

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

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MAY 6, 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 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

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

AN ACT

19 Providing for the regulation of storage tanks and tank
20 facilities; imposing additional powers and duties on the
21 Department of Environmental [Resources] Protection and the
22 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.

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

5 (b) Chairman.--The board shall select a chairman from its
6 members annually.

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

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

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

18 (f) Meetings; quorum.--The board shall meet at least
19 quarterly. Additional meetings may be held upon reasonable
20 notice at times and locations selected by the board. The board
21 shall meet at the call of the chairman or upon written request
22 of three members of the board. [Four] Five members shall
23 constitute a quorum and a quorum may act for the board in all
24 matters.

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

28 Section 704. Underground Storage Tank Indemnification Fund.

29 (a) Establishment of fund.--

30 (1) There is hereby created a special fund in the State

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

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

28 (3) Notwithstanding any general or specific powers
29 granted to the board by this act, whether express or implied,
30 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

1 improper or faulty installations, modifications and removal
2 of underground storage tanks.

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

7 (3) Payments shall not exceed:

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

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

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

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

23 (e) Options.--

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

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

1 of regulations promulgated under this act.

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

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

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

11 (a) Support.--The board may employ or contract for the
12 personnel necessary to process fee payments, to administer
13 claims made against the Underground Storage Tank Indemnification
14 Fund, to administer the upgrade loan program and other programs
15 authorized by this act and to carry out the purposes of the
16 board. The board may also employ or contract for the services of
17 attorneys, consultants and actuaries necessary to advise the
18 board in establishing fees under subsection (d) and deductible
19 amounts under subsection (c).

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

1 prioritizing claims.

2 (c) Deductible.--

3 (1) Claims shall be subject to a deductible amount which
4 the board shall set annually. The board shall give at least
5 30 days' notice of a proposed change in deductible amounts by
6 publication in the Pennsylvania Bulletin, and the change
7 shall take effect on the date specified in the notice. Each
8 owner or operator shall be responsible for the amount of the
9 deductible as provided in this section.

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

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

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

29 (d) Fees.--

30 (1) The board[, by regulation,] shall establish fees to

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

18 (2) The owner or operator of an underground storage tank
19 used to store heating oil [or], diesel fuel or other
20 regulated substance as determined by the board shall pay a
21 per gallon of tank capacity [insurance] fee. [calculated in
22 the following manner by the board. The board shall determine
23 the total revenue a uniform per tank, per gallon insurance
24 fee for all underground storage tanks would generate if it
25 were applied to heating oil and diesel fuel tanks and divide
26 that number by the total tank storage capacity of heating oil
27 and diesel fuel tanks registered with the Department of
28 Environmental Resources at the beginning of the policy
29 period. The resulting per gallon of tank capacity fee shall
30 be paid by owner or operator of heating oil or diesel fuel

1 tanks. The board shall provide public notice of the per
2 gallon of capacity fee in the Pennsylvania Bulletin.] The
3 capacity fee shall be set on the same actuarial basis as is
4 provided in subsection (d)(1).

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

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

14 (5) Fees established under paragraphs (1) and (2) shall
15 be set as follows:

16 (i) The board shall propose its recommended fee at
17 its annual meeting and publish its proposed fee in the
18 Pennsylvania Bulletin.

19 (ii) Within 30 days of publication of the proposed
20 fee, the board shall hold at least one special meeting to
21 accept comment on the proposed fee.

22 (iii) The board at its next regularly scheduled
23 meeting shall decide upon the final fee.

24 (iv) The board shall publish the final fee in the
25 Pennsylvania Bulletin at least 30 days prior to
26 implementation of the new fee.

27 (v) Fees shall be adjusted as deemed necessary by
28 the board, but no more than once per year.

29 (vi) The board shall annually evaluate the fee
30 amount to determine if it is sufficient to meet the

1 anticipated expenses of the fund, and provide a copy of
2 its evaluation to the Environmental Resources and Energy
3 Committee of the Senate and the Environmental Resources
4 and Energy Committee of the House of Representatives.

5 (e) Payment of fees.--Fees established for the owner of the
6 tank under subsection (d)(1) through (4) shall be paid by the
7 owner of the tank unless a written agreement between the owner
8 and the operator provides otherwise. Fees established for
9 certified tank installers under subsection (d)(1) shall be paid
10 to the Underground Storage Tank Indemnification Fund or to the
11 intermediaries so designated by [regulation.] the board.
12 Intermediaries located outside the territorial boundaries of
13 this Commonwealth may collect and remit fees upon proof that a
14 performance bond has been secured and maintained in an amount of
15 \$1,000,000. A person who fails or refuses to pay the fee or a
16 part of the fee by the date established by the board [shall] may
17 be assessed a penalty of 5% of the amount due which shall accrue
18 on the first day of delinquency and be added thereto.

19 Thereafter, on the last day of each month during which any part
20 of any fee or any prior accrued penalty remains unpaid, an
21 additional 5% of the then unpaid balance shall accrue and be
22 added thereto. A financial institution holding a mortgage or
23 security interest on property containing an underground storage
24 tank may with the owner or operator request the board to notify
25 the financial institution in the event the owner or operator
26 does not pay the fees required by this section by the date
27 specified by the board. Notice of nonpayment to the financial
28 institution or payment of an owner or operator's fee shall not
29 constitute the assumption of any corrective action liability on
30 the part of a financial institution.

1 (e.1) Upgrade loan program.--The board shall establish
2 policies, procedures and forms as may be necessary and
3 appropriate in order to administer the upgrade loan program
4 established in section 712.

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

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

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

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

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

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

25 Section 706. Eligibility of claimants.

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

29 (1) The claimant is the owner [or], operator or
30 certified tank installer of the tank which is the subject of

1 the claim.

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

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

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

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

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

16 Section 707. Audit.

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

19 Section 708. [Sunset] Performance review.

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

(b) Allocation.--The board may allocate up to \$3,000,000 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.

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

4 Section 711. Underground Storage Tank Pollution Prevention
5 Program.

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

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

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

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

29 (e) Annual report.--The board shall annually transmit to the
30 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. Such loans shall be made
available to owners of regulated underground 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

1 Treasury Note on the date application is made.

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

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

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

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

14 (d) Assistance.--The Department of Community and Economic
15 Development, in consultation with the Department of
16 Environmental Protection, shall assist the board with the
17 implementation of this program. The fund shall reimburse the
18 Department of Community and Economic Development for actual
19 costs incurred to administer this program. However,
20 administrative costs shall not exceed 5% of the loan amounts
21 approved annually. Final loan approval shall be made by the
22 board.

23 Section 6. This act shall take effect July 1, 1997.