

## CHAPTER 42

AN ACT concerning underground storage tank remediation grants, and amending P.L.1997, c.235.

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

1. 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.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection to the contrary, an applicant that is an independent institution of higher education may receive a grant from the fund for the eligible project costs of a remediation of a discharge from a petroleum underground storage tank in an amount not to exceed \$1,500,000 for each independent institution of higher education. The maximum total amount in grants that an independent institution of higher education may receive pursuant to this section and subsection i. of section 7 of P.L.1997, c.235 (C.58:10A-37.7) shall not exceed \$1,500,000.

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 for a remediation as provided in paragraph (3) of subsection a. of this section, 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 or a grant pursuant to paragraph (3) of subsection a. of this section, as appropriate.

(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.

2. This act shall take effect immediately.

Approved April 15, 2009.