

STORAGE TANK AND SPILL PREVENTION ACT - OMNIBUS AMENDMENTS

Act of Dec. 18, 1992, P.L. 1665, No. 184

Cl. 27

Session of 1992

No. 1992-184

HB 2456

AN ACT

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," exempting volunteer fire companies and volunteer emergency medical service organizations from the underground storage tank registration fee; and further providing for eligibility of claimants, for the advisory committee, for fire protection requirements, for commercial heating oil storage tanks, for the Underground Storage Tank Indemnification Fund, for the powers and duties of the Underground Storage Tank Indemnification Board and for the Storage Tank Loan Fund.

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

Section 1. Section 105(a) 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:

Section 105. Advisory committee.

(a) Appointment, composition, etc.--A storage tank advisory committee shall be appointed by the secretary within 30 days after the effective date of this act. The committee shall consist of no more than [11] **15** members. Four members shall be representatives of local government, [three] **five** members shall be representatives of the regulated community, one member shall be a registered professional engineer with three years of experience in this Commonwealth [and three] **, one member shall be a hydrogeologist and four** members shall be representatives of the public [at large]. Members shall serve without compensation other than reimbursement for reasonable and necessary expenses in accordance with Commonwealth policy or regulations and shall serve for terms fixed by the secretary. The [three] **five** representatives from the regulated community shall be appointed by the secretary, one each from a list of three nominees provided by the following:

- (1) The Associated Petroleum Industries of Pennsylvania.
- (2) The Pennsylvania Petroleum Association.
- (3) The Service Station Dealers and Automotive Repair Association of Pennsylvania and Delaware and the Petroleum Retailers and Auto Repair Association, Inc.
- (4) **The Pennsylvania Chemical Industry Council.**
- (5) **Tank Installers of Pennsylvania.**

* * *

Section 2. The act is amended by adding a section to read:
Section 305. Fire protection requirements.

The State Fire Marshal shall establish fire protection requirements by regulation for aboveground storage and dispensing tanks of 12,000 gallons or less of Class I and Class II motor fuels, naphthalene, kerosene, fuel oil and other substances of like character for nonretail distribution. Prior to the adoption of regulations under this section, protected aboveground storage tanks shall comply with the applicable provisions of Underwriters Laboratory Standards No. 142 and the National Fire Protection Association Standards. The State Fire Marshall and the Pennsylvania State Police shall enforce this section pursuant to the act of April 27, 1927 (P.L.450, No.291), referred to as the State Fire Marshal Law.

Section 3. Sections 503(a), 505, 704(a), 705(a), (c)(2) and (3), (d) and (e) and 709 of the act are amended to read:

Section 503. Registration.

(a) Requirements.--Every owner of an underground storage tank, except as specifically excluded by policy or regulation of the department, shall register with the department each underground storage tank by completing and submitting the form provided by the department and by paying the registration fee prescribed by the department for each underground storage tank within three months of the effective date of this act. **Volunteer fire companies and volunteer emergency medical services organizations which own underground storage tanks shall register each underground storage tank with the department but shall not be required to pay the registration fee.** It shall be unlawful for any owner or operator to operate or use, in any way, any underground storage tank that has not been registered as required by this section.

* * *

Section 505. Commercial heating oil storage tanks.

The Environmental Quality Board shall [establish] **adopt**, by regulation, **the** specific requirements for commercial heating oil storage tanks **when they are established by the United States Environmental Protection Agency**, including, but not limited to, requirements regarding permitting, monitoring, leak detection, corrective action and release prevention, closure and restoration. **If no Federal requirements are adopted by January 1, 1996, the board may establish, by regulation, requirements for commercial heating oil storage tanks until Federal requirements are adopted.**

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 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. 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 of an underground storage tank shall demonstrate financial responsibility by participating in the Underground Storage Tank Indemnification Fund. The owner or operator 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 and shall not be transferred or diverted to any other purpose by the use of any administrative procedure.

* * *

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 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).

* * *

(c) Deductible.--

* * *

(2) The board shall set the initial deductible for corrective action claims at [\$75,000] **\$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 [\$50,000] **\$5,000** per tank per occurrence.

(3) [The board shall set the initial deductible for claims due to bodily injury, property damage or both, at \$150,000 per tank per occurrence. Thereafter, the deductible shall be based on an estimate of the average award for settlement of third-party claims involving 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 \$100,000 per tank per occurrence.] **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.**

(d) Fees.--

(1) The board, by regulation, shall establish fees to be paid by the owner or operator, 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 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.**

(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.**

(e) **Payment of fees.--Fees established under subsection (d) shall be paid by the owner of the tank unless a written agreement between the owner and the operator provides otherwise. Fees shall be paid to the Underground Storage Tank Indemnification Fund or to the intermediaries so designated by regulation. A person who fails or refuses to pay the fee or a part of the fee by the date established by the board shall 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.**

Section 709. Loan fund.

(a) Establishment.--There is established a separate account in the State Treasury to be known as the Storage Tank Loan Fund, which shall be a special fund administered by the Department of Commerce.

(b) Purpose.--In a case when the department has identified no more than two owners or operators that individually own no more than 20 storage tanks as potentially liable to take corrective action under section 1302, such persons may be eligible, upon written application to the Department of Commerce, to receive long-term, low-interest loans in an amount up to [\$15,000] **\$50,000** at an interest rate not to exceed 2%. The Department of Commerce shall promulgate regulations establishing eligibility criteria for the loans. As part of this effort, the Department of Commerce shall include a determination of the availability of other sources of funds at reasonable rates to finance all or a portion of the response action and the need for Department of Commerce assistance to finance the response action.

(c) Funds.--In addition to any funds as may be appropriated by the General Assembly, at least [2%] **\$750,000** of the funds raised annually by the assessments imposed by sections 303 and 502 shall be deposited into the loan fund.

(d) Annual report.--Beginning January 1, 1990, and annually thereafter, the Department of Commerce shall transmit to the General Assembly a report concerning activities and expenditures made pursuant to this section for the preceding State fiscal year. Included in this report shall be information concerning all revenues and receipts deposited into the loan fund and all loans extended to eligible applicants.

(e) Sunset.--The loan fund shall cease to exist on June 30, [1995] **1998**, unless it is reestablished by action of the General Assembly. Any funds remaining in the loan fund on June 30, [1995] **1998**, shall lapse to the Storage Tank Fund. Money received by the Department of Commerce as repayment of outstanding loans after June 30, [1995] **1998**, shall lapse to the Storage Tank Fund.

Section 4. This act shall take effect as follows:

(1) The amendment of sections 503 and 709 of the act shall take effect July 1, 1993.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 18th day of December, A. D. 1992.

ROBERT P. CASEY