

CHAPTER 58

AN ACT concerning underground storage tanks, and amending and supplementing P.L.1997, c.235 and P.L.1991, c.123.

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

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

C.58:10A-37.2 Definitions relative to upgrade, remediation, closure of underground storage tanks.

2. As used in this act:

"Applicant" means a person who files an application for financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund for payment of eligible project costs of a remediation due to a discharge of petroleum from a petroleum underground storage tank, for payment of eligible project costs of a replacement or closure of a petroleum underground storage tank that is not regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq., and for payment of eligible project costs of an upgrade or closure of a regulated tank;

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

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

"Commissioner" means the Commissioner of Environmental Protection;

"Department" means the Department of Environmental Protection;

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

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

"Eligible project costs" means the reasonable costs for equipment, work or services required to effectuate a remediation, an upgrade, or a closure which equipment, work or services are eligible for payment from the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. In the case of an upgrade or closure of a regulated tank, eligible project costs shall be limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of federal and State law except that an eligible owner or operator who has met the upgrade requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.) may be awarded a loan which shall not be limited to the cost of a minimal effective system, in order to finance the costs of the improvement or replacement of tanks to meet State and federal standards as provided in subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5). The limitation of eligible project costs to the minimal effective system shall not be construed to deem ineligible those project costs expended to replace a regulated tank rather than to improve the regulated tank.

An owner or operator may perform an upgrade or a closure beyond the minimal effective system in which case the eligible project costs that may be awarded from the fund as financial assistance in the form of a grant shall be that amount that would represent the cost of a minimal effective system. In the case of a remediation, replacement, or closure of a petroleum underground storage tank that is unregulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq., eligible project costs shall include the cost to replace a tank with an above-ground or underground storage tank. In the case of a remediation, eligible project costs shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) do not allow for residential use. Eligible project costs shall include the cost of a preliminary assessment and site investigation, even if performed prior to the award of financial assistance from the fund if the preliminary assessment and site investigation were performed after the effective date of P.L.1997, c.235;

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

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

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

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

"Owner" means any person who owns a facility;

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

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

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

"Petroleum underground storage tank" means a tank of any size, including appurtenant pipes, lines, fixtures, and other related equipment, that normally and primarily stores

petroleum, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground. "Petroleum underground storage tank" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

C.58:10A-37.4 Allocation of fund; priorities.

4. a. Monies in the fund shall be allocated and used to provide financial assistance only to (1) eligible owners or operators of regulated tanks in this State in order to finance the eligible project costs of the upgrade or closure of those regulated tanks as may be required pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.); (2) eligible owners and operators of petroleum underground storage tanks in this State in order to finance the eligible project costs of remediations that are necessary due to the discharge of petroleum from one or more of those petroleum underground storage tanks ; (3) eligible owners or operators of

petroleum underground storage tanks in this State that are not regulated pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) or 42 U.S.C. s.6991 et seq. in order to finance the eligible project costs of the replacement or closure of those tanks; and (4) eligible owners or operators of regulated tanks in this State who have met the upgrade requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.) in order to finance an improvement or replacement of a regulated tank. Priority for the issuance of financial assistance from the fund, and the terms and conditions of that financial assistance, shall be based upon the criteria set forth in this section.

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

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

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

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

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

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

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

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

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

e. Whenever a facility consists of petroleum underground storage tanks from more than one priority category as enumerated in paragraphs (1) through (5) of subsection b. of this

section, and subsection c. of this section, all the petroleum underground storage tanks at that facility shall be accorded the priority that would be accorded the highest priority petroleum underground storage tank at that facility.

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

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

C.58:10A-37.5 Awarding of financial assistance.

5. a. (1) The authority may award financial assistance from the fund to an eligible owner or operator in the form of a loan or a conditional hardship grant as provided in this section. An award of financial assistance, either as a loan or a grant, or a combination of both, may, upon application therefor, be for 100% of the eligible project costs, except as provided in paragraph (1) of subsection c. and in subsection h. of this section. However, a loan that any applicant may receive from the fund for an upgrade, remediation, or closure, or any combination thereof, for any one facility, may not exceed \$2,000,000, except as provided below, and a grant that any applicant may receive from the fund for any one facility, may not exceed \$500,000. A loan that an applicant may receive from the fund for a remediation of a discharge that poses a threat to a drinking water source may not exceed \$3,000,000.

(2) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, an eligible owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), or the Highlands Region designated pursuant to section 7 of P.L.2004, c.120 (C.13:20-7), may receive a loan in an amount not to exceed \$3,000,000 and a grant in an amount not to exceed \$1,000,000 for each facility so located.

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

c. An applicant, other than a public entity, may apply for and receive a conditional hardship grant for the upgrade, closure or remediation as provided in paragraph (1) of this subsection, or a loan for an upgrade, closure or remediation as provided in paragraph (2) of this subsection, provided that an applicant for a conditional hardship grant or a loan for an upgrade may be eligible for financial assistance only for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building that has received an extension of the deadline for compliance with the standards pursuant to subsection b. of section 9 of P.L.1986, c.102 (C.58:10A-29). Financial assistance awarded an applicant pursuant to this subsection may consist entirely of a conditional hardship grant, a loan for an upgrade, a loan for a closure, or a loan for a remediation, or any combination thereof, except that the total amount of the award of financial assistance shall be subject to the per facility dollar limitation enumerated in subsection a. of this section. Notwithstanding any other provision of this subsection to the contrary, no tax exempt, nonprofit organization, corporation, or association shall be awarded a conditional hardship grant pursuant to paragraph (1) of this subsection, provided that an independent institution of higher education, a nonprofit organization, corporation, or association with not more than 100 paid individuals that is qualified for exemption from federal taxation pursuant to section 501 (c)(3) of the federal Internal Revenue Code, 26 U.S.C.s.501(c)(3), or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad, may be awarded a conditional hardship grant pursuant to paragraph (1) of this subsection.

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

In order to be eligible for a conditional hardship grant for closure or upgrade, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank as of December 1, 2002 and continually thereafter or shall have inherited the property from a person who owned the regulated tank as of that date. In order to be eligible for a conditional hardship grant for remediation, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank at the time of tank closure. No applicant shall be eligible for a conditional hardship grant if the applicant has a taxable income of more than \$250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$500,000. Any applicant with a taxable income of more than \$200,000 who qualifies for a grant shall be required to pay no more than \$1,000 of the eligible project costs .

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

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

In making a finding of financial hardship for an application for the upgrade, closure, or

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

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

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

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

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

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

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

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

g. An eligible owner or operator of a regulated tank in this State who has met the upgrade requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.) may be awarded a loan in order to finance an improvement or replacement of a regulated tank to meet State and federal standards.

h. (1) In the case of a closure of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building in this State where no remediation is required, an eligible owner or operator may receive a grant in an amount up to \$1,200.

(2) In the case of a replacement and closure of a petroleum underground storage tank

used to store heating oil for onsite consumption in a residential building in this State where no remediation is required, an eligible owner or operator may receive a grant in an amount up to \$3,000.

No person shall be eligible for grant monies from the fund to replace a petroleum underground storage tank that stores heating oil for onsite consumption in a residential building if the tank that stores heating oil for that residential building was previously replaced using a grant from the fund.

i. In the case of a closure and replacement of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building in this State, to the maximum extent feasible, the owner or operator shall replace the petroleum underground storage tank with an aboveground tank.

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

C.58:10A-37.7 Conditions for awarding financial assistance.

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

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

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

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

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

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

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

c. An application for financial assistance from the fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance. Except as provided in subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), once financial assistance for an upgrade or closure is awarded for a

facility, no additional award of financial assistance for upgrade or closure costs may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend his application and apply for financial assistance for the required remediation subject to the limitations enumerated in section 5 of P.L.1997, c.235 (C.58:10A-37.5). An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank and commencement of the remediation within the time prescribed and in accordance with the rules and regulations of the department.

d. Except as provided in this subsection, and in subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial assistance for upgrade shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), unless the application is filed with the authority prior to January 1, 1999 and the application is complete and the application fee is received by August 1, 1999. Except as provided in subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial assistance for upgrade shall be awarded for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C.s.6991 et seq., unless the applicant has received an extension of the deadline for compliance with the standards pursuant to subsection b. of section 9 of P.L.1986, c.102 (C.58:10A-29), the application is filed with the authority prior to June 30, 2005 and the application is complete and the application fee is received by December 31, 2005.

No financial assistance for closure shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a discharge from any such regulated tank except as provided in subsection c. of this section, unless the application is filed with the authority prior to June 30, 2005 and the application is complete and the application fee is received by December 31, 2005.

In the case of a regulated tank that is not operational, financial assistance for the closure or the remediation of any discharge therefrom may be awarded if the application is filed with the authority no more than 18 months after the date of discovery of the existence of the regulated tank, or 18 months from the effective date of P.L.2003, c.148, whichever is later.

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

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

storage tank if the discharge began subsequent to the completion of an upgrade of that petroleum underground storage tank, which upgrade was intended to meet all applicable upgrade regulations of the department, no matter when the upgrade was performed.

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

h. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.) to the contrary, if 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, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the eligible owner or operator for the eligible project costs of the remediation.

i. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.) to the contrary, if an applicant that is an independent institution of higher education has expended the applicant's own funds on a remediation prior to filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant 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 independent institution of higher education.

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

5. Section 16 of P.L.1997, c.235 (C.58:10A-37.16) is amended to read as follows:

C.58:10A-37.16 Liens for financial assistance.

16. a. In addition to any other financial assistance requirements imposed by the authority pursuant to P.L.1997, c.235 (C.58:10A-37.1 et seq.), any award of financial assistance from the fund except for any grant awarded pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) for a replacement or closure of a petroleum underground storage tank used to store heating oil at the applicant's residence or for a remediation necessitated by a discharge from a petroleum underground storage tank used to store heating oil at the applicant's residence, shall constitute, in each instance, a debt of the applicant to the fund. The debt shall constitute a lien on the real property at which the subject facility is located. The lien shall be in the amount of the financial assistance awarded the applicant. The lien shall attach when a notice of lien, incorporating the name of the property owner, a description of the real property on which the subject facility is located and an identification

of the amount of the financial assurance awarded, is duly filed with the county recording officer in the county in which the property is located.

Where financial assistance from the fund is awarded as a combination of a loan and a grant, separate liens for the loan and the grant shall be filed. No lien shall be placed on any real property of an applicant based on a conditional hardship grant awarded pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), for a replacement or closure of a petroleum underground storage tank used to store heating oil at the applicant's residence or for a remediation necessitated by a discharge from a petroleum underground storage tank used to store heating oil at the applicant's residence.

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

c. Except as provided below, the lien that is filed on real property pursuant to a conditional hardship grant shall be removed upon repayment of the amount of the grant that is unsatisfied or upon the end of a five-year period in which the site for which the financial assistance was awarded continued to be operated in substantially the same manner as it was operated at the time of the award of financial assistance. The period of operation need not run consecutively. Beginning with the second year of operating in substantially the same manner, 25% of the conditional hardship grant shall be deemed satisfied with an additional 25% to be satisfied each year until the entire amount of the conditional hardship grant is satisfied at the end of the five-year period. The owner or operator of the facility claiming to have satisfied a conditional hardship grant due to the five-year period of operation, shall submit a certification of this fact to the authority. Upon repayment of the unsatisfied grant award or upon submittal of this certification, unless the authority has made a finding that the certification is not correct, the authority shall remove the lien from the property.

Where real property for which a conditional hardship grant was awarded is not being operated in substantially the same manner, the five-year period to satisfy the lien shall be tolled. If at any time prior to the satisfaction of the lien the property is developed or operated for a purpose that is not substantially the same as its operation at the time of the award of the conditional hardship grant, the grant recipient shall so certify to the authority upon the change in operation. Upon receipt of this certification, the authority shall determine, based upon the new operation of the property if the financial assistance shall continue as a conditional hardship grant or if it shall be converted into a loan. In making this determination, the authority shall base its decision on the financial hardship factors used in determining the original eligibility for the conditional hardship grant.

A lien that is filed on real property pursuant to a grant shall be removed by the authority upon condemnation of the property or upon the exercise of the power of eminent domain, and the conditional hardship grant shall be deemed satisfied.

The authority may take whatever enforcement actions it deems necessary to verify the operation of any property for which a conditional hardship grant was made. The terms and conditions of any loan converted from a grant pursuant to this subsection shall be the same as those authorized pursuant to this act.

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

6. Section 3 of P.L.1991, c.123 (C.58:10A-24.3) is amended to read as follows:

C.58:10A-24.3 Examinations for certification to perform services on underground storage tanks.

3. a. The department shall establish and conduct examinations for certifying that a person is qualified to perform services on underground storage tanks at underground storage tank sites for purposes of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) and for tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks. Application to the department for examination for certification shall be made in a manner and on such forms as may be prescribed by the department. The department may prescribe training or continuing education, experience or other requirements as a condition for taking a certification examination, or for recertification. The filing of an application shall be accompanied by a nonrecoverable application fee of \$35.00 to cover the costs of processing the application and conducting examinations. No person shall be certified by the department unless he or she satisfactorily completes the examination and satisfies any other requirements of this act, or of the department adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this section, any person who files, within 300 days of the effective date of this act, an application for certification under this subsection, and demonstrates to the department that he or she has adequately performed services on underground storage tanks at underground storage tank sites for at least five consecutive years immediately preceding the filing of the application, shall be certified without examination upon payment of an application and certification fee. Within one year of certification, a person certified pursuant to this subsection shall submit to the department evidence of attendance at a department approved training course on the department's rules and regulations concerning underground storage tanks. One year from the effective date of this act, no person applying for certification pursuant to this subsection shall perform services requiring certification until certified by the department.

c. A person certified pursuant to subsection b. of this section shall comply with the examination and other requirements adopted by the department pursuant to subsection a. of this section as a precondition for filing for a renewal of a certification issued pursuant to subsection b. of this section.

d. The department may establish a general certification for tank services and on-site supervisory responsibilities, and such other classes of certification for particular tank services or for on-site supervisory responsibilities as it deems appropriate, and may establish separate training, examination and working experience requirements therefor. The department shall establish a separate certification for tank testing, tank installation, tank removal, tank closure, and subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks with separate training and examination requirements therefor. The certification program for persons who perform services on underground storage tanks or on unregulated heating oil tanks shall include standards for pricing, customer service, compliance with applicable rules and regulations, adequate submissions to the department, and any other standards relevant to the performance, qualifications, and business practices of persons or business firms seeking certification. Any person certified to perform services on underground storage tanks at underground storage tank sites for purposes of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) shall not be required to obtain a separate certification to perform work on unregulated heating oil tanks.

7. Section 5 of P.L.1991, c.123 (C.58:10A-24.5) is amended to read as follows:

C.58:10A-24.5 Denial, revocation, etc. of certification.

5. a. The department may deny, suspend, revoke, or refuse to renew a certification for good cause, including:

(1) a violation, or abetting another to commit a violation, of any provision of this act, or of P.L.1986, c.102 (C.58:10A-21 et seq.), or rule or regulation adopted, or order issued under either act;

(2) making a false statement on an application for certification or other information required by the department pursuant to this act, or P.L.1986, c.102;

(3) misrepresentation or the use of fraud in obtaining certification, in performing tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank, or in performing underground storage tank services;

(4) failure to meet the standards or requirements of the certification program, including standards relevant to the performance, qualifications, and business practices of persons or business firms who perform tank services.

b. Before suspending, revoking, or refusing to renew a certification, the department shall afford the applicant or certificate holder an opportunity to be heard in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. Suspension, revocation, or refusal to renew a certification shall not bar the department from pursuing against the applicant or certificate holder any other lawful remedy available to the department.

d. Any business firm or person whose certification is revoked shall be ineligible to apply for certification for three years from the date of the revocation.

e. If the department has reason to believe that a condition exists that poses an imminent threat to the public health, safety or welfare, it may order the certificate holder to cease operations pending the outcome of the hearing.

C.58:10A-24.8 Interim rules, regulations establishing certification program.

8. a. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Department of Environmental Protection shall adopt, after notice, interim rules and regulations establishing a program for the certification of persons qualified to perform tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks as provided in P.L.1999, c.322 within 60 days after the effective date of this act. The rules and regulations shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act."

b. Upon the adoption of interim rules and regulations pursuant to this section, a grant or loan from the fund to close or replace an unregulated heating oil tank may only be made to reimburse the applicant for work performed by a person certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3).

C.58:10A-24.9 Required DEP submissions copied to municipality.

9. Any person who performs tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank shall provide to the governing body of the municipality in which the tank is located, copies

of any submissions required by the Department of Environmental Protection concerning the tank installation, tank removal, tank closure, and subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank within 10 days after their submission to the department.

10. This act shall take effect immediately.

Approved August 2, 2006.