

No. 1998-13

AN ACT

HB 1476

Amending the act of July 6, 1989 (P.L.169, No.32), entitled "An act providing for the regulation of storage tanks and tank facilities; imposing additional powers and duties on the Department of Environmental Resources and the Environmental Quality Board; and making an appropriation," further providing for Underground Storage Tank Indemnification Board and its powers and duties, for the Underground Storage Tank Indemnification Fund, for eligibility of claimants including certified tank installers and for audit, sunset and performance reviews; and providing for Underground Storage Tank Environmental Cleanup Program and the Upgrade Loan Program.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title of the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, is amended to read:

AN ACT

Providing for the regulation of storage tanks and tank facilities; imposing additional powers and duties on the Department of Environmental **[Resources] Protection** and the Environmental Quality Board; and making an appropriation.

Section 2. Section 703 of the act, amended June 26, 1995 (P.L.79, No.16), is amended to read:

Section 703. Underground Storage Tank Indemnification Board.

(a) Establishment of board, appointment and terms.—There is hereby created the Underground Storage Tank Indemnification Board which shall consist of **[nine] ten** members. The Insurance Commissioner and the Secretary of the Department of Environmental **[Resources] Protection** shall be ex officio members. **[Seven] Eight** members shall be appointed by the Governor, as follows:

(1) **[Five] Six** members who shall be persons with particular expertise in the management of underground storage tanks. **[Two] Three** of these members shall be appointed for terms of four years and three shall be appointed for a term of three years. The Governor shall appoint the members, one each from a list of nominees provided by each of the following:

- (i) The Associated Petroleum Industries of Pennsylvania.
- (ii) The Pennsylvania Petroleum Association.
- (iii) The Service Station Dealers and Automotive Repair Association of Pennsylvania and Delaware and the Petroleum Retailers and Auto Repair Association, Inc.

(iv) The Middle Atlantic Truck Stop Operators.

(v) The Pennsylvania Farm Bureau, Pennsylvania State Grange and Pennsylvania Farmers Union.

(vi) *The Tank Installers of Pennsylvania.*

(2) One local government member who shall have knowledge and expertise in underground storage tanks. The local government member shall be appointed for a term of two years.

(3) One public member who shall not be an owner or operator of storage tanks nor affiliated in any way with any person regulated under this act. The public member shall be appointed for a term of three years.

(b) Chairman.—The board shall select a chairman from its members annually.

(c) Vacancies.—Vacancies in appointed positions shall be filled by the Governor in the same manner as the original appointment. Members shall serve until their successors are appointed and qualified.

(d) Compensation.—Members shall receive no compensation for their service other than reimbursement for necessary expenses in accordance with Commonwealth regulations.

(e) Conflicts.—No member shall participate in making any decision in a matter involving any payment from which he or his employer may benefit or which may benefit a member of his immediate family.

(f) Meetings; quorum.—The board shall meet at least quarterly. Additional meetings may be held upon reasonable notice at times and locations selected by the board. The board shall meet at the call of the chairman or upon written request of three members of the board. **[Four]** Six members shall constitute a quorum and a quorum may act for the board in all matters.

Section 3. Sections 704 and 705 of the act, amended December 18, 1992 (P.L.1665, No.184) and June 26, 1995 (P.L.79, No.16), are amended to read:

Section 704. Underground Storage Tank Indemnification Fund.

(a) Establishment of fund.—

(1) There is hereby created a special fund in the State Treasury to be known as the Underground Storage Tank Indemnification Fund. This fund shall consist of the fees assessed by the board under section 705(d), amounts recovered by the board due to fraudulent or improper claims or as penalties for failure to pay fees when due, and funds earned by the investment and reinvestment of the moneys collected. Moneys in the fund are hereby appropriated to the board for the purpose of making payments to owners **[and]**, operators *and certified tank installers* of underground storage tanks who incur liability for taking corrective action or for bodily injury or property damage caused by a sudden or nonsudden release from underground storage tanks *and for making loans to owners as authorized by this act*. The fund shall be the sole source of payments under this act, and the Commonwealth shall have no liability beyond the amount of the fund. Every owner *and certified tank installer* of an underground storage

tank shall demonstrate financial responsibility by participating in the Underground Storage Tank Indemnification Fund. The owner [or], operator *or certified tank installer* may obtain coverage for liability not insured by the fund through any of the methods approved in accordance with section 701(b).

(2) This fund is declared a restricted fund. The moneys in the fund shall be used only for the purposes set forth in this [section] *act* and shall not be transferred or diverted to any other purpose by the use of any administrative procedure.

(3) *Notwithstanding any general or specific powers granted to the board by this act, whether express or implied, the board shall have no power at any time or in any manner to pledge the credit or taxing power of the Commonwealth or any political subdivision. No obligations or liabilities of the board shall be deemed obligations or liabilities of the Commonwealth or of any of its political subdivisions. Nothing herein shall be deemed a waiver of sovereign immunity.*

(b) *Limit of payments to owners or operators.—*

(1) Payments to eligible owners or operators shall be limited to the actual costs of corrective action and the amount of an award of damages by a court of competent jurisdiction for bodily injury, property damage or both, not to exceed a total of \$1,000,000 per tank per occurrence.

(2) Payments of claims against the fund shall be subject to a deductible as provided in section 705. Payments shall be made only for releases resulting from storage tanks that are located within this Commonwealth.

(3) Payments shall not exceed [an]:

(i) *an annual aggregate of \$1,000,000 for each owner and operator of 100 or less underground storage tanks [or an]; or*

(ii) *an annual aggregate of \$2,000,000 for each owner and operator of 101 or more underground storage tanks, up to the total of \$1,000,000 per tank per occurrence or the total eligible costs or damages.*

(b.1) *Limit of payments to certified tank installers.—*

(1) *Payments to certified tank installers shall be limited to the actual costs of corrective action and the amount of an award of damages by a court of competent jurisdiction for bodily injury, property damage or both, not to exceed a total of \$1,000,000 per occurrence. Corrective action under this subsection shall mean releases caused by improper or faulty installations, modifications and removal of underground storage tanks.*

(2) *Payments of claims against the program shall be subject to a deductible as provided in section 705(c)(4). Payments shall be made only for releases resulting from underground storage tanks located in this Commonwealth.*

(3) *Payments shall not exceed:*

(i) *an annual aggregate of \$1,000,000 for certified tank installers who perform 100 or fewer installations or major modifications; or*

(ii) *an annual aggregate of \$2,000,000 for certified tank installers who perform more than 100 installations or major modifications.*

(c) Prohibited uses.—Moneys in the fund shall not be used for the repair, replacement or maintenance of underground storage tanks or improvement of property on which the tanks are located *unless the moneys are loaned by the board as an investment of fund moneys pursuant to section 712.*

(d) Expenses.—All costs and expenses of the board shall be paid from the fund, including, but not limited to, compensation of employees and any independent contractors or consultants hired by the board.

(e) Options.—

(1) Any owner of an underground storage tank of 3,000 gallons or more used for storing heating oil for consumptive use on the premises where stored may elect to participate in the fund.

(2) The owner or operator of an underground storage tank used to store heating oil who elects to participate in the fund shall comply with applicable provisions of this act and of regulations promulgated under this act.

(3) The owner or operator of an underground storage tank used to store heating oil who elects to participate in the fund shall pay the fee established under section 705(d)(2).

(4) The board shall by regulation establish procedures and criteria for allowing *owners or operators of* underground storage tanks to opt into the coverage provided by this section.

Section 705. Powers and duties of Underground Storage Tank Indemnification Board.

(a) Support.—The board may employ or contract for the personnel necessary to process fee payments, to administer claims made against the Underground Storage Tank Indemnification Fund, *to administer the Upgrade Loan Program and other programs authorized by this act* and to carry out the purposes of the board. The board may also employ or contract for the services of attorneys, consultants and actuaries necessary to advise the board in establishing fees under subsection (d) and deductible amounts under subsection (c).

(b) Claims.—The board shall establish procedures by which owners [and], operators *and certified tank installers* may make claims for costs estimated or incurred in taking corrective action and for liability due to bodily injury and property damage caused by a sudden or nonsudden release from underground storage tanks. Claims determined to be eligible shall be paid upon receipt of information [required under regulations which the board shall promulgate] *clearly showing that reimbursable claim costs are reasonable, necessary and directly related to the release from the storage tank that is the subject of the claim.* The board, by regulation, may establish a system for prioritizing claims.

(c) Deductible.—

(1) Claims shall be subject to a deductible amount which the board shall set annually. The board shall give at least 30 days' notice of a proposed change in deductible amounts by publication in the Pennsylvania Bulletin, and the change shall take effect on the date specified in the notice. Each owner or operator shall be responsible for the amount of the deductible as provided in this section.

(2) The board shall set the initial deductible for corrective action claims at \$10,000 per tank per occurrence. Thereafter, the deductible shall be actuarially sound and shall be based on an estimate of the average cost of taking corrective action due to a sudden or nonsudden release from underground storage tanks in this Commonwealth. The board shall not set a deductible in an amount lower than \$5,000 per tank per occurrence.

(3) The board shall set a deductible for claims due to bodily injury, property damage or both caused by a sudden or nonsudden release from underground storage tanks in this Commonwealth. The board shall not set a deductible in an amount lower than \$5,000 per tank per occurrence.

(4) The board shall set a deductible for claims for bodily injury, property damage or both caused by a release from an underground storage tank in this Commonwealth resulting from an installation, modification or removal of regulated underground storage tanks. The board shall not set a deductible in an amount lower than \$5,000 per occurrence.

(d) Fees.—

(1) The board, by regulation, shall establish fees to be paid by the owner [or], operator *or certified tank installer*, as appropriate, of underground storage tanks. Fees shall be set on an actuarial basis in order to provide an amount sufficient to pay outstanding and anticipated claims against the Underground Storage Tank Indemnification Fund in a timely manner. Fees shall also include an amount sufficient to meet all other financial requirements of the board. Fees shall be adjusted as deemed necessary by the board, but no more than once a year. The board shall annually evaluate the fee amount to determine if it is sufficient to meet the anticipated expenses of the fund and provide a copy of its evaluation to the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives. The board shall analyze the claims experience of storage tanks to determine which types of underground tanks or tank configurations result in less frequent leaks.

(2) The owner or operator of an underground storage tank used to store heating oil [or], diesel fuel *or other regulated substance as determined by the board* shall pay a per gallon of tank capacity [insurance] fee [calculated in the following manner by the board. The board shall determine the total revenue a uniform per tank, per gallon insurance fee for all underground storage tanks would generate if it were applied to heating oil and diesel fuel tanks and divide that number by the total tank storage capacity of heating oil and diesel fuel tanks

registered with the Department of Environmental Resources at the beginning of the policy period. The resulting per gallon of tank capacity fee shall be paid by owner or operator of heating oil or diesel fuel tanks. The board shall provide public notice of the per gallon of capacity fee in the Pennsylvania Bulletin]. *The capacity fee shall be set on the same actuarial basis as is provided in subsection (d)(1).*

(3) In no case shall the owner or operator of an underground storage tank used for nonretail bulk storage or wholesale distribution of gasoline pay fees totaling more than \$5,000 per tank in any annual coverage period for which fees are charged.

(4) The owner or operator of an underground tank used to store diesel fuel on a farm for noncommercial purposes shall be required to pay the same fee as the owner or operator of an underground tank containing gasoline.

(e) Payment of fees.—Fees established *for the owner of the tank* under subsection (d)(1) through (4) shall be paid by the owner of the tank unless a written agreement between the owner and the operator provides otherwise. Fees *established for certified tank installers under subsection (d)(1)* shall be paid to the Underground Storage Tank Indemnification Fund or to the intermediaries so designated by [regulation.] *the board. Intermediaries located outside the territorial boundaries of this Commonwealth may collect and remit fees upon proof that a performance bond has been secured and maintained in an amount of \$1,000,000.* A person who fails or refuses to pay the fee or a part of the fee by the date established by the board [shall] *may* be assessed a penalty of 5% of the amount due which shall accrue on the first day of delinquency and be added thereto. Thereafter, on the last day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional 5% of the then unpaid balance shall accrue and be added thereto. A financial institution holding a mortgage or security interest on property containing an underground storage tank may with the owner or operator request the board to notify the financial institution in the event the owner or operator does not pay the fees required by this section by the date specified by the board. Notice of nonpayment to the financial institution or payment of an owner or operator's fee shall not constitute the assumption of any corrective action liability on the part of a financial institution.

(e.1) Upgrade Loan Program.—The board shall establish policies, procedures and forms as may be necessary and appropriate in order to administer the Upgrade Loan Program established in section 712.

(f) Additional powers.—The board shall have additional powers as may be necessary to carry out its duties under this act, including, but not limited to, the following:

(1) To make contracts and execute all instruments necessary or convenient for carrying on of its business.

(2) To make bylaws for the management and regulation of its affairs and to adopt, amend and repeal rules, regulations and guidelines governing the administrative procedures and business of the board and operation and administration of the fund. Regulations of the board shall be subject to review under the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(3) To sue or be sued concerning claims arising as the result of a release from an underground storage tank and to implead and be impleaded, complain and defend in all courts.

(4) To conduct examinations and investigations and take testimony under oath or affirmation on any matter necessary to the determination of approval or disapproval of any claim.

Section 4. Sections 706, 707 and 708 of the act are amended to read:

Section 706. Eligibility of claimants.

In order to receive a payment from the Underground Storage Tank Indemnification Fund, a claimant shall meet the following eligibility requirements:

(1) The claimant is the owner [or], operator *or certified tank installer* of the tank which is the subject of the claim.

(2) The current fee required under section 705 has been paid.

(3) The tank has been registered in accordance with the requirements of section 503.

(4) The owner [or], operator [**has obtained a permit, if**] *or certified tank installer has obtained the appropriate permit or certification as required under sections 108, 501 and 504.*

(5) The claimant demonstrates to the satisfaction of the board that the release that is the subject of the claim occurred after the date established by the board for payment of the fee required by section 705(d).

(6) Additional eligibility requirements which the board may adopt by regulation.

Section 707. Audit.

The board shall contract for an annual independent *financial* audit of the Underground Storage Tank Indemnification Fund.

Section 708. [Sunset] *Performance* review.

[**The Underground Storage Tank Indemnification Fund and the board shall be subject to periodic evaluation, review and termination or continuation under the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act, every five years commencing with an initial termination date of December 31, 1993. Nothing in the Sunset Act or this section shall be construed to invalidate any claim submitted prior to the date of termination.**] *The board shall periodically review and evaluate the performance of the Underground Storage Tank Indemnification Fund, including all programs funded from it, and make recommendations to the General Assembly for its continuation or termination every five years commencing with the initial review date of December 31, 2000.*

Section 5. The act is amended by adding sections to read:

Section 710. Underground Storage Tank Environmental Cleanup Program.

(a) Establishment.—The board is authorized to establish the Underground Storage Tank Environmental Cleanup Program for the purpose of ensuring the taking of corrective actions at underground storage tank facilities under sections 107(g) and 1302(c).

(b) Allocation.—The board may allocate up to \$5,500,000 annually from the Underground Storage Tank Indemnification Fund for the Underground Storage Tank Environmental Cleanup Program as long as the allocation does not impede the fund's ability to pay claims.

(b.1) Special allocation.—No more than \$2,000,000 of the annual allocation for the Underground Storage Tank Environmental Cleanup Program may be used for special environmental cleanup projects to assist owners of underground storage tanks who do not qualify for financial assistance under the provisions of this act, the act of May 19, 1995 (P.L.4, No.2), known as the Land Recycling and Environmental Remediation Standards Act, or any other applicable environmental Federal or State assistance program. Funds for special environmental cleanup projects may not be used to reimburse owners of underground storage tanks for remediation costs already incurred. Special environmental cleanup projects are limited to eligible owners of underground storage tanks whose site has not been remediated for contamination, for remediation not completed due to financial hardship and for those owners whose retail gasoline facility or commercial distribution center is no longer in business. The department shall assign priorities to such special projects based upon their environmental impact.

(b.2) Additional allocation.—No more than \$500,000 of the annual allocation for the Underground Storage Tank Environmental Cleanup Program may be used for costs of corrective action to assist owners of underground storage tanks with a capacity of 3,000 gallons or less used for storing heating oil for consumption on the premises where stored. Payments authorized under this subsection may be made only for releases occurring on or after the effective date of this subsection. Payments made for eligible releases shall be limited in amount to the actual costs of corrective action or to \$5,000, whichever is less. The amount allowed shall be subject to a \$1,000 deductible which shall be paid first by the claimant. This subsection shall expire two years from the effective date of this subsection. On or before that date, the board shall make a report to the General Assembly with recommendations. The board may promulgate regulations to carry out the provisions of this subsection.

(c) Implementation.—The Department of Environmental Protection shall assist the board with the implementation of this program and shall be reimbursed by the board from the fund for actual costs incurred for the

corrective actions taken, but in no event shall the department be reimbursed from the fund for any administrative costs.

(d) Eligibility determinations.—Where funds are expended under this section for corrective action and the owner, operator or certified tank installer of the underground storage tank is later determined to be eligible for Underground Storage Tank Indemnification Fund coverage under section 706, the moneys expended by the board shall be considered payments to the owner, operator or certified tank installer under section 704.

(e) Annual report.—The board shall annually transmit to the General Assembly a report outlining corrective actions taken and expenditures made under this section for the preceding Commonwealth fiscal year.

(f) Sunset.—The Underground Storage Tank Environmental Cleanup Program shall cease to exist on June 30, 2007, unless it is reestablished by action of the General Assembly.

Section 711. Underground Storage Tank Pollution Prevention Program.

(a) Establishment.—The board is hereby authorized to establish an Underground Storage Tank Pollution Prevention Program for the purpose of reimbursing eligible owners, as defined in subsection (d), for the costs of removing regulated substances from and sealing the fill pipes of underground storage tanks which have not been upgraded to comply with the technical requirements of Federal and State regulations. The board shall establish guidelines for eligible expenses and procedures for reimbursement from the Underground Storage Tank Indemnification Fund.

(b) Allocation.—The board may allocate up to \$1,000,000 annually from the Underground Storage Tank Indemnification Fund for the Underground Storage Tank Pollution Prevention Program as long as the allocation does not impede the actuarial soundness of the fund's ability to pay claims.

(c) Implementation.—The Department of Environmental Protection shall assist the board with the implementation of this program and shall be reimbursed by the board from the fund for actual reimbursements made to eligible owners, but in no event shall the department be reimbursed from the fund for any administrative costs.

(d) Eligibility.—Owners of six or fewer underground storage tanks shall be eligible to participate in this program.

(e) Annual report.—The board shall annually transmit to the General Assembly a report outlining actions taken and expenditures made under this section for the preceding Commonwealth fiscal year.

(f) Sunset.—The Underground Storage Tank Pollution Prevention Program shall cease to exist on June 30, 2007, unless it is reestablished by action of the General Assembly.

Section 712. Upgrade Loan Program.

(a) Establishment.—The board is hereby authorized to establish a loan program for owners of regulated underground storage tanks as a method of investing fund moneys, provided that such a program does not interfere

with the actuarial soundness of the fund required by section 705(d)(1). Aggregate outstanding loan balances shall not exceed 20% of the fund balance, hereby defined as the ending cash balance in any given fiscal year less any liability for claims incurred but not yet paid. Loans shall not be made when the fund balance falls below \$50,000,000. Loans shall not be made if such loans impede the board's ability to pay claims.

(b) Eligibility.—Such loans shall be made available to owners of six or fewer regulated underground storage tanks for the purpose of upgrading their storage tanks. Any portion of the annual availability of funds not committed to such owners within 90 days of the effective date of this section and thereafter within 90 days of July 1 in any fiscal year may be awarded to any owner of any number of regulated underground storage tanks that meet the remaining requirements of this section.

(c) Loan terms.—Loans made under this section shall be governed by the following terms:

(1) The maximum loan amount for an individual project is \$500,000 or 75% of the total eligible project costs, whichever is less. The maximum total amount that a single owner or operator may have outstanding is \$500,000.

(2) Loans shall have a repayment period of up to ten years.

(3) Interest rates shall be fixed at the time the loan is made and shall be equal to the Five-Year United States Treasury Note on the date application is made.

(4) All loans must be adequately secured. The board shall determine the methods for securing loans.

(5) The board shall charge a loan origination fee not to exceed 5% of the approved loan amount.

(6) The board, by regulation, may create additional eligibility requirements for participation in the Upgrade Loan Program.

(d) Annual report.—The board shall prepare an annual report for submission to the General Assembly concerning activities and expenditures made pursuant to this section for the preceding year. Included in this report shall be information concerning all loans made to eligible applicants and applications denied.

(e) Assistance.—The Department of Community and Economic Development, in consultation with the Department of Environmental Protection, shall assist the board with the implementation of this program. The fund shall reimburse the Department of Community and Economic Development for actual costs incurred to administer this program. However, administrative costs shall not exceed 5% of the loan amounts approved annually. Final loan approval shall be made by the board.

Section 6. This act shall take effect immediately.

APPROVED—The 30th day of January, A.D. 1998.

THOMAS J. RIDGE