

[First Reprint]

ASSEMBLY, No. 3739

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 9, 2009

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SYNOPSIS

Requires confirmation of financial assistance for eligible homeowners voluntarily closing or replacing petroleum underground storage tanks, and expands eligibility for financial assistance.

CURRENT VERSION OF TEXT

As reported by the Assembly Environment and Solid Waste Committee on March 12, 2009, with amendments.

(Sponsorship Updated As Of: 5/22/2009)

1 AN ACT concerning 'financial assistance for'¹ the closure or
2 replacement of certain petroleum underground storage tanks and
3 amending 'and supplementing'¹ P.L.1997, c.235.

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

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

10 2. As used in this act:

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

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

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

27 "Commissioner" means the Commissioner of Environmental
28 Protection;

29 "Department" means the Department of Environmental
30 Protection;

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

34 "Eligible owner or operator" means (1) any owner or operator,
35 other than the owner or operator of a petroleum underground
36 storage tank storing heating oil for onsite consumption in a
37 residential building, who owns or operates less than 10 petroleum
38 underground storage tanks in New Jersey, who has a net worth of
39 less than \$3,000,000 and who demonstrates to the satisfaction of
40 the authority, the inability to qualify for and obtain a commercial
41 loan for all or part of the eligible project costs, (2) the owner or
42 operator of a petroleum underground storage tank storing heating
43 oil for onsite consumption in a residential building, (3) a public
44 entity who owns or operates a petroleum underground storage tank

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:

¹Assembly AEN committee amendments adopted March 12, 2009.

1 in New Jersey, **[or]** (4) an independent institution of higher
2 education that owns or operates a petroleum underground storage
3 tank, or (5) a nonprofit organization, corporation, or association
4 with not more than 100 paid individuals that is qualified for
5 exemption from federal taxation pursuant to section 501(c)(3) of the
6 federal Internal Revenue Code, 26 U.S.C.s.501(c)(3), or a duly
7 incorporated volunteer fire, ambulance, first aid, emergency, or
8 rescue company or squad;

9 "Eligible project costs" means the reasonable costs for
10 equipment, work or services required to effectuate a remediation, an
11 upgrade, or a closure which equipment, work or services are
12 eligible for payment from the Petroleum Underground Storage Tank
13 Remediation, Upgrade, and Closure Fund. In the case of an
14 upgrade or closure of a regulated tank, eligible project costs shall be
15 limited to the cost of the minimal effective system necessary to
16 meet all the regulatory requirements of federal and State law except
17 that an eligible owner or operator who has met the upgrade
18 requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986,
19 c.102 (C.58:10A-21 et seq.) may be awarded a loan which shall not
20 be limited to the cost of a minimal effective system, in order to
21 finance the costs of the improvement or replacement of tanks to
22 meet State and federal standards as provided in subsection g. of
23 section 5 of P.L.1997, c.235 (C.58:10A-37.5). The limitation of
24 eligible project costs to the minimal effective system shall not be
25 construed to deem ineligible those project costs expended to replace
26 a regulated tank rather than to improve the regulated tank. An
27 owner or operator may perform an upgrade or a closure beyond the
28 minimal effective system in which case the eligible project costs
29 that may be awarded from the fund as financial assistance in the
30 form of a grant shall be that amount that would represent the cost of
31 a minimal effective system. In the case of a remediation ,
32 replacement, or closure of a petroleum underground storage tank
33 that is unregulated pursuant to P.L.1986, c.102 (C.58:10A-21 et
34 seq.) or 42 U.S.C. s.6991 et seq., eligible project costs shall include
35 the cost to replace a tank with an above-ground or underground
36 storage tank. In the case of a remediation, eligible project costs
37 shall not include the cost to remediate a site to meet residential soil
38 remediation standards if the local zoning ordinances adopted
39 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
40 (C.40:55D-1 et seq.) do not allow for residential use. Eligible
41 project costs shall include the cost of a preliminary assessment and
42 site investigation, even if performed prior to the award of financial
43 assistance from the fund if the preliminary assessment and site
44 investigation were performed after the effective date of P.L.1997,
45 c.235;

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

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

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

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

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

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

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

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

40 "Petroleum underground storage tank" means a tank of any size,
41 including appurtenant pipes, lines, fixtures, and other related
42 equipment, that normally and primarily stores petroleum, the
43 volume of which, including the volume of the appurtenant pipes,
44 lines, fixtures and other related equipment, is 10% or more below
45 the ground. "Petroleum underground storage tank" does not
46 include:

47 (1) Septic tanks installed or regulated pursuant to regulations
48 adopted by the department pursuant to "The Realty Improvement

1 Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23
2 et seq.) or the "Water Pollution Control Act," P.L.1977, c.74
3 (C.58:10A-1 et seq.);

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

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

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

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

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

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

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

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

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

35 "Upgrade" means the replacement of a regulated tank, the
36 installation of secondary containment, monitoring systems, release
37 detection systems, corrosion protection, spill prevention, or overfill
38 prevention therefor, or any other necessary improvement to the
39 regulated tank in order to meet the standards for regulated tanks
40 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and
41 42 U.S.C. s.6991 et seq.¹

42 (cf: P.L.2006, c.58, s.1)

43

44 ¹[1.] 2.¹ Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is
45 amended to read as follows:

46 5. a. (1) The authority may award financial assistance from the
47 fund to an eligible owner or operator in the form of a loan or a
48 conditional hardship grant as provided in this section. An award of

1 financial assistance, either as a loan or a grant, or a combination of
2 both, may, upon application therefor, be for 100% of the eligible
3 project costs, except as provided in paragraph (1) of subsection c.
4 and in '[subsection] subsections' h., j. and k.' of this section.
5 However, a loan that any applicant may receive from the fund for
6 an upgrade, remediation, or closure, or any combination thereof, for
7 any one facility, may not exceed \$2,000,000, except as provided
8 below, and a grant that any applicant may receive from the fund for
9 any one facility, may not exceed \$500,000. A loan that an
10 applicant may receive from the fund for a remediation of a
11 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
16 (Metropolitan), Planning Area 2 (Suburban), a designated center as
17 designated pursuant to the "State Planning Act," sections 1 through
18 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), or the Highlands
19 Region designated pursuant to section 7 of P.L.2004, c.120
20 (C.13:20-7), may receive a loan in an amount not to exceed
21 \$3,000,000 and a grant in an amount not to exceed \$1,000,000 for
22 each facility so located.

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

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

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

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

11 In order to be eligible for a conditional hardship grant for closure
12 or upgrade, in the case of a regulated tank, the applicant shall have
13 owned or operated the subject regulated tank as of December 1,
14 2002 and continually thereafter or shall have inherited the property
15 from a person who owned the regulated tank as of that date. In
16 order to be eligible for a conditional hardship grant for remediation,
17 in the case of a regulated tank, the applicant shall have owned or
18 operated the subject regulated tank at the time of tank closure. No
19 applicant shall be eligible for a conditional hardship grant if the
20 applicant has a taxable income of more than \$250,000 or a net
21 worth, exclusive of the applicant's primary residence and pension,
22 of over \$500,000. Any applicant with a taxable income of more
23 than \$200,000 who qualifies for a grant shall be required to pay no
24 more than \$1,000 of the eligible project costs .

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

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

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

1 In making a finding of financial hardship for an application for the
2 upgrade or remediation of a petroleum underground storage tank,
3 where the petroleum underground storage tank is not a part of the
4 business property of the owner, the authority shall base its finding
5 upon the applicant's taxable income in the year prior to the date of
6 the application being submitted.

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

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

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

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

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

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

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

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

6 h. (1) In the case of a closure of a petroleum underground
7 storage tank used to store heating oil for onsite consumption in a
8 residential building in this State where no remediation is required,
9 an eligible owner or operator may receive a grant 'for the eligible
10 project costs' in an amount '[up to \$1,200] consistent with the cost
11 guidelines established by the department pursuant to section 4 of
12 P.L. , c. (C.) (pending before the Legislature as this bill) and
13 in effect at the time the closure is performed'.

14 (2) In the case of a replacement and closure of a petroleum
15 underground storage tank used to store heating oil for onsite
16 consumption in a residential building in this State where no
17 remediation is required, an eligible owner or operator may receive a
18 grant 'for the eligible project costs' in an amount '[up to \$3,000]
19 consistent with the cost guidelines established by the department
20 pursuant to section 4 of P.L. , c. (C.) (pending before the
21 Legislature as this bill) and in effect at the time the replacement and
22 closure is performed'.

23 '(3)' If an eligible owner or operator applies for a grant pursuant
24 to this subsection prior to the completion of the '[eligible]' project
25 and the authority determines that the eligible owner or operator
26 qualifies for the grant, the authority shall issue written confirmation
27 that the eligible owner or operator will receive the grant upon
28 completion of the '[eligible]' project. 'The written confirmation
29 shall be valid for 45 days from the date of issuance. Any eligible
30 owner or operator who has received written confirmation pursuant
31 to this subsection and fails to submit the relevant documentation,
32 certification or other information required by the rules and
33 regulations adopted by the authority pursuant to section 8 of
34 P.L.1997, c.235 (C.58:10A-37.8) before the expiration of the
35 confirmation shall submit a new application for review.'

36 '(4)' No person shall be eligible for grant monies from the fund
37 to replace a petroleum underground storage tank that stores heating
38 oil for onsite consumption in a residential building if the tank that
39 stores heating oil for that residential building was previously
40 replaced using a grant from the fund.

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

46 'j. In the case of a closure or replacement of a petroleum
47 underground storage tank with a capacity of 2,000 gallons or less,

1 used to store heating oil for onsite consumption in a nonresidential
2 building that is owned or operated by a nonprofit organization,
3 corporation, or association with not more than 100 paid individuals
4 that is qualified for exemption from federal taxation pursuant to
5 section 501(c)(3) of the federal Internal Revenue Code, 26
6 U.S.C.s.501(c)(3), or by a duly incorporated volunteer fire,
7 ambulance, first aid, emergency, or rescue company or squad,
8 where no remediation is required, the eligible owner or operator
9 may receive a grant for the eligible project costs of the closure or
10 replacement in an amount consistent with the cost guidelines
11 developed by the department pursuant to section 4 of P.L. _____,
12 c. (C. _____) (pending before the Legislature as this bill) and in effect
13 at the time the closure or replacement is performed.

14 No person shall be eligible for grant monies from the fund
15 pursuant to this subsection if the underground storage tank was
16 previously replaced using a grant from the fund.

17 k. In the case of an emergency remediation of a discharge from
18 a petroleum underground storage tank used to store heating oil for
19 onsite consumption in a residential building in this State, an eligible
20 owner or operator may receive a grant in an amount equal to the
21 actual costs incurred by the department or an authorized agent
22 thereof, and borne by the eligible owner or operator, except that no
23 award of financial assistance shall be made from the fund for
24 administrative costs incurred by the department.¹

25 (cf: P.L.2006, c.58, s.3)

26

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

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

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

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

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

47 (3) the applicant failed to commence or complete a remediation,
48 closure, or an upgrade for which an award of financial assistance

1 was made within the time required by the department in accordance
2 with the applicable rules and regulations, within the time prescribed
3 in an administrative order, an administrative consent agreement, a
4 memorandum of agreement, or a court order; or

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

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

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

39 d. Except as provided in this subsection, and in subsection g. of
40 section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial
41 assistance for upgrade shall be awarded for any regulated tank
42 required to meet the upgrade or closure requirements pursuant to 42
43 U.S.C.s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.),
44 unless the application is filed with the authority prior to January 1,
45 1999 and the application is complete and the application fee is
46 received by August 1, 1999. Except as provided in subsection g. of
47 section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial
48 assistance for upgrade shall be awarded for any underground

1 storage tank with a capacity of over 2,000 gallons used to store
2 heating oil for onsite consumption in a nonresidential building
3 required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21
4 et seq.) but not pursuant to 42 U.S.C.s.6991 et seq., unless the
5 applicant has received an extension of the deadline for compliance
6 with the standards pursuant to subsection b. of section 9 of
7 P.L.1986, c.102 (C.58:10A-29), the application is filed with the
8 authority prior to June 30, 2005 and the application is complete and
9 the application fee is received by December 31, 2005.

10 No financial assistance for closure shall be awarded for any
11 regulated tank required to meet the upgrade or closure requirements
12 pursuant to 42 U.S.C.s.6991 et seq. or P.L.1986, c.102 (C.58:10A-
13 21 et seq.), or for the remediation of a discharge from any such
14 regulated tank except as provided in subsection c. of this section,
15 unless the application is filed with the authority prior to June 30,
16 2010 and the application is complete and the application fee is
17 received by December 31, 2010.

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
21 authority no more than 18 months after the date of discovery of the
22 existence of the regulated tank, or no later than June 30, 2010,
23 whichever is later.

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

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

46 g. Notwithstanding any provision of P.L.1997, c.235
47 (C.58:10A-37.1 et seq.), where an eligible owner or operator has
48 filed an application for financial assistance from the fund, and there

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

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

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

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

39 k. Notwithstanding any provision of P.L.1997, c.235
40 (C.58:10A-37.1 et seq.) to the contrary, if an applicant that is a
41 nonprofit organization, corporation, or association with not more
42 than 100 paid individuals that is qualified for exemption from
43 federal taxation pursuant to section 501(c)(3) of the federal Internal
44 Revenue Code, 26 U.S.C.s.501(c)(3), or a duly incorporated
45 volunteer fire, ambulance, first aid, emergency, or rescue company
46 or squad, has expended the applicant's own funds on a remediation
47 of a discharge from a petroleum underground storage tank with a
48 capacity of 2,000 gallons or less, used to store heating oil for onsite

1 consumption in a nonresidential building on or after the effective
2 date of P.L. , c. (C.) (pending before the Legislature as this
3 bill) prior to filing an application for financial assistance from the
4 fund for the eligible project costs of the remediation, the authority,
5 upon approval of the application, may make a grant from the fund
6 pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997,
7 c.235 (C.58:10A-37.5) to reimburse the applicant for expenditures
8 for the eligible project costs of the remediation.¹

9 (cf: P.L.2007, c.10, s.2)

10

11 ^{14.} (New section) The department shall develop a cost guidance
12 document that establishes the maximum cost to be paid for the
13 eligible project costs of the closure or replacement of a petroleum
14 underground storage tank used to store heating oil for onsite
15 consumption in a residential building or a petroleum underground
16 storage tank with a capacity of 2,000 gallons or less used to store
17 heating oil for onsite consumption in a nonresidential building.
18 Within 90 days after the effective date of P.L. , c. (C.)
19 (pending before the Legislature as this bill), the department shall
20 publish the cost guidance document in the New Jersey Register.
21 The department may revise the cost guidance document as
22 necessary and shall publish the revised cost guidance document
23 within 30 days following adoption of any revision. The adoption of
24 a cost guidance document, or of any revision thereto, shall not be
25 subject to the “Administrative Procedure Act,” P.L.1968, c.410
26 (C.52:14B-1 et seq.).¹

27

28 ^{1[2.] 5.} This act shall take effect immediately.