ¹[7.] 8.¹ This act shall take effect immediately.

23

24

25

26

27 Revises criteria for financing underground storage tank closures,
28 upgrades and remediations.

SENATE, No. 1948

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED OCTOBER 7, 2002

Sponsored by:

Senator HENRY P. MCNAMARA

District 40 (Bergen, Essex and Passaic)

Senator JOSEPH SULIGA

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

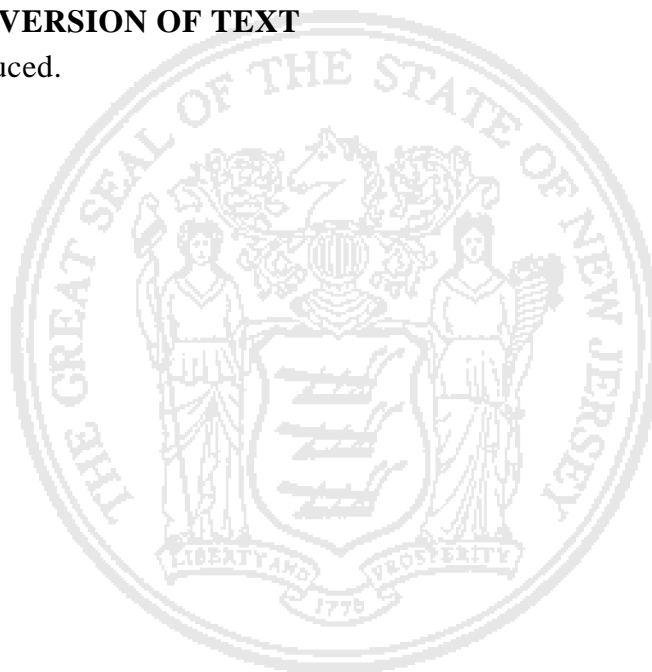
Senator Palaia

SYNOPSIS

Revises criteria for financing underground storage tank closures, upgrades and remediations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/26/2002)

S1948 MCNAMARA, SULIGA

2

1 AN ACT concerning underground storage tank financing, and
2 amending and supplementing P.L.1997, c.235.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 5 of P.L.1997, c.235 (C.58:10A-5) is amended to read
8 as follows:

9 5. a. The authority may award financial assistance from the fund to
10 an eligible owner or operator in the form of a loan or a conditional
11 hardship grant as provided in this section. An award of financial
12 assistance, either as a loan or a grant, or a combination of both, may,
13 upon application therefor, be for 100% of the eligible project costs.
14 However, a loan that any applicant may receive from the fund for an
15 upgrade, remediation, or closure, or any combination thereof, for any
16 one facility, may not exceed [~~\$1,000,000~~] \$2,000,000, except as
17 provided below, and a grant that any applicant may receive from the
18 fund for any one facility, may not exceed [~~\$250,000~~] \$500,000. A
19 loan that an applicant may receive from the fund for a remediation of
20 a discharge that poses an imminent and significant threat to a drinking
21 water source may not exceed \$3,000,000. The total amount of
22 financial assistance awarded as grants in any one year may not exceed
23 one third of the total amount of financial assistance awarded in that
24 year except that this limitation upon the award of grants shall not
25 apply to financial assistance awarded between January 1, 1999 and
26 March 31, 2004.

27 b. A public entity applying for financial assistance from the fund
28 may only be awarded financial assistance in the form of an interest free
29 loan.

30 c. An applicant, other than a public entity, may apply for and
31 receive a conditional hardship grant as provided in paragraph (1) of
32 this subsection, or a loan for an upgrade, closure, or remediation as
33 provided in paragraph (2) of this subsection. Financial assistance
34 awarded an applicant pursuant to this subsection may consist entirely
35 of a conditional hardship grant, a loan for an upgrade, or loan for a
36 closure, or a loan for a remediation, or any combination thereof,
37 except that the total amount of the award of financial assistance shall
38 be subject to the per facility dollar limitation enumerated in subsection
39 a. of this section. Notwithstanding any other provision of this
40 subsection to the contrary, no tax exempt, nonprofit organization,
41 corporation, or association shall be awarded a conditional hardship
42 grant pursuant to paragraph (1) of this subsection.

43 (1) A conditional hardship grant for eligible project costs of an

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.

1 upgrade, closure or remediation shall be awarded by the authority
2 based upon a finding of eligibility and financial hardship and upon a
3 finding that the applicant meets the criteria set forth in this act.

4 [In order to be eligible for a conditional hardship grant, the
5 applicant shall have owned or operated the subject petroleum
6 underground storage tank as of December 1, 1996 and continually
7 thereafter or shall have inherited the property from a person who
8 owned the petroleum underground storage tank as of that date.] No
9 applicant shall be eligible for a conditional hardship grant if the
10 applicant has a taxable income of more than [~~\$100,000~~] \$250,000 or
11 a net worth, exclusive of the applicant's primary residence, of over
12 [~~\$100,000~~] \$500,000.

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

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

32 If the authority awards a conditional hardship grant in combination
33 with a loan pursuant to this subsection, the authority shall release to
34 the applicant the loan monies prior to the release of the conditional
35 hardship grant monies.

36 Conditional hardship grants awarded to an applicant shall be subject
37 to the lien provisions enumerated in section 16 of P.L.1997, c.235
38 (C.58:10A-37.16).

39 (2) A loan to an eligible owner or operator for the eligible project
40 costs of an upgrade, closure, or remediation shall be awarded by the
41 authority only upon a finding that the applicant other than a public
42 entity is able to repay the amount of the loan.

43 In making a finding of an applicant's ability to repay a loan for the
44 upgrade, closure, and remediation of a regulated tank, or for the
45 remediation of a discharge from a petroleum underground storage
46 tank, the authority shall base its finding, as applicable, upon the cash

1 flow of the applicant's business, the applicant's taxable income and the
2 applicant's personal and business assets, except that the authority may
3 not consider the applicant's primary residence as collateral, except that
4 the authority may consider the applicant's primary residence as
5 collateral with the permission of the applicant or where the subject
6 petroleum underground storage tank or regulated tank is located at the
7 primary residence.

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

14 e. Nothing in this section is intended to alter the priority or criteria
15 for awarding financial assistance established pursuant to section 4 of
16 P.L.1997, c.235 (C.58:10A-37.4).

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

23 (cf: P.L.2001, c.22, s.1)

24

25 2. Section 6 of P.L.1997, c.235 (C.58:10A-37.6) is amended to
26 read as follows:

27 6. An eligible owner or operator seeking financial assistance from
28 the fund shall file an application on a form to be developed by the
29 authority. The application form shall be submitted with the application
30 fee. The application fee per facility for residential petroleum
31 underground storage tanks shall be \$250. The authority may establish
32 the application fee per facility for nonresidential petroleum
33 underground storage tanks.

34 The authority shall adopt rules and regulations listing the filing
35 requirements for a complete application for financial assistance. If a
36 financial assistance application is determined to be incomplete by the
37 authority, an applicant shall have 30 days from the date of receipt of
38 written notification of incompleteness to file such additional
39 information as may be required by the authority for a completed
40 application. If an applicant fails to file the additional information
41 within the 30 days, the filing date for that application shall be the date
42 that such additional information is received by the authority. If the
43 additional information is filed within the 30 days and is satisfactory to
44 the authority, the filing date for that application shall be the initial date
45 of application with the authority. Notwithstanding the above, if a
46 completed application has been submitted and the applicant fails to
47 submit the filing fee, then the filing date for the application shall not

1 be established until the date on which the authority receives the
2 application fee. A change in the filing date resulting from failure to
3 submit a completed application or from failure to submit the
4 application fee in a timely fashion for applications filed for financial
5 assistance for a regulated tank to meet the upgrade or closure
6 requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102
7 (C.58:10A-21 et seq.) or for the remediation of a discharge from any
8 such regulated tank shall not render the application ineligible for
9 financial assistance as long as the initial date of application is prior to
10 [January 1, 1999, or prior to August 31, 1999, as applicable] June 30,
11 2004, or for a regulated tank that is not operational, 18 months from
12 the date of discovery of the tank .

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

20 (cf: P.L.1999, c.89, s.2)

21

22 3. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to
23 read as follows:

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

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

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

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

42 (3) the applicant failed to commence or complete a remediation,
43 closure, or an upgrade for which an award of financial assistance was
44 made within the time required by the department in accordance with
45 the applicable rules and regulations, within the time prescribed in an
46 administrative order, an administrative consent agreement, a
47 memorandum of agreement, or a court order; or

1 (4) the applicant provided false information or withheld information
2 on a loan or grant application, or other relevant information required
3 to be submitted to the authority, on any matter that would otherwise
4 render the applicant ineligible for financial assistance from the fund,
5 that would alter the priority of the applicant to receive financial
6 assistance from the fund, that resulted in the applicant receiving a
7 larger grant or loan award than the applicant would otherwise be
8 eligible, or that resulted in payments from the fund in excess of the
9 actual eligible project costs incurred by the applicant or the amount to
10 which the applicant is legally eligible.

11 Nothing in this subsection shall be construed to require the
12 authority to undertake an investigation or make any findings
13 concerning the conduct described in this subsection.

14 c. An application for financial assistance from the fund for an
15 upgrade or closure of a regulated tank shall include all regulated tanks
16 at the facility for which the applicant is seeking financial assistance.
17 Once financial assistance for an upgrade~~[,]~~ or closure ~~[or a~~
18 ~~remediation]~~ is awarded for a facility, no additional award of financial
19 assistance for upgrade or closure costs may be made for that facility.
20 However, if an applicant discovers while performing upgrade or
21 closure activities that a remediation is necessary at the site of a facility,
22 and if financial assistance was previously awarded for that site only for
23 an upgrade or closure of a regulated tank, the applicant may amend his
24 application and apply for financial assistance for the required
25 remediation subject to the limitations enumerated in section 5 of ~~[this~~
26 ~~act]~~ P.L.1997, c.235 (C.58:10A-37.5). An application for financial
27 assistance for an upgrade or closure of a regulated tank shall be
28 conditioned upon the applicant agreeing to perform, at the time of the
29 upgrade or closure, any remediation necessary as a result of a
30 discharge from the regulated tank and commencement of the
31 remediation within the time prescribed and in accordance with the
32 rules and regulations of the department.

33 d. Except as provided below, no financial assistance for upgrade
34 or closure shall be awarded for any regulated tank required to meet the
35 upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq.
36 or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a
37 discharge from any such regulated tank except as provided in
38 subsection c. of this section, unless the application is filed with the
39 authority prior to ~~[January 1, 1999]~~ June 30, 2004 and the application
40 is complete and the application fee is received by ~~[August 1, 1999]~~
41 December 31, 2004 . No financial assistance for upgrade or closure
42 shall be awarded for any underground storage tank with a capacity of
43 over 2,000 gallons used to store heating oil for onsite consumption in
44 a nonresidential building required to be upgraded pursuant to
45 P.L.1986, c.102 (C.58:10A-21 et seq.) but not pursuant to 42
46 U.S.C.s.6991 et seq. or for the remediation of a discharge from any
47 such regulated tank except as provided in subsection c. of this section,

1 unless the application is filed with the authority prior to [August 31,
2 1999] June 30, 2004 and the application is complete and the
3 application fee is received by [March 31, 2000] December 31, 2004.
4 In the case of a regulated tank that is not operational, financial
5 assistance for the closure or the remediation of any discharge
6 therefrom may be awarded if the application is filed with the authority
7 no more than 18 months after the date of discovery of the existence of
8 the regulated tank.

9 e. The date of occurrence of a discharge shall not affect eligibility
10 for financial assistance from the fund. Except for a preliminary
11 assessment or a site investigation performed after the effective date of
12 P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in
13 subsections g. and h. of this section, no award of financial assistance
14 shall be made from the fund for the otherwise eligible project costs of
15 a remediation, closure, or an upgrade, or parts thereof, completed
16 prior to an award of financial assistance from the fund.

17 f. No financial assistance may be awarded from the fund for the
18 remediation of a discharge from a petroleum underground storage tank
19 if financial assistance from the Hazardous Discharge Site Remediation
20 Fund established pursuant to section 26 of P.L.1993, c.139
21 (C.58:10B-4) has previously been made for a remediation at that site
22 as a result of a discharge from that petroleum underground storage
23 tank. [No financial assistance may be awarded from the fund for the
24 remediation of a discharge from a petroleum underground storage tank
25 if the discharge began subsequent to the completion of an upgrade of
26 that petroleum underground storage tank, which upgrade was intended
27 to meet all applicable upgrade regulations of the department, no matter
28 when the upgrade was performed].

29 g. Notwithstanding any provision of P.L.1997, c.235
30 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed
31 an application for financial assistance from the fund, and there are
32 either insufficient monies in the fund or the authority has not yet acted
33 upon the application or awarded the financial assistance, the eligible
34 owner or operator may expend its own funds for the upgrade, closure,
35 or remediation, and upon approval of the application, the authority
36 shall award the financial assistance as a reimbursement of the monies
37 expended for eligible project costs.

38 h. Notwithstanding any provision to the contrary of P.L.1997,
39 c.235 (C.58:10A-37.1 et seq.), if an applicant has expended the
40 applicant's own funds on a remediation prior to filing an application
41 for financial assistance from the fund for the eligible project costs of
42 the remediation, the authority, upon approval of the application, may
43 make a grant from the fund pursuant to paragraph (1) of subsection c.
44 of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the
45 eligible owner or operator for the eligible project costs of the
46 remediation.

47 (cf: P.L.2001, c.22, s.2)

1 4. (New Section) Within 12 months of the effective date of this
2 act, the Department of Environmental Protection shall conduct a
3 public education and information program to inform owners and
4 operators of petroleum underground storage tanks of the changes in
5 the eligibility criteria, changes in the grant and loan limits and changes
6 in the application deadlines adopted pursuant to this act. The public
7 education program shall, among other things, inform those owners or
8 operators of regulated tanks that have not closed or upgraded their
9 tanks, and any person whose application for financial assistance from
10 the fund has been denied because of the failure to meet the previous
11 application deadline of the changes adopted pursuant to this act.

12

13 5. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill would revise the criteria for the awarding of grants and
19 loans for the upgrade, closure and remediation of underground storage
20 tanks. The bill would extend the application deadlines for regulated
21 tanks to June 30, 2004. For those regulated tanks that are not
22 operational, the bill would authorize the application for financial
23 assistance for the closure and remediation of those tanks for 18
24 months after the date of discovery of the tank. The bill would increase
25 the monetary limits for grants and loans. For grants, the bill would
26 authorize a maximum per facility grant of \$500,000. Currently, a grant
27 award may not exceed \$250,000. For loans, the bill would authorize
28 a maximum per facility loan of \$2,000,000. However, in cases where
29 a discharge poses an imminent and significant threat to a drinking
30 water source, the bill would authorize a maximum per facility loan of
31 \$3,000,000. Currently, a loan award may not exceed \$1,000,000.

32 The bill would increase the income and net worth limitations for
33 grant eligibility to \$250,000 and \$500,000 respectively. Currently, an
34 applicant for a grant must have an annual income or a net worth,
35 excluding the primary residence of under \$100,000. The bill would
36 remove the requirement that an applicant must have owned a regulated
37 tank as of December 1, 1996, and continually thereafter to be eligible
38 for a conditional hardship grant. The bill would authorize financial
39 assistance from the fund for the remediation of a discharge even if the
40 discharge began subsequent to the upgrade of the underground storage
41 tank. Finally, the bill would require the Department of Environmental
42 Protection to perform a public education and information program to
43 inform owners and operators of underground storage tanks about the
44 changes adopted pursuant to this bill.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1948

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 6, 2003

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Senate Bill No. 1948 (SCS).

Senate Bill No. 1948 (SCS), as amended, would revise the criteria for the awarding of grants and loans for the upgrade, closure and remediation of underground storage tanks. The bill would extend the application deadlines for financial assistance for closure and remediation for regulated tanks to June 30, 2004. Further, the substitute bill would extend the application deadline for financial assistance for the upgrade of those tanks regulated under State law only, that have received an extension of the deadline for compliance with the standards. For those regulated tanks that are not operational, the bill would authorize the application for financial assistance for the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or 18 months from the effective date of the bill, whichever is later.

The bill would increase the monetary limits for grants and loans. For grants, the bill would authorize a maximum per facility grant of \$500,000. Currently, a grant award may not exceed \$250,000. For loans, the bill would authorize a maximum per facility loan of \$2,000,000. However, in cases where a discharge poses a threat to a drinking water source, the bill would authorize a maximum per facility loan of \$3,000,000. In addition, the bill would increase the monetary limits for grants and loans provided to an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act" to a loan in an amount not to exceed \$3,000,000 and a grant in an amount not to exceed \$750,000. Under current law, a loan award may not exceed \$1,000,000.

The bill, as amended, would increase the income and net worth

limitations for grant eligibility to \$200,000 and \$200,000, exclusive of primary residence and pension, respectively. Currently, an applicant for a grant must have an annual income and a net worth, excluding the primary residence of under \$100,000.

The bill would remove the requirement that an applicant must have owned a regulated tank as of December 1, 1996, and continually thereafter to be eligible for a conditional hardship grant. Instead, for regulated tanks, the applicant for financial assistance must have owned the tank as of December 1, 2002 and continually thereafter to qualify for a grant. For tanks that are not regulated, there is no date of ownership requirement to qualify for a grant.

The bill would also authorize grants for independent institutions of higher education, for tax-exempt nonprofit corporations with under 100 paid employees, and for duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue companies or squads.

The bill would remove the cap on the total grant awards as a percentage of the total assistance awarded.

Further, the bill would authorize eligible project costs to include the replacement of a leaking home heating oil tank with an above-ground or underground storage tank.

The bill, as amended, would provide that a grant may be awarded to reimburse an eligible owner or operator for the eligible project costs of the remediation when an applicant has expended the applicant's own funds on a remediation after filing an application for financial assistance from the fund for the eligible project costs of the remediation. Current law provides for such reimbursement of costs expended prior to filing an application.

The bill, as amended, would authorize the authority, upon approval of the application, to make a grant to reimburse an applicant that is an independent institution of higher education that has expended its own funds on a remediation prior to filing an application for financial assistance from the fund for expenditures for the eligible project costs of the remediation made on or after December 1, 1996 in an amount not to exceed \$500,000 for each institution.

The bill, as amended, would authorize the authority, upon approval of the application, to make a grant to reimburse an applicant that has expended the applicant's own funds on a remediation of a petroleum underground storage tank used to store heating oil for onsite consumption at the applicant's primary residence prior to filing an application for financial assistance from the fund.

The bill would require that upon completion of the upgrade of an underground storage tank, the owner or operator of the tank must submit evidence of financial assurance as required pursuant to State and federal law.

The bill would also authorize the Department of Environmental Protection to require that evidence of financial assurance be submitted prior to the last disbursement of financial assistance from the fund.

Finally, the bill would require the Department of Environmental

Protection to perform a public education and information program to inform owners and operators of underground storage tanks about the changes adopted pursuant to this legislation.

As amended and reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill Nos. 3287 and 3024 as also reported by the committee.

COMMITTEE AMENDMENTS:

Committee amendments to Senate Bill No. 1948 (SCS):

(1) amend the definition of "eligible owner or operator" to expand the eligibility criteria by increasing the allowable net worth criteria for an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act";

(2) increase the amount of the loan and grant that may be provided to an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act" to a loan in an amount not to exceed \$3,000,000 and a grant in an amount not to exceed \$750,000;

(3) amend current law to provide that there shall be a priority for the award of financial assistance when a discharge poses a threat to a drinking water source, rather than an imminent and significant threat as in current law;

(4) deletes the phrase "imminent and significant threat" to provide that in cases where a discharge poses a threat to a drinking water source, the bill would authorize a maximum per facility loan of \$3,000,000;

(5) clarify in section 3 of the amended bill that applicants, other than a public entity, may apply for financial assistance for tanks regulated under State law only that received an extension of the deadline for compliance with the upgrade requirements, for upgrade, closure and any associated remediation;

(6) clarify that the exemption provided to tax exempt, nonprofit organization applies to those nonprofit organizations, corporations, or associations with not more than 100 paid individuals, qualified for exemption from federal taxation pursuant to section 501 (c)(3) of the federal Internal Revenue Code;

(7) amend the income and net worth limitations for grant eligibility from \$250,000 and \$500,000 (exclusive of the applicant's primary residence) respectively to \$200,000 and \$200,000 exclusive of the applicant's primary residence and pension;

(8) clarify that tanks regulated under State law only that received an extension of the deadline for compliance with the upgrade requirement may apply for financial assistance for upgrades and any associated remediation as long as the application is filed with prior to June 30, 2004 and the application is complete and the application fee is received by December 31, 2004.

(9) provide that the authority may make a grant to reimburse an eligible owner or operator for the eligible project costs of the remediation when an applicant has expended the applicant's own funds on a remediation after filing an application for financial assistance from the fund for the eligible project costs of the remediation;

(10) add that the authority, upon approval of the application, may make a grant to reimburse an applicant that is an independent institution of higher education that has expended its own funds on a remediation prior to filing an application for financial assistance from the fund for expenditures for the eligible project costs of the remediation made on or after December 1, 1996 in an amount not to exceed \$500,000 for each institution;

(11) add that the authority, upon approval of the application, may make a grant to reimburse an applicant that has expended the applicant's own funds on a remediation of a petroleum underground storage tank used to store heating oil for onsite consumption at the applicant's primary residence prior to filing an application for financial assistance from the fund; and

(12) make technical and clarifying amendments to the substitute.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1948**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 5, 2003

The Assembly Appropriations Committee reports favorably Senate Bill No. 1948, with committee amendments.

Senate Bill No. 1948 (SCS/1R), as amended, revises the criteria for the awarding of grants and loans for the upgrade, closure and remediation of underground storage tanks. The bill extends the application deadlines for financial assistance for closure and remediation for regulated tanks to June 30, 2005. Further, the bill extends the application deadline for financial assistance for the upgrade of those tanks regulated under State law only, that have received an extension of the deadline for compliance with the standards. For those regulated tanks that are not operational, the bill authorizes the application for financial assistance for the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or 18 months from the effective date of the bill, whichever is later.

The bill increases the monetary limits for grants and loans. For grants, the bill authorizes a maximum per-facility grant of \$500,000. Currently, a grant award may not exceed \$250,000. For loans, the bill authorizes a maximum per facility loan of \$2,000,000. However, in cases where a discharge poses a threat to a drinking water source, the bill authorized a maximum per-facility loan of \$3,000,000. The bill amends current law to provide that there shall be a priority for the award of financial assistance when a discharge poses a threat to a drinking water source, rather than an "imminent and significant" threat, as in current law. The bill increases the monetary limits for grants and loans provided to an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act" to a loan in an amount not to exceed \$3,000,000 and a grant in an amount not to exceed \$750,000.

Under current law, a loan award may not exceed \$1,000,000.

The bill increases the income and net worth limitations for grant eligibility to \$200,000 and \$200,000, exclusive of primary residence and pension, respectively. Currently, an applicant for a grant must have an annual income and a net worth, excluding the primary residence, of under \$100,000.

The bill deletes the requirement that an applicant must have owned a regulated tank as of December 1, 1996, and continually thereafter to be eligible for a conditional hardship grant. Instead, for regulated tanks, the applicant for financial assistance must have owned the tank as of December 1, 2002 and continually thereafter to qualify for a grant. For tanks that are not regulated, there is no date of ownership requirement to qualify for a grant.

The bill authorizes grants for independent institutions of higher education, for tax-exempt nonprofit corporations with under 100 paid employees, and for duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue companies or squads.

The bill deletes the cap on the total grant awards as a percentage of the total assistance awarded.

The bill authorizes eligible project costs to include the replacement of a leaking home heating oil tank with an above-ground or underground storage tank.

The bill provides that a grant may be awarded to reimburse an eligible owner or operator for the eligible project costs of the remediation when an applicant has expended the applicant's own funds on a remediation after filing an application for financial assistance from the fund for the eligible project costs of the remediation. Current law provides for such reimbursement of costs expended prior to filing an application.

The bill authorizes the authority, upon approval of the application, to make a grant to reimburse an applicant that is an independent institution of higher education that has expended its own funds on a remediation prior to filing an application for financial assistance from the fund for expenditures for the eligible project costs of the remediation made on or after December 1, 1996 in an amount not to exceed \$500,000 for each institution.

The bill authorizes the authority, upon approval of the application, to make a grant to reimburse an applicant that has expended the applicant's own funds on a remediation of a petroleum underground storage tank used to store heating oil for onsite consumption at the applicant's primary residence prior to filing an application for financial assistance from the fund.

The bill requires that upon completion of the upgrade of an underground storage tank, the owner or operator of the tank must submit evidence of financial assurance as required pursuant to State and federal law.

The bill authorizes the Department of Environmental Protection to require that evidence of financial assurance be submitted prior to the last disbursement of financial assistance from the fund.

Finally, the bill requires the Department of Environmental Protection to perform a public education and information program to inform owners and operators of underground storage tanks about the changes adopted pursuant to this legislation.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 3287/3024 (ACS) as also amended and reported by the committee.

FISCAL IMPACT:

Article VIII, Section II, paragraph 6 of the New Jersey Constitution dedicates 4% of the revenue annually derived from the Corporation Business Tax to environmental purposes, and through calendar year 2008 the constitution requires a minimum of one-third of that amount to be appropriated for providing funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge from those tanks.

The New Jersey Economic Development Authority reviewed the underground storage tank financing fund and as of December 31, 2002, estimated funds available for future projects at \$83.7 million.

COMMITTEE AMENDMENTS:

The amendments extend the application deadlines for financial assistance for closure and remediation for regulated tanks to June 30, 2005, instead of June 30, 2004, and extend the deadline for receipt of the application fee to December 31, 2005 instead of December 31, 2004.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1948**

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2002

The Senate Environment Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1948.

The substitute bill would revise the criteria for the awarding of grants and loans for the upgrade, closure and remediation of underground storage tanks. The substitute bill would extend the application deadlines for financial assistance for closure and remediation for regulated tanks to June 30, 2004. For those regulated tanks that are not operational, the substitute bill would authorize the application for financial assistance for the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or 18 months from the effective date of the substitute bill, whichever is later.

The substitute bill would increase the monetary limits for grants and loans. For grants, the substitute bill would authorize a maximum per facility grant of \$500,000. Currently, a grant award may not exceed \$250,000. For loans, the substitute bill would authorize a maximum per facility loan of \$2,000,000. However, in cases where a discharge poses an imminent and significant threat to a drinking water source, the substitute bill would authorize a maximum per facility loan of \$3,000,000. Under current law, a loan award may not exceed \$1,000,000.

The substitute bill would increase the income and net worth limitations for grant eligibility to \$250,000 and \$500,000 respectively. Currently, an applicant for a grant must have an annual income or a net worth, excluding the primary residence of under \$100,000.

The substitute bill would remove the requirement that an applicant must have owned a regulated tank as of December 1, 1996, and continually thereafter to be eligible for a conditional hardship grant. Instead, for regulated tanks, the applicant for financial assistance must have owned the tank as of December 1, 2002 and continually thereafter to qualify for a grant. For tanks that are not regulated, there is no date of ownership requirement to qualify for a grant.

The substitute bill would also authorize grants for independent institutions of higher education, for tax-exempt nonprofit corporations with under 100 paid employees, and for duly incorporated volunteer

fire, ambulance, first aid, emergency, or rescue companies or squads.

The substitute bill would remove the cap on the total grant awards as a percentage of the total assistance awarded.

Further, the substitute bill would authorize eligible project costs to include the replacement of a leaking home heating oil tank with an above-ground or underground storage tank.

The substitute bill would require that upon completion of the upgrade of an underground storage tank, the owner or operator of the tank must submit evidence of financial assurance as required pursuant to State and federal law.

The substitute bill would also authorize the Department of Environmental Protection to require that evidence of financial assurance be submitted prior to the last disbursement of financial assistance from the fund.

Finally, the substitute bill would require the Department of Environmental Protection to perform a public education and information program to inform owners and operators of underground storage tanks about the changes adopted pursuant to this legislation.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1948**

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2002

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1948 (SCS).

The substitute bill would revise the criteria for the awarding of grants and loans for the upgrade, closure and remediation of underground storage tanks. The substitute bill would extend the application deadlines for financial assistance for closure and remediation for regulated tanks to June 30, 2004. For those regulated tanks that are not operational, the substitute bill would authorize the application for financial assistance for the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or 18 months from the effective date of the substitute bill, whichever is later.

The substitute bill would increase the monetary limits for grants and loans. For grants, the substitute bill would authorize a maximum per facility grant of \$500,000. Currently, a grant award may not exceed \$250,000. For loans, the substitute bill would authorize a maximum per facility loan of \$2,000,000. However, in cases where a discharge poses an imminent and significant threat to a drinking water source, the substitute bill would authorize a maximum per facility loan of \$3,000,000. Under current law, a loan award may not exceed \$1,000,000.

The substitute bill would increase the income and net worth limitations for grant eligibility to \$250,000 and \$500,000 respectively. Currently, an applicant for a grant must have an annual income or a net worth, excluding the primary residence, of under \$100,000.

The substitute bill would remove the requirement that an applicant must have owned a regulated tank as of December 1, 1996, and continually thereafter to be eligible for a conditional hardship grant. Instead, for regulated tanks, the applicant for financial assistance must have owned the tank as of December 1, 2002 and continually thereafter to qualify for a grant. For tanks that are not regulated, there is no date of ownership requirement to qualify for a grant.

The substitute bill would also authorize grants for independent institutions of higher education, for tax-exempt nonprofit corporations with under 100 paid employees, and for duly incorporated volunteer

fire, ambulance, first aid, emergency, or rescue companies or squads.

The substitute bill would remove the cap on the total grant awards as a percentage of the total assistance awarded.

Further, the substitute bill would authorize eligible project costs to include the replacement of a leaking home heating oil tank with an above-ground or underground storage tank.

The substitute bill would require that upon completion of the upgrade of an underground storage tank, the owner or operator of the tank must submit evidence of financial assurance as required pursuant to State and federal law.

The substitute bill would also authorize the Department of Environmental Protection to require that evidence of financial assurance be submitted prior to the last disbursement of financial assistance from the fund.

Finally, the substitute bill would require the Department of Environmental Protection to perform a public education and information program to inform owners and operators of underground storage tanks about the changes adopted pursuant to this legislation.

FISCAL IMPACT

This bill has not been certified as having a fiscal impact.

ASSEMBLY, No. 3287

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED FEBRUARY 4, 2003

Sponsored by:
Assemblyman REED GUSCIORA
District 15 (Mercer)

SYNOPSIS

Revises criteria for financing underground storage tank closures, upgrades and remediations.

CURRENT VERSION OF TEXT

As introduced.



A3287 GUSCIORA

2

1 AN ACT concerning underground storage tank financing, and
2 amending and supplementing P.L.1997, c.235.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1997, c.235 (C.58:10A-37.2) is amended to
8 read as follows:

9 2. As used in this act:

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

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

18 "Closure" means the proper closure or removal of a petroleum
19 underground storage tank necessary to meet all regulatory
20 requirements of federal, State, or local law;

21 "Commissioner" means the Commissioner of Environmental
22 Protection;

23 "Department" means the Department of Environmental Protection;

24 "Discharge" means the intentional or unintentional release by any
25 means of petroleum from a petroleum underground storage tank into
26 the environment;

27 "Eligible owner or operator" means (1) any owner or operator other
28 than the owner or operator of a petroleum underground storage tank
29 storing heating oil for onsite consumption in a residential building who
30 owns or operates less than 10 petroleum underground storage tanks
31 in New Jersey, who has a net worth of less than \$2,000,000 and who
32 demonstrates to the satisfaction of the authority, the inability to qualify
33 for and obtain a commercial loan for all or part of the eligible project
34 costs, (2) the owner or operator of a petroleum underground storage
35 tank storing heating oil for onsite consumption in a residential
36 building, [or] (3) a public entity who owns or operates a petroleum
37 underground storage tank in New Jersey, or (4) an independent
38 institution of higher education that owns or operates a petroleum
39 underground storage tank;

40 "Eligible project costs" means the reasonable costs for equipment,
41 work or services required to effectuate a remediation, an upgrade, or
42 a closure which equipment, work or services are eligible for payment
43 from the Petroleum Underground Storage Tank Remediation,

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.

1 Upgrade, and Closure Fund. In the case of an upgrade or closure of
2 a regulated tank, eligible project costs shall be limited to the cost of
3 the minimal effective system necessary to meet all the regulatory
4 requirements of federal and State law. The limitation of eligible
5 project costs to the minimal effective system shall not be construed to
6 deem ineligible those project costs expended to replace a regulated
7 tank rather than to improve the regulated tank. An owner or operator
8 may perform an upgrade or a closure beyond the minimal effective
9 system in which case the eligible project costs that may be awarded
10 from the fund as financial assistance shall be that amount that would
11 represent the cost of a minimal effective system. In the case of a
12 remediation of a petroleum underground storage tank used to store
13 heating oil for onsite consumption in a residential building, eligible
14 project costs shall include the cost to replace a leaking tank with an
15 above-ground or underground storage tank. In the case of a
16 remediation, eligible project costs shall not include the cost to
17 remediate a site to meet residential soil remediation standards if the
18 local zoning ordinances adopted pursuant to the "Municipal Land Use
19 Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for
20 residential use. Eligible project costs shall include the cost of a
21 preliminary assessment and site investigation, even if performed prior
22 to the award of financial assistance from the fund if the preliminary
23 assessment and site investigation were performed after the effective
24 date of P.L.1997, c.235[. Eligible project costs shall not include the
25 costs of any remediation performed at a site where the petroleum
26 underground storage tank was removed prior to December 1, 1996];

27 "Facility" means one or more operational or nonoperational
28 petroleum underground storage tanks under single ownership at a
29 common site;

30 "Financial assistance" means a grant or loan or a combination of
31 both that may be awarded by the authority from the fund to an eligible
32 owner or operator as provided in section 5 of P.L.1997, c.235
33 (C.58:10A-37.5);

34 "Independent institution of higher education" means those
35 institutions of higher education incorporated and located in this State,
36 which, by virtue of law or character or license, are nonprofit
37 educational institutions empowered to grant academic degrees and
38 which provide a level of education which is equivalent to the education
39 provided by the State's public institutions of higher education as
40 attested by the receipt of and continuation of regional accreditation by
41 the Middle States Association of Colleges and Schools, and which are
42 eligible to receive State aid under the provisions of the Constitution of
43 the United States and the Constitution of the State of New Jersey.
44 "Independent institution of higher education" does not include any
45 educational institution dedicated primarily to the preparation or
46 training of ministers, priests, rabbis, or other professional persons in

1 the field of religion;

2 "Operator" means any person in control of, or having responsibility
3 for, the daily operation of a facility;

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

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

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

20 "Petroleum Underground Storage Tank Remediation, Upgrade and
21 Closure Fund" or "fund" means the fund established pursuant to
22 section 3 of P.L.1997, c.235 (C.58:10A-37.3);

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

28 "Petroleum underground storage tank" does not include:

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

34 (2) Pipelines, including gathering lines, regulated under 49 U.S.C.
35 s.60101 et seq., or intrastate pipelines regulated under State law;

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

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

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

45 (6) Tanks situated in an underground area, including, but not
46 limited to, basements, cellars, mines, drift shafts, or tunnels, if the

1 storage tank is situated upon or above the surface of the floor, or
2 storage tanks located below the surface of the ground which are
3 equipped with secondary containment and are uncovered so as to
4 allow visual inspection of the exterior of the tank; and

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

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

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

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

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

25 (cf: P.L.1997, c.235, s.2)

26

27 2. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to
28 read as follows:

29 5. a. The authority may award financial assistance from the fund to
30 an eligible owner or operator in the form of a loan or a conditional
31 hardship grant as provided in this section. An award of financial
32 assistance, either as a loan or a grant, or a combination of both, may,
33 upon application therefor, be for 100% of the eligible project costs.
34 However, a loan that any applicant may receive from the fund for an
35 upgrade, remediation, or closure, or any combination thereof, for any
36 one facility, may not exceed ~~[\$1,000,000]~~ \$2,000,000, except as
37 provided below. and a grant that any applicant may receive from the
38 fund for any one facility, may not exceed ~~[\$250,000]~~ \$500,000. The total amount
39 of financial assistance awarded as grants in any one year may not
40 exceed one third of the total amount of financial assistance awarded
41 in that year except that this limitation upon the award of grants shall
42 not apply to financial assistance awarded between January 1, 1999 and
43 ~~March 31, 2004]~~ \$500,000. A loan that an applicant may receive from
44 the fund for a remediation of a discharge that poses an imminent and
45 significant threat to a drinking water source may not exceed
46 \$3,000,000.

1 b. A public entity applying for financial assistance from the fund
2 may only be awarded financial assistance in the form of an interest free
3 loan.

4 c. An applicant, other than a public entity, may apply for and
5 receive a conditional hardship grant as provided in paragraph (1) of
6 this subsection, or a loan for an upgrade~~[.]~~ for any underground
7 storage tank with a capacity of over 2,000 gallons used to store
8 heating oil for onsite consumption in a nonresidential building that has
9 received an extension pursuant to subsection b. of section 9 of
10 P.L.1986, c.102 (C.58:10A-29), the closure~~[.]~~ or remediation as
11 provided in paragraph (2) of this subsection. Financial assistance
12 awarded an applicant pursuant to this subsection may consist entirely
13 of a conditional hardship grant, a [loan for an upgrade, or] loan for a
14 closure, or a loan for a remediation, or any combination thereof,
15 except that the total amount of the award of financial assistance shall
16 be subject to the per facility dollar limitation enumerated in subsection
17 a. of this section. Notwithstanding any other provision of this
18 subsection to the contrary, no tax exempt, nonprofit organization,
19 corporation, or association shall be awarded a conditional hardship
20 grant pursuant to paragraph (1) of this subsection, provided that a tax
21 exempt, nonprofit organization, corporation, or association with not
22 more than 100 paid individuals, or a duly incorporated volunteer fire,
23 ambulance, first aid, emergency, or rescue company or squad, may be
24 awarded a conditional hardship grant pursuant to paragraph (1) of this
25 subsection.

26 (1) A conditional hardship grant for eligible project costs of an
27 upgrade, closure or remediation shall be awarded by the authority
28 based upon a finding of eligibility and financial hardship and upon a
29 finding that the applicant meets the criteria set forth in this act.

30 In order to be eligible for a conditional hardship grant for closure
31 or upgrade, in the case of a regulated tank, the applicant shall have
32 owned or operated the subject [petroleum underground storage]
33 regulated tank as of [December 1, 1996] December 1, 2002 and
34 continually thereafter or shall have inherited the property from a
35 person who owned the [petroleum underground storage] regulated
36 tank as of that date. In order to be eligible for a conditional hardship
37 grant for remediation, in the case of a regulated tank, the applicant
38 shall have owned or operated the subject regulated tank at the time of
39 tank closure. No applicant shall be eligible for a conditional hardship
40 grant if the applicant has a taxable income of more than [\\$100,000]
41 \\$250,000 or a net worth, exclusive of the applicant's primary
42 residence, of over [\\$100,000] \\$500,000.

43 Notwithstanding the eligibility requirements for net worth and
44 income, an independent institution of higher education, a tax exempt,
45 nonprofit organization, corporation, or association with not more than
46 100 paid individuals, or a duly incorporated volunteer fire, ambulance,

1 first aid, emergency, or rescue company or squad shall be eligible for
2 a conditional hardship grant for eligible project costs of a closure or
3 remediation of a petroleum underground storage tank.

4 A finding of financial hardship by the authority shall be based upon
5 a determination that an applicant cannot reasonably be expected to
6 repay all or a portion of the eligible project costs if the financial
7 assistance were to be awarded as a loan. The amount of an award of
8 a conditional hardship grant shall be the amount of that portion of the
9 eligible project costs the authority determines the applicant cannot
10 reasonably be expected to repay.

11 In making a finding of financial hardship for an application for the
12 upgrade, closure, or remediation of a petroleum underground storage
13 tank, where the petroleum underground storage tank is a part of the
14 business property of the owner, the authority shall base its finding
15 upon the cash flow of the applicant's business, whether or not any part
16 of the applicant's business is related to the ownership or operation of
17 that petroleum underground storage tank. In making a finding of
18 financial hardship for an application for the upgrade or remediation of
19 a petroleum underground storage tank, where the petroleum
20 underground storage tank is not a part of the business property of the
21 owner, the authority shall base its finding upon the applicant's taxable
22 income in the year prior to the date of the application being submitted.

23 If the authority awards a conditional hardship grant in combination
24 with a loan pursuant to this subsection, the authority shall release to
25 the applicant the loan monies prior to the release of the conditional
26 hardship grant monies.

27 Conditional hardship grants awarded to an applicant shall be subject
28 to the lien provisions enumerated in section 16 of P.L.1997, c.235
29 (C.58:10A-37.16).

30 (2) A loan to an eligible owner or operator for the eligible project
31 costs of an upgrade, closure, or remediation shall be awarded by the
32 authority only upon a finding that the applicant other than a public
33 entity is able to repay the amount of the loan.

34 In making a finding of an applicant's ability to repay a loan for the
35 upgrade, closure, and remediation of a regulated tank, or for the
36 remediation of a discharge from a petroleum underground storage
37 tank, the authority shall base its finding, as applicable, upon the cash
38 flow of the applicant's business, the applicant's taxable income and the
39 applicant's personal and business assets, except that the authority may
40 not consider the applicant's primary residence as collateral, except that
41 the authority may consider the applicant's primary residence as
42 collateral with the permission of the applicant or where the subject
43 petroleum underground storage tank or regulated tank is located at the
44 primary residence.

45 d. The authority shall, where applicable, require an applicant
46 applying for financial assistance from the fund to submit to the

1 authority the financial statements of the applicant's business for three
2 years prior to the date of the application, the most recent interim
3 financial statement for the year of the application, the applicant's
4 federal income tax returns, or other relevant documentation.

5 e. Nothing in this section is intended to alter the priority or criteria
6 for awarding financial assistance established pursuant to section 4 of
7 P.L.1997, c.235 (C.58:10A-37.4).

8 f. An eligible owner or operator may only be awarded that amount
9 of financial assistance issued as a loan for which the applicant
10 demonstrates he could not qualify for and obtain as a commercial loan.
11 The provisions of this subsection shall not apply to an owner or
12 operator or petroleum underground storage tank used to store heating
13 oil for onsite consumption in a residential building, to an independent
14 institution of higher education, or to a duly incorporated volunteer
15 fire, ambulance, first aid, emergency, or rescue company or squad.
16 (cf: P.L.2001, c.22, s.1)

17

18 3. Section 6 of P.L.1997, c.235 (C.58:10A-37.6) is amended to
19 read as follows:

20 6. An eligible owner or operator seeking financial assistance from
21 the fund shall file an application on a form to be developed by the
22 authority. The application form shall be submitted with the application
23 fee. The application fee per facility for residential petroleum
24 underground storage tanks shall be \$250. The authority may establish
25 the application fee per facility for nonresidential petroleum
26 underground storage tanks.

27 The authority shall adopt rules and regulations listing the filing
28 requirements for a complete application for financial assistance. If a
29 financial assistance application is determined to be incomplete by the
30 authority, an applicant shall have 30 days from the date of receipt of
31 written notification of incompleteness to file such additional
32 information as may be required by the authority for a completed
33 application. If an applicant fails to file the additional information
34 within the 30 days, the filing date for that application shall be the date
35 that such additional information is received by the authority. If the
36 additional information is filed within the 30 days and is satisfactory to
37 the authority, the filing date for that application shall be the initial date
38 of application with the authority. Notwithstanding the above, if a
39 completed application has been submitted and the applicant fails to
40 submit the filing fee, then the filing date for the application shall not
41 be established until the date on which the authority receives the
42 application fee. A change in the filing date resulting from failure to
43 submit a completed application or from failure to submit the
44 application fee in a timely fashion for applications filed for financial
45 assistance for a regulated tank to meet the upgrade or closure
46 requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102

1 (C.58:10A-21 et seq.) or for the remediation of a discharge from any
2 such regulated tank shall not render the application ineligible for
3 financial assistance as long as the initial date of application is prior to
4 [January 1, 1999, or prior to August 31, 1999, as applicable] June 30,
5 2004, or for a regulated tank that is not operational, 18 months from
6 the date of discovery of the tank or 18 months from the effective date
7 of P.L. , c. (C.) (now in the Legislature as this bill),
8 whichever is later .

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

16 (cf: P.L.1999, c.89, s.2)

17

18 4. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to
19 read as follows:

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

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

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

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

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

44 (4) the applicant provided false information or withheld information
45 on a loan or grant application, or other relevant information required
46 to be submitted to the authority, on any matter that would otherwise

1 render the applicant ineligible for financial assistance from the fund,
2 that would alter the priority of the applicant to receive financial
3 assistance from the fund, that resulted in the applicant receiving a
4 larger grant or loan award than the applicant would otherwise be
5 eligible, or that resulted in payments from the fund in excess of the
6 actual eligible project costs incurred by the applicant or the amount to
7 which the applicant is legally eligible.

8 Nothing in this subsection shall be construed to require the
9 authority to undertake an investigation or make any findings
10 concerning the conduct described in this subsection.

11 c. An application for financial assistance from the fund for an
12 upgrade or closure of a regulated tank shall include all regulated tanks
13 at the facility for which the applicant is seeking financial assistance.
14 Once financial assistance for an upgrade[,] or closure [or a
15 remediation] is awarded for a facility, no additional award of financial
16 assistance for upgrade or closure costs may be made for that facility.
17 However, if an applicant discovers while performing upgrade or
18 closure activities that a remediation is necessary at the site of a facility,
19 and if financial assistance was previously awarded for that site only for
20 an upgrade or closure of a regulated tank, the applicant may amend his
21 application and apply for financial assistance for the required
22 remediation subject to the limitations enumerated in section 5 of [this
23 act] P.L.1997, c.235 (C.58:10A-37.5). An application for financial
24 assistance for an upgrade or closure of a regulated tank shall be
25 conditioned upon the applicant agreeing to perform, at the time of the
26 upgrade or closure, any remediation necessary as a result of a
27 discharge from the regulated tank and commencement of the
28 remediation within the time prescribed and in accordance with the
29 rules and regulations of the department.

30 d. Except as provided below, no financial assistance for upgrade
31 [or closure] shall be awarded for any regulated tank required to meet
32 the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et
33 seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), [or for the remediation
34 of a discharge from any such regulated tank except as provided in
35 subsection c. of this section,] unless the application is filed with the
36 authority prior to January 1, 1999 and the application is complete and
37 the application fee is received by August 1, 1999. No financial
38 assistance for upgrade [or closure] shall be awarded for any
39 underground storage tank with a capacity of over 2,000 gallons used
40 to store heating oil for onsite consumption in a nonresidential building
41 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et
42 seq.) but not pursuant to 42 U.S.C.s.6991 et seq. [or for the
43 remediation of a discharge from any such regulated tank except as
44 provided in subsection c. of this section], unless the application is filed
45 with the authority prior to August 31, 1999 and the application is

1 complete and the application fee is received by March 31, 2000.
2 No financial assistance for closure shall be awarded for any regulated
3 tank required to meet the upgrade or closure requirements pursuant to
4 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), or
5 for the remediation of a discharge from any such regulated tank except
6 as provided in subsection c. of this section, unless the application is
7 filed with the authority prior to June 30, 2004 and the application is
8 complete and the application fee is received by December 31, 2004.
9 No financial assistance for upgrade or closure shall be awarded for any
10 underground storage tank with a capacity of over 2,000 gallons used
11 to store heating oil for onsite consumption in a nonresidential building
12 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et
13 seq.) but not pursuant to 42 U.S.C.s.6991 et seq. or for the
14 remediation of a discharge from any such regulated tank except as
15 provided in subsection c. of this section, unless the application is filed
16 with the authority prior to June 30, 2004 and the application is
17 complete and the application fee is received by December 31, 2004.
18 In the case of a regulated tank that is not operational, financial
19 assistance for the closure or the remediation of any discharge
20 therefrom may be awarded if the application is filed with the authority
21 no more than 18 months after the date of discovery of the existence of
22 the regulated tank, or 18 months from the effective date of P.L. .c.
23 (C. _____) (now in the Legislature as this bill), whichever is later.
24 e. The date of occurrence of a discharge shall not affect eligibility
25 for financial assistance from the fund. Except for a preliminary
26 assessment or a site investigation performed after the effective date of
27 P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in
28 subsections g. and h. of this section, no award of financial assistance
29 shall be made from the fund for the otherwise eligible project costs of
30 a remediation, closure, or an upgrade, or parts thereof, completed
31 prior to an award of financial assistance from the fund.
32 f. No financial assistance may be awarded from the fund for the
33 remediation of a discharge from a petroleum underground storage tank
34 if financial assistance from the Hazardous Discharge Site Remediation
35 Fund established pursuant to section 26 of P.L.1993, c.139
36 (C.58:10B-4) has previously been made for a remediation at that site
37 as a result of a discharge from that petroleum underground storage
38 tank. No financial assistance may be awarded from the fund for the
39 remediation of a discharge from a petroleum underground storage tank
40 if the discharge began subsequent to the completion of an upgrade of
41 that petroleum underground storage tank, which upgrade was intended
42 to meet all applicable upgrade regulations of the department, no matter
43 when the upgrade was performed.
44 g. Notwithstanding any provision of P.L.1997, c.235
45 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed
46 an application for financial assistance from the fund, and there are

1 either insufficient monies in the fund or the authority has not yet acted
2 upon the application or awarded the financial assistance, the eligible
3 owner or operator may expend its own funds for the upgrade, closure,
4 or remediation, and upon approval of the application, the authority
5 shall award the financial assistance as a reimbursement of the monies
6 expended for eligible project costs.

7 h. Notwithstanding any provision to the contrary of P.L.1997,
8 c.235 (C.58:10A-37.1 et seq.), if an applicant has expended the
9 applicant's own funds on a remediation prior to filing an application
10 for financial assistance from the fund for the eligible project costs of
11 the remediation, the authority, upon approval of the application, may
12 make a grant from the fund pursuant to paragraph (1) of subsection c.
13 of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the
14 eligible owner or operator for the eligible project costs of the
15 remediation.

16 (cf: P.L.2001, c.22, s.2)

17

18 5. Section 24 of P.L.1997, c.235 (C.58:10A-37.23) is amended to
19 read as follows:

20 24. Prior to July 1, 1997, or **[within six months]** upon completion
21 of the upgrade of an underground storage tank **[being upgraded and**
22 **the site remediated]** as required pursuant to P.L.1986, c.102
23 (C.58:10A-21 et seq.), **[whichever is later,]** the owner or operator of
24 that underground storage tank shall submit to the department evidence
25 of financial responsibility for taking corrective action and
26 compensating third parties as is required pursuant to section 5 of
27 P.L.1986, c.102 (C.58:10A-25) or pursuant to 42 U.S.C. s.6991 et
28 seq. The department may require that evidence of financial
29 responsibility be submitted prior to the last disbursement of financial
30 assistance from the fund. After a regulated tank is upgraded, the New
31 Jersey Spill Compensation Fund, created pursuant to the "Spill
32 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et
33 seq.) shall no longer serve as the evidence of financial responsibility
34 for the regulated tank.

35 (cf: P.L.1997, c.235, s.24)

36

37 6. (New Section) Within 12 months of the effective date of this
38 act, the Department of Environmental Protection shall conduct a
39 public education and information program to inform owners and
40 operators of petroleum underground storage tanks of the changes in
41 the eligibility criteria, changes in the grant and loan limits and changes
42 in the application deadlines adopted pursuant to this act. The public
43 education program shall, among other things, inform those owners or
44 operators of regulated tanks that have not closed or upgraded their
45 tanks, and any person whose application for financial assistance from
46 the fund has been denied because of the failure to meet the previous

1 application deadline of the changes adopted pursuant to this act.

2 7. This act shall take effect immediately.

3

4

5

STATEMENT

6

7

8 This bill would revise the criteria for the awarding of grants and
9 loans for the upgrade, closure and remediation of underground storage
10 tanks. The bill would extend the application deadlines for financial
11 assistance for closure and remediation for regulated tanks to June 30,
12 2004. For those regulated tanks that are not operational, the bill
13 would authorize the application for financial assistance for the closure
14 and remediation of those tanks for 18 months after the date of
15 discovery of the tank, or 18 months from the effective date of the
16 substitute bill, whichever is later.

17 The bill would increase the monetary limits for grants and loans.
18 For grants, the substitute bill would authorize a maximum per facility
19 grant of \$500,000. Currently, a grant award may not exceed \$250,000.
20 For loans, the bill would authorize a maximum per facility loan of
21 \$2,000,000. However, in cases where a discharge poses an imminent
22 and significant threat to a drinking water source, the bill would
23 authorize a maximum per facility loan of \$3,000,000. Under current
24 law, a loan award may not exceed \$1,000,000.

25 The bill would increase the income and net worth limitations for
26 grant eligibility to \$250,000 and \$500,000 respectively. Currently, an
27 applicant for a grant must have an annual income or a net worth,
28 excluding the primary residence of under \$100,000.

29 The bill would remove the requirement that an applicant must have
30 owned a regulated tank as of December 1, 1996, and continually
31 thereafter to be eligible for a conditional hardship grant. Instead, for
32 regulated tanks, the applicant for financial assistance must have owned
33 the tank as of December 1, 2002 and continually thereafter to qualify
34 for a grant. For tanks that are not regulated, there is no date of
35 ownership requirement to qualify for a grant.

36 The bill would also authorize grants for independent institutions of
37 higher education, for tax-exempt nonprofit corporations with under
38 100 paid employees, and for duly incorporated volunteer fire,
39 ambulance, first aid, emergency, or rescue companies or squads.

40 The bill would remove the cap on the total grant awards as a
41 percentage of the total assistance awarded.

42 Further, the bill would authorize eligible project costs to include the
43 replacement of a leaking home heating oil tank with an above-ground
44 or underground storage tank.

45 The bill would require that upon completion of the upgrade of an
46 underground storage tank, the owner or operator of the tank must

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14

1 submit evidence of financial assurance as required pursuant to State
2 and federal law.

3 The bill would also authorize the Department of Environmental
4 Protection to require that evidence of financial assurance be submitted
5 prior to the last disbursement of financial assistance from the fund.

6 Finally, the bill would require the Department of Environmental
7 Protection to perform a public education and information program to
8 inform owners and operators of underground storage tanks about the
9 changes adopted pursuant to this legislation.

ASSEMBLY, No. 3024

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED NOVEMBER 25, 2002

Sponsored by:

Assemblyman DAVID C. RUSSO

District 40 (Bergen, Essex and Passaic)

Assemblyman KEVIN J. O'TOOLE

District 40 (Bergen, Essex and Passaic)

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Revises criteria for financing underground storage tank closures, upgrades and remediations.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/4/2003)

1 AN ACT concerning underground storage tank financing, and
2 amending and supplementing P.L.1997, c.235.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 5 of P.L.1997, c.235 [(C.58:10A-5)] (C.58:10A-37.5)
8 is amended to read as follows:

9 5. a. The authority may award financial assistance from the fund to
10 an eligible owner or operator in the form of a loan or a conditional
11 hardship grant as provided in this section. An award of financial
12 assistance, either as a loan or a grant, or a combination of both, may,
13 upon application therefor, be for 100% of the eligible project costs.
14 However, a loan that any applicant may receive from the fund for an
15 upgrade, remediation, or closure, or any combination thereof, for any
16 one facility, may not exceed [~~\$1,000,000~~] \$2,000,000, except as
17 provided below, and a grant that any applicant may receive from the
18 fund for any one facility, may not exceed [~~\$250,000~~] \$500,000. A
19 loan that an applicant may receive from the fund for a remediation of
20 a discharge that poses an imminent and significant threat to a drinking
21 water source may not exceed \$3,000,000. The total amount of
22 financial assistance awarded as grants in any one year may not exceed
23 one third of the total amount of financial assistance awarded in that
24 year except that this limitation upon the award of grants shall not
25 apply to financial assistance awarded between January 1, 1999 and
26 March 31, 2004.

27 b. A public entity applying for financial assistance from the fund
28 may only be awarded financial assistance in the form of an interest free
29 loan.

30 c. An applicant, other than a public entity, may apply for and
31 receive a conditional hardship grant as provided in paragraph (1) of
32 this subsection, or a loan for an upgrade, closure, or remediation as
33 provided in paragraph (2) of this subsection. Financial assistance
34 awarded an applicant pursuant to this subsection may consist entirely
35 of a conditional hardship grant, a loan for an upgrade, or loan for a
36 closure, or a loan for a remediation, or any combination thereof,
37 except that the total amount of the award of financial assistance shall
38 be subject to the per facility dollar limitation enumerated in subsection
39 a. of this section. Notwithstanding any other provision of this
40 subsection to the contrary, no tax exempt, nonprofit organization,
41 corporation, or association shall be awarded a conditional hardship
42 grant pursuant to paragraph (1) of this subsection.

43 (1) A conditional hardship grant for eligible project costs of an

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

Matter underlined thus is new matter.

1 upgrade, closure or remediation shall be awarded by the authority
2 based upon a finding of eligibility and financial hardship and upon a
3 finding that the applicant meets the criteria set forth in this act.

4 [In order to be eligible for a conditional hardship grant, the
5 applicant shall have owned or operated the subject petroleum
6 underground storage tank as of December 1, 1996 and continually
7 thereafter or shall have inherited the property from a person who
8 owned the petroleum underground storage tank as of that date.] No
9 applicant shall be eligible for a conditional hardship grant if the
10 applicant has a taxable income of more than [~~\$100,000~~] \$250,000 or
11 a net worth, exclusive of the applicant's primary residence, of over
12 [~~\$100,000~~] \$500,000.

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

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

32 If the authority awards a conditional hardship grant in combination
33 with a loan pursuant to this subsection, the authority shall release to
34 the applicant the loan monies prior to the release of the conditional
35 hardship grant monies.

36 Conditional hardship grants awarded to an applicant shall be subject
37 to the lien provisions enumerated in section 16 of P.L.1997, c.235
38 (C.58:10A-37.16).

39 (2) A loan to an eligible owner or operator for the eligible project
40 costs of an upgrade, closure, or remediation shall be awarded by the
41 authority only upon a finding that the applicant other than a public
42 entity is able to repay the amount of the loan.

43 In making a finding of an applicant's ability to repay a loan for the
44 upgrade, closure, and remediation of a regulated tank, or for the
45 remediation of a discharge from a petroleum underground storage
46 tank, the authority shall base its finding, as applicable, upon the cash

1 flow of the applicant's business, the applicant's taxable income and the
2 applicant's personal and business assets, except that the authority may
3 not consider the applicant's primary residence as collateral, except that
4 the authority may consider the applicant's primary residence as
5 collateral with the permission of the applicant or where the subject
6 petroleum underground storage tank or regulated tank is located at the
7 primary residence.

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

14 e. Nothing in this section is intended to alter the priority or criteria
15 for awarding financial assistance established pursuant to section 4 of
16 P.L.1997, c.235 (C.58:10A-37.4).

17 f. An eligible owner or operator may only be awarded that amount
18 of financial assistance issued as a loan for which the applicant
19 demonstrates he could not qualify for and obtain as a commercial loan.
20 The provisions of this subsection shall not apply to an owner or
21 operator or petroleum underground storage tank used to store heating
22 oil for onsite consumption in a residential building.
23 (cf: P.L.2001, c.22, s.1)

24

25 2. Section 6 of P.L.1997, c.235 (C.58:10A-37.6) is amended to
26 read as follows:

27 6. An eligible owner or operator seeking financial assistance from
28 the fund shall file an application on a form to be developed by the
29 authority. The application form shall be submitted with the application
30 fee. The application fee per facility for residential petroleum
31 underground storage tanks shall be \$250. The authority may establish
32 the application fee per facility for nonresidential petroleum
33 underground storage tanks.

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

1 submit the filing fee, then the filing date for the application shall not
2 be established until the date on which the authority receives the
3 application fee. A change in the filing date resulting from failure to
4 submit a completed application or from failure to submit the
5 application fee in a timely fashion for applications filed for financial
6 assistance for a regulated tank to meet the upgrade or closure
7 requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102
8 (C.58:10A-21 et seq.) or for the remediation of a discharge from any
9 such regulated tank shall not render the application ineligible for
10 financial assistance as long as the initial date of application is prior to
11 [January 1, 1999, or prior to August 31, 1999, as applicable] June 30,
12 2004, or for a regulated tank that is not operational, 18 months from
13 the date of discovery of the tank .

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

21 (cf: P.L.1999, c.89, s.2)

22

23 3. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to
24 read as follows:

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

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

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

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

43 (3) the applicant failed to commence or complete a remediation,
44 closure, or an upgrade for which an award of financial assistance was
45 made within the time required by the department in accordance with
46 the applicable rules and regulations, within the time prescribed in an

1 administrative order, an administrative consent agreement, a
2 memorandum of agreement, or a court order; or

3 (4) the applicant provided false information or withheld information
4 on a loan or grant application, or other relevant information required
5 to be submitted to the authority, on any matter that would otherwise
6 render the applicant ineligible for financial assistance from the fund,
7 that would alter the priority of the applicant to receive financial
8 assistance from the fund, that resulted in the applicant receiving a
9 larger grant or loan award than the applicant would otherwise be
10 eligible, or that resulted in payments from the fund in excess of the
11 actual eligible project costs incurred by the applicant or the amount to
12 which the applicant is legally eligible.

13 Nothing in this subsection shall be construed to require the
14 authority to undertake an investigation or make any findings
15 concerning the conduct described in this subsection.

16 c. An application for financial assistance from the fund for an
17 upgrade or closure of a regulated tank shall include all regulated tanks
18 at the facility for which the applicant is seeking financial assistance.
19 Once financial assistance for an upgrade[,] or closure [or a
20 remediation] is awarded for a facility, no additional award of financial
21 assistance for upgrade or closure costs may be made for that facility.
22 However, if an applicant discovers while performing upgrade or
23 closure activities that a remediation is necessary at the site of a facility,
24 and if financial assistance was previously awarded for that site only for
25 an upgrade or closure of a regulated tank, the applicant may amend his
26 application and apply for financial assistance for the required
27 remediation subject to the limitations enumerated in section 5 of [this
28 act] P.L.1997, c.235 (C.58:10A-37.5). An application for financial
29 assistance for an upgrade or closure of a regulated tank shall be
30 conditioned upon the applicant agreeing to perform, at the time of the
31 upgrade or closure, any remediation necessary as a result of a
32 discharge from the regulated tank and commencement of the
33 remediation within the time prescribed and in accordance with the
34 rules and regulations of the department.

35 d. Except as provided below, no financial assistance for upgrade
36 or closure shall be awarded for any regulated tank required to meet the
37 upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq.
38 or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a
39 discharge from any such regulated tank except as provided in
40 subsection c. of this section, unless the application is filed with the
41 authority prior to [January 1, 1999] June 30, 2004 and the application
42 is complete and the application fee is received by [August 1, 1999]
43 December 31, 2004 . No financial assistance for upgrade or closure
44 shall be awarded for any underground storage tank with a capacity of
45 over 2,000 gallons used to store heating oil for onsite consumption in
46 a nonresidential building required to be upgraded pursuant to

1 P.L.1986, c.102 (C.58:10A-21 et seq.) but not pursuant to 42
2 U.S.C.s.6991 et seq. or for the remediation of a discharge from any
3 such regulated tank except as provided in subsection c. of this section,
4 unless the application is filed with the authority prior to [August 31,
5 1999] June 30, 2004 and the application is complete and the
6 application fee is received by [March 31, 2000] December 31, 2004.
7 In the case of a regulated tank that is not operational, financial
8 assistance for the closure or the remediation of any discharge
9 therefrom may be awarded if the application is filed with the authority
10 no more than 18 months after the date of discovery of the existence of
11 the regulated tank.

12 e. The date of occurrence of a discharge shall not affect eligibility
13 for financial assistance from the fund. Except for a preliminary
14 assessment or a site investigation performed after the effective date of
15 P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in
16 subsections g. and h. of this section, no award of financial assistance
17 shall be made from the fund for the otherwise eligible project costs of
18 a remediation, closure, or an upgrade, or parts thereof, completed
19 prior to an award of financial assistance from the fund.

20 f. No financial assistance may be awarded from the fund for the
21 remediation of a discharge from a petroleum underground storage tank
22 if financial assistance from the Hazardous Discharge Site Remediation
23 Fund established pursuant to section 26 of P.L.1993, c.139
24 (C.58:10B-4) has previously been made for a remediation at that site
25 as a result of a discharge from that petroleum underground storage
26 tank. [No financial assistance may be awarded from the fund for the
27 remediation of a discharge from a petroleum underground storage tank
28 if the discharge began subsequent to the completion of an upgrade of
29 that petroleum underground storage tank, which upgrade was intended
30 to meet all applicable upgrade regulations of the department, no matter
31 when the upgrade was performed].

32 g. Notwithstanding any provision of P.L.1997, c.235
33 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed
34 an application for financial assistance from the fund, and there are
35 either insufficient monies in the fund or the authority has not yet acted
36 upon the application or awarded the financial assistance, the eligible
37 owner or operator may expend its own funds for the upgrade, closure,
38 or remediation, and upon approval of the application, the authority
39 shall award the financial assistance as a reimbursement of the monies
40 expended for eligible project costs.

41 h. Notwithstanding any provision to the contrary of P.L.1997,
42 c.235 (C.58:10A-37.1 et seq.), if an applicant has expended the
43 applicant's own funds on a remediation prior to filing an application
44 for financial assistance from the fund for the eligible project costs of
45 the remediation, the authority, upon approval of the application, may
46 make a grant from the fund pursuant to paragraph (1) of subsection c.

1 of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the
2 eligible owner or operator for the eligible project costs of the
3 remediation.

4 (cf: P.L.2001, c.22, s.2)

5
6 4. (New Section) Within 12 months of the effective date of this
7 act, the Department of Environmental Protection shall conduct a
8 public education and information program to inform owners and
9 operators of petroleum underground storage tanks of the changes in
10 the eligibility criteria, changes in the grant and loan limits and changes
11 in the application deadlines adopted pursuant to this act. The public
12 education program shall, among other things, inform those owners or
13 operators of regulated tanks that have not closed or upgraded their
14 tanks, and any person whose application for financial assistance from
15 the fund has been denied because of the failure to meet the previous
16 application deadline of the changes adopted pursuant to this act.

17
18 5. This act shall take effect immediately.

19
20
21 STATEMENT

22
23 This bill would revise the criteria for the awarding of grants and
24 loans for the upgrade, closure and remediation of underground storage
25 tanks. The bill would extend the application deadlines for regulated
26 tanks to June 30, 2004. For those regulated tanks that are not
27 operational, the bill would authorize the application for financial
28 assistance for the closure and remediation of those tanks for 18
29 months after the date of discovery of the tank. The bill would increase
30 the monetary limits for grants and loans. For grants, the bill would
31 authorize a maximum per facility grant of \$500,000. Currently, a grant
32 award may not exceed \$250,000. For loans, the bill would authorize
33 a maximum per facility loan of \$2,000,000. However, in cases where
34 a discharge poses an imminent and significant threat to a drinking
35 water source, the bill would authorize a maximum per facility loan of
36 \$3,000,000. Currently, a loan award may not exceed \$1,000,000.

37 The bill would increase the income and net worth limitations for
38 grant eligibility to \$250,000 and \$500,000 respectively. Currently, an
39 applicant for a grant must have an annual income or a net worth,
40 excluding the primary residence of under \$100,000. The bill would
41 remove the requirement that an applicant must have owned a regulated
42 tank as of December 1, 1996, and continually thereafter to be eligible
43 for a conditional hardship grant. The bill would authorize financial
44 assistance from the fund for the remediation of a discharge even if the
45 discharge began subsequent to the upgrade of the underground storage
46 tank. Finally, the bill would require the Department of Environmental

A3024 RUSSO, O'TOOLE

9

- 1 Protection to perform a public education and information program to
- 2 inform owners and operators of underground storage tanks about the
- 3 changes adopted pursuant to this bill.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3287 and 3024

STATE OF NEW JERSEY

DATED: MARCH 6, 2003

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3287 and 3024.

This Assembly Committee Substitute for Assembly Bill Nos. 3287 and 3024 would revise the criteria for the awarding of grants and loans for the upgrade, closure and remediation of underground storage tanks. The substitute bill would extend the application deadlines for financial assistance for closure and remediation for regulated tanks to June 30, 2004. Further, the substitute bill would extend the application deadline for financial assistance for the upgrade of those tanks regulated under State law only, that have received an extension of the deadline for compliance with the standards. For those regulated tanks that are not operational, the substitute bill would authorize the application for financial assistance for the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or 18 months from the effective date of the substitute bill, whichever is later.

The substitute bill would increase the monetary limits for grants and loans. For grants, the substitute bill would authorize a maximum per facility grant of \$500,000. Currently, a grant award may not exceed \$250,000. For loans, the substitute bill would authorize a maximum per facility loan of \$2,000,000. However, in cases where a discharge poses a threat to a drinking water source, the substitute bill would authorize a maximum per facility loan of \$3,000,000. The substitute bill would also amend current law to provide that there shall be a priority for the award of financial assistance when a discharge poses a threat to a drinking water source, rather than an imminent and significant threat as in current law. In addition, the substitute bill would increase the monetary limits for grants and loans provided to an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act" to a loan in an amount not to exceed \$3,000,000 and a grant in an amount not to exceed \$750,000. Under current law, a loan award may

not exceed \$1,000,000.

The substitute bill would increase the income and net worth limitations for grant eligibility to \$200,000 and \$200,000, exclusive of primary residence and pension, respectively. Currently, an applicant for a grant must have an annual income and a net worth, excluding the primary residence of under \$100,000.

The substitute bill would remove the requirement that an applicant must have owned a regulated tank as of December 1, 1996, and continually thereafter to be eligible for a conditional hardship grant. Instead, for regulated tanks, the applicant for financial assistance must have owned the tank as of December 1, 2002 and continually thereafter to qualify for a grant. For tanks that are not regulated, there is no date of ownership requirement to qualify for a grant.

The substitute bill would also authorize grants for independent institutions of higher education, for tax-exempt nonprofit corporations with under 100 paid employees, and for duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue companies or squads.

The substitute bill would remove the cap on the total grant awards as a percentage of the total assistance awarded.

Further, the substitute bill would authorize eligible project costs to include the replacement of a leaking home heating oil tank with an above-ground or underground storage tank.

The substitute bill would provide that a grant may be awarded to reimburse an eligible owner or operator for the eligible project costs of the remediation when an applicant has expended the applicant's own funds on a remediation after filing an application for financial assistance from the fund for the eligible project costs of the remediation. Current law provides for such reimbursement of costs expended prior to filing an application.

The substitute bill would authorize the authority, upon approval of the application, to make a grant to reimburse an applicant that is an independent institution of higher education that has expended its own funds on a remediation prior to filing an application for financial assistance from the fund for expenditures for the eligible project costs of the remediation made on or after December 1, 1996 in an amount not to exceed \$500,000 for each institution.

The substitute bill would authorize the authority, upon approval of the application, to make a grant to reimburse an applicant that has expended the applicant's own funds on a remediation of a petroleum underground storage tank used to store heating oil for onsite consumption at the applicant's primary residence prior to filing an application for financial assistance from the fund.

The substitute bill would require that upon completion of the upgrade of an underground storage tank, the owner or operator of the tank must submit evidence of financial assurance as required pursuant to State and federal law.

The substitute bill would also authorize the Department of Environmental Protection to require that evidence of financial assurance be submitted prior to the last disbursement of financial assistance from the fund.

Finally, the substitute bill would require the Department of Environmental Protection to perform a public education and information program to inform owners and operators of underground storage tanks about the changes adopted pursuant to this legislation.

As reported by the committee, this Assembly Committee Substitute for Assembly Bill Nos. 3287 and 3024 is identical to Senate Bill No. 1948 (SCS) as amended and also reported by the committee.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 3287 and 3024**

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 5, 2003

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3287 and 3024 (ACS), with committee amendments.

Assembly Bill Nos. 3287 and 3024 (ACS), as amended, revises the criteria for the awarding of grants and loans for the upgrade, closure and remediation of underground storage tanks. The bill extends the application deadlines for financial assistance for closure and remediation for regulated tanks to June 30, 2005. Further, the bill extends the application deadline for financial assistance for the upgrade of those tanks regulated under State law only, that have received an extension of the deadline for compliance with the standards. For those regulated tanks that are not operational, the bill authorizes the application for financial assistance for the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or 18 months from the effective date of the bill, whichever is later.

The bill increases the monetary limits for grants and loans. For grants, the bill authorizes a maximum per-facility grant of \$500,000. Currently, a grant award may not exceed \$250,000. For loans, the bill authorizes a maximum per facility loan of \$2,000,000. However, in cases where a discharge poses a threat to a drinking water source, the bill authorized a maximum per-facility loan of \$3,000,000. The bill amends current law to provide that there shall be a priority for the award of financial assistance when a discharge poses a threat to a drinking water source, rather than an "imminent and significant" threat, as in current law. The bill increases the monetary limits for grants and loans provided to an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act" to a loan in an amount not to exceed \$3,000,000 and a grant in an amount not to exceed \$750,000. Under current law, a loan award may not exceed \$1,000,000.

The bill increases the income and net worth limitations for grant

eligibility to \$200,000 and \$200,000, exclusive of primary residence and pension, respectively. Currently, an applicant for a grant must have an annual income and a net worth, excluding the primary residence, of under \$100,000.

The bill deletes the requirement that an applicant must have owned a regulated tank as of December 1, 1996, and continually thereafter to be eligible for a conditional hardship grant. Instead, for regulated tanks, the applicant for financial assistance must have owned the tank as of December 1, 2002 and continually thereafter to qualify for a grant. For tanks that are not regulated, there is no date of ownership requirement to qualify for a grant.

The bill authorizes grants for independent institutions of higher education, for tax-exempt nonprofit corporations with under 100 paid employees, and for duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue companies or squads.

The bill deletes the cap on the total grant awards as a percentage of the total assistance awarded.

The bill authorizes eligible project costs to include the replacement of a leaking home heating oil tank with an above-ground or underground storage tank.

The bill provides that a grant may be awarded to reimburse an eligible owner or operator for the eligible project costs of the remediation when an applicant has expended the applicant's own funds on a remediation after filing an application for financial assistance from the fund for the eligible project costs of the remediation. Current law provides for such reimbursement of costs expended prior to filing an application.

The bill authorizes the authority, upon approval of the application, to make a grant to reimburse an applicant that is an independent institution of higher education that has expended its own funds on a remediation prior to filing an application for financial assistance from the fund for expenditures for the eligible project costs of the remediation made on or after December 1, 1996 in an amount not to exceed \$500,000 for each institution.

The bill authorizes the authority, upon approval of the application, to make a grant to reimburse an applicant that has expended the applicant's own funds on a remediation of a petroleum underground storage tank used to store heating oil for onsite consumption at the applicant's primary residence prior to filing an application for financial assistance from the fund.

The bill requires that upon completion of the upgrade of an underground storage tank, the owner or operator of the tank must submit evidence of financial assurance as required pursuant to State and federal law.

The bill authorizes the Department of Environmental Protection to require that evidence of financial assurance be submitted prior to the last disbursement of financial assistance from the fund.

Finally, the bill requires the Department of Environmental Protection to perform a public education and information program to inform owners and operators of underground storage tanks about the changes adopted pursuant to this legislation.

As amended and reported by the committee, this bill is identical to Senate Bill No. 1948 (SCS)(1R) as also amended and reported by the committee.

FISCAL IMPACT:

Article VIII, Section II, paragraph 6 of the New Jersey Constitution dedicates 4% of the revenue annually derived from the Corporation Business Tax to environmental purposes, and through calendar year 2008 the constitution requires a minimum of one-third of that amount to be appropriated for providing funding, including the provision of loans or grants, for the upgrade, replacement, or closure of underground storage tanks that store or were used to store hazardous substances, and for the costs of remediating any discharge from those tanks.

The New Jersey Economic Development Authority reviewed the underground storage tank financing fund and as of December 31, 2002, estimated funds available for future projects at \$83.7 million.

COMMITTEE AMENDMENTS:

The amendments extend the application deadlines for financial assistance for closure and remediation for regulated tanks to June 30, 2005, instead of June 30, 2004, and extend the deadline for receipt of the application fee to December 31, 2005 instead of December 31, 2004.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3287 and 3024

STATE OF NEW JERSEY
210th LEGISLATURE

ADOPTED MARCH 6, 2003

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblyman DAVID C. RUSSO

District 40 (Bergen, Essex and Passaic)

Assemblyman KEVIN J. O'TOOLE

District 40 (Bergen, Essex and Passaic)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

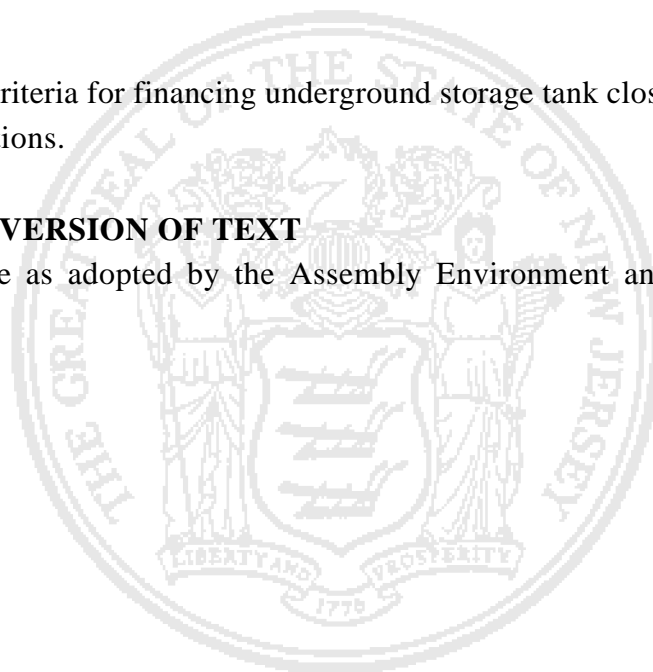
**Assemblymen Burzichelli, Conaway, Corodemus, Cryan, Greenwald,
Gregg, Hackett, Assemblywoman Pou, Assemblyman Sarlo,
Assemblywoman Watson Coleman, Assemblymen Connors, Fisher and
Assemblywoman Heck**

SYNOPSIS

Revises criteria for financing underground storage tank closures, upgrades and remediations.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Environment and Solid Waste Committee.



(Sponsorship Updated As Of: 6/13/2003)

1 AN ACT concerning underground storage tank financing, and
2 amending and supplementing P.L.1997, c.235.

3

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

6

7 1. Section 2 of P.L.1997, c.235 (C.58:10A-37.2) is amended to
8 read as follows:

9 2. As used in this act:

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

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

18 "Closure" means the proper closure or removal of a petroleum
19 underground storage tank necessary to meet all regulatory
20 requirements of federal, State, or local law;

21 "Commissioner" means the Commissioner of Environmental
22 Protection;

23 "Department" means the Department of Environmental Protection;

24 "Discharge" means the intentional or unintentional release by any
25 means of petroleum from a petroleum underground storage tank into
26 the environment;

27 "Eligible owner or operator" means (1) any owner or operator
28 other than the owner or operator of a petroleum underground storage
29 tank storing heating oil for onsite consumption in a residential building
30 who owns or operates less than 10 petroleum underground storage
31 tanks in New Jersey, who has a net worth of less than \$2,000,000 and
32 who demonstrates to the satisfaction of the authority, the inability to
33 qualify for and obtain a commercial loan for all or part of the eligible
34 project costs, or in the case of such an owner or operator of a facility
35 located within an area designated as a Planning Area 1 (Metropolitan),
36 Planning Area 2 (Suburban), or a designated center as designated
37 pursuant to the "State Planning Act," sections 1 through 12 of
38 P.L.1985, c.398 (C.52:18A-196 et seq.), who has a net worth of less
39 than \$3,000,000 and who demonstrates to the satisfaction of the
40 authority, the inability to qualify for and obtain a commercial loan for
41 all or part of the eligible project costs, (2) the owner or operator of a
42 petroleum underground storage tank storing heating oil for onsite
43 consumption in a residential building, [or] (3) a public entity who

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.

1 owns or operates a petroleum underground storage tank in New
2 Jersey, or (4) an independent institution of higher education that owns
3 or operates a petroleum underground storage tank;

4 "Eligible project costs" means the reasonable costs for equipment,
5 work or services required to effectuate a remediation, an upgrade, or
6 a closure which equipment, work or services are eligible for payment
7 from the Petroleum Underground Storage Tank Remediation,
8 Upgrade, and Closure Fund. In the case of an upgrade or closure of
9 a regulated tank, eligible project costs shall be limited to the cost of
10 the minimal effective system necessary to meet all the regulatory
11 requirements of federal and State law. The limitation of eligible
12 project costs to the minimal effective system shall not be construed to
13 deem ineligible those project costs expended to replace a regulated
14 tank rather than to improve the regulated tank. An owner or operator
15 may perform an upgrade or a closure beyond the minimal effective
16 system in which case the eligible project costs that may be awarded
17 from the fund as financial assistance shall be that amount that would
18 represent the cost of a minimal effective system. In the case of a
19 remediation of a petroleum underground storage tank used to store
20 heating oil for onsite consumption in a residential building, eligible
21 project costs shall include the cost to replace a leaking tank with an
22 above-ground or underground storage tank. In the case of a
23 remediation, eligible project costs shall not include the cost to
24 remediate a site to meet residential soil remediation standards if the
25 local zoning ordinances adopted pursuant to the "Municipal Land Use
26 Law," P.L.1975, c.291 (C.40:55D-1 et seq.) does not allow for
27 residential use. Eligible project costs shall include the cost of a
28 preliminary assessment and site investigation, even if performed prior
29 to the award of financial assistance from the fund if the preliminary
30 assessment and site investigation were performed after the effective
31 date of P.L.1997, c.235[. Eligible project costs shall not include the
32 costs of any remediation performed at a site where the petroleum
33 underground storage tank was removed prior to December 1, 1996];

34 "Facility" means one or more operational or nonoperational
35 petroleum underground storage tanks under single ownership at a
36 common site;

37 "Financial assistance" means a grant or loan or a combination of
38 both that may be awarded by the authority from the fund to an eligible
39 owner or operator as provided in section 5 of P.L.1997, c.235
40 (C.58:10A-37.5);

41 "Independent institution of higher education" means those
42 institutions of higher education incorporated and located in this State,
43 which, by virtue of law or character or license, are nonprofit
44 educational institutions empowered to grant academic degrees and
45 which provide a level of education which is equivalent to the education
46 provided by the State's public institutions of higher education as

1 attested by the receipt of and continuation of regional accreditation by
2 the Middle States Association of Colleges and Schools, and which are
3 eligible to receive State aid under the provisions of the Constitution of
4 the United States and the Constitution of the State of New Jersey.
5 "Independent institution of higher education" does not include any
6 educational institution dedicated primarily to the preparation or
7 training of ministers, priests, rabbis, or other professional persons in
8 the field of religion;

9 "Operator" means any person in control of, or having responsibility
10 for, the daily operation of a facility;

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

12 "Person" means any individual, partnership, corporation, society,
13 association, consortium, joint venture, commercial entity, or public
14 entity, but does not include the State or any of its departments,
15 agencies or authorities;

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

27 "Petroleum Underground Storage Tank Remediation, Upgrade and
28 Closure Fund" or "fund" means the fund established pursuant to
29 section 3 of P.L.1997, c.235 (C.58:10A-37.3);

30 "Petroleum underground storage tank" means a tank of any size,
31 including appurtenant pipes, lines, fixtures, and other related
32 equipment, that normally and primarily stores petroleum, the volume
33 of which, including the volume of the appurtenant pipes, lines, fixtures
34 and other related equipment, is 10% or more below the ground.
35 "Petroleum underground storage tank" does not include:

36 (1) Septic tanks installed or regulated pursuant to regulations
37 adopted by the department pursuant to "The Realty Improvement
38 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et
39 seq.) or the "Water Pollution Control Act," P.L.1977, c.74
40 (C.58:10A-1 et seq.);

41 (2) Pipelines, including gathering lines, regulated under 49 U.S.C.
42 s.60101 et seq., or intrastate pipelines regulated under State law;

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

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

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

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

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

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

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

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

25 "Upgrade" means the replacement of a regulated tank, the
26 installation of secondary containment, monitoring systems, release
27 detection systems, corrosion protection, spill prevention, or overfill
28 prevention therefor, or any other necessary improvement to the
29 regulated tank in order to meet the standards for regulated tanks
30 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and
31 42 U.S.C. s.6991 et seq.

32 (cf: P.L.1997, c.235, s.2)

33

34 2. Section 4 of P.L.1997, c.235 (C.58:10A-37.4) is amended to
35 read as follows:

36 4. a. Monies in the fund shall be allocated and used to provide
37 financial assistance only to (1) eligible owners or operators of
38 regulated tanks in this State in order to finance the eligible project
39 costs of the upgrade or closure of those regulated tanks as may be
40 required pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102
41 (C.58:10A-21 et seq.); and (2) eligible owners and operators of
42 petroleum underground storage tanks in this State in order to finance
43 the eligible project costs of remediations that are necessary due to the
44 discharge of petroleum from one or more of those petroleum
45 underground storage tanks. Priority for the issuance of financial
46 assistance from the fund, and the terms and conditions of that financial

1 assistance, shall be based upon the criteria set forth in this section.

2 b. Upon a determination that an application for financial assistance
3 meets all established criteria for the award of financial assistance from
4 the fund, the authority shall approve the application. Prior to
5 December 22, 1998, the authority may approve only those applications
6 given priority pursuant to paragraphs (1) and (2) of this subsection or
7 pursuant to subsections c. and f. of this section, but the authority may
8 receive, file, and deem complete any application for financial
9 assistance it receives prior to that date.

10 Upon the authority's approval of an application for financial
11 assistance, the authority shall award financial assistance to an applicant
12 upon the availability of sufficient monies in the fund. When monies in
13 the fund are not sufficient at any point in time to fully fund all
14 applications for financial assistance that have been approved by the
15 authority, the authority shall award financial assistance to approved
16 applicants, notwithstanding the date of approval of the application, in
17 the following order of priority:

18 (1) Upgrades of regulated tanks required to be upgraded pursuant
19 to 42 U.S.C. s.6991 et seq., and including any necessary remediation
20 at the site of the regulated tank, shall be given first priority;

21 (2) Closure of any regulated tank required to be upgraded
22 pursuant to 42 U.S.C. s.6991 et seq., and including any necessary
23 remediation at the site of the regulated tank, shall be given second
24 priority;

25 (3) Upgrades of regulated tanks required to be upgraded pursuant
26 to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant to
27 42 U.S.C. s.6991 et seq., and including any necessary remediation at
28 the site of the regulated tank, shall be given third priority;

29 (4) Any necessary remediations at the sites of petroleum
30 underground storage tanks other than those given priority pursuant to
31 paragraph (1), (2), or (3) of this subsection shall be given fourth
32 priority;

33 (5) Closure of any regulated tank required to be upgraded
34 pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), but not pursuant
35 to 42 U.S.C. s.6991 et seq., shall be given last priority.

36 c. Notwithstanding the priority for the award of financial
37 assistance set forth in subsection b. of this section, whenever there has
38 been a discharge, and the discharge poses [an imminent and
39 significant] a threat to a drinking water source, to human health, or to
40 a sensitive or significant ecological area, an approved application for
41 the award of financial assistance for the remediation and upgrade or
42 closure, if necessary, shall be given priority over all other applications
43 for financial assistance.

44 d. The priority ranking of applicants within any priority category
45 enumerated in paragraphs (1), (2), (3), (4), and (5) of subsection b.
46 and in subsection c. of this section shall be based upon the date an

1 application for financial assistance is filed with the authority as
2 determined pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6).

3 e. Whenever a facility consists of petroleum underground storage
4 tanks from more than one priority category as enumerated in
5 paragraphs (1) through (5) of subsection b. of this section, and
6 subsection c. of this section, all the petroleum underground storage
7 tanks at that facility shall be accorded the priority that would be
8 accorded the highest priority petroleum underground storage tank at
9 that facility.

10 f. Notwithstanding the priority rankings established in this section,
11 one-tenth of the amount annually appropriated to the Petroleum
12 Underground Storage Tank Remediation, Upgrade and Closure Fund
13 shall be used to provide financial assistance to owners or operators of
14 petroleum underground storage tanks used to store heating oil for
15 onsite consumption in a residential building, in order to finance the
16 eligible project costs of remediations that are necessary due to the
17 discharge of heating oil from those petroleum underground storage
18 tanks. The authority shall provide financial assistance pursuant to this
19 subsection notwithstanding the owner or operator's ability to obtain
20 commercial loans for all or part of the financing. The priority ranking
21 of applicants for these funds shall be based upon the date an
22 application for financial assistance is filed with the authority as
23 determined pursuant to section 6 of P.L.1997, c.235 (C.58:10A-37.6).
24 If the authority does not receive qualified applications for financial
25 assistance from owners and operators of petroleum underground
26 storage tanks used to store heating oil for onsite consumption that
27 meet the criteria set forth in this act and in any rules or regulations
28 issued pursuant thereto, sufficient to enable the award of financial
29 assistance an amount equal to one-tenth of the amount annually
30 appropriated to the fund in any one year as required pursuant to this
31 subsection, the authority may award that financial assistance in the
32 order of priority as provided in this section. In addition to the monies
33 dedicated pursuant to this subsection, the authority may award
34 financial assistance to an owner or operator of a petroleum
35 underground storage tank used to store heating for onsite consumption
36 when the criteria enumerated in subsection c. of this section are met.
37 (cf: P.L.1997, c.235, s.4)

38
39 3. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to
40 read as follows:

41 5. a. (1) The authority may award financial assistance from the
42 fund to an eligible owner or operator in the form of a loan or a
43 conditional hardship grant as provided in this section. An award of
44 financial assistance, either as a loan or a grant, or a combination of
45 both, may, upon application therefor, be for 100% of the eligible
46 project costs. However, a loan that any applicant may receive from

1 the fund for an upgrade, remediation, or closure, or any combination
2 thereof, for any one facility, may not exceed [\$1,000,000]
3 \$2,000,000, except as provided below, and a grant that any applicant
4 may receive from the fund for any one facility, may not exceed
5 [\$250,000. The total amount of financial assistance awarded as grants
6 in any one year may not exceed one third of the total amount of
7 financial assistance awarded in that year except that this limitation
8 upon the award of grants shall not apply to financial assistance
9 awarded between January 1, 1999 and March 31, 2004] \$500,000. A
10 loan that an applicant may receive from the fund for a remediation of
11 a discharge that poses a threat to a drinking water source may not
12 exceed \$3,000,000.

13 (2) Notwithstanding the provisions of paragraph (1) of this
14 subsection to the contrary, an eligible owner or operator of a facility
15 located within an area designated as a Planning Area 1 (Metropolitan),
16 Planning Area 2 (Suburban), or a designated center as designated
17 pursuant to the "State Planning Act," sections 1 through 12 of
18 P.L.1985, c.398 (C.52:18A-196 et seq.), may receive a loan in an
19 amount not to exceed \$3,000,000 and a grant in an amount not to
20 exceed \$750,000 for each facility so located.

21 b. A public entity applying for financial assistance from the fund
22 may only be awarded financial assistance in the form of an interest free
23 loan.

24 c. An applicant, other than a public entity, may apply for and
25 receive a conditional hardship grant for the upgrade, closure or
26 remediation as provided in paragraph (1) of this subsection, or a loan
27 for an upgrade, closure or remediation as provided in paragraph (2)
28 of this subsection , provided that an applicant for a conditional
29 hardship grant or a loan for an upgrade may be eligible for financial
30 assistance only for any underground storage tank with a capacity of
31 over 2,000 gallons used to store heating oil for onsite consumption in
32 a nonresidential building that has received an extension of the deadline
33 for compliance with the standards pursuant to subsection b. of section
34 9 of P.L.1986, c.102 (C.58:10A-29). Financial assistance awarded an
35 applicant pursuant to this subsection may consist entirely of a
36 conditional hardship grant, a loan for an upgrade, **[or]** a loan for a
37 closure, or a loan for a remediation, or any combination thereof,
38 except that the total amount of the award of financial assistance shall
39 be subject to the per facility dollar limitation enumerated in subsection
40 a. of this section. Notwithstanding any other provision of this
41 subsection to the contrary, no tax exempt, nonprofit organization,
42 corporation, or association shall be awarded a conditional hardship
43 grant pursuant to paragraph (1) of this subsection , provided that an
44 independent institution of higher education, a nonprofit organization,
45 corporation, or association with not more than 100 paid individuals
46 that is qualified for exemption from federal taxation pursuant to

1 section 501 (c)(3) of the federal Internal Revenue Code, 26 U.S.C.
2 s.501 (c)(3), or a duly incorporated volunteer fire, ambulance, first
3 aid, emergency, or rescue company or squad, may be awarded a
4 conditional hardship grant pursuant to paragraph (1) of this
5 subsection.

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

10 In order to be eligible for a conditional hardship grant for closure
11 or upgrade, in the case of a regulated tank , the applicant shall have
12 owned or operated the subject [petroleum underground storage]
13 regulated tank as of [December 1, 1996] December 1, 2002 and
14 continually thereafter or shall have inherited the property from a
15 person who owned the [petroleum underground storage] regulated
16 tank as of that date. In order to be eligible for a conditional hardship
17 grant for remediation, in the case of a regulated tank, the applicant
18 shall have owned or operated the subject regulated tank at the time of
19 tank closure. No applicant shall be eligible for a conditional hardship
20 grant if the applicant has a taxable income of more than [\$100,000]
21 \$200,000 or a net worth, exclusive of the applicant's primary residence
22 and pension , of over [\$100,000] \$200,000.

23 Notwithstanding the eligibility requirements for net worth and
24 income, an independent institution of higher education, a nonprofit
25 organization, corporation, or association with not more than 100 paid
26 individuals that is qualified for exemption from federal taxation
27 pursuant to section 501 (c)(3) of the federal Internal Revenue Code,
28 26 U.S.C. s.501 (c)(3), or a duly incorporated volunteer fire,
29 ambulance, first aid, emergency, or rescue company or squad shall be
30 eligible for a conditional hardship grant for eligible project costs of a
31 closure or remediation of a petroleum underground storage tank.

32 A finding of financial hardship by the authority shall be based upon
33 a determination that an applicant cannot reasonably be expected to
34 repay all or a portion of the eligible project costs if the financial
35 assistance were to be awarded as a loan. The amount of an award of
36 a conditional hardship grant shall be the amount of that portion of the
37 eligible project costs the authority determines the applicant cannot
38 reasonably be expected to repay.

39 In making a finding of financial hardship for an application for the
40 upgrade, closure, or remediation of a petroleum underground storage
41 tank, where the petroleum underground storage tank is a part of the
42 business property of the owner, the authority shall base its finding
43 upon the cash flow of the applicant's business, whether or not any part
44 of the applicant's business is related to the ownership or operation of
45 that petroleum underground storage tank. In making a finding of
46 financial hardship for an application for the upgrade or remediation of

1 a petroleum underground storage tank, where the petroleum
2 underground storage tank is not a part of the business property of the
3 owner, the authority shall base its finding upon the applicant's taxable
4 income in the year prior to the date of the application being submitted.

5 If the authority awards a conditional hardship grant in combination
6 with a loan pursuant to this subsection, the authority shall release to
7 the applicant the loan monies prior to the release of the conditional
8 hardship grant monies.

9 Conditional hardship grants awarded to an applicant shall be
10 subject to the lien provisions enumerated in section 16 of P.L.1997,
11 c.235 (C.58:10A-37.16).

12 (2) A loan to an eligible owner or operator for the eligible project
13 costs of an upgrade, closure, or remediation shall be awarded by the
14 authority only upon a finding that the applicant other than a public
15 entity is able to repay the amount of the loan.

16 In making a finding of an applicant's ability to repay a loan for the
17 upgrade, closure, and remediation of a regulated tank, or for the
18 remediation of a discharge from a petroleum underground storage
19 tank, the authority shall base its finding, as applicable, upon the cash
20 flow of the applicant's business, the applicant's taxable income and the
21 applicant's personal and business assets, except that the authority may
22 not consider the applicant's primary residence as collateral, except that
23 the authority may consider the applicant's primary residence as
24 collateral with the permission of the applicant or where the subject
25 petroleum underground storage tank or regulated tank is located at the
26 primary residence.

27 d. The authority shall, where applicable, require an applicant
28 applying for financial assistance from the fund to submit to the
29 authority the financial statements of the applicant's business for three
30 years prior to the date of the application, the most recent interim
31 financial statement for the year of the application, the applicant's
32 federal income tax returns, or other relevant documentation.

33 e. Nothing in this section is intended to alter the priority or criteria
34 for awarding financial assistance established pursuant to section 4 of
35 P.L.1997, c.235 (C.58:10A-37.4).

36 f. An eligible owner or operator may only be awarded that amount
37 of financial assistance issued as a loan for which the applicant
38 demonstrates he could not qualify for and obtain as a commercial loan.
39 The provisions of this subsection shall not apply to an owner or
40 operator or petroleum underground storage tank used to store heating
41 oil for onsite consumption in a residential building . to an independent
42 institution of higher education, or to a duly incorporated volunteer
43 fire, ambulance, first aid, emergency, or rescue company or squad.

44 (cf: P.L.2001, c.22, s.1)

1 4. Section 6 of P.L.1997, c.235 (C.58:10A-37.6) is amended to
2 read as follows:

3 6. An eligible owner or operator seeking financial assistance from
4 the fund shall file an application on a form to be developed by the
5 authority. The application form shall be submitted with the application
6 fee. The application fee per facility for residential petroleum
7 underground storage tanks shall be \$250. The authority may establish
8 the application fee per facility for nonresidential petroleum
9 underground storage tanks.

10 The authority shall adopt rules and regulations listing the filing
11 requirements for a complete application for financial assistance. If a
12 financial assistance application is determined to be incomplete by the
13 authority, an applicant shall have 30 days from the date of receipt of
14 written notification of incompleteness to file such additional
15 information as may be required by the authority for a completed
16 application. If an applicant fails to file the additional information
17 within the 30 days, the filing date for that application shall be the date
18 that such additional information is received by the authority. If the
19 additional information is filed within the 30 days and is satisfactory to
20 the authority, the filing date for that application shall be the initial date
21 of application with the authority. Notwithstanding the above, if a
22 completed application has been submitted and the applicant fails to
23 submit the filing fee, then the filing date for the application shall not
24 be established until the date on which the authority receives the
25 application fee. A change in the filing date resulting from failure to
26 submit a completed application or from failure to submit the
27 application fee in a timely fashion for applications filed for financial
28 assistance for a regulated tank to meet the upgrade or closure
29 requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102
30 (C.58:10A-21 et seq.) or for the remediation of a discharge from any
31 such regulated tank shall not render the application ineligible for
32 financial assistance as long as the initial date of application is prior to
33 [January 1, 1999, or prior to August 31, 1999, as applicable] June 30,
34 2004, or for a regulated tank that is not operational, 18 months from
35 the date of discovery of the tank or 18 months from the effective date
36 of P.L. , c. (C.) (now in the Legislature as this bill),
37 whichever is later .

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

45 (cf: P.L.1999, c.89, s.2)

1 5. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to
2 read as follows:

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

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

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

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

21 (3) the applicant failed to commence or complete a remediation,
22 closure, or an upgrade for which an award of financial assistance was
23 made within the time required by the department in accordance with
24 the applicable rules and regulations, within the time prescribed in an
25 administrative order, an administrative consent agreement, a
26 memorandum of agreement, or a court order; or

27 (4) the applicant provided false information or withheld
28 information on a loan or grant application, or other relevant
29 information required to be submitted to the authority, on any matter
30 that would otherwise render the applicant ineligible for financial
31 assistance from the fund, that would alter the priority of the applicant
32 to receive financial assistance from the fund, that resulted in the
33 applicant receiving a larger grant or loan award than the applicant
34 would otherwise be eligible, or that resulted in payments from the fund
35 in excess of the actual eligible project costs incurred by the applicant
36 or the amount to which the applicant is legally eligible.

37 Nothing in this subsection shall be construed to require the
38 authority to undertake an investigation or make any findings
39 concerning the conduct described in this subsection.

40 c. An application for financial assistance from the fund for an
41 upgrade or closure of a regulated tank shall include all regulated tanks
42 at the facility for which the applicant is seeking financial assistance.
43 Once financial assistance for an upgrade[,] or closure [or a
44 remediation] is awarded for a facility, no additional award of financial
45 assistance for upgrade or closure costs may be made for that facility.
46 However, if an applicant discovers while performing upgrade or

1 closure activities that a remediation is necessary at the site of a facility,
2 and if financial assistance was previously awarded for that site only for
3 an upgrade or closure of a regulated tank, the applicant may amend his
4 application and apply for financial assistance for the required
5 remediation subject to the limitations enumerated in section 5 of [this
6 act] P.L.1997, c.235 (C.58:10A-37.5). An application for financial
7 assistance for an upgrade or closure of a regulated tank shall be
8 conditioned upon the applicant agreeing to perform, at the time of the
9 upgrade or closure, any remediation necessary as a result of a
10 discharge from the regulated tank and commencement of the
11 remediation within the time prescribed and in accordance with the
12 rules and regulations of the department.

13 d. Except as provided below, no financial assistance for upgrade
14 [or closure] shall be awarded for any regulated tank required to meet
15 the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et
16 seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), [or for the remediation
17 of a discharge from any such regulated tank except as provided in
18 subsection c. of this section,] unless the application is filed with the
19 authority prior to January 1, 1999 and the application is complete and
20 the application fee is received by August 1, 1999. No financial
21 assistance for upgrade [or closure] shall be awarded for any
22 underground storage tank with a capacity of over 2,000 gallons used
23 to store heating oil for onsite consumption in a nonresidential building
24 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et
25 seq.) but not pursuant to 42 U.S.C.s.6991 et seq. [or for the
26 remediation of a discharge from any such regulated tank except as
27 provided in subsection c. of this section], unless the applicant has
28 received an extension of the deadline for compliance with the
29 standards pursuant to subsection b. of section 9 of P.L.1986, c.102
30 (C.58:10A-29), the application is filed with the authority prior to
31 [August 31, 1999] June 30, 2004 and the application is complete and
32 the application fee is received by [March 31, 2000] December 31,
33 2004.

34 No financial assistance for closure shall be awarded for any
35 regulated tank required to meet the upgrade or closure requirements
36 pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21
37 et seq.), or for the remediation of a discharge from any such regulated
38 tank except as provided in subsection c. of this section, unless the
39 application is filed with the authority prior to June 30, 2004 and the
40 application is complete and the application fee is received by
41 December 31, 2004.

42 In the case of a regulated tank that is not operational, financial
43 assistance for the closure or the remediation of any discharge
44 therefrom may be awarded if the application is filed with the authority
45 no more than 18 months after the date of discovery of the existence of

1 the regulated tank, or 18 months from the effective date of P.L. .c.
2 (C.) (now in the Legislature as this bill), whichever is later.

3 e. The date of occurrence of a discharge shall not affect eligibility
4 for financial assistance from the fund. Except for a preliminary
5 assessment or a site investigation performed after the effective date of
6 P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in
7 subsections g. [and h.] through j. of this section, no award of financial
8 assistance shall be made from the fund for the otherwise eligible
9 project costs of a remediation, closure, or an upgrade, or parts thereof,
10 completed prior to an award of financial assistance from the fund.

11 f. No financial assistance may be awarded from the fund for the
12 remediation of a discharge from a petroleum underground storage tank
13 if financial assistance from the Hazardous Discharge Site Remediation
14 Fund established pursuant to section 26 of P.L.1993, c.139
15 (C.58:10B-4) has previously been made for a remediation at that site
16 as a result of a discharge from that petroleum underground storage
17 tank. No financial assistance may be awarded from the fund for the
18 remediation of a discharge from a petroleum underground storage tank
19 if the discharge began subsequent to the completion of an upgrade of
20 that petroleum underground storage tank, which upgrade was intended
21 to meet all applicable upgrade regulations of the department, no matter
22 when the upgrade was performed.

23 g. Notwithstanding any provision of P.L.1997, c.235
24 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed
25 an application for financial assistance from the fund, and there are
26 either insufficient monies in the fund or the authority has not yet acted
27 upon the application or awarded the financial assistance, the eligible
28 owner or operator may expend its own funds for the upgrade, closure,
29 or remediation, and upon approval of the application, the authority
30 shall award the financial assistance as a reimbursement of the monies
31 expended for eligible project costs.

32 h. Notwithstanding any provision [to the contrary] of P.L.1997,
33 c.235 (C.58:10A-37.1 et seq.) to the contrary, if an applicant has
34 expended the applicant's own funds on a remediation [prior to] after
35 filing an application for financial assistance from the fund for the
36 eligible project costs of the remediation, the authority, upon approval
37 of the application, may make a grant from the fund pursuant to
38 paragraph (1) of subsection c. of section 5 of P.L.1997, c.235
39 (C.58:10A-37.5) to reimburse the eligible owner or operator for the
40 eligible project costs of the remediation.

41 i. Notwithstanding any provision of P.L.1997, c.235
42 (C.58:10A-37.1 et seq.) to the contrary, if an applicant that is an
43 independent institution of higher education has expended the
44 applicant's own funds on a remediation prior to filing an application
45 for financial assistance from the fund for the eligible project costs of
46 the remediation, the authority, upon approval of the application, may

1 make a grant from the fund pursuant to paragraph (1) of subsection c.
2 of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the
3 applicant for expenditures for the eligible project costs of the
4 remediation made on or after December 1, 1996 in an amount not to
5 exceed \$500,000 for each independent institution of higher education.
6 j. Notwithstanding any provision of P.L.1997, c.235
7 (C.58:10A-37.1 et seq.) to the contrary, if an applicant has expended
8 the applicant's own funds for a remediation of a petroleum
9 underground storage tank used to store heating oil at the applicant's
10 primary residence prior to filing an application for financial assistance
11 from the fund for the eligible project costs of the remediation, the
12 authority, upon approval of the application, may make a grant from the
13 fund pursuant to paragraph (1) of subsection c. of section 5 of
14 P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant for the
15 eligible project costs of the remediation.
16 (cf: P.L.2001, c.22, s.2)

17
18 6. Section 24 of P.L.1997, c.235 (C.58:10A-37.23) is amended to
19 read as follows:

20 24. Prior to July 1, 1997, or [within six months] upon completion
21 of the upgrade of an underground storage tank [being upgraded and
22 the site remediated] as required pursuant to P.L.1986, c.102
23 (C.58:10A-21 et seq.), [whichever is later,] the owner or operator of
24 that underground storage tank shall submit to the department evidence
25 of financial responsibility for taking corrective action and
26 compensating third parties as is required pursuant to section 5 of
27 P.L.1986, c.102 (C.58:10A-25) or pursuant to 42 U.S.C. s.6991 et
28 seq. The department may require that evidence of financial
29 responsibility be submitted prior to the last disbursement of financial
30 assistance from the fund. After a regulated tank is upgraded, the New
31 Jersey Spill Compensation Fund, created pursuant to the "Spill
32 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et
33 seq.) shall no longer serve as the evidence of financial responsibility
34 for the regulated tank.

35 (cf: P.L.1997, c.235, s.24)

36
37 7. (New section) Within 12 months of the effective date of this
38 act, the Department of Environmental Protection shall conduct a
39 public education and information program to inform owners and
40 operators of petroleum underground storage tanks of the changes in
41 the eligibility criteria, changes in the grant and loan limits and changes
42 in the application deadlines adopted pursuant to this act. The public
43 education program shall, among other things, inform those owners or
44 operators of regulated tanks that have not closed or upgraded their
45 tanks, and any person whose application for financial assistance from
46 the fund has been denied because of the failure to meet the previous

1 application deadline of the changes adopted pursuant to this act.

2

3 8. This act shall take effect immediately.