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ENVIRONMENTAL PROTECTION

Site Remediation and Waste Management

Underground Storage Tanks: Certification to perform services on unregulated heating oil tanks

Special Adopted Amendments: N.J.A.C. 7:14B-1, 3 and 12; and 7:26C-10

Special Adopted New Rules: N.J.A.C. 7:14B-16

Adopted: October 2, 2006 by the Department of Environmental Protection, Lisa P. Jackson, Commissioner

Filed: October 3, 2006

Authority: N.J.S.A. 58:10A-21 et seq., and 13:1D-9.

Effective Date: October 3, 2006

Expiration Date: (18 months from effective date)

DEP Docket Number: 13-06-08/400

These rules are adopted pursuant to P.L. 2006, c. 58, effective August 2, 2006, amending N.J.S.A. 58:10A-21, et seq., and pursuant to N.J.S.A. 58:10A-24.8, became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4). As required by N.J.S.A. 58:10A-24.8, the Department gave notice of its intention to adopt these rules by publishing a Notice of Intent to Adopt Interim Rules in the *New Jersey Register* on September 18, 2006 (see 38 N.J.R. 3927(a)). The interim rules will be effective immediately upon filing with the Office of Administrative Law, for a period not to exceed 18 months. They will be proposed to be readopted within that time period. That proposal will be subject to public comment and thereafter be adopted before the expiration date of the specially adopted interim rules.

Federal Standards Analysis

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Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

Although there is a Federal Underground Storage Tank program pursuant to 42 U.S.C. 6991 which regulates the operation, closure and upgrade of regulated underground storage tanks, there are no provisions in the Federal statute or regulations requiring a certification program for contractors performing services on underground storage tanks. The Federal rules at 40 C.F.R. 280.20(e) encourage states to certify individuals to perform services on regulated underground storage tank systems. However, N.J.A.C. 7:14B-16 only applies to unregulated storage tanks, and these tanks are not regulated by Federal law or rule. Therefore, the Department has concluded that the amendments do not contain any standards or requirements that exceed the standards or requirements imposed by Federal law. Accordingly, Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require any further analysis.

Full text of the adopted amendments and adopted new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.4 Applicability

(a) [This chapter applies to all underground storage tanks containing hazardous substances except as provided in (b) below.] This chapter contains the requirements for the registration, operation, design, construction and installation, permitting, release reporting and investigation, remediation, and closure of underground storage tanks and underground storage tank systems that contain hazardous substances, as well as the

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requirements for certification of individuals and business firms performing services on underground storage tanks and underground storage tank systems and on unregulated heating oil tanks.

(b) – (g) No change.

7:14B-1.6 Definitions

As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

* * *

“Farm” means “farm” as defined in the Farmland Assessment Act of 1964, (N.J.S.A. 54:4-23.1 et seq.).

* * *

“Unregulated heating oil tank system” means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons or less used to store heating oil for on-site consumption in a nonresidential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground.

* * *

7:14B-1.7 Certifications

(a) - (d) No change.

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(e) Any individual submitting documents in accordance with N.J.A.C. 7:14B-13.3(c) and N.J.A.C. 7:14B-16.4(e) shall sign and submit to the Department the following certification:

“I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties.”

SUBCHAPTER 3. FEES

7:14B-3.10 Fees for individual and business firm certification in underground storage tank management and unregulated heating oil tank services

(a) The fee schedule for the certification of individuals and business firms pursuant to N.J.A.C. 7:14B-13 and 16 is as follows:

1. through 8. (No change.)

(b)-(h) (No change.)

SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE HEARING PROCEDURES

7:14B-12.1 Penalties

(a) Failure by any person to comply with any requirement of the State Act or this chapter may result in denial or revocation of an owner's or operator's registration or

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permit for the tank system; and/or denial, suspension, revocation or refusal to renew a certified individual's or business firm's certification issued pursuant to N.J.A.C. 7:14B-13 or 16.]; and/or the]

(b) Failure by any person to comply with any requirement of N.J.A.C. 7:14B-1, 3 or 7 through 14, may result in the assessment of civil administrative penalties, pursuant to the [Oversight] Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C-10[.4 and 10.5, for violation of an owner's or operator's obligation to remediate contamination and pursuant to N.J.A.C. 7:14-8 for all other violations of the Underground Storage of Hazardous Substances Act or this chapter, issuance of administrative orders, or other enforcement action in accordance with N.J.S.A. 58:10A-10.], and any other enforcement action, or any action pursuant to N.J.A.C. 7:14B-16.10.

[(b)] (c) An owner, operator, certified individual or certified business firm, may request an administrative hearing for appealing a penalty issued pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or N.J.A.C. 7:14-8 by meeting the requirements of N.J.A.C. 7:14-8.4, or the [Oversight] Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-[10.6] 10.9, as applicable.

7:14B-12.2 Procedures for requesting hearings after denial or revocation of registration, permits, certifications for individuals and business firms, and denial of ordinance adoption

(a) Within 30 calendar days from receipt of notification from the Department denying or revoking a permit, registration, or a certification of an individual or business firm issued pursuant to N.J.A.C. 7:14B-13 or 16 or denying an ordinance adoption, issued pursuant to N.J.A.C. 7:14B-11, the registrant, permittee, certificant or political

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subdivision, may request an adjudicatory hearing to contest such action by submitting a written request to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection [and Energy], PO Box 402, 401 East State Street, Trenton, New Jersey, 08625-0402, which shall include the following information:

1. – 6. (No change.)

(b) – (e) (No change.)

7:14B-12.4 Civil administrative penalties for violations of N.J.A.C. 7:14B-13 and 16

(a) Any person who violates the provisions of N.J.A.C. 7:14B-13 or 16 is liable to a civil administrative penalty of not more than \$5,000 for the first offense, not more than \$10,000 for the second offense, and \$25,000 for the third and each subsequent offense.

(b) – (e) (No change.)

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SUBCHAPTER 16. CERTIFICATION OF INDIVIDUALS AND BUSINESS FIRMS FOR UNREGULATED UNDERGROUND STORAGE TANK SYSTEMS

7:14B-16.1 Scope and Applicability

(a) This subchapter establishes the certification program for any individual or business firm providing services on unregulated heating oil tank systems, except closure of an unregulated heating oil tank system located on a farm.

(b) An individual or business firm certified in one or more classifications of regulated underground storage tank system services in accordance with N.J.A.C. 7:14B-13 is also certified under this subchapter for those same classifications for unregulated underground storage tank systems.

(c) An individual or business firm that is licensed to perform well drilling or pump installation services at the site of unregulated heating oil tank systems pursuant to N.J.S.A. 58:4A-11 shall not be required to be certified under this subchapter .

(d) As of the date of publication of a notice by the Department in the New Jersey Register and on the Department's website that the Department has established a testing program for obtaining certification under this subchapter for individuals or business firms providing services on unregulated heating oil tanks, any individual or business firm providing services on unregulated heating oil tank systems in any of the categories listed in N.J.A.C. 7:14B-16.3 shall meet the requirements of N.J.A.C. 7:14B-16.5. This notice shall include a notice of administrative change amending this subparagraph to include the date that the notice was published.

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7:14B-16.2 General requirements for certification

(a) No individual shall perform any service on unregulated heating oil tank systems unless the individual is certified under this subchapter or is working under the immediate, on-site supervision of a person certified in accordance with this subchapter.

(b) The Department shall issue a certification card to an individual meeting the requirements for certification pursuant to this subchapter. The certification card shall identify the duration and classification(s), for which the individual is certified to perform services. The certified individual shall make this certification card available to the Department or its authorized agent upon request.

(c) The Department shall issue a certificate to a business firm meeting the requirements for certification pursuant to this subchapter. The certificate shall identify the classification(s) for which the business firm is certified to perform services. The business firm shall conspicuously display the certificate for public review in the business office of the business firm. If a business firm maintains a business office at more than one location, a duplicate certificate, issued by the Department, shall be conspicuously displayed at each location.

(d) The owner or operator of an unregulated heating oil tank system shall ensure that all services performed on the unregulated heating oil tank system are performed by an individual or under the immediate, on-site supervision of an individual certified under subchapter 13 of this chapter or under this subchapter. If a certified individual is not present at the unregulated heating oil tank site, the owner or operator shall suspend all activities in that classification of service.

(e) The following individuals are exempt from the requirements of (f) and (g) below,:

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1. An individual who is a permanent employee at a business firm which is certified in the classification of service being performed and the individual is certified in the classification of service being performed; and

2. An individual who is working under the immediate, on-site supervision of an individual certified in the classification of service being performed and both individuals are employed at the same business firm which is certified in the classification of service being performed.

(f) An individual or firm certified to perform services on unregulated heating oil tank systems shall perform such services pursuant to all applicable:

1. Federal and State laws, regulations and permits;

2. Local ordinances or codes;

3. Department of Community Affairs Bulletins and notices published in the “Construction Code Communicator” (www.nj.gov/dca/publications/);

4. Manufacturer’s installation instructions; and

5. Industry standards, including the following, as applicable:

i. American Petroleum Institute Publication 1604, “Closure of Underground Petroleum Storage”;

ii. American Petroleum Institute Publication 1615, “Installation of Underground Storage-Petroleum-Systems” (obtained from Global Engineering Documents at 15 Inverness Way East, Englewood Colorado 80122);

iii. Petroleum Equipment Institute Publication RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems” (obtained from P.O. Box 2380, Tulsa, OK 74101-2380);

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iv. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

v. NACE International Standard RP-02-95 RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, "Standard for Steel underground storage tanks for Flammable and Combustible Liquids" (obtained from: 144 South Creek Drive, Houston, TX 77084-4906);

vi. National Fire Protection Association (NFPA) 30 "Flammable and Combustible Liquids Code", Batterymarch Park, Quincy, Ma 02269-9990; and

vii. Building Officials and Code Administrators International, Inc. (BOCA) Codes.

(g) An individual or business firm certified under this subchapter shall:

1. Submit to the Department, at the address below a listing of the maximum price that the certified individual or business firm will charge to perform those services for which he/she/it is certified. The Department shall post the listing on its website pursuant to N.J.S.A. 58:10A-24.3.

Bureau of Contracts and Fund Management

Department of Environmental Protection

PO Box 413

401 E. State St.

Trenton, New Jersey 08625

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2. Cooperate in and help facilitate any audit of its pricing and business practices, conducted in accordance with industry standards and performed at the expense of the Department by a Certified Public Accounting firm under contract to the Department.

3. For services being performed with financial assistance from the Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund (the Fund), submit documentation to the Department at the address listed in N.J.A.C. 7:14B-2.2(b) of the individual's or business firm's cost for providing the services for which the Fund is providing the financial assistance. The documentation shall include, but is not limited to, documentation of the direct cost to provide the services, and all tiers of subcontractors' costs, including, by way of example, materials, equipment rentals and services.

(h) Certifications are not transferable.

(i) A certified individual or business firm shall notify the Department in writing, within three business days, at the address in (j) below, of any amendments to the certification, other than those created by passing an examination.

(j) When a certified individual listed as the business firm's certifying individual on the certification card issued pursuant to N.J.A.C. 7:14B-16.2(c) above, leaves the business firm, the certified business firm shall so notify the Department, in writing at the below. Notification shall be made by the business firm within three working days of the individual leaving the business firm. The Department shall withdraw the business firm's certification if a replacement name of an individual certified in that classification of service is not submitted within 30 calendar days of the individual leaving the business firm.

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New Jersey Department of Environmental Protection

Examination and Licensing Unit

P.O. Box 441

Trenton, NJ 08625-0441

(k) When a certified individual listed as the business firm's certifying individual on the certification card issued pursuant to N.J.A.C. 7:14B-16.2(c) above, loses his or her certification due to expiration, revocation or suspension, the Department shall withdraw the business firm's certification if a replacement name of an individual certified in that classification of service is not submitted within 30 calendar days of loss of certification. The notice of the loss of certification and the replacement name of an individual certified in that classification of service shall be submitted to the Department, in writing, at the address in (j) above.

(l) When a permit is required to be obtained through the local construction office, for the purposes of providing the services described in this subchapter on an unregulated heating oil tank system, the individual's certification card and a copy of the certification for the business firm shall be made available upon request of the local construction company.

(m) An individual or business firm may replace a damaged or lost certification card or certificate by contacting the Department at the address listed in (j) above and paying the fee required by N.J.A.C. 7:14B-3.10(h)

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7:14B-16.3 Classifications of unregulated heating oil tank services

(a) An individual or business firm may apply for certification in any one or more of the following classifications of unregulated heating oil tank system services:

1. Installation of unregulated heating oil tank systems including:

i. Entire unregulated heating oil tank system installation ; and

ii. Unregulated heating oil tank system release detection monitoring installation.

2. Closure of unregulated heating oil tank systems;

3. Tank testing of unregulated heating oil tank systems;

4. Subsurface evaluation of unregulated heating oil tank systems;

5. Corrosion protection of unregulated heating oil tank system analysis, which may be either cathodic protection specialist or cathodic protection tester, as applicable to unregulated heating oil tank systems.

(b) The activities which comprise the above classifications include the following:

1. Entire unregulated heating oil tank system installation includes all activities required to install unregulated heating oil tanks, associated piping, release detection monitoring systems, interior tank lining, and appurtenant equipment including factory installed cathodic protection systems, from the time the ground is broken to the restoration of finished grade at the site. Entire unregulated heating oil tank system installation of unregulated heating oil tank systems shall be performed in accordance with N.J.A.C 7:14B-16.2(f). Entire system installation includes the performance of an

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internal inspection for the purpose of assessing a tank for corrosion protection and the installation of a field installed cathodic protection system when the installer is under the supervision of a cathodic protection specialist or following the plans designed by a cathodic protection specialist. Entire unregulated heating oil tank system installation activities include any maintenance or repair of any part of the unregulated heating oil tank system or release detection monitoring system.

i. Individuals holding an entire unregulated heating oil tank system installation certification shall also be considered to hold the more limited unregulated heating oil tank system release detection monitoring installation certification described in (b)2 below;

ii. Entire unregulated heating oil tank system installation does not include the installation of discharge detection observation wells unless installed in the manner described in N.J.A.C. 7:14B-4.1(c) and;

iii. Entire unregulated heating oil tank system installation does not include routine maintenance performed on appurtenant pipes, lines, fixtures and other related equipment.

2. Unregulated heating oil tank system release detection monitoring installation includes the activities associated with the installation, repair and maintenance of any release detection monitoring systems of unregulated heating oil tanks.

i. Unregulated heating oil tank system release detection monitoring installation does not include the installation of discharge detection observation wells unless installed in the manner described in N.J.A.C. 7:14B-4.1(c).

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3. Closure of unregulated heating oil tank systems includes all physical activities required by N.J.A.C 7:14B-16.2(f) as applicable relative to the removal or abandonment in place of an unregulated heating oil tank, associated piping and appurtenant equipment, from the time the ground is broken until the excavation is filled, or until a determination is made that subsurface evaluation is necessary and the site falls under the on-site supervision of a subsurface evaluator.

i. Closure activities do not include the preparation or implementation of site investigation or remedial investigation workplans or any other remedial action plans or activities, which are the exclusive purview of an individual certified in unregulated heating oil tank system subsurface evaluation described in (b)5 below.

ii. Closure of an unregulated heating oil tank system shall be performed in accordance with N.J.A.C 7:14B-16.2(f), as applicable.

iii. If upon closure of the tank there is evidence of a discharge, no additional closure activities shall proceed unless an individual certified in subsurface evaluation is present.

4. Tank testing of unregulated heating oil tank systems includes all activities relative to testing the physical integrity of an unregulated heating oil tank and appurtenant piping from inception of the test until removal of testing apparatus from the tank system. The tank testing classification shall not include the activities of air pressure soap tests of tanks or piping where product is not present, which is the exclusive purview of the individual certified in entire unregulated heating oil tank system installation described in (b)1 above. Tank testing of an unregulated heating oil tank system shall be performed pursuant to N.J.A.C. 7:14B-16.2(f) as applicable. All volumetric and non-volumetric tank system testing methods used to test unregulated heating oil tank systems shall be evaluated by an independent testing laboratory to meet the accuracy described by

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N.J.A.C. 7:14B-6.5(a)3 for the size and type of tank system being tested and included in the “List of Leak Detection Evaluations for Underground Storage Tanks Systems”, published by the National Work Group on Leak Detection Evaluations (NWGLDE), most current edition and as amended and supplemented (available at www.epa.gov/swerust1/pubs/ldlist.htm).

5. Subsurface evaluation of unregulated heating oil tank systems includes all activities regarding site investigation, remedial investigation and remedial action, and/or the evaluation for selection of release detection monitoring systems, as follows:

i. For site investigation, remedial investigation and/or remedial action, subsurface evaluation activities required pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, witnessing the tank and/or piping removal, inspecting the tank system for possible holes, inspecting the excavation for contamination, performing (or overseeing) necessary field screening tests, selecting soil and ground water sampling locations, and submitting or reviewing of the report(s) required under N.J.A.C. 7:26E.

ii. Site investigation, remedial investigation and/or remedial action activities include, but are not limited to, the development, implementation, or review of soil and/or ground water sampling plans, quality assurance/quality control plans, health and safety plans; overseeing field screening activities; determining the horizontal and vertical extent of contamination; assessing the actual or potential effect of a discharge on receptors; determining appropriate remedial activities for soil and/or ground water contamination; the submittal or review of appropriate site investigation, remedial investigation and/or remedial action reports, and recommendations for no further action.

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iii. Release detection monitoring system selection activities include selecting locations for soil borings, characterizing soils, and determining soil permeability and depth to ground water as may be applicable.

iv. Subsurface evaluation of unregulated heating oil tank system activities do not include:

(1) The design or installation of any treatment works necessary to perform the remedial action, which is the purview of a licensed professional engineer;

(2) The taking of any soil or groundwater samples for laboratory analyses once a person certified in subsurface evaluation has determined, through on-site observation, the appropriate sample locations; however, the subsurface evaluator shall have knowledge of proper sampling and analytical protocols; and

(3) The performance of well drilling or pump installation services which shall be performed by an individual who is licensed to perform such services pursuant to N.J.S.A. 58:4A-11.

v. Subsurface evaluation of an unregulated heating oil tank system shall be performed pursuant to N.J.A.C. 7:14B-16.2(f), as applicable.

6. Unregulated heating oil tank system cathodic protection specialist includes the activities relative to the design, installation, maintenance and testing of cathodic protection systems for unregulated heating oil tank systems.

i. Individuals holding the unregulated heating oil tank system cathodic protection specialist certification are also considered to hold the more limited

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unregulated heating oil tank system cathodic protection tester certification
described in (b)7 below.

7. Unregulated heating oil tank systems cathodic protection tester includes all activities relative to the testing of cathodic protection systems for unregulated heating oil tank systems.

7:14B-16.4 Application procedures

(a) An individual who wishes to be certified in one or more of the classifications described in N.J.A.C. 7:14B-16.3, or if already certified, who wishes to add a classification of certification, or who wishes to renew the certification, shall apply on forms obtained from the Department at the address listed in N.J.A.C. 7:14B-2.2(b). The information required to be submitted to the Department shall include the following:

1. The name and address of certification applicant;
2. The name and address of the employer of the certification applicant;
3. A history of experience documenting the qualification for certification as required at N.J.A.C. 7:14B-16.5;
4. A listing of education and/or training completed demonstrating the fulfillment of the requirement for certification pursuant to N.J.A.C. 7:14B-16.5;
5. A list of the categories of service being applied for; and
6. The issuance and expiration dates and New Jersey Professional Engineer's license number if the certification applicant is applying for an exemption from the examination.

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(b) A business firm that wishes to be certified in one or more of the classifications described in N.J.A.C. 7:14B-16.3, or if already certified, wishes to add a classification of certification, or wishes to renew the certification, shall apply on forms obtained from the Department at the address listed in N.J.A.C. 7:14B-16.2(j). The business firm shall submit with the application:

1. A copy of the mechanism of financial responsibility assurance as required by N.J.A.C. 7:14B-16.9; and

2. A copy of the certifying individual's certification card(s) noting each of the requested classifications by:

i. The owner, in the case of a sole proprietorship;

ii. One or more partners in the business firm, in the case of a partnership; or

iii. One or more officers of the corporation, in the case of a corporation.

(c) The applicant shall sign and certify the application as follows:

1. The following documents required to be submitted to the Department shall be executed and include a certification pursuant to N.J.A.C. 7:14B-1.7:

i. An individual's application for certification, certification renewal, or proficiency examination pursuant to this subchapter; and

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ii. Any document submitted in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E and prepared by a certified individual or professional engineer in accordance with N.J.A.C. 7:26E.

(d) The applicant shall submit with the application all appropriate fees pursuant to N.J.A.C. 7:14B-3.10.

7:14B-16.5 Eligibility

(a) Individuals not satisfying the criteria in (b) below may obtain certification by passing the proficiency examination described in N.J.A.C. 7:14B- 16.6. An applicant shall be eligible to take the proficiency examination if the applicant meets the following minimum criteria for each classification for which the applicant is seeking certification:

1. An applicant for the entire unregulated heating oil tank system installation classification examination shall meet the following criteria:

i. Either a minimum of two years experience performing installations with participation in at least five installations during each year of experience or nine months experience with participation in at least 25 installations in that nine-month period;

ii. Completion of training approved by the manufacturer of the equipment installed by the individual; and

iii. Completion of health and safety training given in accordance with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (155.5)) and the United States Department of Labor's Occupational Safety and Health Administration's Safety and Health Standards (29 C.F.R. 1910 and 1926 et seq.).

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2. An applicant for the unregulated heating oil tank system release detection monitoring installation classification examination shall meet the following criteria:

i. Either a minimum of two years experience performing release detection monitoring installations with participation in at least five installations during each year of experience or nine months experience with participation in at least 25 installations in that nine-month period;

ii. Completion of training approved by the manufacturer of the equipment to be installed; and

iii. Completion of health and safety training given in accordance with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (155.5)) and the United States Department of Labor's Occupational Safety and Health Administration's Safety and Health Standards (29 C.F.R. 1910 and 1926 et seq.).

3. An applicant for the closure of unregulated heating oil tank systems classification examination shall meet the following criteria:

i. Either a minimum of two years experience performing closures with participation in at least five closures during each year of experience or nine months experience with participation in at least 25 closures in that nine-month period; and

ii. Completion of health and safety training given in accordance with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (155.5)) and the

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United States Department of Labor's Occupational Safety and Health
Administration's Safety and Health Standards (29 C.F.R. 1910 and 1926 et seq.).

4. An applicant for the tank testing of unregulated heating oil tank systems
classification examination shall meet the following criteria:

i. A minimum of two years experience performing tank testing services with
participation in at least five tank tests during each year of experience or nine
months experience with participation in at least 25 tank tests within that nine-
month period;

ii. Completion of training approved by the manufacturer of the testing
equipment; and

iii. Completion of health and safety training given in accordance with the United
States Environmental Protection Agency's Standard Operating Safety Guides
(Hazardous Materials Incident Response Operations Course (155.5)) and the
United States Department of Labor's Occupational Safety and Health
Administration's Safety and Health Standards (29 C.F.R. 1910 and 1926 et seq.).

5. An applicant for the unregulated heating oil tank system cathodic protection
specialist classification examination shall possess a certification from NACE
International in the category of cathodic protection specialist; and

6. An applicant for the unregulated heating oil tank system cathodic protection
tester classification examination shall meet the following criteria:

i. A minimum of two years experience performing cathodic protection system
testing with participation in at least five tank tests during each year of experience

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or nine months experience with participation in at least 25 tests within that nine-month period;

ii. Fulfill all requirements in accordance with the requirements of NACE International's Certification Committee for the category of cathodic protection tester, corrosion technologist, or senior corrosion technologist; and

iii. Completion of health and safety training given in accordance with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (155.5)) and the United States Department of Labor's Occupational Safety and Health Administration's Safety and Health Standards (29 C.F.R. 1910 and 1926 et seq.).

7. An applicant for the subsurface evaluation of unregulated heating oil tank systems classification examination shall meet the following criteria:

i. A bachelor's degree from an accredited institution in a natural (earth, biological, or environmental) science or appropriate engineering discipline;

ii. Either a minimum of two years experience performing subsurface evaluation services with participation in at least five subsurface evaluation services performed during each year of experience or nine months experience with participation in at least 25 subsurface evaluations in that nine-month period; and

iii. Completion of appropriate health and safety training given in accordance with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (155.5)) and the United States Department of Labor's Occupational Safety and

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Health Administration's Safety and Health Standards (29 C.F.R. 1910 and 1926 et seq.).

(b) Any individual possessing a valid New Jersey Professional Engineers License, issued pursuant to N.J.S.A. 45:8-27 et seq., shall be eligible for certification in all classifications upon application to the Department and shall be exempt from the examination requirements of (a) above and individual certification fee requirements of N.J.A.C. 7:14B-3.10.

(c) As a condition to the certification granted in accordance with (b) above, a certified individual shall attend a Department approved course concerning underground storage tank system management in New Jersey within one year prior to or after the effective date of the certification.

7:14B-16.6 Examinations

(a) As a condition of initial certification under this subchapter, an individual is required to pass an examination in each classification of service for which the applicant is seeking certification, unless the individual is exempt under N.J.A.C. 7:14B-16.5(b) or meets the requirements of N.J.A.C. 7:14B-16.1(b) or (c).

(b) Failure to pass an examination shall result in the denial of the application for certification and the forfeiture of all application fees.

(c) Any applicant who submits false, inaccurate or incomplete information when applying for certification may be disqualified from taking the examination or receiving the certification.

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(d) The Department shall issue each applicant who passes the examination and pays the appropriate fee pursuant to N.J.A.C. 7:14B-3.10 a certification in the classification for which the applicant passed the appropriate examination.

7:14B-16.7 Continuing education requirements

(a) As a condition for renewal of certification, all certified individuals shall attend annual eight-hour health and safety refresher courses as required by 29 C.F.R. 1910.120(e)(8).

(b) As a condition for renewal of certification, within one year prior to renewal, all individuals certified to perform services on unregulated heating oil storage tank systems shall complete a Department-approved training course concerning underground storage tank system management in New Jersey.

7:14B-16.8 Renewal requirements

(a) The certification of each individual and business firm shall be valid for three years.

(b) An individual certification may be renewed by submitting a complete renewal application and the application fee required pursuant to N.J.A.C. 7:14B-3 to the Department at least 60 calendar days prior to expiration of the current certification.

(c) A business firm certification may be renewed by submitting a complete renewal application, the application fee required pursuant to N.J.A.C. 7:14B-3, and a copy of the certification of those individuals through which the business firm is certified, to the Department at the address listed in N.J.A.C. 7:14B-16.2(j) at least 60 calendar days prior to expiration of the current certification.

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(d) No individual may perform services for which certification is required after the expiration of a certification. An individual who fails to renew his or her certification within 90 calendar days following the expiration date of the certification shall meet the initial certification requirements as required by this subchapter.

(e) Individuals who have acquired additional classifications subsequent to initial certification shall renew all subsequent certifications at the same time as renewing the initial certification.

(f) Proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-16.7 shall be submitted to the Department with the renewal application.

(g) The Department is not responsible for providing notification to any individuals or business firms that certifications are to expire.

7:14B-16.9 Financial responsibility assurance

(a) As a condition of certification or renewal of certification, a business firm engaged in performing unregulated heating oil tank system services shall maintain evidence of financial responsibility assurance pursuant to this section, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services. Financial responsibility assurance in the amount and form required in this section shall be maintained for the term of the certification of the business firm.

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(b) A business firm shall provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance at the following address:

New Jersey Department of Environmental Protection
Bureau of Underground Storage Tanks
P.O. Box 433
401 E. State Street
Trenton, NJ 08501-0433

(c) Financial responsibility assurance may be demonstrated through one or more of the following mechanisms:

1. Liability insurance as follows:

i. Liability insurance may be in the form of a separate insurance policy, or an endorsement to an existing policy which covers the remediation of a discharge resulting from the performance of those services which the insured is certified to perform under this subchapter;

ii. The policy shall provide limits of liability for at least \$250,000 per occurrence and at least \$250,000 annual aggregate;

iii. The insurer is responsible for the payment of all monies to the limit of the policy, including any deductible applicable to the policy, to the provider of remediation with a right to reimbursement by the insured for any such payment made by the insurer; and

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iv. Each insurance policy shall be issued by an insurer that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in New Jersey; or

2. A surety bond, letter of credit, self-insurance or other security posted with the Department in the amount of no less than \$250,000, provided that prior approval for the use of the surety bond, letter of credit, self-insurance or other security posted with the Department is received in writing from the Department.

7:14B-16.10 Denial, suspension, revocation and refusal to renew a certification

(a) The Department may deny, suspend, revoke, or refuse to renew a certification issued pursuant to this subchapter, for any of the following:

1. A violation, or abetting another to commit a violation of any provision of this subchapter, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Department Oversight of the Remediation of Contaminated Sites Rule, N.J.A.C. 7:26C, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or of an order issued pursuant to any of these Acts;

2. Making a false, inaccurate or incomplete statement on an application for certification or other information required by the Department pursuant to this subchapter, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Department Oversight of the Remediation of Contaminated Sites Rule, N.J.A.C. 7:26C, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Underground Storage of

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Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or of an order issued pursuant to any of these Acts;

3. Misrepresentation or the use of fraud in obtaining certification or performing unregulated heating oil tank services;

4. Failure to attend a Department approved course on the regulations as required pursuant to N.J.A.C. 7:14B-16.7(b);

5. Performing tank services on unregulated heating oil underground storage tank systems without obtaining appropriate permits or approvals from State, Federal and local agencies; or

6. Any other violation of this subchapter, the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, the Department Oversight of the Remediation of Contaminated Sites Rule, N.J.A.C. 7:26C, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or of an order issued pursuant to any of these Acts.

(b) Within 30 calendar days after receipt of notification of the Department's intent to suspend, revoke, deny or refuse to renew a certification, the applicant or certificate holder may request an adjudicatory hearing pursuant to N.J.A.C. 7:14B-12.2.

(c) The Department may order the certificate holder to cease operations pending the outcome of the adjudicatory hearing if the Department has reason to believe that a condition exists that poses an imminent threat to the public health, safety or welfare.

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(d) Suspension, revocation, denial, or refusal to renew a certification shall not bar the Department from pursuing any other lawful remedy available to the Department against the applicant or certificate holder.

(e) Any business firm or person whose certification is revoked shall be ineligible to apply for certification for three years from the date of the revocation. Reapplication shall be for initial certification as per this subchapter.

CHAPTER 26C

DEPARTMENT OVERSIGHT OF THE REMEDIATION OF CONTAMINATED SITES

SUBCHAPTER 10 CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:26C-10.4 Civil administrative penalty determination

(a) – (b) (No change.)

(c) The following summary of rules contained in the “Subchapter and Violation” column of the following tables is provided for informational purposes only. In the event that there is a conflict between the rule summary in the following tables and the corresponding rule provision, then the corresponding rule provision shall prevail. The “Citation” column lists the citation and shall be used to determine the specific rule to which the violation applies. In the “Type of Violation” column, “M” identifies a violation as minor and “NM” identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the “Grace Period” column. The “Base Penalty” column indicates the applicable base penalty for each violation.

* * *

5. The Underground Storage Tank Regulations N.J.A.C. 7:14B

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<u>Subchapter and Violation</u>	<u>Citation</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>	<u>Base Penalty</u>
16 Certification Of Individuals And Business Firms For Unregulated Underground Storage Tank Systems				
<u>Failure to be certified in accordance with N.J.A.C. 7:14B-16 or work under the immediate, on-site supervision of a certified individual while performing services on unregulated heating oil tanks.</u>	<u>7:14B-16.2(a)</u>	<u>NM</u>		<u>\$12,000</u>
<u>Failure to make the Department-issued certification card available to the Department or its authorized agent upon request.</u>	<u>7:14B-16.2(b)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of a business firm to conspicuously display the Department-issued certificate at the office of the business firm.</u>	<u>7:14B-16.2(c)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tanks are performed by a certified individual or under the immediate, on-site supervision of a certified individual.</u>	<u>7:14B-16.2(d)</u>	<u>NM</u>		<u>\$12,000</u>

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<u>Failure of an individual performing services on unregulated heating oil tanks to be employed by a certified firm and be certified in the same category of service as the firm.</u>	<u>7:14B-16.2(e)1</u>	<u>NM</u>		<u>\$12,000</u>
<u>Failure of an individual performing services on unregulated heating oil tanks to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.</u>	<u>7:14B-16.2(e)2</u>	<u>NM</u>		<u>\$12,000</u>
<u>Failure of an individual or business firm performing services on unregulated heating oil tanks to submit a list of the maximum price that they will charge to perform those services for which he/she/it is certified.</u>	<u>7:14B-16.2(g)1</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of an individual or business firm performing services on unregulated heating oil tanks to cooperate in any audit of their pricing and business practices.</u>	<u>7:14B-16.2(g)2</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of an individual or business firm performing services on unregulated heating oil tanks to submit documentation of the cost to provide the services for which the Petroleum Underground Storage Tank Remediation and Upgrade Closure Fund is providing financial assistance.</u>	<u>7:14B-16.2(g)3</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

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<u>Failure of an individual or business firm to notify the Department in writing within three business days of any amendments to the certification other than those created by passing an examination.</u>	<u>7:14B-16.2(i)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of a business firm to notify the Department in writing, within three business days, of a certifying officer leaving the business firm or losing his or her certification.</u>	<u>7:14B-16.2(j)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of a business firm performing services on unregulated heating oil tanks to notify the Department in writing of the loss of the certifying individual's certification due to expiration, revocation or suspension and the name of the replacement individual.</u>	<u>7:14B-16.2(k)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to make available to the local construction office a copy of the certification for the business or an individual's certification card when requested by the local construction official.</u>	<u>7:14B-16.2(l)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to attend annual eight-hour health and safety refresher courses as required by 26 C.F.R. 1910.120(e)(8).</u>	<u>7:14B-16.7(a)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>
<u>Failure to complete a Department-approved training course on the Department's rules and regulations concerning underground storage tanks within one year prior to</u>	<u>7:14B-16.7(b)</u>	<u>M</u>	<u>30</u>	<u>\$4,000</u>

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certification renewal.

<u>Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.</u>	<u>7:14B-16.8(d)</u>	<u>NM</u>		<u>\$12,000</u>
<u>Failure to provide proof of the individual's attendance at continuing education courses, required training courses, and supporting documentation of all requisites or prerequisites as required in N.J.A.C. 7:14B-16.7.</u>	<u>7:14B-16.8f)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.</u>	<u>7:14B-16.9(a)</u>	<u>NM</u>		<u>\$12,000</u>
<u>Failure to provide written notification to the Department 120 calendar days prior to any cancellation or change in status of a mechanism used to provide financial responsibility assurance.</u>	<u>7:14B-16.9(b)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order

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No. 27 (1994) and N.J.S.A. 52:14B-23, permit the public to understand accurately and plainly the purposes and expected consequences of this special adoption. I hereby authorize this special adoption.

Date: _____

Lisa P. Jackson, Commissioner

Department of Environmental Protection