

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 1476 Session of  
1997

INTRODUCED BY LYNCH, REBER, STERN, MARSICO, S. H. SMITH,  
BIRMELIN, JADLOWIEC, HENNESSEY, HUTCHINSON, SERAFINI AND  
McNAUGHTON, MAY 6, 1997

SENATOR MADIGAN, ENVIRONMENTAL RESOURCES AND ENERGY, IN SENATE,  
AS AMENDED, SEPTEMBER 30, 1997

AN ACT

1 ~~Amending the act of July 6, 1989 (P.L.169, No.32), entitled "An~~ <—  
2 ~~act providing for the regulation of storage tanks and tank~~  
3 ~~facilities; imposing additional powers and duties on the~~  
4 ~~Department of Environmental Resources and the Environmental~~  
5 ~~Quality Board; and making an appropriation," further~~  
6 ~~providing for Underground Storage Tank Indemnification Board~~  
7 ~~and its powers and duties, for the Underground Storage Tank~~  
8 ~~Indemnification Fund, for eligibility of claimants including~~  
9 ~~certified tank installers and for audit, sunset and~~  
10 ~~performance reviews; and providing for Underground Storage~~  
11 ~~Tank Environmental Cleanup Program and the Upgrade Loan~~  
12 ~~Program.~~  
13 AMENDING THE ACT OF JULY 6, 1989 (P.L.169, NO.32), ENTITLED "AN <—  
14 ACT PROVIDING FOR THE REGULATION OF STORAGE TANKS AND TANK  
15 FACILITIES; IMPOSING ADDITIONAL POWERS AND DUTIES ON THE  
16 DEPARTMENT OF ENVIRONMENTAL RESOURCES AND THE ENVIRONMENTAL  
17 QUALITY BOARD; AND MAKING AN APPROPRIATION," FURTHER  
18 PROVIDING FOR UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD  
19 AND ITS POWERS AND DUTIES, FOR THE UNDERGROUND STORAGE TANK  
20 INDEMNIFICATION FUND, FOR ELIGIBILITY OF CLAIMANTS INCLUDING  
21 CERTIFIED TANK INSTALLERS AND FOR AUDIT, SUNSET AND  
22 PERFORMANCE REVIEWS; AND PROVIDING FOR UNDERGROUND STORAGE  
23 TANK ENVIRONMENTAL CLEANUP PROGRAM AND THE UPGRADE LOAN  
24 PROGRAM.  
25 The General Assembly of the Commonwealth of Pennsylvania  
26 hereby enacts as follows:  
27 ~~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.~~

1           ~~(iv) The Middle Atlantic Truck Stop Operators.~~

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

4           ~~(vi) The Tank Installers of Pennsylvania.~~

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

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

12          ~~(b) Chairman. The board shall select a chairman from its~~  
13          ~~members annually.~~

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

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

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

25          ~~(f) Meetings; quorum. The board shall meet at least~~  
26          ~~quarterly. Additional meetings may be held upon reasonable~~  
27          ~~notice at times and locations selected by the board. The board~~  
28          ~~shall meet at the call of the chairman or upon written request~~  
29          ~~of three members of the board. [Four] Five members shall~~  
30          ~~constitute a quorum and a quorum may act for the board in all~~

1 matters.

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

5 Section 704. ~~Underground Storage Tank Indemnification Fund.~~

6 ~~(a) Establishment of fund.~~

7 ~~(1) There is hereby created a special fund in the State~~  
8 ~~Treasury to be known as the Underground Storage Tank~~  
9 ~~Indemnification Fund. This fund shall consist of the fees~~  
10 ~~assessed by the board under section 705(d), amounts recovered~~  
11 ~~by the board due to fraudulent or improper claims or as~~  
12 ~~penalties for failure to pay fees when due, and funds earned~~  
13 ~~by the investment and reinvestment of the moneys collected.~~  
14 ~~Moneys in the fund are hereby appropriated to the board for~~  
15 ~~the purpose of making payments to owners [and], operators and~~  
16 ~~certified tank installers of underground storage tanks who~~  
17 ~~incur liability for taking corrective action or for bodily~~  
18 ~~injury or property damage caused by a sudden or nonsudden~~  
19 ~~release from underground storage tanks and for making loans~~  
20 ~~to owners as authorized by this act. The fund shall be the~~  
21 ~~sole source of payments under this act, and the Commonwealth~~  
22 ~~shall have no liability beyond the amount of the fund. Every~~  
23 ~~owner and certified tank installer of an underground storage~~  
24 ~~tank shall demonstrate financial responsibility by~~  
25 ~~participating in the Underground Storage Tank Indemnification~~  
26 ~~Fund. The owner [or], operator or certified tank installer~~  
27 ~~may obtain coverage for liability not insured by the fund~~  
28 ~~through any of the methods approved in accordance with~~  
29 ~~section 701(b).~~

30 ~~(2) This fund is declared a restricted fund. The moneys~~

1 in the fund shall be used only for the purposes set forth in  
2 this [section] act and shall not be transferred or diverted  
3 to any other purpose by the use of any administrative  
4 procedure.

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

13 ~~(b) Limit of payments to owners or operators.~~

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

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

23 ~~(3) Payments shall not exceed [an]:~~

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

27 ~~(ii) an annual aggregate of \$2,000,000 for each~~  
28 ~~owner and operator of 101 or more underground storage tanks,~~  
29 ~~up to the total of \$1,000,000 per tank per occurrence or the~~  
30 ~~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           ~~(1) Any owner of an underground storage tank of 3,000~~  
2           ~~gallons or more used for storing heating oil for consumptive~~  
3           ~~use on the premises where stored may elect to participate in~~  
4           ~~the fund.~~

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

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

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

16          ~~(f) Eligibility of claims. Regulations to the contrary~~  
17          ~~notwithstanding, claims for releases of regulated substances~~  
18          ~~that occurred after the effective date of this act but before~~  
19          ~~February 1, 1994, shall be eligible for payment under section~~  
20          ~~702 with the following restrictions:~~

21                 ~~(1) Claims must be submitted to the Underground Storage~~  
22                 ~~Tank Indemnification Board within 90 days of the effective~~  
23                 ~~date of this subsection.~~

24                 ~~(2) Payment for any single release shall not exceed~~  
25                 ~~\$30,000.~~

26                 ~~(3) No more than \$15,000,000 from the fund shall be used~~  
27                 ~~to implement this subsection.~~

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

30          ~~(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.~~



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

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

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

18    ~~(d) Fees.—~~

19        ~~(1) The board, by regulation, shall establish fees to be~~  
20    ~~paid by the owner [or], operator or certified tank installer~~  
21    ~~as appropriate, of underground storage tanks. Fees shall be~~  
22    ~~set on an actuarial basis in order to provide an amount~~  
23    ~~sufficient to pay outstanding and anticipated claims against~~  
24    ~~the Underground Storage Tank Indemnification Fund in a timely~~  
25    ~~manner. Fees shall also include an amount sufficient to meet~~  
26    ~~all other financial requirements of the board. Fees shall be~~  
27    ~~adjusted as deemed necessary by the board, but no more than~~  
28    ~~once a year. The board shall annually evaluate the fee amount~~  
29    ~~to determine if it is sufficient to meet the anticipated~~  
30    ~~expenses of the fund and provide a copy of its evaluation to~~

1 the Environmental Resources and Energy Committee of the  
2 Senate and the Conservation Committee of the House of  
3 Representatives. The board shall analyze the claims  
4 experience of storage tanks to determine which types of  
5 underground tanks or tank configurations result in less  
6 frequent leaks.

7 (2) ~~The owner or operator of an underground storage tank~~  
8 ~~used to store heating oil [or], diesel fuel or other~~  
9 ~~regulated substance as determined by the board shall pay a~~  
10 ~~per gallon of tank capacity [insurance] fee, [calculated in~~  
11 ~~the following manner by the board. The board shall determine~~  
12 ~~the total revenue a uniform per tank, per gallon insurance~~  
13 ~~fee for all underground storage tanks would generate if it~~  
14 ~~were applied to heating oil and diesel fuel tanks and divide~~  
15 ~~that number by the total tank storage capacity of heating oil~~  
16 ~~and diesel fuel tanks registered with the Department of~~  
17 ~~Environmental Resources at the beginning of the policy~~  
18 ~~period. The resulting per gallon of tank capacity fee shall~~  
19 ~~be paid by owner or operator of heating oil or diesel fuel~~  
20 ~~tanks. The board shall provide public notice of the per~~  
21 ~~gallon of capacity fee in the Pennsylvania Bulletin.] The~~  
22 ~~capacity fee shall be set on the same actuarial basis as is~~  
23 ~~provided in subsection (d)(1).~~

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

29 (4) ~~The owner or operator of an underground tank used to~~  
30 ~~store diesel fuel on a farm for noncommercial purposes shall~~

1 ~~be required to pay the same fee as the owner or operator of~~  
2 ~~an underground tank containing gasoline.~~

3 ~~(c) Payment of fees. Fees established for the owner of the~~  
4 ~~tank under subsection (d)(1) through (4) shall be paid by the~~  
5 ~~owner of the tank unless a written agreement between the owner~~  
6 ~~and the operator provides otherwise. Fees established for~~  
7 ~~certified tank installers under subsection (d)(1) shall be paid~~  
8 ~~by the certified tank installers. Fees shall be paid to the~~  
9 ~~Underground Storage Tank Indemnification Fund or to the~~  
10 ~~intermediaries so designated by [regulation.] the board.~~  
11 ~~Intermediaries located outside the territorial boundaries of~~  
12 ~~this Commonwealth may collect and remit fees upon proof that a~~  
13 ~~performance bond has been secured and maintained in an amount of~~  
14 ~~\$1,000,000. A person who fails or refuses to pay the fee or a~~  
15 ~~part of the fee by the date established by the board [shall] may~~  
16 ~~be assessed a penalty of 5% of the amount due which shall accrue~~  
17 ~~on the first day of delinquency and be added thereto.~~  
18 ~~Thereafter, on the last day of each month during which any part~~  
19 ~~of any fee or any prior accrued penalty remains unpaid, an~~  
20 ~~additional 5% of the then unpaid balance shall accrue and be~~  
21 ~~added thereto. A financial institution holding a mortgage or~~  
22 ~~security interest on property containing an underground storage~~  
23 ~~tank may with the owner or operator request the board to notify~~  
24 ~~the financial institution in the event the owner or operator~~  
25 ~~does not pay the fees required by this section by the date~~  
26 ~~specified by the board. Notice of nonpayment to the financial~~  
27 ~~institution or payment of an owner or operator's fee shall not~~  
28 ~~constitute the assumption of any corrective action liability on~~  
29 ~~the part of a financial institution.~~

30 ~~(c.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.~~

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

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

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

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

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

15    ~~Section 707. Audit.~~

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

18    ~~Section 708. [Sunset] Performance review.~~

19          ~~[The Underground Storage Tank Indemnification Fund and the~~  
20    ~~board shall be subject to periodic evaluation, review and~~  
21    ~~termination or continuation under the act of December 22, 1981~~  
22    ~~(P.L.508, No.142), known as the Sunset Act, every five years~~  
23    ~~commencing with an initial termination date of December 31,~~  
24    ~~1993. Nothing in the Sunset Act or this section shall be~~  
25    ~~construed to invalidate any claim submitted prior to the date of~~  
26    ~~termination.] The board shall periodically review and evaluate~~  
27    ~~the performance of the Underground Storage Tank Indemnification~~  
28    ~~Fund including all programs funded from it and make~~  
29    ~~recommendations to the General Assembly for its continuation or~~  
30    ~~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 taking corrective actions at underground storage tank~~  
~~facilities under sections 107(g) and 1302(c).~~

~~(b) Allocation. The board may allocate up to \$10,000,000~~  
~~annually from the Underground Storage Tank Indemnification Fund~~  
~~for the Storage Tank Environmental Cleanup Program as long as~~  
~~the allocation does not impede 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 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 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. Such loans shall be made available to owners of regulated storage tanks for the purpose of upgrading their storage tanks or removing them from service.~~

~~(b) 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) Owners of six or fewer storage tanks shall be eligible to participate in the upgrade loan program.~~

~~(7) The board, by regulation, may create additional eligibility requirements for participation in the upgrade loan program.~~

~~(c) 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.~~

~~(d) 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 July 1, 1997.~~

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

1 GOVERNMENT MEMBER SHALL BE APPOINTED FOR A TERM OF TWO YEARS.

2 (3) ONE PUBLIC MEMBER WHO SHALL NOT BE AN OWNER OR  
3 OPERATOR OF STORAGE TANKS NOR AFFILIATED IN ANY WAY WITH ANY  
4 PERSON REGULATED UNDER THIS ACT. THE PUBLIC MEMBER SHALL BE  
5 APPOINTED FOR A TERM OF THREE YEARS.

6 (B) CHAIRMAN.--THE BOARD SHALL SELECT A CHAIRMAN FROM ITS  
7 MEMBERS ANNUALLY.

8 (C) VACANCIES.--VACANCIES IN APPOINTED POSITIONS SHALL BE  
9 FILLED BY THE GOVERNOR IN THE SAME MANNER AS THE ORIGINAL  
10 APPOINTMENT. MEMBERS SHALL SERVE UNTIL THEIR SUCCESSORS ARE  
11 APPOINTED AND QUALIFIED.

12 (D) COMPENSATION.--MEMBERS SHALL RECEIVE NO COMPENSATION FOR  
13 THEIR SERVICE OTHER THAN REIMBURSEMENT FOR NECESSARY EXPENSES IN  
14 ACCORDANCE WITH COMMONWEALTH REGULATIONS.

15 (E) CONFLICTS.--NO MEMBER SHALL PARTICIPATE IN MAKING ANY  
16 DECISION IN A MATTER INVOLVING ANY PAYMENT FROM WHICH HE OR HIS  
17 EMPLOYER MAY BENEFIT OR WHICH MAY BENEFIT A MEMBER OF HIS  
18 IMMEDIATE FAMILY.

19 (F) MEETINGS; QUORUM.--THE BOARD SHALL MEET AT LEAST  
20 QUARTERLY. ADDITIONAL MEETINGS MAY BE HELD UPON REASONABLE  
21 NOTICE AT TIMES AND LOCATIONS SELECTED BY THE BOARD. THE BOARD  
22 SHALL MEET AT THE CALL OF THE CHAIRMAN OR UPON WRITTEN REQUEST  
23 OF THREE MEMBERS OF THE BOARD. [FOUR] FIVE MEMBERS SHALL  
24 CONSTITUTE A QUORUM AND A QUORUM MAY ACT FOR THE BOARD IN ALL  
25 MATTERS.

26 SECTION 3. SECTIONS 704 AND 705 OF THE ACT, AMENDED DECEMBER  
27 18, 1992 (P.L.1665, NO.184) AND JUNE 26, 1995 (P.L.79, NO.16),  
28 ARE AMENDED TO READ:

29 SECTION 704. UNDERGROUND STORAGE TANK INDEMNIFICATION FUND.

30 (A) ESTABLISHMENT OF FUND.--

1           (1) THERE IS HEREBY CREATED A SPECIAL FUND IN THE STATE  
2 TREASURY TO BE KNOWN AS THE UNDERGROUND STORAGE TANK  
3 INDEMNIFICATION FUND. THIS FUND SHALL CONSIST OF THE FEES  
4 ASSESSED BY THE BOARD UNDER SECTION 705(D), AMOUNTS RECOVERED  
5 BY THE BOARD DUE TO FRAUDULENT OR IMPROPER CLAIMS OR AS  
6 PENALTIES FOR FAILURE TO PAY FEES WHEN DUE, AND FUNDS EARNED  
7 BY THE INVESTMENT AND REINVESTMENT OF THE MONEYS COLLECTED.  
8 MONEYS IN THE FUND ARE HEREBY APPROPRIATED TO THE BOARD FOR  
9 THE PURPOSE OF MAKING PAYMENTS TO OWNERS [AND], OPERATORS AND  
10 CERTIFIED TANK INSTALLERS OF UNDERGROUND STORAGE TANKS WHO  
11 INCUR LIABILITY FOR TAKING CORRECTIVE ACTION OR FOR BODILY  
12 INJURY OR PROPERTY DAMAGE CAUSED BY A SUDDEN OR NONSUDDEN  
13 RELEASE FROM UNDERGROUND STORAGE TANKS AND FOR MAKING LOANS  
14 TO OWNERS AS AUTHORIZED BY THIS ACT. THE FUND SHALL BE THE  
15 SOLE SOURCE OF PAYMENTS UNDER THIS ACT, AND THE COMMONWEALTH  
16 SHALL HAVE NO LIABILITY BEYOND THE AMOUNT OF THE FUND. EVERY  
17 OWNER AND CERTIFIED TANK INSTALLER OF AN UNDERGROUND STORAGE  
18 TANK SHALL DEMONSTRATE FINANCIAL RESPONSIBILITY BY  
19 PARTICIPATING IN THE UNDERGROUND STORAGE TANK INDEMNIFICATION  
20 FUND. THE OWNER [OR], OPERATOR OR CERTIFIED TANK INSTALLER  
21 MAY OBTAIN COVERAGE FOR LIABILITY NOT INSURED BY THE FUND  
22 THROUGH ANY OF THE METHODS APPROVED IN ACCORDANCE WITH  
23 SECTION 701(B).

24           (2) THIS FUND IS DECLARED A RESTRICTED FUND. THE MONEYS  
25 IN THE FUND SHALL BE USED ONLY FOR THE PURPOSES SET FORTH IN  
26 THIS [SECTION] ACT AND SHALL NOT BE TRANSFERRED OR DIVERTED  
27 TO ANY OTHER PURPOSE BY THE USE OF ANY ADMINISTRATIVE  
28 PROCEDURE.

29           (3) NOTWITHSTANDING ANY GENERAL OR SPECIFIC POWERS  
30 GRANTED TO THE BOARD BY THIS ACT, WHETHER EXPRESS OR IMPLIED,

1 THE BOARD SHALL HAVE NO POWER, AT ANY TIME OR IN ANY MANNER,  
2 TO PLEDGE THE CREDIT OR TAXING POWER OF THE COMMONWEALTH OR  
3 ANY POLITICAL SUBDIVISION. NO OBLIGATIONS OR LIABILITIES OF  
4 THE BOARD SHALL BE DEEMED OBLIGATIONS OR LIABILITIES OF THE  
5 COMMONWEALTH OR OF ANY OF ITS POLITICAL SUBDIVISIONS. NOTHING  
6 HEREIN SHALL BE DEEMED A WAIVER OF SOVEREIGN IMMUNITY.

7 (B) LIMIT OF PAYMENTS TO OWNERS OR OPERATORS.--

8 (1) PAYMENTS TO ELIGIBLE OWNERS OR OPERATORS SHALL BE  
9 LIMITED TO THE ACTUAL COSTS OF CORRECTIVE ACTION AND THE  
10 AMOUNT OF AN AWARD OF DAMAGES BY A COURT OF COMPETENT  
11 JURISDICTION FOR BODILY INJURY, PROPERTY DAMAGE OR BOTH, NOT  
12 TO EXCEED A TOTAL OF \$1,000,000 PER TANK PER OCCURRENCE.

13 (2) PAYMENTS OF CLAIMS AGAINST THE FUND SHALL BE SUBJECT  
14 TO A DEDUCTIBLE AS PROVIDED IN SECTION 705. PAYMENTS SHALL BE  
15 MADE ONLY FOR RELEASES RESULTING FROM STORAGE TANKS THAT ARE  
16 LOCATED WITHIN THIS COMMONWEALTH.

17 (3) PAYMENTS SHALL NOT EXCEED [AN]:

18 (I) AN ANNUAL AGGREGATE OF \$1,000,000 FOR EACH OWNER  
19 AND OPERATOR OF 100 OR LESS UNDERGROUND STORAGE TANKS [OR  
20 AN]; OR

21 (II) AN ANNUAL AGGREGATE OF \$2,000,000 FOR EACH  
22 OWNER AND OPERATOR OF 101 OR MORE UNDERGROUND STORAGE  
23 TANKS, UP TO THE TOTAL OF \$1,000,000 PER TANK PER  
24 OCCURRENCE OR THE TOTAL ELIGIBLE COSTS OR DAMAGES.

25 (B.1) LIMIT OF PAYMENTS TO CERTIFIED TANK INSTALLERS.--

26 (1) PAYMENTS TO CERTIFIED TANK INSTALLERS SHALL BE  
27 LIMITED TO THE ACTUAL COSTS OF CORRECTIVE ACTION AND THE  
28 AMOUNT OF AN AWARD OF DAMAGES BY A COURT OF COMPETENT  
29 JURISDICTION FOR BODILY INJURY, PROPERTY DAMAGE OR BOTH, NOT  
30 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

1 CLAIM. THE BOARD, BY REGULATION, MAY ESTABLISH A SYSTEM FOR  
2 PRIORITIZING CLAIMS.

3 (C) DEDUCTIBLE.--

4 (1) CLAIMS SHALL BE SUBJECT TO A DEDUCTIBLE AMOUNT WHICH  
5 THE BOARD SHALL SET ANNUALLY. THE BOARD SHALL GIVE AT LEAST  
6 30 DAYS' NOTICE OF A PROPOSED CHANGE IN DEDUCTIBLE AMOUNTS BY  
7 PUBLICATION IN THE PENNSYLVANIA BULLETIN, AND THE CHANGE  
8 SHALL TAKE EFFECT ON THE DATE SPECIFIED IN THE NOTICE. EACH  
9 OWNER OR OPERATOR SHALL BE RESPONSIBLE FOR THE AMOUNT OF THE  
10 DEDUCTIBLE AS PROVIDED IN THIS SECTION.

11 (2) THE BOARD SHALL SET THE INITIAL DEDUCTIBLE FOR  
12 CORRECTIVE ACTION CLAIMS AT \$10,000 PER TANK PER OCCURRENCE.  
13 THEREAFTER, THE DEDUCTIBLE SHALL BE ACTUARIALLY SOUND AND  
14 SHALL BE BASED ON AN ESTIMATE OF THE AVERAGE COST OF TAKING  
15 CORRECTIVE ACTION DUE TO A SUDDEN OR NONSUDDEN RELEASE FROM  
16 UNDERGROUND STORAGE TANKS IN THIS COMMONWEALTH. THE BOARD  
17 SHALL NOT SET A DEDUCTIBLE IN AN AMOUNT LOWER THAN \$5,000 PER  
18 TANK PER OCCURRENCE.

19 (3) THE BOARD SHALL SET A DEDUCTIBLE FOR CLAIMS DUE TO  
20 BODILY INJURY, PROPERTY DAMAGE OR BOTH CAUSED BY A SUDDEN OR  
21 NONSUDDEN RELEASE FROM UNDERGROUND STORAGE TANKS IN THIS  
22 COMMONWEALTH. THE BOARD SHALL NOT SET A DEDUCTIBLE IN AN  
23 AMOUNT LOWER THAN \$5,000 PER TANK PER OCCURRENCE.

24 (4) THE BOARD SHALL SET A DEDUCTIBLE FOR CLAIMS FOR  
25 BODILY INJURY, PROPERTY DAMAGE OR BOTH CAUSED BY A RELEASE  
26 FROM AN UNDERGROUND STORAGE TANK IN THIS COMMONWEALTH  
27 RESULTING FROM AN INSTALLATION, MODIFICATION OR REMOVAL OF  
28 REGULATED UNDERGROUND STORAGE TANKS. THE BOARD SHALL NOT SET  
29 A DEDUCTIBLE IN AN AMOUNT LOWER THAN \$5,000 PER OCCURRENCE.

30 (D) FEES.--



1           (1) THE BOARD[, BY REGULATION,] SHALL ESTABLISH FEES TO  
2 BE PAID BY THE OWNER [OR], OPERATOR OR CERTIFIED TANK  
3 INSTALLER, AS APPROPRIATE, OF UNDERGROUND STORAGE TANKS. FEES  
4 SHALL BE SET ON AN ACTUARIAL BASIS IN ORDER TO PROVIDE AN  
5 AMOUNT SUFFICIENT TO PAY OUTSTANDING AND ANTICIPATED CLAIMS  
6 AGAINST THE UNDERGROUND STORAGE TANK INDEMNIFICATION FUND IN  
7 A TIMELY MANNER. FEES SHALL ALSO INCLUDE AN AMOUNT SUFFICIENT  
8 TO MEET ALL OTHER FINANCIAL REQUIREMENTS OF THE BOARD. FEES  
9 SHALL BE ADJUSTED AS DEEMED NECESSARY BY THE BOARD, BUT NO  
10 MORE THAN ONCE A YEAR. THE BOARD SHALL ANNUALLY EVALUATE THE  
11 FEE AMOUNT TO DETERMINE IF IT IS SUFFICIENT TO MEET THE  
12 ANTICIPATED EXPENSES OF THE FUND AND PROVIDE A COPY OF ITS  
13 EVALUATION TO THE ENVIRONMENTAL RESOURCES AND ENERGY  
14 COMMITTEE OF THE SENATE AND THE CONSERVATION COMMITTEE OF THE  
15 HOUSE OF REPRESENTATIVES. THE BOARD SHALL ANALYZE THE CLAIMS  
16 EXPERIENCE OF STORAGE TANKS TO DETERMINE WHICH TYPES OF  
17 UNDERGROUND TANKS OR TANK CONFIGURATIONS RESULT IN LESS  
18 FREQUENT LEAKS.

19           (2) THE OWNER OR OPERATOR OF AN UNDERGROUND STORAGE TANK  
20 USED TO STORE HEATING OIL [OR], DIESEL FUEL OR OTHER  
21 REGULATED SUBSTANCE AS DETERMINED BY THE BOARD SHALL PAY A  
22 PER GALLON OF TANK CAPACITY [INSURANCE] FEE, [CALCULATED IN  
23 THE FOLLOWING MANNER BY THE BOARD. THE BOARD SHALL DETERMINE  
24 THE TOTAL REVENUE A UNIFORM PER TANK, PER GALLON INSURANCE  
25 FEE FOR ALL UNDERGROUND STORAGE TANKS WOULD GENERATE IF IT  
26 WERE APPLIED TO HEATING OIL AND DIESEL FUEL TANKS AND DIVIDE  
27 THAT NUMBER BY THE TOTAL TANK STORAGE CAPACITY OF HEATING OIL  
28 AND DIESEL FUEL TANKS REGISTERED WITH THE DEPARTMENT OF  
29 ENVIRONMENTAL RESOURCES AT THE BEGINNING OF THE POLICY  
30 PERIOD. THE RESULTING PER GALLON OF TANK CAPACITY FEE SHALL

1 BE PAID BY OWNER OR OPERATOR OF HEATING OIL OR DIESEL FUEL  
2 TANKS. THE BOARD SHALL PROVIDE PUBLIC NOTICE OF THE PER  
3 GALLON OF CAPACITY FEE IN THE PENNSYLVANIA BULLETIN.] THE  
4 CAPACITY FEE SHALL BE SET ON THE SAME ACTUARIAL BASIS AS IS  
5 PROVIDED IN SUBSECTION (D)(1).

6 (3) IN NO CASE SHALL THE OWNER OR OPERATOR OF AN  
7 UNDERGROUND STORAGE TANK USED FOR NONRETAIL BULK STORAGE OR  
8 WHOLESALE DISTRIBUTION OF GASOLINE PAY FEES TOTALING MORE  
9 THAN \$5,000 PER TANK IN ANY ANNUAL COVERAGE PERIOD FOR WHICH  
10 FEES ARE CHARGED.

11 (4) THE OWNER OR OPERATOR OF AN UNDERGROUND TANK USED TO  
12 STORE DIESEL FUEL ON A FARM FOR NONCOMMERCIAL PURPOSES SHALL  
13 BE REQUIRED TO PAY THE SAME FEE AS THE OWNER OR OPERATOR OF  
14 AN UNDERGROUND TANK CONTAINING GASOLINE.

15 (5) FEES ESTABLISHED UNDER PARAGRAPHS (1) AND (2) SHALL  
16 BE SET AS FOLLOWS:

17 (I) THE BOARD SHALL PROPOSE ITS RECOMMENDED FEE AT  
18 ITS ANNUAL MEETING AND PUBLISH ITS PROPOSED FEE IN THE  
19 PENNSYLVANIA BULLETIN.

20 (II) WITHIN 30 DAYS OF PUBLICATION OF THE PROPOSED  
21 FEE, THE BOARD SHALL HOLD AT LEAST ONE SPECIAL MEETING TO  
22 ACCEPT COMMENT ON THE PROPOSED FEE.

23 (III) THE BOARD AT ITS NEXT REGULARLY SCHEDULED  
24 MEETING SHALL DECIDE UPON THE FINAL FEE.

25 (IV) THE BOARD SHALL PUBLISH THE FINAL FEE IN THE  
26 PENNSYLVANIA BULLETIN AT LEAST 30 DAYS PRIOR TO  
27 IMPLEMENTATION OF THE NEW FEE.

28 (V) FEES SHALL BE ADJUSTED AS DEEMED NECESSARY BY  
29 THE BOARD, BUT NO MORE THAN ONCE PER YEAR.

30 (VI) THE BOARD SHALL ANNUALLY EVALUATE THE FEE

1        AMOUNT TO DETERMINE IF IT IS SUFFICIENT TO MEET THE  
2        ANTICIPATED EXPENSES OF THE FUND, AND PROVIDE A COPY OF  
3        ITS EVALUATION TO THE ENVIRONMENTAL RESOURCES AND ENERGY  
4        COMMITTEE OF THE SENATE AND THE ENVIRONMENTAL RESOURCES  
5        AND ENERGY COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

6        (E)    PAYMENT OF FEES.--FEES ESTABLISHED FOR THE OWNER OF THE  
7        TANK UNDER SUBSECTION (D)(1) THROUGH (4) SHALL BE PAID BY THE  
8        OWNER OF THE TANK UNLESS A WRITTEN AGREEMENT BETWEEN THE OWNER  
9        AND THE OPERATOR PROVIDES OTHERWISE. FEES ESTABLISHED FOR  
10       CERTIFIED TANK INSTALLERS UNDER SUBSECTION (D)(1) SHALL BE PAID  
11       TO THE UNDERGROUND STORAGE TANK INDEMNIFICATION FUND OR TO THE  
12       INTERMEDIARIES SO DESIGNATED BY [REGULATION.] THE BOARD.  
13       INTERMEDIARIES LOCATED OUTSIDE THE TERRITORIAL BOUNDARIES OF  
14       THIS COMMONWEALTH MAY COLLECT AND REMIT FEES UPON PROOF THAT A  
15       PERFORMANCE BOND HAS BEEN SECURED AND MAINTAINED IN AN AMOUNT OF  
16       \$1,000,000. A PERSON WHO FAILS OR REFUSES TO PAY THE FEE OR A  
17       PART OF THE FEE BY THE DATE ESTABLISHED BY THE BOARD [SHALL] MAY  
18       BE ASSESSED A PENALTY OF 5% OF THE AMOUNT DUE WHICH SHALL ACCRUE  
19       ON THE FIRST DAY OF DELINQUENCY AND BE ADDED THERETO.

20       THEREAFTER, ON THE LAST DAY OF EACH MONTH DURING WHICH ANY PART  
21       OF ANY FEE OR ANY PRIOR ACCRUED PENALTY REMAINS UNPAID, AN  
22       ADDITIONAL 5% OF THE THEN UNPAID BALANCE SHALL ACCRUE AND BE  
23       ADDED THERETO. A FINANCIAL INSTITUTION HOLDING A MORTGAGE OR  
24       SECURITY INTEREST ON PROPERTY CONTAINING AN UNDERGROUND STORAGE  
25       TANK MAY WITH THE OWNER OR OPERATOR REQUEST THE BOARD TO NOTIFY  
26       THE FINANCIAL INSTITUTION IN THE EVENT THE OWNER OR OPERATOR  
27       DOES NOT PAY THE FEES REQUIRED BY THIS SECTION BY THE DATE  
28       SPECIFIED BY THE BOARD. NOTICE OF NONPAYMENT TO THE FINANCIAL  
29       INSTITUTION OR PAYMENT OF AN OWNER OR OPERATOR'S FEE SHALL NOT  
30       CONSTITUTE THE ASSUMPTION OF ANY CORRECTIVE ACTION LIABILITY ON

1 THE PART OF A FINANCIAL INSTITUTION.

2 (E.1) UPGRADE LOAN PROGRAM.--THE BOARD SHALL ESTABLISH  
3 POLICIES, PROCEDURES AND FORMS AS MAY BE NECESSARY AND  
4 APPROPRIATE IN ORDER TO ADMINISTER THE UPGRADE LOAN PROGRAM  
5 ESTABLISHED IN SECTION 712.

6 (F) ADDITIONAL POWERS.--THE BOARD SHALL HAVE ADDITIONAL  
7 POWERS AS MAY BE NECESSARY TO CARRY OUT ITS DUTIES UNDER THIS  
8 ACT, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

9 (1) TO MAKE CONTRACTS AND EXECUTE ALL INSTRUMENTS  
10 NECESSARY OR CONVENIENT FOR CARRYING ON OF ITS BUSINESS.

11 (2) TO MAKE BYLAWS FOR THE MANAGEMENT AND REGULATION OF  
12 ITS AFFAIRS AND TO ADOPT, AMEND AND REPEAL RULES, REGULATIONS  
13 AND GUIDELINES GOVERNING THE ADMINISTRATIVE PROCEDURES AND  
14 BUSINESS OF THE BOARD AND OPERATION AND ADMINISTRATION OF THE  
15 FUND. REGULATIONS OF THE BOARD SHALL BE SUBJECT TO REVIEW  
16 UNDER THE ACT OF JUNE 25, 1982 (P.L.633, NO.181), KNOWN AS  
17 THE REGULATORY REVIEW ACT.

18 (3) TO SUE OR BE SUED CONCERNING CLAIMS ARISING AS THE  
19 RESULT OF A RELEASE FROM AN UNDERGROUND STORAGE TANK AND TO  
20 IMPEAD AND BE IMPEADED, COMPLAIN AND DEFEND IN ALL COURTS.

21 (4) TO CONDUCT EXAMINATIONS AND INVESTIGATIONS AND TAKE  
22 TESTIMONY UNDER OATH OR AFFIRMATION ON ANY MATTER NECESSARY  
23 TO THE DETERMINATION OF APPROVAL OR DISAPPROVAL OF ANY CLAIM.

24 SECTION 4. SECTIONS 706, 707 AND 708 OF THE ACT ARE AMENDED  
25 TO READ:

26 SECTION 706. ELIGIBILITY OF CLAIMANTS.

27 IN ORDER TO RECEIVE A PAYMENT FROM THE UNDERGROUND STORAGE  
28 TANK INDEMNIFICATION FUND, A CLAIMANT SHALL MEET THE FOLLOWING  
29 ELIGIBILITY REQUIREMENTS:

30 (1) THE CLAIMANT IS THE OWNER [OR] OPERATOR OR

1     CERTIFIED TANK INSTALLER OF THE TANK WHICH IS THE SUBJECT OF  
2     THE CLAIM.

3           (2)   THE CURRENT FEE REQUIRED UNDER SECTION 705 HAS BEEN  
4     PAID.

5           (3)   THE TANK HAS BEEN REGISTERED IN ACCORDANCE WITH THE  
6     REQUIREMENTS OF SECTION 503.

7           (4)   THE OWNER [OR]\_ OPERATOR [HAS OBTAINED A PERMIT, IF]  
8     OR CERTIFIED TANK INSTALLER HAS OBTAINED THE APPROPRIATE  
9     PERMIT OR CERTIFICATION, AS REQUIRED UNDER SECTIONS 108, 501  
10    AND 504.

11          (5)   THE CLAIMANT DEMONSTRATES TO THE SATISFACTION OF THE  
12    BOARD THAT THE RELEASE THAT IS THE SUBJECT OF THE CLAIM  
13    OCCURRED AFTER THE DATE ESTABLISHED BY THE BOARD FOR PAYMENT  
14    OF THE FEE REQUIRED BY SECTION 705(D).

15          (6)   ADDITIONAL ELIGIBILITY REQUIREMENTS WHICH THE BOARD  
16    MAY ADOPT BY REGULATION.

17   SECTION 707.   AUDIT.

18       THE BOARD SHALL CONTRACT FOR AN ANNUAL INDEPENDENT FINANCIAL  
19    AUDIT OF THE UNDERGROUND STORAGE TANK INDEMNIFICATION FUND.

20   SECTION 708.   [SUNSET] PERFORMANCE REVIEW.

21       [THE UNDERGROUND STORAGE TANK INDEMNIFICATION FUND AND THE  
22    BOARD SHALL BE SUBJECT TO PERIODIC EVALUATION, REVIEW AND  
23    TERMINATION OR CONTINUATION UNDER THE ACT OF DECEMBER 22, 1981  
24    (P.L.508, NO.142), KNOWN AS THE SUNSET ACT, EVERY FIVE YEARS  
25    COMMENCING WITH AN INITIAL TERMINATION DATE OF DECEMBER 31,  
26    1993. NOTHING IN THE SUNSET ACT OR THIS SECTION SHALL BE  
27    CONSTRUED TO INVALIDATE ANY CLAIM SUBMITTED PRIOR TO THE DATE OF  
28    TERMINATION.] THE BOARD SHALL PERIODICALLY REVIEW AND EVALUATE  
29    THE PERFORMANCE OF THE UNDERGROUND STORAGE TANK INDEMNIFICATION  
30    FUND INCLUDING ALL PROGRAMS FUNDED FROM IT AND MAKE

1 RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR ITS CONTINUATION OR  
2 TERMINATION EVERY FIVE YEARS COMMENCING WITH THE INITIAL REVIEW  
3 DATE OF DECEMBER 31, 2000.

4 SECTION 5. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:  
5 SECTION 710. UNDERGROUND STORAGE TANK ENVIRONMENTAL CLEANUP  
6 PROGRAM.

7 (A) ESTABLISHMENT.--THE BOARD IS AUTHORIZED TO ESTABLISH THE  
8 UNDERGROUND STORAGE TANK ENVIRONMENTAL CLEANUP PROGRAM FOR THE  
9 PURPOSE OF TAKING CORRECTIVE ACTIONS AT UNDERGROUND STORAGE TANK  
10 FACILITIES UNDER SECTIONS 107(G) AND 1302(C).

11 (B) ALLOCATION.--THE BOARD MAY ALLOCATE UP TO \$3,000,000  
12 ANNUALLY FROM THE UNDERGROUND STORAGE TANK INDEMNIFICATION FUND  
13 FOR THE STORAGE TANK ENVIRONMENTAL CLEANUP PROGRAM AS LONG AS  
14 THE ALLOCATION DOES NOT IMPEDE THE FUND'S ABILITY TO PAY CLAIMS.

15 (C) IMPLEMENTATION.--THE DEPARTMENT OF ENVIRONMENTAL  
16 PROTECTION SHALL ASSIST THE BOARD WITH THE IMPLEMENTATION OF  
17 THIS PROGRAM AND SHALL BE REIMBURSED BY THE BOARD FROM THE FUND  
18 FOR ACTUAL COSTS INCURRED FOR THE CORRECTIVE ACTIONS TAKEN, BUT  
19 IN NO EVENT SHALL THE DEPARTMENT BE REIMBURSED FROM THE FUND FOR  
20 ANY ADMINISTRATIVE COSTS.

21 (D) ELIGIBILITY DETERMINATIONS.--WHERE FUNDS ARE EXPENDED  
22 UNDER THIS SECTION FOR CORRECTIVE ACTION AND THE OWNER, OPERATOR  
23 OR CERTIFIED TANK INSTALLER OF THE UNDERGROUND STORAGE TANK IS  
24 LATER DETERMINED TO BE ELIGIBLE FOR UNDERGROUND STORAGE TANK  
25 INDEMNIFICATION FUND COVERAGE UNDER SECTION 706, THE MONEYS  
26 EXPENDED BY THE BOARD SHALL BE CONSIDERED PAYMENTS TO THE OWNER,  
27 OPERATOR OR CERTIFIED TANK INSTALLER UNDER SECTION 704.

28 (E) ANNUAL REPORT.--THE BOARD SHALL ANNUALLY TRANSMIT TO THE  
29 GENERAL ASSEMBLY A REPORT OUTLINING CORRECTIVE ACTIONS TAKEN AND  
30 EXPENDITURES MADE UNDER THIS SECTION FOR THE PRECEDING

1 COMMONWEALTH FISCAL YEAR.

2 (F) SUNSET.--THE UNDERGROUND STORAGE TANK ENVIRONMENTAL  
3 CLEANUP PROGRAM SHALL CEASE TO EXIST ON JUNE 30, 2007, UNLESS IT  
4 IS REESTABLISHED BY ACTION OF THE GENERAL ASSEMBLY.

5 SECTION 711. UNDERGROUND STORAGE TANK POLLUTION PREVENTION  
6 PROGRAM.

7 (A) ESTABLISHMENT.--THE BOARD IS HEREBY AUTHORIZED TO  
8 ESTABLISH AN UNDERGROUND STORAGE TANK POLLUTION PREVENTION  
9 PROGRAM FOR THE PURPOSE OF REIMBURSING ELIGIBLE OWNERS, AS  
10 DEFINED IN SUBSECTION (D), FOR THE COSTS OF REMOVING REGULATED  
11 SUBSTANCES FROM AND SEALING THE FILL PIPES OF UNDERGROUND  
12 STORAGE TANKS WHICH HAVE NOT BEEN UPGRADED TO COMPLY WITH THE  
13 TECHNICAL REQUIREMENTS OF FEDERAL AND STATE REGULATIONS. THE  
14 BOARD SHALL ESTABLISH GUIDELINES FOR ELIGIBLE EXPENSES AND  
15 PROCEDURES FOR REIMBURSEMENT FROM THE UNDERGROUND STORAGE TANK  
16 INDEMNIFICATION FUND.

17 (B) ALLOCATION.--THE BOARD MAY ALLOCATE UP TO \$1,000,000  
18 ANNUALLY FROM THE UNDERGROUND STORAGE TANK INDEMNIFICATION FUND  
19 FOR THE UNDERGROUND STORAGE TANK POLLUTION PREVENTION PROGRAM AS  
20 LONG AS THE ALLOCATION DOES NOT IMPEDE THE ACTUARIAL SOUNDNESS  
21 OF THE FUND'S ABILITY TO PAY CLAIMS.

22 (C) IMPLEMENTATION.--THE DEPARTMENT OF ENVIRONMENTAL  
23 PROTECTION SHALL ASSIST THE BOARD WITH THE IMPLEMENTATION OF  
24 THIS PROGRAM AND SHALL BE REIMBURSED BY THE BOARD FROM THE FUND  
25 FOR ACTUAL REIMBURSEMENTS MADE TO ELIGIBLE OWNERS, BUT IN NO  
26 EVENT SHALL THE DEPARTMENT BE REIMBURSED FROM THE FUND FOR ANY  
27 ADMINISTRATIVE COSTS.

28 (D) ELIGIBILITY.--OWNERS OF SIX OR FEWER UNDERGROUND STORAGE  
29 TANKS SHALL BE ELIGIBLE TO PARTICIPATE IN THIS PROGRAM.

30 (E) ANNUAL REPORT.--THE BOARD SHALL ANNUALLY TRANSMIT TO THE

1 GENERAL ASSEMBLY A REPORT OUTLINING ACTIONS TAKEN AND  
2 EXPENDITURES MADE UNDER THIS SECTION FOR THE PRECEDING  
3 COMMONWEALTH FISCAL YEAR.

4 (F) SUNSET.--THE UNDERGROUND STORAGE TANK POLLUTION  
5 PREVENTION PROGRAM SHALL CEASE TO EXIST ON JUNE 30, 2007, UNLESS  
6 IT IS REESTABLISHED BY ACTION OF THE GENERAL ASSEMBLY.  
7 SECTION 712. UPGRADE LOAN PROGRAM.

8 (A) ESTABLISHMENT.--THE BOARD IS HEREBY AUTHORIZED TO  
9 ESTABLISH A LOAN PROGRAM FOR OWNERS OF REGULATED UNDERGROUND  
10 STORAGE TANKS AS A METHOD OF INVESTING FUND MONEYS, PROVIDED  
11 THAT SUCH A PROGRAM DOES NOT INTERFERE WITH THE ACTUARIAL  
12 SOUNDNESS OF THE FUND REQUIRED BY SECTION 705(D)(1). AGGREGATE  
13 OUTSTANDING LOAN BALANCES SHALL NOT EXCEED 20% OF THE FUND  
14 BALANCE, HEREBY DEFINED AS THE ENDING CASH BALANCE IN ANY GIVEN  
15 FISCAL YEAR LESS ANY LIABILITY FOR CLAIMS INCURRED BUT NOT YET  
16 PAID. LOANS SHALL NOT BE MADE WHEN THE FUND BALANCE FALLS BELOW  
17 \$50,000,000. LOANS SHALL NOT BE MADE IF SUCH LOANS IMPEDE THE  
18 BOARD'S ABILITY TO PAY CLAIMS. SUCH LOANS SHALL BE MADE  
19 AVAILABLE TO OWNERS OF REGULATED UNDERGROUND STORAGE TANKS FOR  
20 THE PURPOSE OF UPGRADING THEIR STORAGE TANKS OR REMOVING THEM  
21 FROM SERVICE.

22 (B) LOAN TERMS.--LOANS MADE UNDER THIS SECTION SHALL BE  
23 GOVERNED BY THE FOLLOWING TERMS:

24 (1) THE MAXIMUM LOAN AMOUNT FOR AN INDIVIDUAL PROJECT IS  
25 \$500,000 OR 75% OF THE TOTAL ELIGIBLE PROJECT COSTS,  
26 WHICHEVER IS LESS. THE MAXIMUM TOTAL AMOUNT THAT A SINGLE  
27 OWNER OR OPERATOR MAY HAVE OUTSTANDING IS \$500,000.

28 (2) LOANS SHALL HAVE A REPAYMENT PERIOD OF UP TO TEN  
29 YEARS.

30 (3) INTEREST RATES SHALL BE FIXED AT THE TIME THE LOAN



1 IS MADE, AND SHALL BE EQUAL TO THE FIVE-YEAR UNITED STATES  
2 TREASURY NOTE ON THE DATE APPLICATION IS MADE.

3 (4) ALL LOANS MUST BE ADEQUATELY SECURED. THE BOARD  
4 SHALL DETERMINE THE METHODS FOR SECURING LOANS.

5 (5) THE BOARD SHALL CHARGE A LOAN ORIGINATION FEE NOT TO  
6 EXCEED 5% OF THE APPROVED LOAN AMOUNT.

7 (6) THE BOARD, BY REGULATION, MAY CREATE ADDITIONAL  
8 ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE UPGRADE  
9 LOAN PROGRAM.

10 (C) ANNUAL REPORT.--THE BOARD SHALL PREPARE AN ANNUAL REPORT  
11 FOR SUBMISSION TO THE GENERAL ASSEMBLY CONCERNING ACTIVITIES AND  
12 EXPENDITURES MADE PURSUANT TO THIS SECTION FOR THE PRECEDING  
13 YEAR. INCLUDED IN THIS REPORT SHALL BE INFORMATION CONCERNING  
14 ALL LOANS MADE TO ELIGIBLE APPLICANTS AND APPLICATIONS DENIED.

15 (D) ASSISTANCE.--THE DEPARTMENT OF COMMUNITY AND ECONOMIC  
16 DEVELOPMENT, IN CONSULTATION WITH THE DEPARTMENT OF  
17 ENVIRONMENTAL PROTECTION, SHALL ASSIST THE BOARD WITH THE  
18 IMPLEMENTATION OF THIS PROGRAM. THE FUND SHALL REIMBURSE THE  
19 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT FOR ACTUAL  
20 COSTS INCURRED TO ADMINISTER THIS PROGRAM. HOWEVER,  
21 ADMINISTRATIVE COSTS SHALL NOT EXCEED 5% OF THE LOAN AMOUNTS  
22 APPROVED ANNUALLY. FINAL LOAN APPROVAL SHALL BE MADE BY THE  
23 BOARD.

24 SECTION 6. THIS ACT SHALL TAKE EFFECT JULY 1, 1997.