

CHAPTER 10

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

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

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

C.58:10A-37.6 Application for financial assistance; fee.

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

The authority shall adopt rules and regulations listing the filing requirements for a complete application for financial assistance. If a financial assistance application is determined to be incomplete by the authority, an applicant shall have 30 days from the date of receipt of written notification of incompleteness to file such additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within the 30 days, the filing date for that application shall be the date that such additional information is received by the authority. If the additional information is filed within the 30 days and is satisfactory to the authority, the filing date for that application shall be the initial date of application with the authority. Notwithstanding the above, if a completed application has been submitted and the applicant fails to submit the filing fee, then the filing date for the application shall not be established until the date on which the authority receives the application fee. A change in the filing date resulting from failure to submit a completed application or from failure to submit the application fee in a timely fashion for applications filed for financial assistance for a regulated tank 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 shall not render the application ineligible for financial assistance as long as the initial date of application is prior to June 30, 2010, or for a regulated tank that is not operational, 18 months from the date of discovery of the tank or June 30, 2010, whichever is later.

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

2. 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, 2010 and the application is complete and the application fee is received by December 31, 2010.

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 no later than June 30, 2010, 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.

C.58:10A-37.3a DEP notification to municipalities of fund.

3. The Department of Environmental Protection shall notify the governing body of each municipality in the State of the existence of the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund and shall describe the eligibility criteria and the availability of loans and grants from the fund.

4. This act shall take effect immediately.

Approved January 24, 2007.