

No. 1995-16

AN ACT

HB 825

Amending the act of July 6, 1989 (P.L.169, No.32), entitled "An act providing for the regulation of storage tanks and tank facilities; imposing additional powers and duties on the Department of Environmental Resources and the Environmental Quality Board; and making an appropriation," further providing for definitions, for aboveground storage tank, for underground storage tank program requirements, for interim requirements and discontinued use, for registration, for the storage tank advisory committee, for the Underground Storage Tank Indemnification Fund and claims on that fund, for the Storage Tank Loan Fund and for powers and duties of the Underground Storage Tank Indemnification Board; and providing for the dispensing of Class II motor fuels to certain customers and for reimbursement for testing.

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

Section 1. The definitions of "aboveground storage tank," "commercial heating oil storage tank" and "underground storage tank" in section 103 of the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, are amended to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Aboveground storage tank." Any one or combination of stationary tanks with a capacity in excess of 250 gallons, including underground pipes and dispensing systems connected thereto within the storage tank facility, which is or was used to contain an accumulation of regulated substances, and the volume of which, including the volume of all piping within the storage tank facility, is greater than 90% above the surface of the ground. The term includes any tank which can be visually inspected, from the exterior, in an underground area. The term shall not include any of the following:

- (1) A **[farm, municipal or residential]** tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes *or motor oil*.
- (2) A tank used for storing heating oil for consumptive use on the premises where stored.
- (3) A pipeline facility, including gathering lines, regulated under:
 - (i) the Natural Gas Pipeline Safety Act of 1968 (Public Law 90-481, 82 Stat. 720, 49 U.S.C. App. § 1671 et seq.)[.];
 - (ii) the Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989, 49 U.S.C. § 2001 et seq.); or

(iii) [An] *an* interstate or intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in subparagraph (i) or (ii).

(4) A surface impoundment, pit, pond or lagoon.

(5) A storm water or wastewater collection system.

(6) A flow-through process tank, including, but not limited to, a pressure vessel or process vessel and oil and water separators.

(7) A nonstationary tank liquid trap or associated gathering lines directly related to oil and gas production or gathering operations.

(8) Tanks which are used to store brines, crude oil, drilling or frac fluids and similar substances or materials and are directly related to the exploration, development or production of crude oil or natural gas regulated under the act of December 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act.

(9) Tanks regulated under the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

(10) Tanks used for the storage of products which are regulated pursuant to the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.).

(11) Tanks permitted pursuant to the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, including, but not limited to, piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management.

(12) A tank of 1,100 gallons or less in capacity located on a farm used solely to store or contain substances that are used to facilitate the production of crops, livestock and livestock products on such farm.

(13) Tanks which are used to store propane gas.

(14) Any other tank excluded by regulations promulgated pursuant to this act.

The term shall not include any pipes connected to any tank described in paragraphs (1) through (13).

* * *

["Commercial heating oil storage tank." Underground storage tank in excess of 3,000 gallons used for storage of heating oil for the consumptive use of the premises where stored.]

* * *

"Underground storage tank." Any one or combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. The term shall not include:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) Tanks [of 3,000 gallons or less] used for storing heating oil for consumptive use on the premises where stored[,] *unless they are specifically required to be regulated by Federal law.*

(3) A septic or other subsurface sewage treatment tank.

(4) A pipeline facility (including gathering lines) regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968 (Public Law 90-481, 82 Stat. 720, 49 U.S.C. App. § 1671 et seq.).

(ii) The Hazardous Liquid Pipeline Safety Act of 1979 (Public Law 96-129, 93 Stat. 989, 49 U.S.C. § 2001 et seq.).

(5) An interstate or intrastate pipeline facility regulated under State laws comparable to the provisions of law in paragraph (4).

(6) Surface impoundments, pits, ponds or lagoons.

(7) Storm water or wastewater collection systems.

(8) Flow-through process tanks.

(9) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.

(10) Storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft or tunnel) if the tank is situated upon or above the surface of the floor.

(11) Tanks permitted pursuant to the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, including, but not limited to, piping, tanks, collection and treatment systems used for leachate, methane gas and methane gas condensate management.

(12) Any underground storage tank system whose capacity is 110 gallons or less.

(13) Any other tank excluded by policy or regulations promulgated pursuant to this act.

Section 2. Section 105(a) of the act, amended December 18, 1992 (P.L.1665, No.184), 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 [15] 17 members. Four members shall be representatives of local government, [five] six members shall be representatives of the regulated community, one member shall be a registered professional engineer with three years of experience in this Commonwealth, one member shall be a hydrogeologist [and], four members shall be representatives of the public *and one member shall be an active commercial farm owner or operator nominated by Statewide general farm organizations.* 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 [five] six 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.
- (6) *The Middle Atlantic Truck Stop Operators.*

* * *

Section 3. The act is amended by adding a section to read:

Section 306. Dispensing of Class II motor fuels to certain customers.

(a) Use of certain tanks.—Nothing in this act or any other statute shall prohibit the use of an aboveground storage tank, not in excess of 12,000 gallons capacity, by a bulk plant operator for dispensing Class II motor fuels to members of a key or card club established by the bulk plant operator and located at this plant, provided the installation and its operation meet the requirements of this section and otherwise comply with State Fire Marshal regulations.

(b) Specifications.—The tank shall be located at least:

- (1) 50 feet from the nearest important building on the same property;*
- (2) 50 feet from any fuel dispenser;*
- (3) 50 feet from the nearest side of any public way; and*
- (4) 100 feet from any property line that is or might be built upon, including the opposite side of any public way.*

(c) Safety matters.—A clearly labeled emergency switch capable of shutting off power to all dispensers in case of an emergency shall be located no less than 20 feet nor more than 100 feet from the dispensers. Operating instructions shall be conspicuously posted in the dispensing area and shall include location of the emergency switch and a requirement that the user must stay in view of the dispensing nozzle during dispensing. Emergency instructions shall be posted and shall include the telephone number for reporting an emergency. A telephone or other approved, clearly identified means to notify the fire department shall be provided on the site.

(d) Definition.—As used in this section, the term “a key or card club membership” shall be construed to mean a nonretail sale consistent with section 305.

Section 4. Section 501(a)(1) of the act is amended and the subsection is amended by adding paragraphs to read:

Section 501. Underground storage tank requirements.

(a) Program requirements.—The department shall adopt regulations and implement an underground storage tank program that, at a minimum, requires all of the following:

(1) The payment of an annual registration fee to the department by owners of underground storage tanks **[and commercial heating oil storage tanks]**.

* * *

(13) Minimization of the amount of soil and subsurface material affected by a release of a regulated substance by segregating the unaffected soil and subsurface material during removal of an underground storage tank from the material affected by a release of a regulated substance.

(14) Development of alternative methods for the disposal and cleanup of soil and subsurface material affected by the release of a regulated substance, including, but not limited to, incineration, evaporation and landfill disposal.

(15) The requirement that the person removing the material affected by a release of a regulated substance provide to the owner, operator, landowner or other responsible party a receipt documenting acceptance of the material at a permitted treatment or disposal facility.

* * *

Section 5. Sections 502(a) and 503(b) of the act are amended to read:
Section 502. Interim requirements and discontinued use.

(a) Registration fees and requirements.—Until alternative fees are established by the department by regulation, an annual fee of \$50 for each underground storage tank **[and each commercial heating oil storage tank]** to be paid by owners of the underground storage tank is hereby established.

* * *

Section 503. Registration.

* * *

(b) Prohibitions.—After 12 months from the effective date of this act, it shall be unlawful to sell, distribute, deposit or fill an underground storage tank with any regulated substance unless the underground storage tank is registered as required by this section. Any person who, on or after the effective date of this subsection, knowingly sells, distributes, deposits or fills any underground storage tank in violation of this subsection prior to the discovery of a release shall be liable for any release from the underground storage tank, in addition to the remedies provided in section 1302. ***It shall be a defense to an enforcement action under this subsection regarding delivery to an unregistered tank that the tank in question had been registered in a prior year.*** Within 12 months of the effective date of this act, the department shall have available for the general public an easily distinguishable visual system, such as a sticker, to identify tanks with a current sticker as part of enforcement by the department.

* * *

Section 6. The act is amended by adding a section to read:

Section 507. Reimbursement for testing.

(a) *Federal requirements.*—The department shall reimburse the owners of underground storage tanks for the cost of routine testing and monitoring requirements which exceed the minimum routine testing and monitoring requirements established by the United States Environmental Protection Agency.

(b) *No-fault testing.*—The department shall reimburse the owners of underground storage tanks for the cost of any testing, monitoring or hydrogeologic studies required by the department under section 1311 to determine if a tank owner is responsible for the release of a regulated substance or contamination by a regulated substance where the results of the testing, monitoring and hydrogeologic studies show the tank owner was not the source of the release or contamination and where the tank owner cooperated fully with the department in the investigation.

(c) *Discovery of de minimis contamination.*—Discovery of a de minimis amount of contamination on a site tested pursuant to subsection (b) shall not preclude reimbursement under subsection (b) unless it is more likely than not that the de minimis onsite contamination is contributing to the offsite contamination.

(d) *Fund.*—The department shall use funds from the Storage Tank Fund established in section 702 to provide the reimbursements required by this section.

Section 7. Section 703(a) of the act 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 [~~seven~~] *nine* members. The Insurance Commissioner and the Secretary of the Department of Environmental Resources shall be ex officio members. [~~Five~~] *Seven* members shall be appointed by the Governor, as follows:

(1) [~~Three~~] *Five* members who shall be persons with particular expertise in the management of underground storage tanks. Two of these members shall be appointed for terms of four years and [~~one~~] *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.*

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

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

* * *

Section 8. Section 704 of the act is amended by adding a subsection to read:

Section 704. Underground Storage Tank Indemnification Fund.

* * *

(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 underground storage tanks to opt into the coverage provided by this section.

Section 9. Sections 705(d) and 709 of the act, amended December 18, 1992 (P.L.1665, No.184), are amended to read:

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

* * *

(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.

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

* * *

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 \$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.

(b.1) Agricultural eligibility.—Loans under subsection (b) shall be available to the owner or operator of a farm where the owner or operator wishes to remove or permanently close one or more storage tanks and where the farm encompasses no more than six storage tanks.

(c) Funds.—In addition to any funds as may be appropriated by the General Assembly, at least \$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, 1998, unless it is reestablished by action of the General Assembly. Any funds remaining in the loan fund on June 30, 1998, shall lapse to the Storage Tank Fund. Money received by the Department of Commerce as repayment of outstanding loans after June 30, 1998, shall lapse to the Storage Tank Fund.

Section 10. The amendment of sections 103 and 705 of the act shall be retroactive to January 1, 1995.

Section 11. This act shall take effect in 60 days.

APPROVED—The 26th day of June, A.D. 1995.

THOMAS J. RIDGE