

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2568

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED MARCH 16, 2009

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen)

Senator STEVEN V. OROHO

District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:

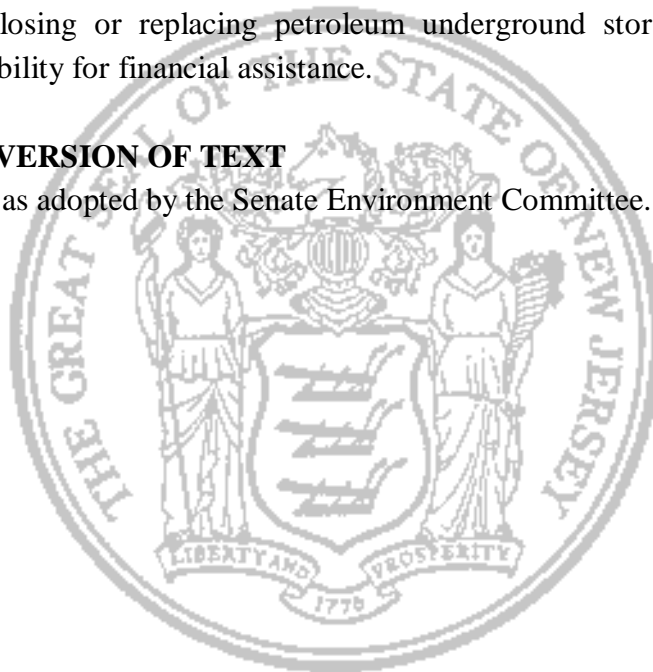
**Senators Weinberg, Bucco, Cardinale, Ciesla, Haines, Karrow, Kyrillos,
Singer, Van Drew, Bateman, Vitale, Beck, Ruiz and Turner**

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

Substitute as adopted by the Senate Environment Committee.



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

1 **AN ACT** concerning financial assistance for the closure or
2 replacement of certain petroleum underground storage tanks and
3 amending and supplementing 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 1. 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
45 in New Jersey, **[or]** (4) an independent institution of higher

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

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

45 "Facility" means one or more operational or nonoperational
46 petroleum underground storage tanks under single ownership at a
47 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:

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

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

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

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

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

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

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

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

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

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

37 "Upgrade" means the replacement of a regulated tank, the
38 installation of secondary containment, monitoring systems, release
39 detection systems, corrosion protection, spill prevention, or overfill
40 prevention therefor, or any other necessary improvement to the
41 regulated tank in order to meet the standards for regulated tanks
42 adopted pursuant to section 5 of P.L.1986, c.102 (C.58:10A-25) and
43 42 U.S.C. s.6991 et seq.

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

45
46 2. Section 5 of P.L.1997, c.235 (C.58:10A-37.5) is amended to
47 read as follows:

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

16 (2) Notwithstanding the provisions of paragraph (1) of this
17 subsection to the contrary, an eligible owner or operator of a facility
18 located within an area designated as a Planning Area 1
19 (Metropolitan), Planning Area 2 (Suburban), a designated center as
20 designated pursuant to the "State Planning Act," sections 1 through
21 12 of P.L.1985, c.398 (C.52:18A-196 et seq.), or the Highlands
22 Region designated pursuant to section 7 of P.L.2004, c.120
23 (C.13:20-7), may receive a loan in an amount not to exceed
24 \$3,000,000 and a grant in an amount not to exceed \$1,000,000 for
25 each facility so located.

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

29 c. An applicant, other than a public entity, may apply for and
30 receive a conditional hardship grant for the upgrade, closure or
31 remediation as provided in paragraph (1) of this subsection, or a
32 loan for an upgrade, closure or remediation as provided in
33 paragraph (2) of this subsection, provided that an applicant for a
34 conditional hardship grant or a loan for an upgrade may be eligible
35 for financial assistance only for any underground storage tank with
36 a capacity of over 2,000 gallons used to store heating oil for onsite
37 consumption in a nonresidential building that has received an
38 extension of the deadline for compliance with the standards
39 pursuant to subsection b. of section 9 of P.L.1986, c.102
40 (C.58:10A-29). Financial assistance awarded an applicant pursuant
41 to this subsection may consist entirely of a conditional hardship
42 grant, a loan for an upgrade, a loan for a closure, or a loan for a
43 remediation, or any combination thereof, except that the total
44 amount of the award of financial assistance shall be subject to the
45 per facility dollar limitation enumerated in subsection a. of this
46 section. Notwithstanding any other provision of this subsection to
47 the contrary, no tax exempt, nonprofit organization, corporation, or

1 association shall be awarded a conditional hardship grant pursuant
2 to paragraph (1) of this subsection, provided that an independent
3 institution of higher education, a nonprofit organization,
4 corporation, or association with not more than 100 paid individuals
5 that is qualified for exemption from federal taxation pursuant to
6 section 501 (c)(3) of the federal Internal Revenue Code, 26
7 U.S.C.s.501(c)(3), or a duly incorporated volunteer fire, ambulance,
8 first aid, emergency, or rescue company or squad, may be awarded
9 a conditional hardship grant pursuant to paragraph (1) of this
10 subsection.

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

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

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

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

46 In making a finding of financial hardship for an application for
47 the upgrade, closure, or remediation of a petroleum underground

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

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

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

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

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

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

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

44 f. An eligible owner or operator may only be awarded that
45 amount of financial assistance issued as a loan for which the
46 applicant demonstrates he could not qualify for and obtain as a
47 commercial loan. The provisions of this subsection shall not apply

1 to an owner or operator or petroleum underground storage tank used
2 to store heating oil for onsite consumption in a residential building,
3 to an independent institution of higher education, or to a duly
4 incorporated volunteer fire, ambulance, first aid, emergency, or
5 rescue company or squad.

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

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

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

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

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

46 i. In the case of a closure and replacement of a petroleum
47 underground storage tank used to store heating oil for onsite

1 consumption in a residential building in this State, to the maximum
2 extent feasible, the owner or operator shall replace the petroleum
3 underground storage tank with an aboveground tank.

4 j. In the case of a closure or replacement of a petroleum
5 underground storage tank with a capacity of 2,000 gallons or less,
6 used to store heating oil for onsite consumption in a nonresidential
7 building that is owned or operated by a nonprofit organization,
8 corporation, or association with not more than 100 paid individuals
9 that is qualified for exemption from federal taxation pursuant to
10 section 501(c)(3) of the federal Internal Revenue Code, 26
11 U.S.C.s.501(c)(3), or by a duly incorporated volunteer fire,
12 ambulance, first aid, emergency, or rescue company or squad,
13 where no remediation is required, the eligible owner or operator
14 may receive a grant for the eligible project costs of the closure or
15 replacement in an amount consistent with the cost guidelines
16 developed by the department pursuant to section 4 of P.L. ,
17 c. (C.) (pending before the Legislature as this bill) and in effect
18 at the time the closure or replacement is performed.

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

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

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

31
32 3. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to
33 read as follows:

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

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

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

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

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

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

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

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

46 d. Except as provided in this subsection, and in subsection g. of
47 section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial

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

18 No financial assistance for closure shall be awarded for any
19 regulated tank required to meet the upgrade or closure requirements
20 pursuant to 42 U.S.C.s.6991 et seq. or P.L.1986, c.102 (C.58:10A-
21 21 et seq.), or for the remediation of a discharge from any such
22 regulated tank except as provided in subsection c. of this section,
23 unless the application is filed with the authority prior to June 30,
24 2010 and the application is complete and the application fee is
25 received by December 31, 2010.

26 In the case of a regulated tank that is not operational, financial
27 assistance for the closure or the remediation of any discharge
28 therefrom may be awarded if the application is filed with the
29 authority no more than 18 months after the date of discovery of the
30 existence of the regulated tank, or no later than June 30, 2010,
31 whichever is later.

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

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

1 be awarded from the fund for the remediation of a discharge from a
2 petroleum underground storage tank if the discharge began
3 subsequent to the completion of an upgrade of that petroleum
4 underground storage tank, which upgrade was intended to meet all
5 applicable upgrade regulations of the department, no matter when
6 the upgrade was performed.

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

16 h. Notwithstanding any provision of P.L.1997, c.235
17 (C.58:10A-37.1 et seq.) to the contrary, if an applicant has
18 expended the applicant's own funds on a remediation after filing an
19 application for financial assistance from the fund for the eligible
20 project costs of the remediation, the authority, upon approval of the
21 application, may make a grant from the fund pursuant to paragraph
22 (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5)
23 to reimburse the eligible owner or operator for the eligible project
24 costs of the remediation.

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

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

1 k. Notwithstanding any provision of P.L.1997, c.235
2 (C.58:10A-37.1 et seq.) to the contrary, if an applicant that is a
3 nonprofit organization, corporation, or association with not more
4 than 100 paid individuals that is qualified for exemption from
5 federal taxation pursuant to section 501(c)(3) of the federal Internal
6 Revenue Code, 26 U.S.C.s.501(c)(3), or a duly incorporated
7 volunteer fire, ambulance, first aid, emergency, or rescue company
8 or squad, has expended the applicant's own funds on a remediation
9 of a discharge from a petroleum underground storage tank with a
10 capacity of 2,000 gallons or less, used to store heating oil for onsite
11 consumption in a nonresidential building on or after the effective
12 date of P.L. , c. (C.) (pending before the Legislature as this
13 bill) prior to filing an application for financial assistance from the
14 fund for the eligible project costs of the remediation, the authority,
15 upon approval of the application, may make a grant from the fund
16 pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997,
17 c.235 (C.58:10A-37.5) to reimburse the applicant for expenditures
18 for the eligible project costs of the remediation.
19 (cf: P.L.2007, c.10, s.2)

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

37
38 5. This act shall take effect immediately.