

CHAPTER 59

AN ACT concerning underground storage tanks and amending and supplementing P.L.1986, c.102, and amending P.L.1997, c.235.

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

1. Section 9 of P.L.1986, c.102 (C.58:10A-29) is amended to read as follows:

C.58:10A-29 Requirements to meet standards for underground storage tanks.

9. a. The department shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (52:14B-1 et seq.), requiring the owner or operator of a facility to meet the standards for the construction, installation, and operation of new and existing underground storage tanks, including standards for secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, and overfill prevention, and other underground storage tank equipment adopted pursuant to paragraph (2) of subsection a. of section 5 of P.L.1986, c.102 (C.58:10A-25). The deadlines for compliance with the standards shall be identical to those deadlines established by the United States Environmental Protection Agency pursuant to 42 U.S.C. s.6991 et seq. for all underground storage tanks, including those underground storage tanks not regulated pursuant to 42 U.S.C. s.6991 et seq.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, and except as provided in section 2 of P.L.1998, c.59 (C.58:10A-29.1), the deadline for compliance for underground storage tanks with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a non-residential building shall be five years after the deadline established pursuant to subsection a. of this section.

C.58:10A-29.1 Requirement for contract for leak detection testing.

2. The owner or operator of any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a non-residential building who does not meet the deadline for compliance pursuant to subsection a. of section 9 of P.L.1986, c.102 (C.58:10A-29), shall, no later than December 22, 1998, enter into a contract for the provision of leak detection testing on the underground storage tank using a method that is accepted by the Department of Environmental Protection, which testing shall be performed no later than August 31, 1999 and at least once every 36 months thereafter. The owner or operator of the underground storage tank shall provide a copy of the contract to the Department of Environmental Protection by December 22, 1998 and shall notify the department of the results of the test within 15 days of its performance. If an owner or operator of an underground storage tank fails to comply with the testing and notification requirements specified in this section, then the deadline for compliance shall not be extended as provided in subsection b. of section 9 of P.L. 1986, c. 102 (C.58:10A-29) and the owner or operator who fails to comply with the deadlines established in subsection a. of section 9 of P.L. 1986, c. 102 shall be subject to the penalties as provided in section 10 of P.L.1977, c.74 (C.58:10A-10).

3. 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. Once financial assistance for an upgrade, closure or a remediation is awarded for a facility, no additional award of financial assistance 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 this act. 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 below, no financial assistance for upgrade or 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 January 1, 1999 and the application is complete and the application fee is received by March 1, 1999. No financial assistance for upgrade or closure 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. 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 August 31, 1999 and the application is complete and the application fee is received by October 31, 1999.

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 subsection g. 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.

4. This act shall take effect immediately.

Approved July 30, 1998.