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ENVIRONMENTAL PROTECTION

SITE REMEDIATION PROGRAM

COMPLIANCE AND ENFORCEMENT

Underground Storage Tanks

Proposed New Rules: N.J.A.C. 7:14-8.19 and 7:14B-4.1A, 5.10 through 5.14, and 5A

Proposed Amendments: N.J.A.C. 7:14-8.4A and 8.18, and 7:14B-1.3, 1.4, 1.6, 2.1, 2.2, 2.4, 3.1, 3.2, 4.1, 4.2, 5, 6.1, 6.5, 6.7, 7.1, 9.1, 10.1, 12.1, 12.2, 13.2, 13.4, 13.10, and 16.3

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 58:10-23 et seq., 58:10A-1 et seq., and 58:10A-21 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 03-15-03.

Proposal Number: PRN 2015-047.

Submit comments by July 3, 2015, electronically at http://www.nj.gov/dep/rules/comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket Number: 03-15-03

Office of Legal Affairs

Department of Environmental Protection

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The rule proposal may be viewed or downloaded from the Department's web page at http://www.nj.gov/dep/rules.

The agency proposal follows.

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Underground Storage Tank rules at N.J.A.C. 7:14B implement the Underground Storage of Hazardous Substances Act (State Act), N.J.S.A. 58:10A-21 et seq., and the Federal Underground Storage Tank (UST) program, discussed below. The Department's rules establish requirements for tank owners and operators, and are intended to prevent the discharge of hazardous substances into the environment from underground storage tanks (USTs). The rules apply to USTs that store motor fuel, liquid petroleum products, waste oil, and other hazardous substances regulated pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq., and its implementing regulations. Hazardous substances are listed in Appendix A to the Discharge of Hazardous Substances rules, N.J.A.C. 7:1E.

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The Federal UST program was created in 1984 in response to the increasing threat to groundwater posed by leaking USTs. Congress responded to the threat by adding Subtitle I to the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 through 6992k, to require the United States Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for USTs storing petroleum or certain hazardous substances. The Federal Energy Policy Act of 2005, Pub.L. 109–58 (EP Act), amended Subtitle I, in part by adding UST provisions that focus on preventing releases. The amendments expand the use of the Federal Leaking Underground Storage Tank (LUST) Trust Fund, and include provisions regarding inspections, operator training, delivery prohibition, secondary containment, financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

The EP Act's amendments require states that receive funding under Subtitle I of the Solid Waste Disposal Act, such as New Jersey, to meet certain minimum standards (specifically § 1522 of the EP Act). These standards are intended to prevent releases from USTs, and include provisions regarding inspections, operator training, delivery prohibition, secondary containment, and financial responsibility, and cleanup of releases that contain oxygenated fuel additives. The LUST Trust Fund is the primary source of funding for the Department's UST program, through grants from the EPA. The remaining funds for the UST program come from the State's Corporate Business Tax.

In November 2006, EPA published Grant Guidelines to States for Implementing the Secondary Containment Provisions of the Energy Policy Act of 2005 (Secondary Containment Guidelines) (http://www.epa.gov/oust/fedlaws/final-sec-cont-gls-111506.pdf), and Grant Guidelines to States for Implementing the Operator Training Provisions of the Energy Policy Act of 2005 (Operator Training Guidelines)

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(http://www.epa.gov/swerust1/fedlaws/otgg_final080807.pdf), to assist states in meeting the requirements of the EP Act. EPA has advised the Department that grant funding to the State will be significantly reduced unless the Department amends the UST rules to conform to the grant guidelines. Accordingly, the Department proposes to amend N.J.A.C. 7:14B, Underground Storage Tanks, and related penalty provisions at N.J.A.C. 7:14, Water Pollution Control Act, to implement requirements of the EP Act and the guidelines. Proposed amendments also clarify language, establish base penalties at N.J.A.C. 7:14-8.19 for new and existing requirements, and establish grace periods for violations of the proposed new requirements.

The Summary below discusses the proposed amendments by topic: secondary containment; operator training, designation, and duties; and additional amendments. The proposed amendments relating to secondary containment and operator training are subdivided by subchapter, while the additional amendments are broken into subjects. Therefore, amendments to a section, such as definitions at N.J.A.C. 7:14B-1.6, may be discussed under each of the three topic headings.

Secondary Containment

As discussed above, EPA has issued Secondary Containment Guidelines, which apply to new or replaced USTs and piping regulated under Subtitle I of the Solid Waste Disposal Act. In meeting the guidelines, states have the option of mandating secondary containment and interstitial monitoring of certain UST systems, or requiring manufacturers or installers of UST systems to maintain financial responsibility for discharges. Under the first option, each new or replaced UST, or piping connected to a new or replaced UST, that is within 1,000 feet of an

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existing community water system or existing potable drinking water well must have secondary containment, and must be monitored for leaks (interstitial monitoring). In addition, each new motor fuel dispenser system installed within 1,000 feet of an existing community water system or potable drinking water well must have under-dispenser containment. If an existing UST or associated piping is replaced, the secondary containment and interstitial monitoring requirements apply only to the replaced tank or piping. Under the second option, states must require the manufacturer of underground tanks or piping for the tank, or the installer of the tank or piping to maintain financial responsibility for 10 years following the manufacture or installation, as applicable, sufficient to pay the cost of remediating a release from the tank or piping, caused by improper manufacture or installation. This provision does not alter or affect the liability of any owner or operator of any underground storage tank for remediating contamination that results from a release from the UST system.

In New Jersey, the State Act does not require manufacturers to maintain evidence of financial responsibility (usually a policy of insurance) in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture, although the State Act does require some evidence of financial responsibility from installers. The State Act requires certified installers to maintain financial responsibility, but then for only the term of certification, which is three years under the existing UST rules. Under the guidelines, the installer would have to maintain financial responsibility for 10 years, regardless of whether the installer continued to install USTs during that 10-year period. For example, if a tank was installed in 2013, and the installer decided not to recertify in 2014, the Secondary Containment Guidelines would nevertheless require the installer to keep the financial responsibility in place for 10 years from installation, which would be 2023. The State Act, on the other hand, would

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not require the installer to maintain financial responsibility once the installer was no longer certified. Because the State Act does not require or authorize the Department to require extended financial responsibility that the guidelines' second option would impose, the Department is proposing rules implementing the first option under the guidelines, which is secondary containment and interstitial monitoring for the USTs and related piping.

The EP Act requires states that receive Federal Subtitle I money (and that choose the secondary containment option) to have secondary containment and under-dispenser containment for tanks, piping, and dispensers only if they are installed or replaced within 1,000 feet of an existing community water system or potable drinking water well. The Department, consistent with EPA's proposed "Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training" (76 Fed. Reg. 71708 (Nov. 18, 2011)) (EPA Proposal), is proposing that all new and replaced tanks and piping have secondary containment, and that UST systems have under-dispenser containment beneath all new dispenser systems, whether or not they are within 1,000 feet of a community water system or potable drinking water well. The EPA advises on its website that it anticipates adopting the amendments in the EPA Proposal in April 2015 (http://yosemite.epa.gov/opei/RuleGate.nsf/byRIN/2050-AG46). The Department has determined, based on its experience regulating USTs, that nearly all new and replaced tanks and piping in New Jersey are installed within 1,000 feet of an existing community water system or potable drinking water well, because water is necessary to the operation of the facility at which the UST is located. Gas stations with USTs require water for restrooms and drinking water. All privately owned facilities in the State (for example, fuel dispensing facilities that provide fuel for motor vehicle fleets, but do not sell fuel) are also in close

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proximity to some type of water supply. These facilities are typically combined with other operations, such as offices, maintenance yards, or manufacturing facilities that require water. There are a few remote USTs containing fuel for emergency or backup systems for radio or communications systems within the Pinelands and the Highlands that the Department believes may be more than 1,000 feet from a community water system or potable drinking water well. In these areas, secondary containment will help protect sensitive natural resources, such as aquifers.

As a practical matter, the proposed rules should have little impact on the installation of regulated tanks and piping. The Department's review of new installation data for regulated USTs, particularly in the nine years since the EP Act, indicates that installations of single-walled tanks or piping are not occurring anywhere in the State. Liability insurance carriers have been requiring the secondary containment as a condition of the policy, in order that the insurance carriers may reduce the likelihood of discharges and subsequent claims.

N.J.A.C. 7:14B-1. General Information

Among the purposes of the chapter, as provided at N.J.A.C. 7:14B-1.3, is to ensure sound underground storage tank management. The proposed amended rule identifies an ancillary purpose, which is to ensure compliance with release detection monitoring. Both are necessary for preventing, controlling, remediating, and/or abating actual or potential ground water contamination.

The existing rules do not require underground storage tank systems used to store motor fuel solely for use by emergency power generators to comply with the release detection monitoring requirements at N.J.A.C. 7:14B-6. (See N.J.A.C. 7:14B-1.4(d).) The proposed

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amended rules do. Proposed amended N.J.A.C. 7:14B-6.1 provides that such UST systems must comply with the release prevention requirements of N.J.A.C. 7:14B-6 no later than three years after the operative date of the amended rule. The Department has determined that the risk of release from these UST systems is no different from that of any other regulated system; consequently, release detection is necessary in order to prevent a potential discharge. Modern release detection methods are available to ensure that even remote and unmanned sites can be effectively monitored. The Department has observed from its inspections of these tank systems that many of the tanks already maintain release detection monitoring. Accordingly, the Department is amending the applicability provisions at N.J.A.C. 7:14B-1.4.

The Department proposes new definitions at N.J.A.C. 7:14B-1.6, specifically, "compartmented tank," "containment device" or "containment equipment" or "containment system," "dispenser system," "interstitial monitor," "interstitial space" or "interstice," "line leak detector" or "LLD," and "swing joint." These proposed new terms are used throughout the amended chapter and are used in the Secondary Containment Guidelines. The definitions describe portions of an underground storage tank system and secondary containment or monitoring. The proposed amended definition of "liquid sensor" specifies that the sensor detects water, as well as the liquid phase of a hazardous substance. The existing definition specifies only that the sensor detects the liquid phase of a hazardous substance. The presence of water in a UST or related piping is an indicator of a possible leak; accordingly, a liquid sensor must detect the presence of water, as well as a liquid hazardous substance.

The EP Act requires new or replaced USTs and piping located within 1,000 feet of an existing community water system or existing potable drinking water well to have secondary containment and be monitored for leaks; consequently, the Department proposes to amend the

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definition of "wellhead protection area" to conform to the Federal requirement. The existing definition establishes a protection area based upon the hazardous substance stored in the UST system; the EP Act makes no such distinction. The Department also proposes to add the acronym "UST" to the definitions of "underground storage tank" and "underground storage tank system," because the proposed new and amended rules make use of the acronym.

N.J.A.C. 7:14B- 4. Underground Storage Tank Systems: Design, Construction and Installation

Subchapter 4 governs design, construction, and installation of underground storage tanks. The Department proposes to amend N.J.A.C. 7:14B-4.1, Performance standards for new underground storage tank systems, to require that all new tanks and piping must have secondary containment and interstitial monitoring. Existing underground storage tank systems that have interstitial monitoring must maintain the interstitial monitoring for the life of the system. The only exceptions from the secondary containment and interstitial monitoring requirements are for European (safe) suction piping that meets the requirements of N.J.A.C. 7:14B-6.2, which contains the requirements for UST systems containing petroleum products and waste oil, and piping associated with field-constructed tanks and airport hydrant fuel distribution systems. European suction piping uses a suction pump to deliver fuel from the UST to the dispenser. The piping operates at less than atmospheric pressure, slopes back towards the UST so regulated substances drain to the UST if suction is lost, and has only one check valve located close to the suction pump. If a break occurs in the piping, it is unlikely that fuel will be released. Piping associated with field-constructed tanks and airport hydrant fuel distribution systems typically is of large diameter and runs for long distances, making it difficult to slope the piping back to an interstitial monitoring area. In addition, it is difficult to

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keep water out of the interstitial area of these long piping runs. Since nearly all this piping is steel, corrosion can occur in the interstitial area when an electrolyte, such as water, is in the interstitial area. This corrosion can significantly shorten the piping's life. Corrosion protection safeguards piping in contact with the ground, but does not protect the inside part of piping from corrosion. To prevent corrosion caused by water in the interstitial area, owners and operators would need to add corrosion protection inside the interstitial area of piping, which would be difficult, if not impossible. Given all of these issues, secondary containment for these piping runs could potentially increase, rather than decrease, the risk of releases. Accordingly, EPA has determined that secondary containment of suction piping that meets the requirements of N.J.A.C. 7:14B-6.2, and piping associated with field-constructed tanks and airport hydrant fuel distribution systems do not require secondary containment. (See EPA Proposal, summary of proposed amendments to 40 CFR 280.20(b).)

If an existing UST system has secondary containment and interstitial monitoring, the proposed rule requires that the interstitial monitoring be maintained for the operational life of the system. Although the owner or operator of an existing tank in good working order that does not have secondary containment and interstitial monitoring does not need to install it, a tank that already has secondary containment and interstitial monitoring must maintain and continue to use interstitial monitoring. To allow the monitoring to be discontinued, or changed to a less protective method of release protection, would be contrary to the intent of the EP Act and the grant guidelines. Existing underground storage tank systems with secondary containment, but use a method of release detection other than interstitial monitoring, are required at a minimum, to ensure the integrity of the system (no leaks in the inner or outer walls) and must also conduct periodic testing, in accordance with N.J.A.C. 7:14B-5.11.

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Secondary containment of tanks and piping must contain any release of hazardous substance until the substance is detected and removed, and must prevent releases of regulated substances to the environment at all times during the operational life of the UST system. The Department proposes to delete N.J.A.C. 7:14B-4.1(b), which requires that all new underground storage tank systems installed within wellhead protection areas have secondary containment and be monitored. This subsection is superfluous in light of the proposed amendments.

The existing rules at N.J.A.C. 7:14B-4.1(e) through (j) specify the industry standards that shall be used to comply with the construction and installation requirements at N.J.A.C. 7:14B-4.1(a)1 and 2. Proposed N.J.A.C. 7:14B-4.1(f) (existing subsection (g)) does not incorporate by reference the Association for Composite Tanks ACT-100, “Specification for the Fabrication of FRP Clad Underground Storage Tanks,” one of the two alternative standards that the existing rules provide for construction of a steel-fiberglass-reinforced-plastic composite tank. Under the amended rule, such tanks must meet the Underwriters Laboratories Standard 1746, the other alternative in the existing rule. Proposed new N.J.A.C. 7:14B-4.1(g) provides a list of codes and standards applicable to secondary containment for new or replaced piping for which installation begins after the operative date of the amendments. With the exception of the Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks" and Specification F922, “Steel Tank Institute Specification for Permatank®” (both available at www.steeltank.com), the standards at proposed new N.J.A.C. 7:14B-4.1(g) are already incorporated by reference in existing N.J.A.C. 7:14B-4.1. The EPA has indicated that it advocates the proposed standards, which are the same standards contained in the EPA Proposal. The EPA Proposal was intended to “establish Federal requirements that are similar to key portions of the Energy Policy Act of 2005.” (See 76 Fed. Reg. 71708.)

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Because the within proposed amendments are intended to implement the provisions of the EP Act, in accordance with the Secondary Containment Guidelines, it is appropriate that the Department use the same standards as EPA proposes in its rules. To correct an error in the existing rule, the Department is deleting N.J.A.C. 7:14B-4.1(h)4, which identifies NACE International Standard RP-01-95 RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems." The standard applies to metallic piping systems. N.J.A.C. 7:14B-4.1(h) identifies standards applicable to fiberglass-reinforced plastic piping. Therefore, the standard is incorrectly included in the subsection.

Existing N.J.A.C. 7:14B-4.1(a)3 applies to spill and overflow prevention equipment. Under the proposed amended rules, tanks filled by means of gravity may continue to use the overfill prevention equipment allowed under the existing rules (automatic shut off, alerts, or flow restriction). Flow restriction in vent lines, typically “ball floats,” will not be an option for gravity-filled tanks three years after the operative date of the amendments. Department inspections of UST systems and responses to incidents have repeatedly revealed that vent line flow restrictors are unreliable in preventing spills and overfills during product transfer. In addition, tank installation and recommended practice manuals, such as the National Fire Protection Association’s publication 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages” (2003) (www.nfpa.org), and the Fiberglass Tank & Pipe Institute’s “Overfill Prevention of Petroleum Underground Storage Tanks and Adverse and Unintended Consequences” (2015) (www.fiberglasstankandpipe.com), specifically warn against the use of vent line flow restrictors.

The proposed amendments require tanks that are filled by means other than gravity deliveries, such as deliveries that are pumped, metered, or pressurized, to have overfill

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protection that is compatible with the method of filling the tank. This is to ensure that tanks are not over-pressurized during delivery of product, resulting in a release to the environment. The proposed rule requires that spill and overfill prevention equipment be periodically tested in accordance with N.J.A.C. 7:14B-5.10, to ensure that the equipment functions properly.

The Department is deleting existing N.J.A.C. 7:14B-4.1(a)1v, 2iv, and 3iii(1), which allow the Department to issue a permit for equipment that does not meet the specified industry standards, but is no less protective of human health and the environment than equipment that meets the specified standards. As amended, the rule requires all equipment to meet the specified standards for tanks, piping, and overfill prevention. In practice, the overwhelming majority of installed equipment is standardized and commercially manufactured, meeting the standards in the proposed rule. The Department has never received an application for a permit to use alternative equipment; therefore, removing the provision is an effort to streamline the rules and remove superfluous language.

Proposed new N.J.A.C. 7:14B-4.1A, Performance standards for motor fuel dispenser systems, requires motor fuel dispenser systems (fuel pumps) installed on and after the rules are operative to be equipped with under-dispenser containment. The containment must be liquid-tight on its sides, bottom, and at any penetrations, be compatible with the substance conveyed by the piping, and allow for visual inspection and access to the components in the containment system, or be continuously monitored for leaks from the dispenser system. The owner or operator must inspect the under-dispenser containment system every 30 days for the presence of water and/or product. The Secondary Containment Guidelines identify the components of a dispenser and related equipment, specify the criteria for determining whether a dispenser is considered new, and mandate the frequency of inspection. The guidelines require such under-

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dispenser containment only for new motor fuel dispensers that are located within 1,000 feet of any existing community water system or any existing potable drinking water well; however, the guidelines allow states to develop more stringent requirements, including requiring containment for "all new installations and replacements, independent of whether the installation is within 1,000 feet of any existing community water system or any existing potable drinking water well." The Department has determined that any discharge of motor fuel from a dispenser has the potential to cause harm, because such discharges can affect not only the State's water supply, but also its natural resources. The Department has promulgated rules, such as the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, Remediation Standards, N.J.A.C. 7:26D, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, intended to protect the public and the State's natural resources, not limited to its water supply, from contamination that has already occurred. It makes sense, therefore, for the Department to take appropriate measures to prevent contamination from occurring in the first instance. Therefore, the proposed new rule does not limit the under-dispenser containment based on proximity to a community water system or existing potable drinking water well.

N.J.A.C. 7:14B-4.2 governs upgrading of existing underground storage tank systems. The Department proposes to amend N.J.A.C. 7:14B-4.2(b) to make it clear that a permit application must be submitted and approved by the Department prior to an owner or operator initiating an upgrade. The Department also proposes to include fiberglass tanks as eligible for upgrading. The existing rule refers only to steel tanks, but fiberglass tanks are in common use and can be upgraded.

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Installation of an internal lining to a tank is among the types of upgrades that the existing rule allows. The Department has determined, however, that an internal lining is not appropriate in every instance. Therefore, the amended rule allows installation of an internal lining only if a tank is structurally sound, has sufficient wall thickness (minimum 1/8 inch (0.32 centimeter) for steel tanks), and has cathodic protection. One condition of an upgrade with an internal liner is periodic internal inspection to confirm that the tank is structurally sound and the lining is performing as designed. Under the proposed amended rule, if the inspection reveals that the tank is not structurally sound or the lining is not meeting specifications, then the tank shall be closed. Further upgrade or repair is not permitted. Tanks that do not pass the periodic inspection are likely to leak, causing harm to human health or the environment. Similarly, the existing rule allows a tank to be upgraded with cathodic protection, provided certain conditions are met. The proposed amended rule adds the condition that the tank must have sufficient wall thickness before cathodic protection may be installed.

The Department also proposes to replace several of the codes and standards that are to be used to comply with the cathodic protection requirements of the section. The publications cited in the existing rule are out-of-date. The proposed amended list of standards applicable to cathodic protection contains the standards for cathodic protection recited in the EPA Proposal. The standards are American Petroleum Institute Publication 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks"; National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection"; American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Storage Tanks and Piping Systems”; NACE International Standard SP0169-2007 "Control of External Corrosion

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on Underground or Submerged Metallic Piping Systems"; and Underwriters Laboratories Standard 58, “Standard for Steel underground storage tanks for Flammable and Combustible Liquids.”

N.J.A.C. 7:14B-5. General Operating Requirements

Subchapter 5 contains the general operating requirements for underground storage tanks, including testing, inspection, and repairs. Throughout the subchapter, the Department proposes to update cross-references, and at N.J.A.C. 7:14B-5.1(d)3, the Department is deleting the reference to N.J.A.C. 7:14B-4.1(n). The existing rules contain no such subsection. The Department also proposes to update the titles of various codes and standards, and replace outdated publications with more recent ones.

At proposed amended N.J.A.C. 7:14B-5.1(b), the Department is replacing the existing standards with those identified in the EPA Proposal at proposed amended 40 CFR 280.30 as applicable to spill and overfill control. These standards are the transfer procedures described in National Fire Protection Association Standard 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, and American Petroleum Institute Recommended Practice 1007, “Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles.” The Department also identifies as guidance on spill and overfill prevention the American Petroleum Institute Recommended Practice 1621, “Bulk Liquid Stock Control at Retail Outlets."

At N.J.A.C. 7:14B-5.2(a)2ii, the proposed amendment replaces the general reference to codes of practice of nationally recognized associations with specific codes of practice by nationally recognized associations. The standards are NACE International Test Method TM 0101, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground

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or Submerged Metallic Tank Systems," and NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems," Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for sti-P3 USTs," NACE International Recommended Practice RP- 02-85, "Control of Underground Storage Tank Systems by Cathodic Protection," and NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems." The proposed standards are those that the EPA identified as applicable to the operation and maintenance of corrosion protection (see EPA Proposal, amendments to 40 CFR 280.31).

The proposed amended list of standards for repairs to UST systems, set forth at N.J.A.C. 7:14B-5.4(c), are the same as the EPA deemed appropriate in its proposal of amendments to 40 CFR 280.33, Repairs (see EPA Proposal). The standards are National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines," American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," National Leak Prevention Association Standard 631, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks," Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to sti-P3® Tanks," NACE International Recommended Practice RP 0285, "Control of Underground Storage Tank Systems by Cathodic Protection," Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks," and Petroleum Equipment Institute Recommended Practice RP1200 "Recommended

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Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment UST Facilities."

In order that a substance can be safely stored in an UST system, the owner or operator must be sure that the substance is compatible with the system. Some regulated materials are corrosive, and could cause leaks if contained in an UST system with which they were incompatible. Therefore, the rules require that the UST system be compatible with the contents. At N.J.A.C. 7:14B-5.3, the Department proposes to delete the reference to specific American Petroleum Institute publications as a means of demonstrating that the UST system is compatible with its contents. Instead, the Department is proposing methods for determining compatibility. One means of determining compatibility is to refer to a certification or listing of UST system components by a nationally recognized independent testing laboratory (for example, Underwriters Laboratories). Other means are the written statement of the equipment or component manufacturer, or a method that the owner or operator demonstrates is no less protective than the other identified methods. As above with regard to proposed standards, the proposed methods of complying with the compatibility requirements are the same as the compatibility provisions in the EPA Proposal, proposed 40 CFR 280.32, indicating that EPA has determined these methods to be appropriate under the EP Act.

The compatibility standards in existing N.J.A.C. 7:14B-5.3(b) apply only to owners and operators who store alcohol blends. Because alcohol blends are not the only fuel blends available in the market, the Department proposes to amend the rule in order that it applies to ethanol and biodiesel, as well as blends of any other regulated substance. As part of the requirement to demonstrate compatibility between the UST system and the contents, proposed amended N.J.A.C. 7:14B-5.3(c) requires the owners and operators to retain records for the life

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of the equipment or component. The records must include the manufacturer and model of the equipment, and the date of installation or replacement. The document retention requirement allows the Department to continue to enforce the compatibility requirements well into the life of the UST system.

Existing N.J.A.C. 7:14B-5.3(c) requires that contents of a "compartmentalized" tank be compatible with each other, in order to prevent a safety hazard. At proposed amended N.J.A.C. 7:14B-5.3(d), the Department is replacing "compartmentalized" with "compartmented." Based on the Department's experience in regulating the industry, the proposed term is more correct, and more frequently used in the industry. The substance of the rule remains the same.

N.J.A.C. 7:14B-5.4 governs repairs of UST systems. The existing rule requires that fiberglass pipes and fittings be repaired or replaced in accordance with the manufacturer's specifications. The proposed amended rule refers to "non-corrodible" pipes and fittings, rather than fiberglass, because newer piping materials exist, in addition to fiberglass. The proposed amended rule also requires the entire piping run to be replaced and have secondary containment when 50 percent or more of a piping run is replaced. According to an EPA analysis of UST regulations for the approximately 40 states that currently require secondary containment and interstitial monitoring, three-quarters of these states have requirements at least as stringent as the proposed 50 percent threshold. (See EPA Proposal, fn 11, E2, Incorporated, memoranda and analyses submitted under Contract EP–W–05–018, "U.S. Environmental Protection Agency. Underground Storage Tanks/Leaking Underground Storage Tanks Analytical and Technical Support.") In addition, EPA performed a screening analysis using limited, readily available data to determine when repair cost approached replacement cost, and

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at what point owners and operators were most likely to replace the entire piping run rather than repair it. The EPA determined that the replacement cost of an entire piping run became equal to repair cost when approximately 60 percent of a piping run is repaired. (See EPA Proposal, fn 17, IEc Incorporated, Work Assignment # 1–19, "Methodology and Calculator for Secondary Containment for Piping," October 3, 2008.) The proposed requirement is intended to prevent owners and operators from leaving small pipe sections in the ground to avoid the secondary containment requirement. If an UST system has multiple piping runs, the secondary containment requirement will apply to only those where 50 percent or more of piping is replaced. Piping runs installed prior to the operative date of the amendments do not need to have secondary containment.

As discussed in the summary of proposed amended N.J.A.C. 7:14B-4.2 above, it is important that the integrity of UST systems be determined promptly. Accordingly, proposed amendments to N.J.A.C. 7:14B-5.4(a) require UST systems with secondary containment to be tested within 30 days following the completion of any repair. Systems that use interstitial sensors as part of the secondary containment must be tested using a vacuum or liquid method. If spill or overfill prevention equipment is repaired, it must be immediately tested to ensure that it is operating properly. Proposed new N.J.A.C. 7:14B-5.10 and 5.11 provide testing methods, as discussed below.

Existing N.J.A.C. 7:14B-5.6, Recordkeeping requirements, identifies records that must be maintained until the Department notifies the owner or operator that the records can be destroyed. The Department proposes to add to the list of such documents those related to installation and replacement of equipment. In order to prevent confusion, the Department proposes to make it clear that there are other recordkeeping requirements in the chapter.

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Proposed new N.J.A.C. 7:14B-5.10, Spill and overfill prevention equipment, prescribes the criteria that spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must meet in order to prevent releases to the environment. The proposed rule requires spill prevention equipment either to have two walls, with continuously monitored interstices; or be tested every 12 months using vacuum, pressure, or liquid testing to ensure the spill prevention equipment is liquid tight. All owners and operators of UST systems must test overfill prevention equipment at installation and at least once every three years. At a minimum, testing must ensure that overfill prevention equipment is set to activate at the correct levels and will activate when regulated substance reaches that level. Owners and operators of UST systems installed on or before the operative date the proposed rules will have one year to meet the standards and begin testing. Owners and operators of UST systems installed after the operative date of the proposed rules must comply upon installation. The Department believes the one-year timeframe is sufficient for UST system owners or operators to meet the standards and develop and initiate testing protocols, or hire UST system contractors to provide these services.

Proposed N.J.A.C. 7:14B-5.10(d) contains recordkeeping requirements associated with testing. All records of spill prevention equipment testing and overfill prevention equipment testing must be maintained for five years. If equipment is not tested every 12 months, documents must be maintained to show that the spill prevention equipment has two walls and is monitored continuously. Owners and operators must maintain this documentation for as long as the spill prevention equipment is monitored continuously, and for five additional years after continuous monitoring ends.

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Proposed new N.J.A.C. 7:14B-5.11, Integrity testing of UST systems with secondary containment, requires owners and operators of such UST systems to test the integrity of all interstitial areas, including all tanks, piping, and containment sumps, in order to ensure that the UST system is functioning properly and is detecting and preventing releases to the environment. UST systems with continuous interstitial monitoring must be tested at least once every 30 days to ensure that the monitoring system is functioning properly. For UST systems without continuous interstitial monitoring, the integrity of the interstitial areas must be tested by vacuum, pressure, or liquid testing at least once every three years. Testing can be through the manufacturer's requirements, a code of practice developed by a nationally recognized association or independent testing laboratory, or a method that the owner or operator demonstrates is no less protective of human health and the environment than one of the other methods. The proposed rule includes examples of applicable protocols developed by nationally recognized associations or independent laboratories.

From a release detection and prevention perspective, continuous monitoring is preferable; however, the Department is aware that not all owners and operators of UST systems are in a position to immediately upgrade and install continuous monitoring equipment. Accordingly, the proposed rule allows the alternative of testing the secondary containment every three years. The Department believes that testing every three years will be sufficiently protective, taking into account the overall detection and prevention benefit realized from the general requirement that all tanks must have secondary containment.

As proposed at N.J.A.C. 7:14B-5.11(b), owners and operators of UST systems with secondary containment must meet the proposed testing requirements in accordance with a schedule based on the installation date of the UST systems. If an owner or operator had one or

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more USTs installed on or before December 22, 1988, then testing is required within one year after the rules are operative. If no USTs at the facility were installed on or before December 22, 1988, and at least one UST at the facility was installed before December 22, 1998, then testing of secondary containment is required on or before two years after the operative date of the rules. If all USTs at the facility were installed on or after December 22, 1998, then testing of secondary containment is required within three years after the operative date of the rules. The Department believes the phase in schedule will provide sufficient time for the UST owners and operators to address these testing requirements. As of December 22, 1998, all UST systems were required to meet the upgrade and operational release detection requirements. Those that could not be upgraded were required to be permanently closed. (See Summary of proposed amendments to N.J.A.C. 7:14B-4, 6, and 9, 34 N.J.R. 4024(a), adopted at 35 N.J.R. 2304(a).) The proposed phase-in of the testing requirements gives the oldest tanks the earliest testing date. Those installed more recently have additional time to comply.

Proposed new N.J.A.C. 7:14B-5.11(c) contains recordkeeping requirements related to monitoring and testing. Records of interstitial space testing shall be maintained for five years. Records demonstrating the tank is using continuous interstitial monitoring, the piping is using continuous interstitial monitoring with vacuum, pressure, liquid-filled interstitial space, and the containment sump has two walls and uses continuous interstitial monitoring shall be maintained for the life of the UST system. These recordkeeping requirements will allow the Department to ascertain compliance with the interstitial monitoring requirements.

N.J.A.C. 7:14B6. Release Detection

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Subchapter 6 contains the release detection provisions for UST systems. The general release detection requirements for all UST systems are set forth at N.J.A.C. 7:14B-6.1. Proposed amended N.J.A.C. 7:14B-6.1 requires owners and operators of all regulated UST systems, beginning one year after the operative date of the rule, to test the proper operation of electronic and mechanical components in accordance with the manufacturer's instructions, a code of practice developed by a nationally recognized association, or an independent testing laboratory, or a method no less protective. The testing must be performed at least annually and include the automatic tank gauge and other controllers, probes and sensors, line leak detector and vacuum pumps and pressure gauges, to the extent applicable. These tests are necessary to ensure that release detection equipment is working properly to detect and prevent releases. Owners and operators of UST systems associated with emergency power generators that currently do not have leak detection systems have three years to install leak detection equipment, in accordance with existing N.J.A.C. 7:14B-6.1(a). Once the leak detection equipment is installed, it must be tested at least annually. Proposed new N.J.A.C. 7:14B-6.7(k) requires the results of annual release detection operation tests to be maintained, in order that the Department can ensure compliance.

The Department proposes to amend N.J.A.C. 7:14B-6.5, Methods of release detection for tanks. The existing rule establishes the requirements for various types of release detection, including product inventory control, manual tank gauging, tank tightness testing, automatic tank gauging, testing or monitoring for vapors within soil gas, testing or monitoring liquids floating on ground water, interstitial monitoring between the tank and a secondary barrier, and unspecified methods that are sufficiently sensitive to detect leaks from the tanks. One of the requirements for automatic tank gauging is that the product level monitor must detect a 0.2

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gallon per hour leak rate. The proposed amended rule specifies the acceptable methods for conducting those tests, and prescribes the frequency of the test.

With regard to interstitial monitoring, the existing rule prescribes sampling or testing methods for double-walled UST systems, UST systems with a secondary barrier, and tanks with an internally fitted liner. The Department proposes to amend the rule to add testing methods for tanks that use continuous vacuum, pressure, or liquid-filled methods of interstitial monitoring. Testing must take place at least once every 30 days, and must be capable of detecting breaches in the inner and outer walls of the tank.

The proposed amended rule expressly allows statistical inventory reconciliation as a method of release detection. Although such reconciliation was allowed under the existing rules if it met the detection limits in the rule, it was not specifically mentioned. Statistical inventory reconciliation analyzes inventory, delivery, and dispensing data collected over a period of time to determine if the UST system is leaking. The testing method is, however, subject to the additional requirements at proposed new N.J.A.C. 7:14B-6.5(a)8i. UST systems using statistical inventory reconciliation methods shall report a quantitative result with a calculated leak rate, use a threshold that does not exceed one-half the minimum detectible leak rate and be conducted at least once every 30 days. In the Department's experience, statistical inventory reconciliation methods that do not meet the proposed requirements are not sufficient for early release detection.

N.J.A.C. 7:14B-9. Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems

N.J.A.C. 7:14B-9 governs out-of-service UST systems and closure of UST systems. In

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order to take an UST system out of service, the owner or operator must notify the Department, remain in compliance with all applicable environmental rules, maintain release detection monitoring, maintain corrosion protection, and install spill and overfill prevention for systems that do not have these. Under existing N.J.A.C. 7:14B-9.1, notice to the Department is to be provided "within five calendar days of the tank becoming out of service," on a form obtained from the Department. The proposed amended rule requires the owner or operator to submit an amended New Jersey Underground Storage Tank Facility Questionnaire within seven days after the UST system is placed out of service. The proposed requirement is consistent with N.J.A.C. 7:14B-2.4, Changes to registration, which requires the owner or operator intending to close an UST system to submit a questionnaire within seven days of the closure. The proposed amended rule allows only those tanks with secondary containment to remain out of service for more than 12 months. Single wall UST systems that have been out of service for more than 12 months and UST systems with secondary containment that do not meet the criteria of proposed amended N.J.A.C. 7:14B-9.1(c), discussed below, must be closed. (See proposed N.J.A.C. 7:14B-9.1(c) and (d).)

The Department's goal is to ensure that an UST system that has been out of service for an extended period of time will not release hazardous substances into the environment. "Mothballing" older underground storage tank systems – those with single walls, and without proper secondary containment and cathodic protection – for potential future reuse is inconsistent with the Department's goal of limiting releases to the environment. Such mothballing is also inconsistent with the EP Act and the Secondary Containment Guidelines, which require additional measures to protect groundwater from contamination. (See Secondary Containment Guidelines, p. 1.)

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Under the existing rule at N.J.A.C. 7:14B-9.1(c), a tank that has been out of service for 12 months does not need to be closed if the owner or operator either submits a site investigation report prepared by a licensed site remediation professional, or submits documentation showing that the underground storage tank is being maintained in compliance with all applicable environmental rules, including release detection monitoring. The proposed amended rule also requires owners or operators to submit documentation showing that the corrosion protection is in place and will be operated and maintained in accordance with N.J.A.C. **7**:14B-5.2. If the corrosion protection is an impressed current corrosion protection system, the owner or operator must also demonstrate that the system will be inspected every 60 days to ensure that the system is on and working properly while the tank is out of service.

In order to put an UST with secondary containment back in service after it has been out of service for more than 12 months, proposed new N.J.A.C. 7:14B-9.1(e) requires the owner or operator to submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire to the Department 30 days prior to introducing product into the underground storage tank system, which questionnaire shall include a statement from a certified installer certifying that the system is properly designed and capable of being put back into service, and documentation that the corrosion protection for the system was properly maintained for the entire time that the tank was out of service. The purpose of both N.J.A.C. 7:14B-9.1(e)1 and 2 is to ensure that the tank is being properly maintained and that no discharge of hazardous substances has occurred.

Operator Training, Designation, and Duties

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In addition to requiring secondary containment of tanks and piping, the EP Act requires EPA, in coordination with states, to develop training guidelines for three distinct classes of operators who operate and maintain Federally regulated UST systems. In New Jersey, Federally regulated UST systems are governed by N.J.A.C. 7:14B. As discussed above, the EPA issued the Operator Training Guidelines, which describe the minimum requirements a state's UST program must contain in order for a state to comply with the EP Act's requirements for Subtitle I funding. These guidelines include a description of the classes of operators, mandatory training for each class of operator, deadlines by which operators must be trained, and examples of acceptable state approaches to operator training. The three classes of operators are Class A, Class B, and Class C, the duties of which are discussed below. A facility must designate a Class A, Class B, and Class C operator, and each of the designated operators must be trained in accordance with the Operator Training Guidelines. One person may be designated under more than one of the classes of operators, in which case the person must be trained for each class for which he or she is designated.

A Class A operator has primary responsibility to operate and maintain the UST system. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, in order to achieve and maintain compliance with regulatory requirements. The Class A operator must, at minimum, have a general knowledge of UST system requirements so he or she can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping requirements. The Operator Training Guidelines require a Class A operator to be trained in spill prevention, overfill prevention, release detection, corrosion protection, emergency

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response, product compatibility, financial responsibility documentation requirements, notification requirements, and reporting of releases and suspected releases.

A Class B operator is in charge of day-to-day aspects of operating, maintaining, and recordkeeping for USTs at one or more facilities. For example, this individual typically ensures that the requirements for release prevention equipment, recordkeeping, and reporting are met, and that all relevant equipment complies with performance standards. He or she also makes sure that appropriate individuals, typically Class C operators, are trained to properly respond to emergencies caused by releases or spills from underground storage tank systems at the facility. Compared with training for the Class A operator, training for the Class B operator provides a more in-depth understanding of operation and maintenance aspects, but may not cover applicable regulatory requirements in as much detail as the training for a Class A operator. The Operator Training Guidelines require that training for Class B operators include an understanding of the purpose and function of the equipment associated with underground storage tank systems, product and equipment compatibility, and methods of release detection and release prevention applied to underground storage tank components. The training also includes operation and maintenance requirements, including spill prevention, overfill prevention, release detection, corrosion protection, emergency response, product compatibility, and reporting and recordkeeping requirements. The Class B operator must also be knowledgeable about Class C operator training requirements.

A Class C operator is an on-site employee and is, generally, the first to respond to potential emergencies. For example, he or she may monitor the dispensing or sale of regulated substances or, for retail gas stations, be an attendant at a gasoline pump. This individual is responsible for responding to alarms or other indications of emergencies caused by spills or

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releases from underground storage tank systems. This individual notifies the Class A or Class B operator and appropriate emergency responders when necessary. Not every employee at the facility must be a Class C operator. The Operator Training Guidelines require the individual to be trained to take action in response to emergencies or alarms caused by spills or releases from an underground storage tank system. Although each facility must designate and train a Class C operator, some unmanned facilities may not have a Class C operator on site. Examples of these types of facilities are emergency generators and card lock/card access facilities, such as at a gas pump for municipal or corporate vehicles.

Owners and operators can designate themselves as Class A, Class B, or Class C operators, or they can designate contractors or employees. If contractors or employees are designated, the UST system owners and operators still retain liability for all regulatory issues, including ensuring their Class A, B, and C operators have received the required training and passed the applicable examinations.

N.J.A.C. 7:14B-1. General Information

The Department proposes to amend N.J.A.C. 7:14B-1.3, Purpose, to include among the various purposes of the chapter the designation and training of the three classes of operators. In the definitions applicable to the chapter, N.J.A.C. 7:14B-1.6, the Department proposes to define the three classes of operators, and "unmanned facility." The definitions of the operators are consistent with the description of the duties of the classes of operators, discussed above. In order to reduce confusion, the proposed definition of each of the classes of operators states that an individual does not become an "operator" solely by virtue of being designated a particular class of operator. An "operator" has responsibilities throughout the chapter that a person

designated as a Class A, B, or C operator does not have. An "unmanned facility" does not have an attendant present during all hours of operation to respond to alarms or emergencies related to the UST system. Examples of unmanned UST facilities include, but are not limited to, card lock or card access fueling stations, telecommunication towers or utility transfer stations serviced by emergency generator USTs, and unattended UST systems located at industrial or governmental facilities. The proposed definitions are based upon the descriptions of the operators and facilities contained in the Operator Training Guidelines.

N.J.A.C. 7:14B-2. Registration Requirements and Procedures

Subchapter 2 contains the registration requirements and procedures related to UST systems. The proposed amendments to N.J.A.C. 7:14B-2.2(d)6, (e)2, and (f)6 require owners and operators to include on the New Jersey Underground Storage Tank Facility Certification Questionnaire the names of the designated Class A and designated Class B operators for the facility during initial registration, registration renewal, and when there is a change in the designation of a Class A or Class B operator. The underlying requirement to designate operators in each class is in the proposed amendments to Subchapter 5, General Operating Requirements. Designation of a new Class A or Class B operator constitutes a change in status of the UST system, in accordance with proposed amended N.J.A.C. 7:14B-2.2(f); therefore, when an owner or operator designates a new Class A or B operator, because of personnel turnover or otherwise, the owner or operator must update the facility's Underground Storage Tank Facility Certification Questionnaire within 30 days. Class C operators need not be identified on the registration statements or certificate renewals, and identification of a new Class C operator does not constitute a change in status of a facility. There is considerable

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turnover among employees, such as gas pump attendants, who fall within the Class C operator category. Accordingly, requiring updates to the registrations and renewals upon a change in Class C operator could be unmanageable for facilities. Instead, under the proposed new recordkeeping requirements at N.J.A.C. 7:14B-5A.5, the owner or operator must maintain training records for all designated operators, and make the records available for Department inspection. These records will enable the Department to ensure that at least one trained Class C operator is designated for the facility at all times.

Existing N.J.A.C. 7:14B-2.4(a) requires the owner or operator to notify the Department within 30 days after any modification to the information in the New Jersey Underground Storage Tank Facility Questionnaire. The Department proposes to amend N.J.A.C. 7:14B-2.2(f) to repeat the 30-day requirement. As amended, proposed N.J.A.C. 7:14B-2.2(f) requires the owner or operator to submit a revised questionnaire no later than 30 days after making the change in status. Therefore, in the context of designating a new Class A or Class B operator, within 30 days after designating the new Class A or Class B operator in accordance with proposed new N.J.A.C. 7:14B-5.14, discussed below, the owner or operator must submit a new Underground Storage Tank Facility Questionnaire.

N.J.A.C. 7:14B-5. General Operating Requirements

Subchapter 5 of N.J.A.C. 7:14B contains the general operating requirements for UST facilities. Proposed new N.J.A.C. 7:14B-5.14, Designation of Class A, Class B, and Class C operators, requires an owner or operator to designate Class A, Class B, and Class C operators for the facility, as required by the Operator Training Guidelines. As discussed above, the Class A and Class B operators are identified in the facility's New Jersey Underground Storage Tank

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Facility Certification Questionnaire. The Class A, Class B, and Class C operators must also be identified in the release response plan, as set forth at proposed amended N.J.A.C. 7:14B-5.5. These individuals may have responsibility for the operation of the facility during an emergency. In order that a facility has appropriately trained people available at all times, a facility must have at least one of each class of operator designated at all times. There can be no break between the time that one operator of a class leaves a facility, and another of the same class is designated, leaving a facility without an operator of a particular class.

In addition to requiring the name and contact information of the various classes of operators at a facility to be included in the release response plan, the proposed amendments also require that the release response plan include the procedures to address alarms associated with release detection equipment, and the procedures to be followed in the event of a leak or discharge of a hazardous substance. Existing N.J.A.C. 7:14B-5.5 requires the release response plan to include the procedures to be followed in the event of a leak of a hazardous substance, in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and N.J.A.C. 7:14B-9, in the event the UST must be closed. The Department proposes to delete this requirement. Existing N.J.A.C. 7:14B-9.2(a)5 of the rules governing closure of UST systems requires any remediation to be conducted in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C; therefore, it is unnecessary that the remediation response plan contain a list of steps to be followed in accordance with N.J.A.C. 7:26C.

Among the purposes of the EP Act is the prevention of releases from UST systems; consequently, the Operator Training Guidelines require trained operators to inspect the UST systems to prevent or reduce the impact of releases. Proposed new N.J.A.C. 7:14B-5.12,

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Periodic operation and maintenance walkthrough inspections, requires owners and operators to ensure that a trained Class A or Class B operator conducts a walkthrough inspection of the UST system at least once every 30 days to be sure that spill detection and prevention equipment is working properly. The inspection includes spill prevention equipment, sumps, dispenser cabinets, monitoring/observation wells, cathodic protection, and release detection systems. The proposed new rule contains specific requirements for the inspection, as well as an alternative. Rather than follow the steps set forth in the rules, the walk through inspection can be in accordance with a standard code of practice developed by an independent testing agency or nationally recognized association, such as the Petroleum Equipment Institute's (PEI) "Recommended Practice RP900, Recommended Practices for the Inspection and Maintenance of UST Systems." The Petroleum Equipment Institute's code of practice is available for a fee from www.pei.org. To substitute for the inspection in the rules, the code of practice must be comparable to the requirements of proposed N.J.A.C. 7:14B-5.12(a)1.

Walkthrough inspections are necessary for early detection and prevention of discharges, spills, and monitoring problems. The Department is aware that many facilities have been performing these inspections even in the absence of regulatory requirements; however, the Department anticipates that mandatory monthly inspections will result in a greater level of compliance, leading to fewer enforcement actions and fewer penalties. The Department recommends that facilities perform routine equipment inspections in addition to the proposed mandatory inspection. The proposed rule requires owners and operators to maintain records of operation and maintenance walkthrough inspections for 10 years.

Proposed new N.J.A.C. 7:14B-5.13, Specific operating requirements for unmanned facilities, applies only to unmanned facilities. Unmanned facilities are specifically exempt

from the requirement at proposed new N.J.A.C. 7:14B-5.14(d) that at least one Class C operator be present at a facility during operation of the facility. These facilities do not have an attendant present during all operating hours. The owner or operator of an unmanned facility must ensure that the facility has clearly visible, weather resistant signs providing emergency procedure information and notification information as detailed in the release response plan requirements found at N.J.A.C. 7:14B-5.5(a)1 through 4**.** Such signs are a low cost, common sense tool for providing information on responding to emergencies.

As discussed above, proposed new N.J.A.C. 7:14B-5.14 requires an UST facility to designate at least one of each class of operator, to have at least one of each class of operator designated at all times, and to ensure that a Class C operator is present at all hours that a facility (other than an unmanned facility) is operating. The proposed new rule gives existing facilities two years to designate the operators in each class, which will allow the facilities time to develop a training plan for Class C operators, and time for Class A and Class B operators to undergo required training. A new facility must designate Class A and Class B operators in the facility's initial New Jersey Underground Storage Tank Facility Certification Questionnaire. Once a facility has designated at least one of each class of operator, it may designate additional operators in each class at any time, provided each is trained prior to being designated, and provided there is always at least one of each class designated. As discussed above, unlike the designation of a Class A or Class B operator, the designation of a Class C operator does not require a change to the facility's New Jersey Underground Storage Tank Facility Certification Questionnaire.

N.J.A.C. 7:14B-5A. Class A, Class B, and Class C Operator Training

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Proposed new N.J.A.C. 7:14B-5A contains the operator training requirements from the Operator Training Guidelines. Proposed new N.J.A.C. 7:14B-5A.1 sets forth the general Class A, Class B, and Class C operator training requirements, and proposed new N.J.A.C. 7:14B-5A.2 sets for the requirements specific to each class of operator. Each owner or operator must ensure that each of the facility's designated Class A, Class B, and Class C operators is properly trained. Training of Class A and Class B operators is through a program that the Department or its designee provides, as discussed below, or through a program eligible for reciprocity in accordance with proposed N.J.A.C. 7:14B-5A.3. The owner or operator determines his or her own method of training Class C operators. As discussed above, there is considerable turnover among Class C operators, many of whom will be gas station attendants. Accordingly, it is impractical to require these individuals to undergo formal training and evaluation at the Department-approved courses.

In accordance with the Operator Training Guidelines, Class A operators are to be trained in spill and overfill prevention, release detection, corrosion protection, emergency response, product and equipment compatibility, financial responsibility, notification and storage tank registration, temporary and permanent closure, related reporting and recordkeeping, and environmental and regulatory consequences of releases. They also learn the training applicable to Class B and Class C operators. Class B operator training includes operation and maintenance, spill and overfill prevention, release detection and related reporting, corrosion protection and related testing, emergency response, product and equipment compatibility, reporting and recordkeeping, and environmental and regulatory consequences of releases. Class B operators also learn the training requirements for Class C operators. Class C operator training includes responding to emergencies and addressing alarms caused by spills or

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releases from the UST system. Training must meet the minimum requirements of the section, and for Class A and Class B operators will include an examination to test the operator's knowledge of the material. Because some facilities may designate the same person as the Class A and Class B operator, the Department anticipates development of a training and examination for combined Class A and B operators.

The Department will develop the training program in conjunction with Rutgers Continuing Education Program and will develop the examination in conjunction with the International Code Council (ICC). This is similar to how training and testing is provided to State and municipal construction code enforcement officials, for example. Department staff, with Rutgers assistance, will develop the training (including a web-based version for convenience), assist in classroom instruction and, along with ICC, develop the battery of test questions. Rutgers will administer the training program. The Department expects the combined training and testing fees will be in the $250.00 to $500.00 range. The Department considered allowing independent organizations to provide training and testing overseen by the Department; however, the Department determined that it does not have the staff resources required to review, approve, and monitor numerous training and testing programs, which it would have to do if testing and training were provided by independent organizations. In addition, the Department's arrangement with Rutgers will provide convenience by virtue of multiple training and testing sites throughout the State. The Department will develop and make available on its website (www.nj.gov/dep/srp/bust) the Department's "Regulated UST Class A, Class B, and Class C Operator Training Guide" to advise owners and operators of the Class A, Class B, and Class C operator training requirements and provide specific information on the training courses, locations, and costs.

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In contrast to the Class A and Class B operators, Class C operators are not required to attend training classes or take an examination, but shall receive, at a minimum, instruction and evaluation of their ability to respond to spills or releases of hazardous materials, including those that pose an immediate danger or threat to the public or to the environment including the procedures to address alarms associated with release detection equipment. Each UST owner or operator is responsible for ensuring that the facility's Class A, B, and C operators are trained pursuant to the requirements in Subchapter 5A.

Because all states that receive Section I funding from EPA are required to comply with the Operator Training Guidelines, on which the Department's proposed training requirements are based, other states also require facilities to identify Class A, B, and C operators, and require the operators to undergo appropriate training. To the extent that another state has a training and examination program that meets the requirements of the proposed rules, proposed new N.J.A.C. 7:14B-5A.3 provides for reciprocity. When the owner or operator submits the New Jersey Underground Storage Tank Facility Certification Questionnaire identifying the newly designated Class A or Class B operator, the owner or operator must submit documentation of the designated operator's training and good standing in the other state. If training and evaluation methods in that state are comparable to the Department's training and evaluation method for the relevant class of operator, then the Department will allow designation without New Jersey-specific training. The Department will post a list on its website, indicating the states whose training and evaluation methods are comparable to the Department's. Provided the Class A or Class B operator's training is from one of those states, the Department will not require New Jersey-specific training. A Class C operator is not entitled to reciprocity, but must undergo training in accordance with proposed N.J.A.C. 7:14B-5A.2(c). Unlike Class A

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and Class B operators, Class C operators do not undergo formal training and evaluation; instead, the owner or operator ensures that the Class C operators are appropriately trained. Accordingly, there is no means for the Department to measure the adequacy of any training previously received.

If the Department determines, through compliance reviews or some other manner, that an UST system is significantly or repeatedly out of compliance with the UST rules, such as by not having operating leak detection or cathodic protection mechanisms, failing to respond to alarms, failing to correct an ongoing discharge, or repeatedly violating the same requirements over multiple inspections, the Department will require the UST system owner or operator to arrange for the retraining and retesting (as applicable) of the designated Class A, B, or C operators of the UST system in accordance with N.J.A.C. 7:14B-5A.1 no later than 30 days from the date the Department advises the facility of significant or repeated non-compliance or within an alternate timeframe as agreed to by the Department. The Department may waive retraining if the Department finds that the UST system's non-compliance resulted from unanticipated equipment failure, improper contractor repairs, or other factors beyond the normal control and diligence of the owner or operator. See proposed new N.J.A.C. 7:14B-5A.4.

In order that the Department can verify that the designated operators at a facility have undergone appropriate training, the Department must have access to training records. Accordingly, proposed N.J.A.C. 7:14B-5A.5 specifies the contents of training records, and requires the owner and/or operator to maintain records identifying operators and showing the training that each Class A, Class B, and Class C operator has received. The records must show the information for each designated Class A and Class B operator over the period that an owner

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owns a facility. For Class C operators, records must reflect only the preceding five years. The documentation of Class C operators is for a shorter period of time, in light of the turnover of Class C operators. Also, because Class A and Class B operators are responsible for much of the monitoring and recordkeeping at a facility, it is appropriate that their information be maintained for a longer period of time. If there is an incident at the facility, it may be necessary as part of the Department's investigation to know the Class A and Class B operator history over an extended period.

Civil Administrative Penalties

N.J.A.C. 7:14-8. Civil Administrative Penalties and Requests for Adjudicatory Hearings

In accordance with the State Act, the Department has established standards for construction, installation, and operation of new and existing underground storage tanks, including standards for secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, overfill prevention and other underground storage tank equipment, and operator training. The State Act provides at N.J.S.A. 58:10A-32 that a person violating the provisions of the State Act is subject to the penalties prescribed in the Water Pollution Control Act, N.J.S.A. 58:10A-10. Thus, as set forth at proposed amended N.J.A.C. 7:14B-12.1(b), if the Department finds that an owner or operator has failed to comply with the requirements of the State Act or the Underground Storage Tank rules, N.J.A.C. 7:14B, the Department may assess a civil administrative penalty.

The Department proposes to amend the Water Pollution Control Act rules at N.J.A.C. 7:14-8 to include violations and administrative penalties applicable to the proposed new provisions of N.J.A.C. 7:14B and the State Act. In addition, the Department proposes to

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establish specific base penalties for all violations. Because the existing rules do not provide for base penalties, the Department proposes to amend Table 2 at N.J.A.C. 7:14-8.18(c), which lists violations, designates them as minor or non-minor for purposes of a grace period, and specifies the duration of any applicable grace period, by adding the applicable base penalty. The proposed new table is discussed further below.

Proposed new N.J.A.C. 7:14-8.19, Civil administrative penalties for violations of the Underground Storage of Hazardous Substances Act, describes the means by which the Department will calculate administrative penalties for violations of the State Act and N.J.A.C. 7:14B. As required by the Water Pollution Control Act at N.J.S.A. 58:10A-10.d, the Department proposes to cap the penalty for each violation at $50,000, with each day that the violation continues constituting a separate violation. If a violation can pertain to more than one act, condition, occurrence item, unit, waste, parameter, or the like, then the failure to comply constitutes a separate and distinct violation for each. The Department may use its discretion to determine violations. For example, if an action (or inaction) could fall within two or more rule provisions, the Department may choose which provision to apply for purposes of a violation, and calculate the penalty accordingly. In assessing a penalty for a violation of an administrative order, permit, or license, for which there is no corresponding penalty in proposed Table 2 at N.J.A.C. 7:14-8.18(c), the Department will base the penalty on a similar violation.

In establishing administrative penalties, the Water Pollution Control Act at N.J.S.A. 58:10A-10.d(1)(b) requires the Department to take into account the type; seriousness (including extent, toxicity, and frequency of a violation) based upon harm to public health or the environment resulting from the violation; the economic benefits from the violation gained

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by the violator; the degree of cooperation or recalcitrance of the violator in remedying the violation; any measures taken by the violator to avoid a repetition of the violation; any unusual or extraordinary costs directly or indirectly imposed on the public by the violation; and any other pertinent factors that the commissioner determines measure the seriousness or frequency of the violation, or the conduct of the violator.

Proposed amended Table 2 at N.J.A.C. 7:14-8.18(c) contains base penalties that reflect a scenario in which the violator does not have a history of violations, and there are no aggravating factors, such as those identified in N.J.S.A. 58:10A-10d(1)(b), discussed above. Proposed N.J.A.C. 7:14-18.19(f) provides for a severity penalty component, based upon the behavior of the violator. The Department may add as much as 100 percent to the base penalty if there is a history of violations. The severity factor multipliers are based on whether the violator committed the same or different violation within the last 12 months (1.0 or 0.50 of the base penalty, respectively), or the violator committed the same or different violation within the last 24 months (0.50 or 0.25 of the base penalty, respectively), and is in addition to the base penalty listed in proposed Table 2. The proposed rule gives an example of the calculation of a penalty at proposed N.J.A.C. 7:14-8.19(f)4.

There may be a violation of the State Act or N.J.A.C. 7:14B that is not identified in Table 2 at N.J.A.C. 7:14-8.18(c) or, because of the specific circumstances of the violation, the Department may determine that the penalty amount under N.J.A.C. 7:14B-8.18(c) would be too low to account for the seriousness of the violation or the conduct of the violator. This could include the frequency of a violation. The Department would make such a determination based upon its evaluation of the harm to public health or the environment resulting from the violation, or the lack of cooperation or recalcitrance of the violator in remedying the violation,

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or any other pertinent factors that the Department determines measure the seriousness or frequency of the violation or conduct of the violator as required by the State Act. In such cases, in order that the assessed penalty takes into account the factors required at N.J.S.A. 58:10A-10.d(1)(b), proposed N.J.A.C. 7:14-8.19(g) applies. The Department would apply the penalty matrix at existing N.J.A.C. 7:14-8.5(f), determine the seriousness of the violation in accordance with existing N.J.A.C. 7:14-8.5(g), and evaluate the conduct of the violator in accordance with N.J.A.C. 7:14-8.5(h). For example, if an UST system owner or operator intentionally disables monitoring equipment to hide the fact of a discharge, and a significant discharge results, the Department may apply the existing matrix, rather than Table 2. If the violation has caused or has the potential to cause serious harm to human health or the environment, the seriousness of the violation may be deemed "major" under N.J.A.C. 7:14-8.5(g)1iii(2). Such a violation is assessed a penalty of between $15,000 and $50,000 under the existing rule, depending on the seriousness of the conduct of the violator.

Proposed amended Table 2 at N.J.A.C. 7:14B-8.18(c) identifies specific violations of N.J.A.C. 7:14B, assigns a base penalty, and identifies whether the violation is minor or non-minor for purposes of the Grace Period Law, N.J.S.A. 13:1D-125 et seq. If the violation is deemed minor, and therefore subject to a grace period, the table specifies the length of the grace period. Under the Grace Period Law, any person responsible for a minor violation is afforded a period of time (a grace period) during which to correct the violation. If the minor violation is corrected as required, then no penalty is assessed. In those cases in which a violation is not corrected within the grace period, the Department may assess a penalty in accordance with its statutory authority including, but not limited to, the assessment of penalties as may be appropriate within the exercise of the Department's enforcement discretion.

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To determine whether a particular violation or category of violations is minor or non-minor, the Department is required to apply the criteria set forth in the Grace Period Law at N.J.S.A. 13:1D-129(b). These criteria are as follows: the violation is not the result of the purposeful, knowing, reckless, or criminally negligent conduct of the person responsible for the violation; the violation poses minimal risk to the public health, safety, and natural resources; the violation does not materially and substantially undermine or impair the goals of the regulatory program; the activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency; the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period; and, in the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period.

In applying the criteria in the Grace Period Law, the Department has determined that violations that pose minimal risk to public health, safety, and natural resources, do not undermine or impair the goals of the program, and can be corrected within a designated grace period, would be designated in Table 2 as minor. A designation of a violation as minor in Table 2 is not absolute. The additional statutory criteria regarding the intent of the violator, the duration of the violation, and whether the violation is a repeat offense, are fact-specific for each violation and must be considered on a case-by-case basis. Thus, each violation listed in proposed Table 2 that is identified as minor will be eligible for a grace period only if it meets

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these additional criteria. The Department has clarified this in its proposed amendment to N.J.A.C. 7:14-8.4A(c).

The Grace Period Law at N.J.S.A. 13:1D-127 also requires the Department to establish the length of the grace period, which generally may be no fewer than 30 days or more than 90 days (unless extended by the Department), based upon the nature and extent of the minor violation and a reasonable estimate of the time necessary to achieve compliance. Table 2 at N.J.A.C. 7:14-8.18(c) identifies the grace period applicable to each minor violation.

The Department also reviewed the existing designations of violations as minor or non-minor, and has determined that seven redesignations are necessary. Based upon this review, along with the Department's experience and expertise in determining risk and impacts associated with UST system violations, five violations designated as non-minor in the existing rules are proposed to be redesignated as minor and afforded a 30-day grace period. These are N.J.A.C. 7:14B-2.2(c), failure to complete and submit the New Jersey Underground Storage Tank Facility Certification Questionnaire prior to the expiration of the facility's Registration Certificate; N.J.A.C. 7:14B-2.2(f), failure to supply information regarding change in status of the underground storage tank system; N.J.A.C. 7:14B-2.6(a), failure to display or make available during the inspection the UST Registration Certificate; N.J.A.C. 7:14B-5.2(a)3, failure to inspect the impressed current cathodic protection system every 60 days to ensure the system is compliant with operation and maintenance standards; and N.J.A.C. 7:14B-5.2(a)4, failure to maintain records of the operation of the corrosion protection system, including all required inspections and tests. Two violations, N.J.A.C. 7:14B-6.5(a)1, failure to conduct and record daily inventory readings, including bottom water levels to the nearest 1/8th inch, and N.J.A.C. 7:14B-6.6(a)1, failure to annually test line leak detectors, originally designated as

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minor, have been redesignated as non-minor. The Department has determined that daily inventory readings are critical when using the monthly product inventory control method for release detection, as these readings form the basis for the mathematical analysis required. Without the daily readings, release detection cannot be assured. With regard to testing of line leak detectors, failing to test these detectors on a routine frequency has substantial risk and can result in a significant impact in the event the detectors are not functioning properly and are not detecting a discharge.

The Department has applied the factors at existing N.J.A.C. 7:14-8.5(g) and (h) (seriousness and conduct) in establishing the base penalties at proposed Table 2. A violation that has the potential to cause serious harm to human health, such as locating or operating an UST system within 50 feet of a public community supply system well (N.J.A.C. 7:14B-4.1(*l*)), or introducing a hazardous substance into an UST that is known or suspected to be leaking (proposed N.J.A.C. 7:14B-5.9(a)) are assessed base penalties of $15,000, among the highest base penalties. In contrast, failing to timely submit a New Jersey Underground Storage Tank Facility Certification Questionnaire to inform the Department of a change in ownership of the facility (N.J.A.C. 7:14B-2.4(a)), is assessed a relatively low base penalty of $1,750, and provided a grace period of 30 days. This is consistent with the violation being considered minor in seriousness and minor in conduct for purposes of the existing penalty matrix, under which the violation would be assessed a penalty of between $1,000 and $2,500, and provided a grace period during which to come into compliance. Under both the existing and proposed amended rules, if the questionnaire is submitted within the 30-day grace period, no penalty would be assessed.

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Additional Amendments

General information

In addition to the above proposed new rules and amendments, and proposed updates to cross-references throughout the chapter, the Department proposes amendments unrelated to the EP Act and related guidelines. At N.J.A.C. 7:14B-1.4, which contains the applicability provisions of the Underground Storage Tank rules, the Department proposes to add vaults to the examples at N.J.A.C. 7:14B-1.4(a)8 and 9 of underground areas to which the chapter does not apply. The term “vault” is commonly used in the underground storage tank industry. Tanks situated in vaults, and meeting the stated exemption criteria, are and have always been exempt from the chapter, inasmuch as they are a type of underground area; however, to avoid confusion the Department proposes to expressly add them to the exemptions.

The Department proposes a new definition at N.J.A.C. 7:14B-1.6. “Compartmented tank” is a new term, meaning any underground storage tank that is divided by one or more walls or bulkheads to create individual and separate compartments within the tank. The Department considers each compartment to be a separate regulated tank, requiring a separate registration. The proposed definition will eliminate confusion regarding tank registration requirements for this particular tank system. The Department proposes to replace the term “compartmentalized tank” at N.J.A.C. 7:14B-5.3(d) with “compartmented tank.”

The Department also proposes to amend existing definitions to reflect current industry standards and practices. For clarity, the term “annular space,” which means the space created between the primary and secondary container of a underground storage tank system with secondary containment, is proposed to be amended to indicate that this term also applies to “ancillary piping and containment systems.” The proposed amended term "abandon in place"

or "abandonment in place" refers to a tank this is permanently eliminated from service, and not just rendered nonoperational. A nonoperational tank could, potentially, be made operational; a tank that is permanently eliminated from service cannot be made operational. The definition of “entire piping run” is proposed to be amended to limit the term to the piping that relates to product, which is the hazardous substance contained in the piping. Piping that contains something other than product is not included in the proposed amended definition. The definition of “motor fuel” is proposed to be amended to include biodiesel and ethanol blends so as to be consistent with EPA’s corresponding definition.

The Department is also proposing to include in the existing definition of “person” the term “responsible corporate official,” in recognition of the State Act’s remedial purpose to protect and preserve New Jersey’s natural resources. The imposition of liability on business official advances the State’s purpose by holding accountable those officials of corporations, limited liability companies, partnerships and the like that have actual responsibility for the condition or act resulting in a violation or that were in a position to prevent the occurrence of the violation but failed to do so. The definition of “person” in the State Act at N.J.S.A. 58:10A-3 and the Water Pollution Control Act rules at N.J.A.C. 7:14-8.2 similarly includes any responsible corporate official for the purpose of enforcement under Section 10 of the State Act (N.J.S.A. 58:10A-10).

Registration of UST systems

At N.J.A.C. 7:14B-2.1(g), the Department proposes to require the owner or operator or the UST service provider, when initiating repairs, installations, substantial modifications, or upgrades of the underground storage tank system, to notify the Department at least 14 calendar

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days prior to commencing physical on-site work. This provides an opportunity for the Department's inspectors to visit the site to ensure the work is being conducted in accordance with the registration/permit and is being performed by individuals and business firms certified to perform these activities, pursuant to N.J.A.C. 7:14B-13. The Department intends through this proposed amendment to ensure that only UST contractors certified pursuant to N.J.A.C. 7:14B-13 are performing this work. The notice also allows the Department to provide compliance assistance and more easily ascertain whether there are environmental concerns, as the systems are usually uncovered during these activities. The Department proposes to add references to the proposed new subsection to the permit requirements at N.J.A.C. 7:14B-10.1(a) and (b).

An individual or business firm certified to perform these work activities pursuant to N.J.A.C. 7:14B-13, can notify the Department on behalf of the owner or operator, as can a Licensed Site Remediation Professional, licensed pursuant to N.J.A.C. 7:26C-1.3. Work activities conducted on an emergency basis are exempt from the 14-day requirement, but notification must still be provided as soon as practicable. The proposed rule identifies the information to be provided, and specifies that the notice is to be provided by e-mail.

In 1987, when the UST rules were first adopted, annual registration was required. (See 19 N.J.R. 1477(a) and 2417(a).) By 1993, there were approximately 17,000 facilities submitting annual registrations. Citing the administrative cost of processing the registrations for all of the 17,000 UST facilities every year, the Department amended the rule to extend the registration period to three years, so that only a third of the facilities, approximately 5,700, would submit registrations per year (25 N.J.R. 1363(a), 1366). At N.J.A.C. 7:14B-2.2(c), the Department proposes to reduce the registration period for an UST system from three years to

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one year. Since 1993, the number of regulated USTs has decreased to approximately 4,200; some facilities have closed, and others have switched to above ground storage tanks. Therefore, the administrative burden on the Department from annual registration is more manageable.

As a condition of registration, an owner or operator must demonstrate that there is insurance or another method of financial responsibility in place. Financial responsibility, also called financial assurance, is required under existing N.J.A.C. 7:14B-15, for the purpose of paying for any necessary remediation and for compensating third parties for bodily injury and property damage as a result of a discharge. Usually financial assurance is in the form of an insurance policy, most of which are issued for one year. Since proof of insurance is required only once every three years, the Department cannot easily verify that the system remained insured for the entire term of the registration. In fact, the Department frequently finds during its inspections that a facility has allowed its insurance policy to lapse, in violation of the rules. As proposed to be amended, the registration period and the insurance coverage period will coincide, meaning that each year the UST system owner or operator must demonstrate that there is financial assurance in place, in order to register the UST system. Although the proposed amendment will not eliminate lapses in insurance coverage, it should reduce the number of facilities that operate without the required financial assurance.

Existing N.J.A.C. 7:14B-2.2(d)3 requires that the registration provide the name and address of the owner of the facility; however, the existing rule does not require that the registration provide name and address of the operator. Proposed new N.J.A.C. 7:14B-2.2(d)4 corrects that omission. At N.J.A.C. 7:14B-2.2(d)3i and 4i, the Department proposes to require that if the owner or operator is a corporation, a limited liability company, a partnership, a

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limited partnership, or other form of business, information regarding the business entity be included on the initial registration and any subsequent Underground Storage Tank Facility Certification Questionnaire.

Proposed amended N.J.A.C. 7:14B-2.4(c) requires owners or operators intending to take an UST system out of service or to close an UST system in accordance with N.J.A.C. 7:14B-9 to submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire within seven calendar days after the underground storage tank system is placed out of service or closed. Existing N.J.A.C. 7:14B-2.4(c) was not clear that an amended questionnaire is required when a system is taken out of service, although existing N.J.A.C. 7:14B-9.1(a) requires that notice be provided to the Department. In addition, the Department has made the submission timeframe for submitting the closure and out-of-service questionnaire consistent. The existing rule provided seven days to submit a closure questionnaire (existing N.J.A.C. 7:14B-2.4(c)), but five days to submit an out-of-service questionnaire (existing N.J.A.C. 7:14B-9.1(a)). From a regulatory and operational perspective, a consistent timeframe is preferred. The Department proposes a related amendment to N.J.A.C. 7:14B-9.1(a)1 to make it clear that notice to the Department is provided through an amended questionnaire, rather than by some other means.

At N.J.A.C. 7:14B-2.4(d), the Department proposes to require owners or operators intending to put an out-of-service UST system back into service to comply with N.J.A.C. 7:14B-9.1(e), which requires the owner or operator to submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire to the Department 30 calendar days prior to introducing product into the underground storage tank system and also include a statement from a certified installer certifying that the system is properly designed and capable

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of being put back into service. This amendment will allow time for Department staff to inspect the system for containment integrity before the tank system is filled.

Fees

At N.J.A.C. 7:14B-3.1, Registration fee, the Department proposes to amend the section heading and the rule to refer to "initial registration fee," to more accurately reflect the purpose of this fee. The fee applies only to new facilities and covers the Department's costs associated with the review and approval of the initial UST system, the establishment of the UST system information in the Department's data systems, and the issuance of the registration certificate. The Department is proposing to amend the fee to include the cost of the review and processing of the New Jersey Underground Storage Tank Facility Certification Questionnaire, normally a separate fee issued pursuant to N.J.A.C. 7:14B-3.2. The New Jersey Underground Storage Tank Facility Certification Questionnaire is a dual purpose document that is used for both initial registrations and renewals. During initial registration, the owner and operator are required to supply facility name and location, name of the contact person for the facility, name and address of the facility owner, number and type of underground storage tank systems at the facility (including contents, size, age, type of construction and other characteristics of the tank system), a site plan of the facility, including the location of the tanks, lines, pumps, dispensers, fill pipes, and other features of the tank system, including the distance from existing buildings and property boundaries and financial responsibility (or general liability insurance) information. During the annual renewal, the owner and operator are required to supply a certification that the facility is in compliance with N.J.A.C. 7:14B, notify the Department of any changes to the status of the facility and of any changes to the information previously

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included on the questionnaire, and provide evidence of financial responsibility. Under the existing rule, a new facility pays $150.00 for new registration under N.J.A.C. 7:14B-3.1, and $150.00 for the three-year facility certification under N.J.A.C. 7:14B-3.2. As amended, N.J.A.C. 7:14B-3.1 requires a new facility to pay $200.00, which is the equivalent of the existing administrative fee ($150.00) and the fee for one year certification ($50.00), discussed below.

The Department is proposing to re-designate the "Facility Certification" fee at N.J.A.C. 7:14B-3.2 as the "Annual Renewal Certification" fee in both the heading and the rule. This fee covers the Department's costs associated with processing the annual renewal submittals, primarily the review of the New Jersey Underground Storage Tank Facility Certification Questionnaire. The Department is also proposing to change the fee from a three-year certification fee of $150.00 to $50.00 per year. Instead of assessing the fee every three years, the Department will assess the fee annually. Annual renewal allows the Department to better ensure that owners/operators are maintaining the required financial assurance, as discussed above with regard to proposed amendments to N.J.A.C. 7:14B-2.2(c).

Permit requirements and industry standards

The Department proposes to delete N.J.A.C. 7:14B-4.1(a)1v and (a)2iv, which state that the Department shall issue a permit for the installation of a new tank and piping system pursuant to N.J.A.C. 7:14B-10. Existing N.J.A.C. 7:14B-10.1(b) and proposed amended N.J.A.C. 7:14B-10.1(d) specify that an owner or operator of an existing or proposed UST system does not need a permit if the UST or piping is protected from corrosion, spills, and overfills, and has secondary containment and interstitial monitoring. Since all new UST

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systems (tanks and piping) must have corrosion protection, spill and overfill prevention, and release detection (secondary containment with interstitial monitoring), there is no need for a permit. Although a permit is not required, the proposed amended rule requires the owner or operator to notify the Department that the installation is taking place. The notification provisions are contained at proposed new N.J.A.C. 7:14B-2.1(g), discussed above.

At N.J.A.C. 7:14B-4.1(a)2, the Department is clarifying that metallic swing joints and flex connectors are considered to be part of the UST system piping as they connect rigid piping runs and routinely contain regulated substances.

The Department proposes to amend N.J.A.C. 7:14B-4.2(f), 5.1(b), 5.4(c), and 6.5(a) to update industry codes and standards that have changed. Similarly, at N.J.A.C. 7:14B-5.2(a)2ii, the Department proposes to amend the criteria that are used to determine that cathodic protection is adequate. Unlike existing N.J.A.C. 7:14B-5.2(a)2ii, which lists codes of practice that may be used to comply with the rule, the proposed amended rule specifies the publications that shall be used to determine the adequacy of cathodic protection. The publications are by nationally recognized associations, consistent with the existing rule.

Release detection

N.J.A.C. 7:14B-6 contains the release detection requirements for UST systems. The Department proposes to amend the automatic tank gauging requirements at N.J.A.C. 7:14B-6.5(a)4i. The existing rule requires the automatic product level monitor test to detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product. The proposed amended rule adds alternative additional requirements. The automatic product level monitor test can be in-tank static testing on a periodic basis, with the tank volume at 90 percent

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of the nominal capacity, or the test can be through continuous in-tank leak detection. The continuous in-tank leak detection must be operated on an uninterrupted basis, or with a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days. Testing the automatic tank gauge in one of these modes ensures the equipment is functioning properly, thus contributing to early release detection and prevention.

Release reporting and investigation

Existing N.J.A.C. 7:14B-7.1(a) lists the circumstances and timeframe under which an owner or operator must investigate a suspected release. The Department proposes to amend N.J.A.C. 7:14B-7.1(a) to require an owner or operator to investigate if monitoring results, including alarms, from a release detection method required under N.J.A.C. 7:14B-6 indicate a release may have occurred as a situation requiring a suspected release investigation. The existing rule does not specify monitoring results among the occurrences that trigger an investigation. Inasmuch as the purpose of monitoring is to detect releases, it is necessary that an owner or operator investigate if the monitoring results indicate a release may have occurred.

Adjudicatory hearings

N.J.A.C. 7:14B-12.2 establishes the procedure for requesting an adjudicatory hearing. The existing rule states that after denial or revocation of a registration, permit, certification for individuals or business firms, and denial of ordinance adoption, a “registrant, permittee, certificant, or political subdivision” may request an adjudicatory hearing. The Department proposes to amend the subchapter and section headings to clarify that the section applies to

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"adjudicatory" hearings, which is the term used in the rules (see, for example, N.J.A.C. 7:14B-12.2(a) and (b)). The Department also proposes to delete the list of specific Department actions for which a hearing may be requested, and the list of persons or entities that may request a hearing. An adjudicatory hearing is available for more than the administrative actions listed in the existing rule, as indicated in the proposed amended rule.

The Department proposes to shorten from 30 days to 20 days the timeframe for a requestor to submit an adjudicatory hearing request. The Water Pollution Control Act at N.J.S.A. 58:10A-10, and the State Act at N.J.S.A. 58:10A-24.6, both of which are authority for the Underground Storage Tank rules, allow only 20 days to submit a request for a hearing on the assessment of a civil administrative penalty. For consistency, the Department proposes to apply the same 20-day timeframe to requests for hearings on the issuance or denial of permits. The Department proposes the same amendment at N.J.A.C. 7:14B-13.10. In addition, the Department proposes to amend the address to which requests for an adjudicatory hearing are sent.

Certification of individuals and business firms

At N.J.A.C. 7:14B-13, Certification of Individuals and Business Firms, the Department proposes to amend N.J.A.C. 7:14B-13.2(b)4, which identifies tank testing activities relative to certification classifications, to include new testing activities in accordance with the proposed new requirements for periodic testing of spill and overfill prevention equipment, periodic testing of secondary containment and interstitial monitoring, and periodic testing of electronic and mechanical components. Individuals or businesses seeking tank testing certification will

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require expertise in these newer test activities. Similarly, the Department proposes to amend N.J.A.C. 7:14B-16.3(b)4 to also include the proposed new testing activities.

N.J.A.C. 7:14B-13.4 establishes the eligibility requirements for individuals and business firms to be certified. The proposed amended rule allows an applicant for the cathodic protection tester classification examination to fulfill the requirements of the Steel Tank Institute's Cathodic Protection Tester Certification Program in order to qualify for certification, as an alternative to the requirements of the NACE International's Certification Committee.

Social Impact

The proposed new rules and amendments are anticipated to have a positive social impact. Discharges from UST systems have the potential to cause severe harm to public health and safety and the environment. The discharges of hazardous substances can threaten ground water and potable water sources, and create vapor hazards that can have immediate dangers of explosion and long term health risks. Contamination caused by these discharges can also lower property values, cause difficulties in transfers of real estate, and can render land unfit for development and use. The Department's experience has shown that UST systems that have secondary containment and interstitial monitoring, along with regular system maintenance and testing, appropriately trained operators, certified installers, and appropriate closure, decrease the incidence of discharges, or result in early detection of releases.

The proposed amendments to the registration requirements, reducing the certification period from three years to one year, require owners and operators to demonstrate that they have the necessary financial assurance in place to pay for remediation or to compensate third parties.

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This has the benefit of ensuring that UST system owners and operators have the means to meet their financial responsibilities related to a discharge.

The proposed new rules and amendments relating to civil administrative penalties will continue to encourage compliance and discourage noncompliance with the State Act. To the extent that violations are designated as minor and eligible for a grace period, thereby removing the threat of penalties for certain types of violations where compliance is achieved within the time specified, the proposed amended rules encourage the regulated community to take positive and timely action toward achieving compliance.

Economic Impact

In analyzing the economic impact of this proposed rulemaking, it must first be noted that the secondary containment and operator training amendments apply only to "regulated tanks." Regulated tanks are those that contain any quantity of any substance deemed hazardous on a list developed by the Department, any quantity of motor fuel stored for commercial use, and all heating oil tanks of 2,001 gallons or more for on-site consumption at businesses or commercial operations. Thus, the rules do not apply to homeowners and small businesses with heating oil USTs of less than 2,001-gallon capacity.

Also noteworthy is the fact that the requirement to have secondary containment and interstitial monitoring for tanks and piping applies only when an owner or operator is installing a new tank or piping, replacing an old tank or piping, or engaging in substantial modification or repair of the UST system. UST systems in good working order that do not have secondary containment do not need to meet the new secondary containment requirements until they are replaced or substantially repaired or modified. The economic impact of the proposed

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secondary containment requirements is most evident in the difference in cost between single wall tank/piping and double wall tank/piping. The secondary containment components are more expensive, although the cost of installation is approximately the same. The additional cost is also evident in the system monitoring and the cost of installing dispenser containment for dispenser systems (gas pumps) when they are replaced.

In many of these instances, businesses will need to engage the services of certified equipment installers, consultants, and/or professional engineers. The capital and operating costs of complying with the underground storage tank system upgrading, operating, monitoring, and testing requirements vary from approximately $3,000 to $100,000, depending upon whether the owner or operator has already installed state of the art equipment, and whether any existing equipment can be or needs to be replaced. Contractors use various equipment available to meet the prescribed standards and operating requirements. Therefore, an owner or operator of an underground storage tank system has flexibility to choose the most cost effective manner by which to achieve compliance.

Even though the existing rules do not require secondary containment, approximately 68 percent of regulated UST systems in New Jersey already have secondary containment, and almost all new installations include secondary containment. Department records show that only one new UST system installed in the past five years is a single walled system. Some insurance carriers have required secondary containment as a condition of insurance, since the costs associated with a discharge are so high, as discussed below. Therefore, even in the absence of the proposed rules, facilities will incur the cost of installing UST systems with secondary containment.

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In addition to requiring secondary containment, the proposed rules require regular inspection of spill catchment basins, piping sumps, and dispenser pans, and require facilities to document that the visual inspections have been completed. The costs associated with these requirements are negligible, since they require only a visual inspection and documentation of the results of the inspection in a record book.

The proposed rules also require the designation and training of Class A, Class B, and Class C operators. The proposed operator training requirements will result in a cost of approximately $250.00 to $500.00 per Class A and Class B operator, representing the cost of the required training course and testing. It is likely that UST facility owners or operators will pay for the training and testing. Training of a Class C operator is according to a method that the owner or operator determines to be appropriate, provided the training covers the subjects that the rules require; accordingly, there should be no cost other than the time to develop the training protocol, and the time to train the Class C operator. Although the UST facility owners and operators will bear the cost of the training, they will benefit from having trained personnel operating UST systems. The personnel will be trained in maintenance requirements and emergency protocols, which the Department expects will reduce the potential for discharges and prevent releases, which will result in long-term cost savings to UST system owners and operators and the public.

The proposed new rules and amendments also include recordkeeping requirements. The Department does not anticipate that these requirements will result in a cost to the regulated community. Most regulated entities will already keep most of the required records in the ordinary course of their businesses. To the extent that the proposed rules require new records, such as records associated with the training of the Class A, Class B, and Class C operators, the

Department does not anticipate that there will be a cost associated with creating or keeping the records. The records may be kept electronically, if the facility has that capability, or in hard copy, provided they are available for on-site inspection.

Overall, the proposed new and amended rules related to secondary containment and operator training will have a positive economic impact due to the prevention of releases. On average, it costs approximately $150,000 to remediate a release from an underground storage tank system. Secondary containment has reduced and will continue to reduce the number of releases, thereby reducing the annual cost to remediate UST sites Statewide. Secondary containment will prevent or minimize discharges to the environment. The Department anticipates that the cost of complying with the proposed secondary containment requirements will outweigh the cost of remediating the releases that could otherwise occur.

The Department proposes to require an UST facility to be registered every year, rather than every three years under the existing rules. This registration period will coincide with the majority of the insurance liability policy periods, which are also one year. The proposed amendment will allow the Department to ensure UST systems are maintaining liability coverage, but should result in no increased cost to owners or operators. The annual fee, which is proposed to be $50.00 per year, is effectively the same as the existing $150.00 for three years. Although the owner or operator should be maintaining insurance coverage or other financial assurance for the entire term of the registration under the existing rule, some owners or operators may be taking advantage of the three year period between registrations by allowing their liability insurance to lapse until the next registration. The proposed amendment is intended to reduce the number of facilities that do not maintain the necessary financial assurance. The Department anticipates that the annual registration of an existing facility with

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no new UST systems will take a half hour or less to complete, either online or in hard copy. If a facility has new UST systems, the existing rules require a facility to complete a new or revised facility registration before the systems are operational. This provision is not affected by the proposed amendments.

Environmental Impact

The Department anticipates that the proposed new rules and amendments will have a positive environmental impact. Discharges from underground storage tanks can seriously impact both ground and surface waters and can cause the release of hazardous vapors into the environment. The far-reaching impacts can affect human health and safety and the environment. Environmental impacts from property damage and remediation costs can range far beyond an owner and operator's ability to pay, if they do not have financial assurance in place. The proposed rules requiring owners and operators of underground storage tank systems to install only UST systems with secondary containment and interstitial monitoring, and requiring regular system maintenance and testing, appropriately trained operators, and certified installers, are anticipated to result in fewer discharges. Those discharges that do occur should be detected early, when remediation may be less costly.

The proposed amendments requiring facilities to be certified annually will, as discussed in the Social Impact and Economic Impact above, result in fewer facilities being without appropriate financial assurance. This will reduce the burden on the public, which may otherwise be called upon to pay for remediation of discharges. Owners and operators who maintain financial assurance are more likely to complete a cleanup in accordance with the Department's rules.

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With regard to the assessment of civil administrative penalties, the proposed amendments are an integral part of the Department's Underground Storage Tank Program and encourage compliance. The penalty provisions will continue to deter those who would violate the regulatory requirements. The proposed grace periods will continue to provide a violator with an opportunity to correct certain violations within the time provided and thereby avoid a penalty. The Department anticipates that these rules will encourage the regulated community to correct certain types of violations in a timely manner. Prompt correction will reduce any potential risk these minor violations may create and will, therefore, result in an additional positive environmental impact.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. 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. As set forth above in the Summary, the Department proposes the new rules and amendments related to secondary containment and operator training in order to comply with the Federal Energy Policy Act of 2005. The Department has determined that the proposed new rules and amendments are consistent with, and do not exceed Federal requirements, except as set forth below. The proposed rules and amendments are consistent with the mandate of the State Act at N.J.S.A. 58:10A-25, which requires the State's rules governing Federally regulated UST systems be substantially identical to the Federal requirements. For those tanks that are only State regulated, the proposed rules and amendments are consistent with the State Act's requirement to be no more stringent than the Federal requirements for Federally regulated USTs.

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The EP Act requires states that receive Federal Subtitle I money and that choose the secondary containment option, as discussed in the Summary of the proposed secondary containment provisions above, to have secondary containment and under-dispenser containment for tanks, piping, and dispensers only if they are installed or replaced within 1,000 feet of an existing community water system or potable drinking water well. The proposed rules and amendments, consistent with the EPA Proposal, require that all new and replaced tanks and piping have secondary containment, and all UST systems have under-dispenser containment beneath new dispenser systems. Therefore, the proposed rules and amendments are broader in scope than the EP Act; nevertheless, the proposed rules and amendments are consistent with EPA's interpretation of the Federal requirements, as set forth in the EPA Proposal.

The proposed new rules and amendments in the Water Pollution Control Act Rules, N.J.A.C. 7:14, are assessed pursuant to the Water Pollution Control Act. Proposed amended N.J.A.C. 7:14-8.18 and new N.J.A.C. 7:14-8.14 contain enforcement provisions applicable to the proposed rules and amendments implementing not only the Secondary Containment Guidelines and the Operator Training Guidelines, but also the other requirements of the Underground Storage Tanks rules. The purpose of penalties is to encourage compliance and discourage noncompliance with the State Act. In some cases, the Department's penalties may be regarded as more stringent than the Federal program, in that the maximum penalty that may be assessed under the Department's rules is $50,000 per day per violation. The Federal government assesses civil administrative penalties in accordance with the Federal enforcement provisions of the statute regulating underground storage tanks, 42 U.S.C. §§ 6991 et seq. The Federal law at 42 U.S.C. § 6991e(d) provides that penalties for violations of the Federal law or

regulation may not exceed $10,000 per day per violation. If a violator fails to comply with a compliance order, the Federal law allows a penalty of up to $25,000 per day. Therefore, to the extent that the proposed rules allow a penalty to be as much as $50,000, the proposed rules exceed the Federal standards. The proposed penalty provisions will have no economic or other impact on the regulated community, unless there is a violation of the rules governing Underground Storage Tanks, N.J.A.C. 7:14B. The Department believes that exceeding the Federal standards is justified, since more than half of New Jersey's population depends on groundwater sources of drinking water.

The proposed new and amended penalty provisions at N.J.A.C. 7:14-8 include a designation of violations as either minor or non-minor, in order to comply with the State's Grace Period Law, as well as other amendments unrelated to the Secondary Containment Guidelines and the Operator Training Guidelines. These proposed amendments are not promulgated in accordance with, or to implement or comply with any standard or requirement imposed by Federal law. Accordingly, no analysis is required.

Jobs Impact

The proposed new rules and amendments are not anticipated to have an impact on the creation or retention of jobs in the State. Although the proposed amendments to N.J.A.C. 7:14B do require new and modified UST systems to have secondary containment, the Department has observed that most new and modified UST systems are already being installed with the requisite protection as a result of insurance requirements. Therefore, it is unlikely that additional personnel will be needed to install UST systems that meet the proposed standards.

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The proposed amendments to N.J.A.C. 7:14B require each facility to provide appropriately trained Class A, Class B, and Class C operators. Training is already available to existing operators, although it is not required. To the extent that additional trainers are needed in order to meet the demand for training as a result of the proposed mandatory training requirements, there may be some increase in employment.

The Department does not anticipate that the proposed amendments to the penalty provisions of the Water Pollution Control Act rules at N.J.A.C. 7:14-8 will have an impact on job creation or retention in the State. The proposed amendments to N.J.A.C. 7:14 relate to enforcement of the new and existing provisions of N.J.A.C. 7:14B.

Agriculture Industry Impact

The Department has determined that the proposed new and amended rules will have no impact on the agricultural industry. In general, farmers are exempt from the requirements of the Underground Storage Tank Rules, inasmuch as the Underground Storage Tank rules at N.J.A.C. 7:14B-1.4(b) exempt from the rules farm tanks of 1,100 gallons or less used for storing motor fuel for noncommercial purposes.

Regulatory Flexibility Analysis

The New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines small businesses as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full-time employees. The proposed new rules and amendments will apply to all owners and operators of regulated underground storage tank systems that store hazardous substances. The Department estimates that more than 3,500 underground storage

tank system owners and operators subject to the proposed rules are small businesses as defined in the New Jersey Regulatory Flexibility Act. The types of small businesses to which the rules apply include independent gasoline service stations, fleet services, and heating oil companies.

The various reporting, recordkeeping, and compliance requirements and their associated costs are discussed in the Summary and Economic Impact above. The rules do not exempt small businesses from the reporting, recordkeeping or other compliance requirements. A discharge of hazardous substances endangers public health safety and welfare, and cannot be correlated to the size of the business. Small businesses will incur the penalties established under these rules only if they are determined to be in violation of the State Act.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed rules and amendments to determine their impact, if any, on the affordability of housing. The proposed rules and amendments govern underground storage tank registration, construction, operation, maintenance, and testing, and do not apply to residential heating oil tanks, residential tanks of 1,100 gallons or less for storage of motor fuel for non-commercial purposes, or to septic tanks. Because few if any residences have underground storage tanks that are greater than 1,100 gallons, the Department has determined that it is extremely unlikely that the proposed rules and amendments will evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed rules and amendments to determine their impact, if any, on housing production within Planning Areas 1

or 2 or within designated centers, under the State Development and Redevelopment Plan. The proposed rules and amendments govern underground storage tank registration, construction, operation, maintenance, and testing, and do not apply to residential heating oil tanks, residential tanks of 1,100 gallons or less for storage of motor fuel for non-commercial purposes, or to septic tanks. It is unlikely that a residence will have a tank regulated under the proposed rules and amendments. Therefore, there is an extreme unlikelihood that the proposed new rules and amendments will evoke a change in housing production within Planning Areas 1 or 2 or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 14

WATER POLLUTION CONTROL ACT

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.4A Grace period applicability; procedures

(a) – (b) (No change.)

(c) **Notwithstanding (a) above, and the designation of a violation as minor in Table 2 below,** [The] **the** Department or a local government agency shall provide a grace period for any violation identified as minor under this section, provided the following conditions are met:

1.-5. (No change.)

(d) (No change.)

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7:14-8.18 Tables of minor and non-minor violations; **base penalties;** grace periods

(a) Tables 1 and 2 below identify particular violations of the Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, and the Underground Storage Tanks rules, N.J.A.C. 7:14B, as minor or non-minor for purposes of a grace period, and identify the duration of the grace period for minor violations. **In addition, Table 2 includes the base penalty for violations of N.J.A.C. 7:14B.** The descriptions of the violations set forth in the tables in this section are provided for informational purposes only. In the event that there is a conflict between a violation description in the tables and the rule to which the violation description corresponds, the rule shall govern.

(b) (No change.)

(c) Comparability of a violation under (b) above with a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 is based upon the nature of the violation (for example, a violation of recordkeeping, permit limitation, or monitoring).

TABLE 1

(No change.)

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

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Subchapter 2. Registration Requirements and Procedures

Rule Citation	Description of Violation	**Base Penalty**	Type of Violation	Grace Period
7:14B-2.1(a)	Failure to register a regulated underground storage tank.	**$5,000**	NM	
7:14B-2.1(c)	[Using] **Failure to use only** a regulated underground storage tank [without] **having** a valid Registration Certificate.	**$5,000**	NM	
7:14B-2.1(d)	Failure to register **a** regulated underground storage tank[s] system[s] 30 days prior to use.	**$5,000**	NM	
7:14B-2.1(e)	Failure to register a regulated underground storage tank removed on or after September 3, 1986**,** for the period between September 3, 1986**,** and the date of removal.	**$5,000**	NM	

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7:14B-2.1(f)	Failure to register a regulated underground storage tank system [before] **prior to initiation of** closure activities [are begun].	**$5,000**	NM	
7:14B-2.1(g)	**Failure to notify the Department at least 14 calendar days prior to the commencement of any work activities related to installation, substantial modification or closure of an underground storage tank system.**	**$1,750**	**M**	**30 days**
[7:14B-2.2(a)	Failure to file the required registration and certification information on the New Jersey Underground Storage Tank Facility Certification		NM]	

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	Questionnaire.			
[7:14B-2.2(b)	Failure to complete and submit the required registration and certification forms to the Department.		NM]	
7:14B-2.2(c)	Failure to complete **and submit** the New Jersey Underground Storage Tank Facility Certification Questionnaire prior to **the** expiration of the facility's Registration Certificate.	**$1,750**	[NM] **M**	**30 days**
[7:14B-2.2(d)	Failure to supply the information required in N.J.A.C. 7:14B-2.2(d) during initial registration.		NM]	
[7:14B-2.2(e)	Failure to supply registration information during the Certificate renewal.		NM]	
7:14B-2.2(f)	Failure **to** supply information [in accordance with N.J.A.C.	**$1,750**	[NM] **M**	**30 days**

	7:14B-2.2(f) if any] **regarding** change in status [to] **of** the underground storage tank system [has been made since the initial registration].			
7:14B-2.3(b)	**Failure to notify the Department of any change in the ownership of a facility within 30 days after the contract date or the date of closing,**	**$1,750**	**M**	**30 days**
7:14B-2.4(a)	Failure to submit [a] **an amended registration to reflect any modification of any information included in the New Jersey Underground Storage Tank** Facility Certification Questionnaire [reflecting changes to a facility or its ownership as per N.J.A.C.	**$1,750**	M	30 days

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	7:14B-2.4(b), within 30 days after a modification].			
7:14B-2.4(c)	Failure to submit a Facility Certification Questionnaire within seven calendar days [following closure] of **taking** a tank system **out of service or closing the tank system**.	**$1,750**	M	30 days
7:14B-2.4(d)	**Failure to submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire 30 days prior to introducing product into an out-of-service underground storage tank system.**	**$5,000**	**NM**	
7:14B-2.6(a)	Failure to display or make available during the inspection the UST Registration	**$1,750**	[NM] **M**	**30 days**

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	Certificate.		
7:14B-2.7(e)	Failure to cease use of a regulated tank system upon receipt of a Notice from the Department denying or revoking a registration.	**$15,000**	NM

Subchapter 4. Underground Storage Tank Systems: Design, Construction and Installation

Rule Citation	**Description of Violation**	**Base Penalty**	**Type of Violation**	**Grace Period**
7:14B-4.1(a)1**i through iv**	Failure of [a tank] installed [on or after September 4, 1990] **tank** to be properly designed and constructed and [have] **protected from** corrosion [protection].	**$5,000**	NM	

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7:14B-4.1(a)1v	**Failure of a tank installed on or after (the operative date of the rule) to have secondary containment and interstitial monitoring.**	**$5,000**	**NM**
7:14B-4.1(a)1vi	**Failure to maintain interstitial monitoring of a tank with secondary containment.**	**$5,000**	**NM**
7:14B-4.1(a)2**i through iii**	Failure to properly install, construct**,** and/or operate the corrosion protection system for piping.	**$5,000**	NM
7:14B-4.1(a)2iv	**Failure to have secondary containment and interstitial monitoring for piping installed on or after (the operative date of this amendment).**	**$5,000**	**NM**
7:14B-4.1(a)2v	**Failure to maintain interstitial**	**$5,000**	**NM**

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	monitoring of piping with secondary containment.		
7:14B-4.1(a)3i	Failure to have spill prevention equipment when the transfer hose is detached from the fill pipe.	**$5,000**	NM
7:14B-4.1(a)3ii	Failure to have an **acceptable** overfill device on the tank.	**$5,000**	NM
7:14B-4.1(a)3iii	**Failure to have overfill protection compatible with tanks that are filled by means other than gravity deliveries.**	**$5,000**	**NM**
7:14B-4.1(a)4	**Failure to ensure all tanks and piping are properly installed in accordance with a code of practice developed by a nationally recognize association or independent testing laboratory and in**	**$5,000**	**NM**

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	accordance with the manufacturer's instructions		
7:14B-4.1(a)5	**Failure of owners and operators to ensure that the appropriate methods of certification or inspection are used to demonstrate compliance with N.J.A.C. 7:14B-4.1(a)4**	**$5,000**	**NM**
[7:14B-4.1(b)	Failure to provide secondary containment to new underground storage tank systems installed within a wellhead protection area.		NM]
7:14B-4.1(*l*)	**Failure to comply with community supply well distance requirements.**	**$15,000**	**NM**
7:14B-4.1A(a)	**Failure to equip an UST system with under-dispenser**	**$5,000**	**NM**

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	containment for any new dispenser system installed.			
7:14B-4.1A(b)	**Failure of under-dispenser containment to be liquid-tight on its sides, bottom, and at any penetrations, be compatible with the substance conveyed by the piping; and allow for visual inspection and access to the components in the containment system, or be continuously monitored for leaks from the dispenser system.**	**$5,000**	**NM**	
7:14B-4.1A(c)	**Failure of owner or operator to inspect under-dispenser containment every 30 days for the presence of water and/or product.**	**$1,750**	**M**	**30 days**

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7:14B-4.2	**Failure to comply with requirements related to upgrading existing underground storage tank systems.**	**$5,000**	**NM**
[7:14B-4.2(b)	Failure of a steel tank to have corrosion protection.		NM]
[7:17B-4.2(c)	Failure of steel piping to have cathodic protection.		NM]
[7:14B-4.2(d)	Failure to have spill prevention equipment on the tank system.		NM]
[7:14B-4.2(d)	Failure to have an overfill device on the tank.		NM]

Subchapter 5. General Operating Requirements

Rule Citation	Description of Violation	Base Penalty	Type of Violation	Grace Period
7:14B-5.1(a)	Failure to ensure no spillage **and/**or overflow occurs **and/**or failure to constantly monitor the transfer operation.	**$5,000**	NM	

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[7:14B-5.1(b)	Failure to use the specified transfer procedures.		NM]
[7:14B-5.1(c)	Failure of the owner and/or operator to report, investigate and remediate any spills and overfills in accordance with N.J.A.C. 7:14B-8.		NM]
7:14B-5.1(d)	Failure to ensure proper operation of spill containment equipment.	**$5,000**	NM
7:14B-5.2(a)1	Failure to [have] **operate and maintain** a cathodic protection system **to** continuously [operational] **provide corrosion protection**.	**$5,000**	NM
7:14B-5.2(a)2	Failure to test the cathodic protection system within six months of installation and/or every three years thereafter.	**$5,000**	NM

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7:14B-5.2(a)3	Failure to inspect the impressed current cathodic protection system every 60 days to ensure the system is [on and operating properly] **compliant with operation and maintenance standards**.	**$1,750**	[NM] **M**	**30 days**
7:14B-5.2(a)4	Failure to maintain records of the operation of the corrosion protection system, including all required inspections and tests.	**$1,750**	[NM] **M**	**30 days**
7:14B-5.3(a)	**Failure to use an underground storage tank system that is compatible with the substance stored.**	**$5,000**	**NM**	
7:14B-5.3(c)	**Failure to maintain the records of compatibility for the life of the equipment or**	**$1,750**	**M**	**30 days**

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	component.		
7:14B-5.3(d)	**Failure to hold in each compartment of a compartmented tank hazardous substances that are compatible with one another.**	**$5,000**	**NM**
7:14B-5.4**(a)**	Failure to obtain a permit from the Department and/or make repairs in accordance with N.J.A.C. 7:14B-5.4.	**$5,000**	NM
7:14B-5.4(a)3	**Failure to replace the entire piping run when 50 percent or more of a piping run is replaced.**	**$5,000**	**NM**
7:14B-5.4(a)4	**Failure to perform tightness testing of repaired tanks and/or piping within 30 calendar days following the**	**$5,000**	**NM**

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	date of the completion of the repair.			
7:14B-5.4(a)5	**Failure to test secondary containment within 30 days following the completion of any repair.**	**$5,000**	**NM**	
7:14B-5.4(a)[5]**6**	Failure to test [a] within [six months] **30 days** following the repair of a cathodic protection system.	**$5,000**	NM	
7:14B-5.4(a)7	**Failure to test immediately following any repair to spill or overfill prevention equipment to ensure it is operating properly.**	**$5,000**	**NM**	
7:14B-5.4(a)8	**Failure to maintain records of each repair and tightness test.**	**$1,750**	**M**	**30 days**

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7:14B-5.4(b)	**Failure to obtain a permit from the Department pursuant to N.J.A.C. 7:14B-10.1(a) prior to performing repairs that constitute a substantial modification under N.J.A.C. 7:14B-10.**	**$5,000**	**NM**	
7:14B-5.5(a)	Failure to prepare **and update** a [complete] Release Response Plan.	**$1,750**	M	30 days
7:14B-5.5(b)	Failure to make [the Release Response Plan] available for [on site] inspection **a Release Response Plan**.	**$1,750**	M	30 days
7:14B-5.6(a) and [5.6](b)	Failure to maintain [records of installation (installation checklist), site and remedial investigations, release detection results, tank system repairs,	**$5,000**	NM	

	operation of corrosion protection and design of the corrosion protection] **all required UST system records**.			
[7:14B-5.7(a)1	Failed to allow the Department to enter upon any property or place of business where an underground storage tank is or might be located or in which monitoring equipment or records required by N.J.A.C. 7:14B are kept, for purposes of inspection, sampling, copying or photographing.		NM]	
7:14B-5.8	Failure [of owner and/or operator] to properly mark the fill ports.	**$1,750**	M	30 days
7:14B-5.9(a)	Introduction of a hazardous substance into an underground storage tank that is known or	**$15,000**	NM	

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	suspected to be leaking or discharging.			
7:14B-5.9(b)	Introduction of a hazardous substance into an underground storage tank that [is not properly registered] **does not have a proper registration, or registration is revoked or denied**.	**$5,000**	NM	
7:14B-5.10(a)1	**Failure to comply with the spill and overfill prevention equipment requirements.**	**$5,000**	**NM**	
7:14B-5.10(a)2	**Failure to test overfill prevention equipment at installation and at least once every three years.**	**$5,000**	**NM**	
7:14B-5.10(d)	**Failure to maintain records of spill and overfill prevention**	**$1,750**	**M**	**30 days**

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	equipment for the life of the equipment or component.			
7:14B-5.11(a)1i	**Failure to monitor/test the integrity of UST systems with secondary containment.**	**$5,000**	**NM**	
7:14B-5.11(c)	**Failure to maintain records for each tank, piping, and containment device that uses interstitial monitoring.**	**$1,750**	**M**	**30 days**
7:14B-5.12(a)	**Failure to conduct walkthrough inspections at least once every 30 days to check appropriate equipment and systems.**	**$1,750**	**M**	**30 days**
7:14B-5.12(b)	**Failure to maintain records of operation and maintenance walkthrough inspections.**	**$1,750**	**M**	**30 days**

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7:14B-5.13(a)	**Failure to have clearly visible weather resistant signs providing emergency procedures and notification requirements at an unmanned facility.**	**$1,750**	**M**	**30 days**
7:14B-5.14(a)	**Failure to designate a Class A, Class B, or Class C operator.**	**$1,750**	**M**	**30 days**
7:14B-5.14(b)	**Failure to have a Class A, Class B, and Class C operator designated for a facility at all times.**	**$1,750**	**M**	**30 days**
7:14B-5.14(d)	**Failure to ensure that at least one Class C operator is present at the facility while the facility is operating.**	**$1,750**	**M**	**30 days**

Subchapter 5A. Class A, Class B, and Class C Operator Training

Rule Citation	**Description of Violation**	**Base Penalty**	**Type of Violation**	**Grace Period**

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7:14B-5A.1	**Failure to ensure that Class A, Class B, and Class C operators are properly trained and pass any applicable examination.**	**$1,750**	**M**	**30 days**
7:14B-5A.4(a)	**Failure to ensure the Class A, Class B, or Class C operators are retrained, if required, within the specified timeframe.**	**$5,000**	**NM**	
7:14B-5A.5	**Failure to maintain required operator training records and documentation.**	**$1,750**	**M**	**30 days**

Subchapter 6. Release Detection

Rule Citation	**Description of Violation**	**Base Penalty**	**Type of Violation**	**Grace Period**
7:14B-6.1(a)**1**	Failure to provide **acceptable**	**$5,000**	NM	

	release detection methods that are able to detect a release from any portion of the [tank] **UST** system (tank and piping).		
7:14B-6.1(a)2	**Failure to ensure release detection equipment is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.**	**$5,000**	**NM**
7:14B-6.1(b)	**Failure to comply with release detection requirements for an underground storage tank system used to store motor fuel solely for use by emergency power generators, on or before (three years after**	**$5,000**	**NM**

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	the operative date of the rule).		
7:14B-6.1(f) or (g)	**Failure to test electronic and mechanical components annually for proper operation.**	**$5,000**	**NM**
7:14B-6.2(a)1	Failure to perform appropriate release detection monitoring [of the] **for** tank**s**.	**$5,000**	NM
7:14B-6.2(a)2	Failure to **perform** appropriate[ly] **release detection** monitor**ing** [the] **for** piping.	**$5,000**	NM
7:14B-6.2(b)1 [and] **or** 2	[Failed] **Failure** to provide release detection for **underground storage** tank[s] [and piping as required pursuant to N.J.A.C. 7:14B-16.2] **systems that utilize separate**	**$5,000**	NM

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	product-bearing supply and return lines.		
7:14B-6.3(a)	Failure to [provide] **comply with special** release detection [that meets the] requirements [of N.J.A.C. 7:14B-6.3(a)2 at new or existing non-petroleum hazardous substance] **for underground storage** tank systems **containing hazardous substances other than petroleum products and waste oils**.	**$5,000**	NM
[7:14B-6.4	Failure to properly monitor a tank located within a well head protection area. (Existing tanks [installed before 9-4-90] must monitor monthly; new tanks [installed on or after 9-4-90] must be secondarily contained		NM]

	with interstitial monitoring.]			
7:14B-6.4(a)	**Failure to comply with special release detection requirements for underground storage tank systems located within wellhead protection areas.**	**$5,000**	**NM**	
7:14B-6.5(a)1[ii]	Failure to [take] **conduct** and record daily inventory readings**, including bottom water levels** to the nearest 1/8th inch**, at least once a month**.	**$5,000**	[M] **NM**	[30 days]
[7:14B-6.5(a)1vi	Failure to conduct measurement of any water level in the bottom of the tank to the nearest 1/8th of an inch at least once per month.		M	30 days]
7:14B-6.5(a)2	**Failure to comply with manual tank gauging requirements.**	**$1,750**	**M**	**30 days**

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7:14B-6.6[(a)1]	Failure to annually test line leak detectors.	**$5,000**	[M] **NM**	[30 days]
7:14B-6.7(a)	Failure to maintain written monitoring instructions.	**$1,750**	M	30 days
7:14B-6.7(b)	Failure to keep the written monitoring procedure at the underground storage tank facility and make it available for inspection.	**$1,750**	M	30 days
7:14B-6.7(c)	Failure to maintain written documentation of the performance claims of the [Release Detection Monitoring System] **release detection monitoring system**.	**$1,750**	M	30 days
7:14B-6.7(d)	Failure to maintain records of all calibration, maintenance**,**	**$1,750**	M	30 days

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	and repair of all [Release Detection] **release detection** equipment.		
7:14B-6.7(e)	Failure to maintain a summary of the results of monitoring of the underground storage tank system and maintenance checks of the release detection equipment.	**$5,000**	NM
7:14B-6.7(f)	Failure to maintain records of all environmental sampling, tank system testing and monitoring, and monthly inventory reconciliations.	**$5,000**	NM

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7:14B-6.7(i)	Failure to maintain on site**,** a certification from a Subsurface Evaluator and/or required documentation from the manufacturer.	**$1,750**	M	30 days
7:14B-6.7(k)	**Failure to maintain results of annual operation tests conducted in accordance with N.J.A.C. 7:14B-6.1(f).**	**$1,750**	**M**	

Subchapter 15. Financial Responsibility Requirements

Rule Citation	**Description of Violation**	**Base Penalty**	**Type of Violation**	**Grace Period**
7:14B-15.1(b)	Failure to maintain financial assurance for [federally] **Federally** regulated underground storage tank systems [per] **in accordance with** 40 CFR Part H.	**$5,000**	NM	

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7:14B-15.1(c)	Failure to maintain financial assurance, [per] **in accordance with** 40 CFR Part H**,** with the exclusions noted at N.J.A.C. 7:14B-15.3(c), for underground storage tank systems not covered by N.J.A.C. 7:14B-15.1(b), in the amounts listed at N.J.A.C. 7:14B-15.2.	**$5,000**	NM	
7:14B-15.1(h)	Failure to identify the financial assurance mechanism used on the Facility Certification Questionnaire; failure to maintain evidence of financial assurance on site and at the owner/operator's place of business; **or** failure to submit evidence of financial assurance to the Department upon request.	**$1,750**	M	30 days

7:14B-15.1(i)	Failure of the financial institution to notify the Department in writing within 30 days of the cancellation or expiration of any form of financial assurance.	**$5,000**	NM
7:14B-15.2(a)	Failure to maintain financial responsibility assurance in the required per-occurrence amounts.	**$5,000**	NM
7:14B-15.2(b)	Failure to maintain financial responsibility assurance in the required annual aggregate amounts.	**$5,000**	NM
7:14B-15.2(c)	Failure to maintain financial responsibility assurance in the required annual aggregate or per-occurrence amounts when acquiring or installing	**$5,000**	NM

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	additional underground storage tanks.			
7:14B-15.2(d)	Failure to submit an amended Facility Certification Questionnaire to the Department to demonstrate any adjusted amount of financial responsibility assurance due to acquiring or installing additional underground storage tanks.	**$1,750**	M	30 days
[7:14B-15.3(b)	Failure to maintain financial assurance for federally regulated underground storage tank systems per 40 CFR Part H.		NM]	
[7:14B-15.3(c)	Failure to maintain financial assurance, per 40 CFR Part H with the exclusions of surety bond, State required		NM]	

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mechanisms, State fund or local government guarantee, for State regulated underground storage tank systems not covered by N.J.A.C. 7:14B-15.3(b), in the amounts listed at N.J.A.C. 7:14B-15.2.

7:14-8.19 Civil administrative penalties for violations of the Underground Storage of Hazardous Substances Act

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $50,000 for each violation of N.J.A.C. 7:14B, Underground Storage Tanks.

(b) Each violation constitutes an additional, separate, and distinct violation.

(c) Each day during which a violation continues constitutes an additional, separate, and distinct violation.

(d) Where any requirement of N.J.A.C. 7:14B may pertain to more than one act, condition, occurrence, item, unit, waste, or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste, or parameter constitutes an additional, separate, and distinct violation.

(e) For a violation of a requirement or condition of an administrative order, permit, or license, the Department may in its sole discretion identify a comparable requirement of any violation description listed in N.J.A.C. 7:14-8.18(c) Table 2 and

determine the amount of the civil administrative penalty on the basis of the rule provision violated.

(f) The Department shall determine the amount of a civil administrative penalty for each violation of N.J.A.C. 7:14B on the basis of the provision violated, according to the following procedure.

1. Identify the rule violated;

2. Identify the corresponding base penalty dollar amount in N.J.A.C. 7:14-8.18(c) Table 2;

3. Multiply the base penalty dollar amount times the following multipliers for each factor to obtain the severity penalty component, as applicable:

Severity factor	Multiplier
i. Violator violated the same rule less than 12 months prior to the violation	1.00
ii. Violator violated a different rule less than 12 months prior to the violation	0.50
iii. Violator violated the same rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation	0.50
iv. Violator violated a different rule during the period which began 24 months prior to the violation and ended 12 months prior to the violation	0.25

4. To obtain the civil administrative penalty for a particular violation, add all of the severity penalty components pursuant to (f)3 above to the base penalty. If the sum

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total exceeds $50,000, then the civil administrative penalty for that violation shall be $50,000.

EXAMPLE:

Base penalty (for violation of N.J.A.C. 7:14B-2.1(a) = $5,000

N.J.A.C. 7:14-8.19(f)3iii applies:

0.50 x $5,000 = $2,500

Civil administrative penalty $7,500

(g) Notwithstanding (a), (b), and (c) above, the Department may in its sole discretion assess a penalty in accordance with N.J.A.C. 7:14-8.5(e) through (i), rather than N.J.A.C. 7:14-8.18(c) Table 2, when:

1. Because of the specific circumstances of the violation, the Department determines that the penalty amount under N.J.A.C. 7:14-8.18(c) Table 2 would be too low to account for the type, seriousness (including extent, toxicity, and frequency of a violation) based upon the harm to public health or the environment resulting from the violation or the lack of cooperation or recalcitrance of the violator in remedying the violation, the specific facts of the violation, or conduct of the violator, or any other pertinent factors consistent with the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.;

2. The violation is not identified at N.J.A.C. 7:14-8.18(c) Table 2; or

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3. There is no comparable violation identified at N.J.A.C. 7:14-8.18(c) Table 2 such that the Department can apply (e) above.

7:14-[8.19]**8.20** (No change in text.)

CHAPTER 14B

UNDERGROUND STORAGE TANKS

SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.3 Purpose

(a) This chapter is promulgated for the following purposes:

1. – 9. (No change.)

10. To protect human health and the environment of the State by ensuring sound underground storage tank management **and compliance with release detection monitoring**, thereby preventing, controlling, remediating**,** and/or abating actual or potential groundwater contamination; [and]

11. To establish a certification program for individuals and business firms who provide certain services on regulated underground storage tank systems and unregulated heating oil tank systems pursuant to N.J.S.A. 58:10A-24 and this chapter[.]**; and**

12. To establish classes of operators and training requirements for all Class A, B, and C operators of underground storage tank systems.

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7:14B-1.4 Applicability

(a) (No change.)

(b) The following types of underground storage tank systems are exempt from the requirements of this chapter:

1. – 7. (No change.)

8. Tanks situated in an underground area including, but not limited to, basements, cellars, **vaults,** mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor;

9. Tanks situated in an underground area including, but not limited to, basements, cellars, **vaults,** mines, drift shafts, or tunnels if the storage tank is equipped with secondary containment, and is uncovered so as to allow visual inspection of the exterior of the tank;

10. - 14. (No change.)

(c) The following types of underground storage tank systems are subject only to N.J.A.C. 7:14B-2, 3, 7**,** and 8.

1. (No change.)

2. Tanks that are part of an emergency generator system at nuclear power generator facilities regulated by the Nuclear Regulatory Commission [under] **pursuant to** 10 CFR 50 Appendix A.

[(d) Underground storage tank systems used to store motor fuel solely for use by emergency power generators are exempt from the requirements N.J.A.C. 7:14B-6.]

Recodify existing (e) through (g) as **(d) through (f)**. (No change in text.)

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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.

"Abandon in place" or "abandonment in place" means a tank [rendered] permanently [nonoperational] **eliminated from service** by following the procedures in American Petroleum Institute Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks," **as supplemented or amended,** and left in the ground.

…

"Annular space" means the space created between the primary and secondary container of a secondarily contained underground storage tank system **including ancillary piping and containment systems**.

…

"Class A operator" means the individual designated by the owner or operator to have primary responsibility to operate and maintain the UST system in accordance with applicable requirements of this chapter. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. An individual does not, solely by virtue of being designated a Class A operator, become an "operator" as defined in this section for purposes of this chapter.

"Class B operator" means the individual designated by the owner or operator to have day-to-day responsibility for implementing applicable regulatory requirements

established by the Department. The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system. An individual does not, solely by virtue of being designated a Class B operator, become an "operator" as defined in this section for purposes of this chapter.

"Class C operator" means an on-site employee designated by the owner or operator to be responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances. An individual does not, solely by virtue of being designated a Class C operator, become an "operator" as defined in this section for purposes of this chapter.

…

"Compartmented tank" means any underground storage tank that is divided by one or more walls or bulkheads to create individual and separate compartments within the underground storage tank. Each compartment is a separate regulated tank, requiring separate registration.

…

"Containment device" or "containment equipment" or "containment system" means a liquid-tight structure or system of structures that provide containment of any product releases. Containment devices are typically used underneath product dispensers, enclosing submersible turbine pumps and below piping connections/transitions.

…

"Dispenser system" means equipment located aboveground that meters the amount of regulated substances transferred to a point of use outside the UST system, such as a

motor vehicle. This system includes the equipment necessary to connect the dispenser to the UST system.

…

"Entire piping run" means the total length of **product** piping from the tank to the dispenser.

...

“Interstitial monitor” means a device used to check the space between the primary and secondary container of an underground storage tank system with secondary containment, including ancillary piping and containment systems, for leaks and alert the operator if a leak is suspected or detected.

“Interstitial space” or “interstice” means annular space.

…

“Line leak detector” or “LLD” means a mechanical or electro-mechanical device that is fitted to the submersible turbine pump (STP) or associated pressurized product piping that is employed to detect a piping leak of three gallons per hour (gph) or greater at 10 psi.

…

"Liquid sensor" means [a monitoring system which detects the liquid phase of a hazardous substance] **an electro-mechanical device, typically in conjunction with a monitoring system, which detects either the presence of water or the liquid phase of a hazardous substance.**

…

“Motor fuel” means any petroleum [product that includes, but is not limited to, all grades of

gasoline, diesel fuel and kerosene] **or petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol and is typically** used in the operation of any type of engine**. This definition applies to blended petroleum motor fuels such as biodiesel and ethanol blends that contain more than a de minimis amount of petroleum or petroleum-based substance.**

…

"Person" means any individual or entity, including without limitation, a public or private corporation, company, association, society, business firm, partnership, joint stock company, foreign individual or entity, interstate agency or authority, the United States and any of its political subdivisions, the State of New Jersey, or any of the political subdivisions of or found within the State of New Jersey, or any of the other meanings which apply to the common understanding of the term. **"Person" shall also include any responsible corporate official for the purpose of enforcement action under Section 10 of the State Act (N.J.S.A. 58:10A-10).**

…

"Swing joint" means a flexible connector device made of steel elbows and pipe nipples that allow movement in the piping run.

…

"Underground storage tank" **or "UST"** means any one or combination of tanks as set forth in N.J.A.C. 7:14B-1.4, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, the volume of which, including the volume of the appurtenant pipes, lines, fixtures**,** and other related equipment, is 10 percent or more beneath the surface of the ground.

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…

"Underground storage tank system" or **"UST system" or** "tank system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

…

"**Unmanned facility" means a facility that does not have an attendant present during all hours of operation to respond to alarms or emergencies related to the UST system. Examples of unmanned facilities include, but are not limited to, card lock or card access fueling stations, telecommunication towers or utility transfer stations serviced by emergency generator USTs, and unattended UST systems located at industrial or governmental facilities.**

…

"Wellhead protection area" means[:

1. The area within a 2,000 foot radius surrounding a public community or public noncommunity water system well when there is an underground storage tank containing gasoline or nonpetroleum hazardous substances located within that area; or

2. The area within a 750 foot radius surrounding a public community or public noncommunity water system well when there is an underground storage tank containing petroleum products other than gasoline located within that area.] **an area within a 1,000-foot radius of any existing community water system or any existing potable drinking water well.**

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SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

7:14B-2.1 General registration requirements.

(a) - (f) (No change.)

(g) The owner or operator, an individual or business firm certified to perform these work activities pursuant to N.J.A.C. 7:14B-13, or a Licensed Site Remediation Professional licensed pursuant to N.J.A.C. 7:26C-1.3, and as authorized by the owner or operator, shall notify the Department at least 14 calendar days prior to commencing physical on-site work activities related to installation, substantial modification, or closure of the underground storage tank system, or performing any activity specified in N.J.A.C. 7:14B-4, 5, or 6 requiring Department approval. Notification of activities undertaken in an emergency shall be provided to the Department as soon as practicable, not to exceed 14 calendar days after the emergency activity. Notification shall be by e-mail, forwarded to 14dayUSTnotice@dep.state.nj.us and shall include:

1. The address, name, and facility registration number of the facility where the work activities will occur;

2. The approved activity to be undertaken and the anticipated date(s) of activity;

3. The name and phone contact information of the entity submitting the notification; and

4. The name and phone contact information of the contractor performing the activities, if different from the entity submitting the notification.

7:14B-2.2 Registration and certification procedures

(a)– (b) (No change.)

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(c) The owner or operator shall complete the New Jersey Underground Storage Tank Facility Certification Questionnaire prior to the expiration of the facility's Registration Certificate. The Department may issue a Registration Certificate to the registrant following submission of the complete New Jersey Underground Storage Tank Facility Certification Questionnaire. The Department will issue the Registration Certificate for a [maximum] period of [three] **one** year[s]. The expiration date of the Facility Certification will be specified on the Registration Certificate.

(d) The owner or operator shall, during initial registration, supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1- 2. (No change.)

3. The name and address of the facility owner;

i. If the owner is a corporation, a limited liability company, a partnership, a limited partnership, or other form of business, the Corporate Entity ID number, the date of the original business formation and/or registration filed with the State, the type of business entity, and the name of the corporate officer, partner, or other person with primary decision making authority regarding the facility.

4. The name and address of the facility operator;

i. If the operator is a corporation, a limited liability company, a partnership, a limited partnership, or other form of business, the Corporate Entity ID number, the date of the original business formation and/or registration filed with the State, the type of business entity, and the name of the

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corporate officer, partner, or other person with primary decision making authority regarding the facility.

[4.] **5.** The number and type of underground storage tank systems at the facility, including, but not limited to, contents, size, age, type of construction**,** and other characteristics of the tank system;

[5.] **6.** A site plan of the facility, including the location of the tanks, lines, pumps, dispensers, fill pipes, and other features of the tank system, including the distance from existing buildings and property boundaries; [and]

7. The names of each designated Class A and Class B operator at the facility; and

[6.] **8.** [Provide the following information for] **For** all general liability insurance or other financial responsibility mechanisms:

i.– v. (No change.)

(e) The owner or operator shall, during Certificate renewal, supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1. (No change.)

2. Notification of any changes to the status of the facility **including any changes to the designated Class A and Class B operators;** and

3. (No change.)

(f) The owner or operator who made any change in status of the underground storage tank system since the initial registration shall supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire **no later than 30 days after**

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the change in status:

1. - 5. (No change.)

6. Specific information concerning transfer of ownership, abandonment or removal, substantial modifications and new or replacement installations, **and changes in the designation of Class A or Class B operators,** depending on which activity is applicable;

7. – 8. (No change.)

7:14B-2.4 Changes to registration.

(a) – (b) (No change.)

(c) The owner or operator intending to **take an underground storage tank system out of service or** close an underground storage tank system in accordance with N.J.A.C. 7:14B-9 shall submit [a] **an amended** New Jersey Underground Storage Tank Facility Certification Questionnaire within seven calendar days after the [closure of the tank system] **underground storage tank system is taken out of service or closed**.

(d) The owner or operator intending to put an out-of-service underground storage tank system back into service shall amend the facility's registration to reflect the change in status and comply with the out-of-service underground storage tank system requirements at N.J.A.C. 7:14B-9.1(e).

SUBCHAPTER 3. FEES

7:14B-3.1 **Initial** [Registration] **registration** fee

The owner or operator **of a facility that has not been previously registered with the Department** shall submit a [$150.00] **$200.00 Initial** Registration Fee for each facility upon **the initial** registration of [the] **said** facility with the Department. **This fee does not apply for**

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USTs added to an existing facility. The Department shall [only] issue [a] **an initial** Registration Certificate [following the submission] **only after receipt** of the **Initial** Registration Fee **and completed questionnaire**.

7:14B-3.2 [Facility] **Annual Renewal** Certification fee

(a) The owner or operator shall submit [a Facility] **an Annual Renewal** Certification fee **of $50.00** for each facility upon [the periodic] renewal of the Facility Certification with the Department.

(b) The owner or operator shall pay the [Facility] A**nnual Renewal** Certification fee of [$150.00] **$50.00** per facility for the [three-year facility] **one-year** certification cycle and after receiving an invoice from the Department within the time frame set forth in the invoice. The Department may renew the Registration Certificate following the submission of the [Facility] **Annual Renewal** Certification Fee.

(c) The owner or operator who failed to register the system and pay the necessary fees when initially required in 1988 or when the tank system was installed, whichever is later, shall be responsible for paying all [Facility] **Annual Renewal** Certification fees for the years the tank system was not closed in accordance with API Recommended Practice 1604, titled "Closure of Underground Petroleum Storage Tanks." Payment of these fees by the owner or operator does not restrict the Department from taking enforcement action against the owner or operator pursuant to N.J.A.C. 7:14B-12.

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SUBCHAPTER 4. UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION**,** AND INSTALLATION

7:14B-4.1 Performance standards for new underground storage tank systems

(a) Owners and operators of underground storage tank systems which are installed on or after September 4, 1990**,** shall obtain a permit in accordance with N.J.A.C. 7:14B-10 before installation and ensure that the systems meet the following requirements:

1. Each tank shall be properly designed and constructed, and any portion underground that routinely contains product shall be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

i. – iii. (No change.)

iv. The tank shall be constructed of metal without additional corrosion protection measures provided that:

(1) (No change.)

(2) Owners and operators maintain records that demonstrate compliance with the requirements **of** (a)1iv(1) above for the remaining life of the tank; [or]

[v. The Department shall issue a permit for the installation of the tank system pursuant to N.J.A.C 7:14B-10. The owner or operator of the underground storage tank shall submit a permit application in accordance with N.J.A.C. 7:14B-10 and demonstrate that the tank construction and corrosion protection are designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than (a)1i through iv above.]

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v. Each tank for which installation begins on or after (the operative date of the amendments) shall be designed and constructed with secondary containment and interstitial monitoring, such that in the event of a primary containment breach the secondary containment shall contain regulated substances until they are detected and removed. Secondary containment shall prevent the release of regulated substances to the environment at all times during the operational life of the tank;

vi. Each tank installed prior to (the operative date of the amendments) that has secondary containment and interstitial monitoring shall maintain interstitial monitoring at all times during the operational life of the tank; and

vii. Each tank that has secondary containment and interstitial monitoring or other approved release detection monitoring shall be tested in accordance with N.J.A.C. 7:14B-5.11.

2. The piping**, including metallic swing joints and metallic flex connectors,** that routinely contains regulated substances and is in contact with the ground shall be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

i. – ii. (No change.)

iii. The piping shall be constructed of metal without additional corrosion protection measures provided that:

(1) (No change.)

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(2) Owners and operators maintain records that demonstrate compliance with the requirements of (a)2iii above for the remaining life of the piping; [or] **and**

[iv. The Department shall issue a permit for the installation of the piping pursuant to N.J.A.C. 7:14B-10. The owner or operator of the underground storage tank system shall submit a permit application in accordance with N.J.A.C. 7:14B-10 and demonstrate that the piping construction and corrosion protection are designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than (a)2i through iii above.]

iv. All new or replaced piping for which installation begins on or after (the operative date of the amendments), except suction piping that meets the requirements of N.J.A.C. 7:14B-6.2 and piping associated with field-constructed tanks and airport hydrant fuel distribution systems, shall be designed, constructed, and installed with secondary containment and interstitial monitoring, such that in the event of a primary containment breach, the secondary containment shall contain the regulated substances until they are detected and removed. Secondary containment shall prevent the release of regulated substances to the environment at all times during the operational life of the UST system;

v. Piping installed prior to (the operative date of the amendment) that has secondary containment and interstitial monitoring shall maintain interstitial monitoring at all times during the operational life of the piping; and

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vi. Piping with secondary containment and interstitial monitoring or other approved release detection monitoring shall be tested in accordance with N.J.A.C. 7:14B-5.11.

3. Except as provided in (a)3[iii]**v** below, to prevent spilling and overfilling associated with product transfer to the underground storage tank system, owners and operators shall use the following spill and overfill prevention equipment:

i. Spill prevention equipment that shall prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); [and]

ii. [Overfill] **For tanks filled by means of gravity, overfill** prevention equipment that shall:

(1)– (2) (No change.)

(3) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling. **Flow restrictors in vent lines shall not be used to comply with this subparagraph on or after (three years after the operative date of this amendment);**

iii. For tanks that are filled by means other than gravity deliveries (such as pumped, metered, or pressurized), overfill protection shall be compatible with the method used to fill the tank; and

iv. Spill and overfill prevention equipment shall be periodically tested in accordance with N.J.A.C. 7:14B-5.10.

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[iii.] **v.** Owners and operators are not required to use the spill and overfill prevention equipment specified in (a)3i [and ii] **through iii** above if[:

(1) A permit is issued in accordance with N.J.A.C. 7:14B-10 for the use of alternative equipment that is determined by the Department to be no less protective of human health and the environment than the equipment specified in (a)3i or ii above; or

(2) The] **the** underground storage tank system is filled by transfers of no more than 25 gallons at one time.

4. – 5. (No change.)

[(b) All new underground storage tank systems installed within wellhead protection areas as defined in N.J.A.C. 7:14B-1.6 shall be secondarily contained and monitored in accordance with the requirements of N.J.A.C. 7:14B-6.4(a)2.]

[(c)] **(b)** (No change in text.)

[(d)] **(c)** The owner or operator of a proposed monitoring system which uses screen and casing and is not in conformance with [N.J.A.C. 7:14B-4.1(c)] **(b) above** shall comply with N.J.S.A. 58:4A-4.1 et seq, the Subsurface and Percolating Water Act.

Recodify existing (e) and (f) as **(d) and (e)**. (No change in text.)

[(g)] **(f)** Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks," [or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks,"] incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)1iii above.

(g) The following codes and standards, as applicable, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)1vi above:

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1. Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids" (available at www.UL.com);

2. Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures" (available at www.UL.com);

3. Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks" (available at www.UL.com);

4. Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"(available at www.steeltank.com); and

5. Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank®" (available at www.steeltank.com).

(h) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)2i above:

1. Underwriters Laboratories [Subject] **Standard** 971, "Non-Metallic Underground Piping for Flammable Liquids" **(available at www.UL.com)**;

2. Underwriters Laboratories Standard 567, "Pipe Connectors for Petroleum Products and LP Gas" **(available at www.UL.com)** ; **or**

3. Underwriters Laboratories of Canada Guide ORD-107.7 "Glass-fibre Reinforced Plastic Pipes and Fittings"[; or] **(available at canada.UL.com).**

[4. NACE International Standard RP-01-95 RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."]

(i)-(*l*) (No change.)

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7:14B-4.1A Performance standards for motor fuel dispenser systems

(a) On and after (the operative date of the new rule), this section shall apply whenever both a dispenser and the equipment needed to connect the dispenser to the UST system are installed at a facility. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

(b) Under-dispenser containment shall:

1. Be liquid-tight on its sides, bottom, and at any penetrations;

2. Be compatible with the substance conveyed by the piping; and

3. Allow for visual inspection and access to the components in the containment system, or be continuously monitored for leaks from the dispenser system.

(c) The owner or operator shall inspect under-dispenser containment every 30 days for the presence of water and/or product.

7:14B-4.2 Upgrading of existing underground storage tank systems

(a) (No change.)

(b) If **after Department review and approval of a permit application,** an owner or operator [chooses to] upgrade**s** an underground storage tank, [a] **the** steel **or fiberglass** tank shall be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

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1. A tank may be upgraded by internal lining if the lining is installed in accordance with the requirements of N.J.A.C. 7:14B-5.4**, and provided the internal inspection determines the tank is structurally sound, has sufficient wall thickness (minimum 1/8 inch (0.32 centimeter) for steel tanks), and the tank has cathodic protection in accordance with N.J.A.C. 7:14B-4.1(a)1ii(2), (3), and (4)**.

i. (No change.)

ii. If the internal inspection reveals that the tank is not structurally sound, or the internal lining is not performing in accordance with original design specifications, the tank shall be closed in accordance with N.J.A.C. 7:14B-9.2.

2. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of N.J.A.C. 7:14B-4.1(a)1ii(2), (3)**,** and (4) and the integrity of the tank is ensured using one of the following methods:

i. The tank is internally inspected and assessed to ensure that the tank is structurally sound**, has sufficient wall thickness (minimum 1/8 inch (0.32 centimeter) for steel tanks),** and **is** free of corrosion holes prior to installing the cathodic protection system;

ii. – iv. (No change.)

3.– 4. (No change.)

(c) -(e) (No change.)

(f) The following codes and standards, incorporated herein by reference, as amended and supplemented, **and as applicable,** shall be used to comply with the requirements of (c) above:

[1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

2. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";]

1. American Petroleum Institute Publication 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks" (available at www.api.org);

2. National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection" (available from United States Environmental Protection Agency, Office of Underground Storage Tanks, Washington, D.C. 20460, or www.nlpa-online.org);

3. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Storage Tanks and Piping Systems"; [or]

4. NACE International Standard [RP-01-95 RP0169-96] **SP0169-2007** "Control of External Corrosion on Underground or Submerged Metallic Piping Systems[.]" **(available at www.NACE.org); or**

5. Underwriters Laboratories Standard 58, "Standard for Steel underground storage tanks for Flammable and Combustible Liquids" (available at www.UL.com).

SUBCHAPTER 5. GENERAL OPERATING REQUIREMENTS

7:14B-5.1 Spill and overfill control

(a) (No change.)

(b) The transfer procedures described in National Fire Protection Association [Publication] **Standard** 385, **Standard for Tank Vehicles for Flammable and Combustible Liquids**

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(available at www.nfpa.org) [and] **or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles (available at www.api.org), incorporated herein by reference, as amended and supplemented, shall be used to comply with this section. Further guidance on spill and overfill prevention appears in** American Petroleum Institute [Publication] **Recommended Practice** 1621, "[Recommended Practice for] Bulk Liquid Stock Control at Retail Outlets" [and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)1 and 2 above].

(c) (No change.)

(d) In order to ensure proper operation of spill containment equipment, the owner and operator shall:

1. – 2. (No change.)

3. Ensure deficient equipment is repaired or replaced. Repairs and installation of new equipment shall be in compliance with N.J.A.C. 7:14B-4.1(a)3i, [4.1(n),] 4.2(d)**,** and 5.4; and

4. (No change.)

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7:14B-5.2 Operation and maintenance of corrosion protection

(a) All owners and operators of metallic underground storage tank systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the underground storage tank system is used to store regulated substances:

1. (No change.)

2. All underground storage tank systems equipped with cathodic protection systems shall be inspected for proper operation by a Cathodic Protection Tester or Cathodic Protection Specialist certified pursuant to N.J.A.C. 7:14B-13 in accordance with the following requirements:

i. (No change.)

ii. The criteria that are used to determine that cathodic protection is adequate as required by this section shall be in accordance with [a code of practice developed by a nationally recognized association. For example, NACE International Standard RP-02-95 RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection" may be used to comply with this requirement.] **the following codes of practice, as applicable, incorporated herein by reference, as amended and supplemented:**

(1) NACE International Test Method TM 0101, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems” (available at www.nace.org);

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(2) NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems" (available at www.nace.org);

(3) Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for sti-P3 USTs" (available at www.steeltank.com);

(4) NACE International Recommended Practice RP- 02-85, "Control of Underground Storage Tank Systems by Cathodic Protection" (available at www.nace.org); or

(5) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" (available at www.nace.org).

3. – 4. (No change.)

7:14B-5.3 Compatibility

(a) (No change.)

[(b) Owners and operators storing alcohol blends shall use the following codes, incorporated herein by reference, as amended and supplemented, to comply with the requirements of (a) above:

1. American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

2. American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."]

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(b) Owners and operators storing any regulated substance containing greater than 10 percent ethanol or greater than 20 percent biodiesel, or any other regulated hazardous substance identified by the Department, shall use one or more of the following methods to demonstrate UST system compatibility with these regulated substances:

1. A certification or listing of UST system components by a nationally recognized, independent testing laboratory for use with the regulated substance stored;

2. The written statement of the equipment or component manufacturer, indicating the range of biofuel blends with which the equipment or component is compatible; or

3. Another method that the owner or operator demonstrates is no less protective of human health and the environment than the methods listed in (b)1 or 2 above.

(c) Owners and operators shall maintain the following records in accordance with N.J.A.C. 7:14B-5.6(b) for the life of the equipment or component:

1. Documents showing compliance with (b) above, as applicable; and

2. Records of all equipment or components installed or replaced on or after (the operative date of this amendment). At a minimum, each record shall include the date of installation or replacement, manufacturer, and model.

[(c)] **(d)** All [compartmentalized] **compartmented** tanks shall hold, in each compartment, hazardous substances compatible with one another to prevent safety hazards such as a fire or explosion or corrosion of the underground storage tank system in case of breaches in the compartment walls.

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7:14B-5.4 Repairs

(a) Owners and operators shall obtain a permit from the Department in accordance with N.J.A.C. 7:14B-10 and meet the following requirements to ensure that repairs shall prevent releases due to structural failure or corrosion as long as the underground storage tank system is used to store hazardous substances:

1.– 2. (No change.)

3. Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced. [Fiberglass] **Non-corrodible** pipes and fittings shall be repaired or replaced in accordance with the manufacturer's specifications. **All new or replaced piping, for which installation begins on or after (the operative date of this amendment) shall have secondary containment and interstitial monitoring. The entire piping run shall be replaced when 50 percent or more of the piping run is replaced.**

4. (No change.)

5. UST systems with secondary containment shall be tested using methods as specified in N.J.A.C. 7:14B-5.11 within 30 days following the completion of any repair. UST systems that use interstitial sensors as part of the secondary containment shall be tested using a vacuum, or liquid method in accordance with one of the criteria listed in N.J.A.C. 7:14B- 5.11 following any repair.

[5.] **6.** (No change in text.)

7. Immediately following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment shall be tested in accordance with N.J.A.C. 7:14B-5.10(a) to ensure it is operating properly.

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[6.] **8**. (No change in text.)

(b) (No change.)

(c) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with the requirements of (a) above:

1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" **(available at www.nfpa.org)**;

2. American Petroleum Institute [Publication] **Recommended Practice RP** 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines" **(available at www.api.org)**;

3. American Petroleum Institute [Publication] **Recommended Practice RP** 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks" **(available at www.api.org)**; [or]

4. National Leak Prevention Association Standard 631, ["Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."] **"Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks" (available at www.nlpa-online.org);**

5. Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to sti-P3® Tanks" (available at www.steeltank.com);

6. NACE International Recommended Practice RP 0285, "Control of Underground Storage Tank Systems by Cathodic Protection" (available at NACE.org);

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7. Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks" (available at www.fiberglasstankandpipe.com); or

8. Petroleum Equipment Institute Recommended Practice RP1200 "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment UST Facilities" (available at www.pei.org).

7:14B-5.5 Release response plan

(a) The owner or operator shall prepare, and update as necessary to reflect changes to the facility and to regulations governing response plans, a release response plan which includes the following information:

1. (No change.)

2. The name and telephone number(s) of the person responsible for the operation of the facility during an emergency**, including the Class A, B, or C operator, as applicable**;

[3. The name and telephone number of any retained licensed site remediation professional; and]

[4.] **3**. The procedures to be followed in the event of a leak or discharge of a hazardous substance, pursuant to N.J.A.C. 7:14B-7.3 and 8,[and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and N.J.A.C. 7:14B-9 if the underground storage tank system must be closed.] **including the procedures to address alarms associated with release detection equipment; and**

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4. The name and telephone number of any retained licensed site remediation professional.

(b) - (c) (No change)

7:14B-5.6 Recordkeeping

(a) Owners and operators shall maintain the following information until the owner or operator receives the Department's written permission to discard the records pursuant to (c) below:

1. For underground storage tank systems susceptible to corrosion:

i. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used in accordance with N.J.A.C. 7:14B-4.1(a)1iv and [2]**3**iii; and

ii. (No change.)

2.- 4. (No change.)

5. An installation checklist as required by N.J.A.C. 7:14B-4.1(a)5;[and]

6. Documentation of compliance with N.J.A.C. 7:14B-5.1(d)[.]**; and**

7. Documentation indicating that UST system equipment installed or replaced on or after (the operative date of this amendment) complies with N.J.A.C. 7:14B-5.4.

(b) – (d) (No change.)

(e) The recordkeeping requirements of this section are in addition to recordkeeping requirements elsewhere in this chapter.

7:14B-5.10 Spill and overfill prevention equipment

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(a) Owners and operators of UST systems with spill and overfill prevention equipment shall ensure that the equipment meets the following requirements:

1. Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) shall:

i. Have two walls, with the space between the walls monitored continuously to ensure that the integrity of the walls is maintained; or

ii. Be tested at installation and at least once every 12 months thereafter by using vacuum, pressure, or liquid testing to ensure that the spill prevention equipment is liquid tight, in accordance with one of the following:

(1) Requirements developed by the manufacturer, if any;

(2) A code of practice developed by a nationally recognized association or independent testing laboratory, such as Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment UST facilities" (available at www.pei.org); or

(3) A method that the owner or operator demonstrates is no less protective of human health and the environment than the requirements of (a)1ii(1) and (2) above.

2. Overfill prevention equipment shall be tested at installation and at least once every three years. At a minimum, testing shall ensure that overfill prevention equipment satisfies the requirements of N.J.A.C. 7:14B-4.1(a)3ii or iii, as applicable. Testing shall be conducted in accordance with at least one of the criteria in (a)1ii(1) through (3) above.

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(b) Owners and operators of registered UST systems installed prior to (the operative date of this amendment) shall ensure compliance with the spill prevention requirements set forth at (a)1i above no later than (one year after the operative date of this amendment) and at least once every 12 months thereafter, and shall begin testing overfill prevention equipment in accordance with (a)2 above no later than (one year after the operative date of this amendment), and at least once every three years thereafter.

(c) Owners and operators of UST systems installed on or after (the operative date of this amendment) shall comply with the spill prevention requirements set forth at (a)1i above and the overfill prevention testing requirements set forth at (a)2 above upon installation.

(d) Owners and operators shall maintain the following records related to spill and overfill prevention equipment, in accordance with N.J.A.C. 7:14B-5.6(b):

1. All records of spill prevention equipment testing and overfill prevention equipment testing, which shall be maintained for five years; and

2. For spill prevention equipment not tested every 12 months, documentation showing that the spill prevention equipment has two walls and is monitored continuously, which shall be maintained for the period during which the spill prevention equipment is monitored, and for five years after continuous monitoring ends.

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7:14B-5.11 Integrity testing of UST systems with secondary containment

(a) Owners and operators of UST systems with secondary containment shall test the integrity of all interstitial areas, including all tanks, piping, and containment devices, as follows:

1. A method used to test UST systems with secondary containment shall be capable of detecting a breach in both the inner and outer walls of the tank, piping, and containment device.

i. Tanks, piping, and containment devices that are continuously monitored using a vacuum, pressure, or a liquid-filled interstitial space method shall be tested at least once every 30 days to ensure the monitoring system is functioning properly.

ii. Tanks, piping, and containment devices not continuously monitored shall be tested at least once every three years using a vacuum, pressure, or liquid testing method, in accordance with one of the following:

(1) Requirements developed by the manufacturer, if any;

(2) A code of practice developed by a nationally recognized association or independent testing laboratory, such as the following:

(A) Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks" (available at www.steeltank.com);

(B) Fiberglass Tank and Pipe Institute Protocol, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double

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and Triple-Wall Tanks with Dry Annular Space" (available at www.fiberglasstankandpipe.com); or

(C) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment UST Facilities" (available at www.pei.org); or

(3) A method that the owner or operator demonstrates is no less protective of human health and the environment than the requirements at (a)1ii(1) and (2) above.

(b) Owners and operators of UST systems with secondary containment shall comply with the integrity testing requirements of this section in accordance with the following schedule:

Criteria	Testing Compliance Dates
One or more USTs at the facility were installed on or before December 22, 1988	(One year after operative date of this amendment)
No USTs at the facility were installed on or before December 22, 1988, and at least one UST at the facility was installed before December 22, 1998	(Two years after operative date of this amendment)

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All USTs at the facility were installed on or after December 22, 1998	**(Three years after operative date of this amendment)**

(c) Owners and operators shall maintain the following records in accordance with N.J.A.C. 7:14B-5.6(b) for the time frames indicated for each tank, piping, and containment device that has secondary containment:

1. Records of interstitial space testing which shall be maintained for five years; or

2. Records demonstrating the tank is using continuous interstitial monitoring; the piping is using continuous interstitial monitoring with vacuum, pressure, liquid-filled interstitial space; and the containment device has two walls and uses continuous interstitial monitoring. These records shall be maintained for the life of the UST system.

7:14B-5.12 Periodic operation and maintenance walkthrough inspections

(a) To properly operate and maintain both manned and unmanned UST systems, owners and operators shall ensure that a Class A or Class B operator, trained pursuant to N.J.A.C. 7:14B-5A, conducts a walkthrough inspection either:

1. At least once every 30 calendar days, at a minimum and as appropriate to the facility, as follows:

i. Open and visually inspect spill prevention equipment for damage, remove any liquid or debris, check each fill cap to make sure it is securely on the fill pipe,

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and check spill prevention equipment with continuous interstitial monitoring for leaks in the interstitial area;

ii. Open and visually check sumps for damage, leaks to the containment area, or releases to the environment, remove any liquid in contained sumps, remove debris, and check sumps with continuous interstitial monitoring for leaks in the interstitial area;

iii. Open and visually check dispenser cabinets for damage, leaks to the containment area or releases to the environment, remove any liquid from dispensers with under-dispenser containment, remove debris, and check under-dispenser containment with continuous interstitial monitoring for a leak in the interstitial area;

iv. Check monitoring and observation wells covers to make sure they are secured;

v. Check cathodic protection to make sure impressed current cathodic protection rectifiers are on and operating, and ensure records of three-year cathodic protection testing and 60-day impressed current system inspections are reviewed and current;

vi. Check release detection systems to make sure the system is on and operating with no alarms or other unusual operating conditions present; and

vii. Check devices such as tank gauge sticks, groundwater bailers, and hand-held vapor monitoring devices for operability and serviceability; or

2. At least once every 30 calendar days according to a standard code of practice, developed by a nationally recognized association or independent testing laboratory,

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that is comparable to (a)1 above, such as Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems" (available at www.pei.org).

(b) Owners and operators shall maintain for 10 years, in accordance with N.J.A.C. 7:14B-5.6(b), records of operation and maintenance walkthrough inspections. The record shall identify the areas checked, whether each area checked was acceptable or required corrective action, and a description of any corrective action taken.

7:14B-5.13 Specific operating requirements for unmanned facilities

(a) The owner or operator of an unmanned facility shall ensure that the facility shall has clearly visible weather resistant signs providing emergency procedures and notification requirements to be followed in the event of an incident. The information on the sign shall include:

1. The emergency telephone numbers of the local fire department, local health department, Department of Environmental Protection Hotline 1-877 WARN DEP or 1-877-927-6337, and any other appropriate local or State agencies;

2. The name and telephone number(s) of the person responsible for the operation of the facility during an emergency, including the Class A, B, or C operator, as applicable;

3. The procedures to be followed in the event of a leak or discharge of a hazardous substance, pursuant to N.J.A.C. 7:14B-7.3 and 8, including the procedures to address alarms associated with release detection equipment; and

4. The name and telephone number of any retained licensed site remediation professional.

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(b) The owner or operator of an unmanned facility shall comply with (a) above as follows:

1. The owner or operator of an unmanned facility at which one or more UST systems were installed prior to (the operative date of this new rule) shall comply on or before (one year after the operative date of this new rule).

2. The owner or operator of an unmanned facility at which no UST systems were installed prior to (the operative date of this new rule), and at which one or more UST systems are installed on or after (the operative date of this new rule) shall comply before installation of the UST system or systems commences.

7:14B-5.14 Designation of Class A, Class B, and Class C operators

(a) The owner or operator of a facility shall designate at least one Class A, Class B, and Class C operator for the facility in accordance with the schedule at (c) below, and notify the Department of each designated Class A and Class B operator in accordance with N.J.A.C. 7:14B-2. An individual may be designated under more than one operator class, provided the individual is trained in accordance with N.J.A.C. 7:14B-5, Class A, Class B, and Class C Operator Training, for each class for which he or she is designated.

(b) Subject to the schedule in (c) below, at least one of each class of operator shall be designated for a facility at all times.

(c) The owner or operator of a facility shall designate a Class A, Class B, and Class C operator in accordance with the following schedule:

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1. If the facility has one or more UST systems installed prior to (the operative date of the proposed rule), the owner or operator shall designate at least one Class A, Class B, and Class C operator no later than (two years after the operative date of the proposed rule), as follows:

i. A Class A or Class B operator eligible for reciprocity in accordance with N.J.A.C. 7:14B-5A.3 may be designated at any time;

ii. A Class A or Class B operator not eligible for reciprocity under N.J.A.C. 7:14B-5A.3 shall be designated after he or she has successfully completed training and passed an examination in accordance with N.J.A.C. 7:14B-5A; and

iii. A Class C operator shall be designated after he or she has successfully completed training in accordance with N.J.A.C. 7:14B-5A.

2. If a facility has no UST systems installed prior to (the operative date of the proposed rule) and one or more UST systems installed on or after (the operative date of the proposed rule) the owner or operator shall designate at least one Class A and Class B operator in its initial New Jersey Underground Storage Tank Facility Certification Questionnaire, and shall designate at least one Class C operator prior to operating the facility. Thereafter, it shall designate Class A, Class B, and Class C operators in accordance with (c)3 below.

3. After at least one of each class of operator is designated for a facility in accordance with (c)1 or 2 above, as applicable, an owner or operator shall designate Class A, Class B, or Class C operators as follows:

i. A Class A or Class B operator eligible for reciprocity in accordance with N.J.A.C. 7:14B-5A.3 may be designated at any time;

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ii. A Class A or Class B operator not eligible for reciprocity under N.J.A.C. 7:14B-5A.3 shall be designated after he or she has successfully completed training and passed an examination in accordance with N.J.A.C. 7:14B-5A; and

iii. A Class C operator shall be designated after he or she has successfully completed training in accordance with N.J.A.C. 7:14B-5A.

(d) Except as set forth in N.J.A.C. 7:14B-5.13, the owner or operator shall ensure that at least one Class C operator is present at the facility at all times that the facility is operating, including when hazardous substances are introduced into or removed from an UST system.

(e) Designation of a Class A, Class B, or Class C operator does not relieve an owner or operator of responsibility for compliance with the State Act, and this chapter.

SUBCHAPTER 5A. CLASS A, CLASS B, AND CLASS C OPERATOR TRAINING

7:14B-5A.1 General Class A, Class B, and Class C operator training requirements

(a) Each owner or operator shall ensure that each designated Class A, Class B, and Class C operator at a facility is trained in accordance with this subchapter.

(b) Training of Class A and Class B operators shall be through a program developed and administered by the Department, or the Department's designee, unless N.J.A.C. 7:14B-5A.3, Reciprocity, applies.

(c) The owner or operator shall determine the appropriate method of training each Class C operator at a facility, provided that the training meets the requirements at N.J.A.C. 7:14B-5A.2(c).

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(d) An individual shall successfully complete operator training applicable to each class for which he or she is designated. Successful completion by a Class A or Class B operator shall mean passing the applicable proficiency examination in accordance with N.J.A.C. 7:14B-5A.4(a)2 and (b)4. Successful completion by a Class C operator shall mean demonstrating to the satisfaction of the owner or operator the ability to respond to spills or releases of hazardous materials as set forth in N.J.A.C. 7:14B-5A.2(c).

7:14B-5A.2 Specific Class A, Class B, and Class C operator training requirements

(a) Training of a Class A operator shall include, at minimum:

1. General knowledge of the purpose, methods, and function of:

i. Spill and overfill prevention;

ii. Release detection;

iii. Corrosion protection;

iv. Emergency response;

v. Product and equipment compatibility;

vi. Financial responsibility;

vii. Notification and storage tank registration;

viii. Temporary and permanent closure;

ix. Related reporting and recordkeeping;

x. Environmental and regulatory consequences of releases; and

xi. Training requirements for Class B and Class C operators.

2. Training of a Class A operator shall include a proficiency examination related to the subjects at (a)1 above, which the trainee must pass before he or she may be designated a Class A operator under N.J.A.C. 7:14B-5.14.

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(b) Training of a Class B operator shall include, at minimum:

1. Regulatory requirements applicable to UST systems;

2. The purpose and function of equipment generally used in an UST system;

3. The specific purpose, methods, and function of:

i. Operation and maintenance of UST systems;

ii. Spill and overfill prevention;

iii. Release detection and related reporting;

iv. Corrosion protection and related testing;

v. Emergency response;

vi. Product and equipment compatibility;

vii. Reporting and recordkeeping;

viii. Environmental and regulatory consequences of releases; and

ix. Training requirements for a Class C operator.

4. Training of a Class B operator shall include a proficiency examination related to the subjects at (b)1 through 3 above, which the trainee must pass before he or she may be designated a Class B operator under N.J.A.C. 7:14B-5.14.

(c) Training for a Class C operator shall include, at minimum, appropriately responding to spills or releases of hazardous materials, including those that pose an immediate danger or threat to the public or to the environment, and shall also include responding to alarms associated with release detection equipment. Before he or she may be designated a Class C operator under N.J.A.C. 7:14B-5.14, the trainee shall demonstrate to the person conducting training that the trainee understands his or her

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role in responding to spills or releases and alarms associated with release detection equipment, and is able to respond appropriately.

7:14B-5A.3 Reciprocity

(a) An owner or operator of an UST system may designate a Class A or Class B operator who has completed training and successfully passed an authorized examination in another state, provided:

1. The owner or operator submits to the Department as part of the New Jersey Underground Storage Tank Facility Certification Questionnaire formal documentation, such as an official training or examination certificate, indicating that the Class A or Class B operator has successfully completed training and passed an examination in a state other than New Jersey for the class of operator for which he or she is being designated;

2. The training is from a state whose operator training program and evaluation method the Department has determined is comparable to the Department's training program and evaluation method for the relevant class of operator. The Department will post a list on its website, www.nj.gov/dep/srp/bust, indicating the states whose training and evaluation methods are comparable to the Department's; and

3. The Class A or Class B operator is in good standing in that state(s) in the operator class for which the owner or operator is seeking to designate him or her.

(b) Training and/or certification of a Class A or Class B operator in a state other than New Jersey shall not substitute for retraining in accordance with N.J.A.C. 7:14B-5A.4.

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7:14B-5A.4 Retraining

(a) Except as provided in (b) below, if the Department determines that an UST system is either significantly out of compliance or is repeatedly out of compliance with a significant requirement (for example, not having operating leak detection or cathodic protection mechanisms, failing to respond to alarms or active discharges, or repeatedly violating the same requirements over multiple inspections), the Department will require the owner or operator to arrange for retraining and retesting (as applicable) of the designated Class A, Class B, or Class C operators of the UST system in accordance with N.J.A.C. 7:14B-5A.2 no later than 30 days from the date the Department advises the facility of significant or repetitive non-compliance or within an alternate timeframe as agreed to by the Department.

(b) The Department may, at its discretion, provide an exception from the retraining under (a) above, if the Department determines that the UST system's non-compliance on which the retraining determination is based is the result of unanticipated equipment failure, improper contractor repairs, or other factors beyond the normal control and diligence of the owner or operator.

7:14B-5A.5 Documentation of training

(a) The owner and/or operator shall maintain, in accordance with N.J.A.C. 7:14B-5.6(b)1, records that document the training received for each designated Class A, Class B, and Class C operator.

(b) The training records shall be maintained on paper or electronically, and shall be made available for on-site inspection by the Department upon request.

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(c) The training record shall:

1. Identify each designated Class A and Class B operator for the period during which the owner has owned the facility and the operator has operated the facility, and shall include the Class A or Class B operator's name, class, date of initial or continuing training and any retraining, and dates that each Class A or Class B operator served in each operator class;

2. Identify each Class C operator over the preceding five years, including the Class C operator's name, date of initial training, and dates that the operator served as a Class C operator. If the owner or operator has owned the facility for less than five years, the information shall be maintained for the period during which the owner or operator has owned the facility.

SUBCHAPTER 6. RELEASE DETECTION

7:14B-6.1 General requirements for all underground storage tank systems

(a) (No change.)

(b) Owners and operators of underground storage tank systems used to store motor fuel solely for use by emergency power generators shall comply with the requirements of this subchapter, except (f) below, on or before (three years after the operative date of this amendment). When such underground storage tank systems have been provided with leak detection in accordance with (a) above, operation, maintenance, and testing of the underground storage tank system shall be in accordance with (f)1 through 3 below.

Recodify existing (b) through (d) as **(c) through (e)**. (No change in text.)

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(f) Except as set forth in (b) above, on or before (one year after the operative date of this amendment), owners and operators shall ensure that all underground storage tank systems, including electronic and mechanical components, are operated, maintained, and tested in accordance with the following:

1. Requirements developed by the manufacturer, if any;

2. A code of practice developed by a nationally recognized association or independent testing laboratory, such as Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment UST facilities" (available at www.pei.org); or

3. A method that the owner or operator demonstrates is no less protective of human health and the environment than the requirements of (f)1 and 2 above.

(g) Testing of electronic and mechanical components in accordance with (f) above shall be performed at least annually and shall include, as applicable, the following:

1. For automatic tank gauge and other controllers: testing alarm, verifying system configuration, and testing battery backup;

2. For probes and sensors: inspecting for residual buildup and ensuring floats move freely, ensuring shaft is not damaged, ensuring cables are free of kinks, bends, and breaks, and ensuring that the alarm is operable and communicates with the controller;

3. For line leak detectors: ensuring that the detectors meet the criteria at N.J.A.C. 7:14B-6.6(a)1; and

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4. For vacuum pumps and pressure gauges: ensuring proper communication with sensors and controller.

7:14B-6.5 Methods of release detection for tanks

(a) The owner or operator shall use each method of release detection for tanks according to the requirements of N.J.A.C. 7:14B-6.2, 6.3**,** and 6.4, and in accordance with the following:

1. Product inventory control shall be conducted monthly to detect a release of at least 1.0 percent of throughput plus 130 gallons on a monthly basis in the following manner:

i. – vi. (No change.)

vii. The practices described in American Petroleum Institute [Publication 1621], ["]Recommended Practice [for] **1621 "**Bulk Liquid Stock Control at Retail Outlets,**"** may be used, where applicable, as guidance in meeting the requirements of N.J.A.C. 7:14B-6.5(a)1i through vi above.

2.– 3. (No change.)

4. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control shall meet the following requirements:

i. The automatic product level monitor test shall detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product**, and shall include:**

(1) In-tank static testing conducted at least once every 30 days with the tank volume at 90 percent of nominal capacity; or

(2) Continuous in-tank leak detection operating either on an uninterrupted basis, or with a process that allows the system to gather incremental measurements to ensure an accurate test at least once every 30

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days; and

ii. (No change.)

5. – 6. (No change.)

7. Interstitial monitoring between the underground storage tank and a secondary barrier immediately around or beneath it may be used, [but only if] **provided:**

i. For UST systems using continuous vacuum, pressure, or liquid-filled methods of interstitial monitoring:

(1) The method shall be capable of detecting breaches in the inner and outer walls of the tank; and

(2) The method shall be tested at least once every 30 days; and

ii. For all UST systems, the **monitoring** system is designed, constructed**,** and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

[i. For double-walled underground storage tank systems, the sampling or testing method shall detect a release through the inner wall in any portion of the tank that routinely contains product. The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks;]

[ii.] **(1)** For underground storage tank systems with a secondary barrier within the excavation zone, the sampling or testing method used shall detect a release between the underground storage tank system and the secondary barrier. The secondary barrier shall meet the following requirements:

Recodify existing (1) through (6) as **(A) through (F)** (No change in text.)

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[iii.]**(2)** (No change in text.)

8. Any other type of release detection method, or combination of methods, **including statistical inventory reconciliation,** can be used if [it] **the method** can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05.

i. Statistical inventory reconciliation shall, in addition to paragraph (a)8 above:

(1) Report a quantitative result with a calculated leak rate;

(2) Use a threshold that does not exceed one-half the minimum detectible leak rate; and

(3) Be conducted at least once every 30 days.

9. (No change.)

7:14B-6.7 Release detection recordkeeping

(a) – (j) (No change.)

(k) The results of annual operation tests conducted in accordance with N.J.A.C. 7:14B-6.1(f) and (g) shall be maintained for as long as the site is operational in accordance with N.J.A.C. 7:14B-5.6(b). At a minimum, the results shall list each component tested, indicate whether each component tested meets criteria in N.J.A.C. 7:14B-6.1(f) or needs to have action taken, and describe any action taken to correct an issue.

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SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.1 Suspected releases

(a) The owner or operator shall complete an investigation of a suspected release in accordance with the requirements of N.J.A.C. 7:14B-7.2(a) within seven calendar days of the discovery of the suspected release, when any of the following situations have occurred:

1.– 6. (No change.)

7. Monitoring results, including alarms, from a release detection method required under N.J.A.C. 7:14B-6, indicate a release may have occurred;

Recodify existing 7. and 8. as **8. and 9.** (No change in text.)

(b) (No change.)

SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

7:14B-9.1 Out-of-service underground storage tank systems

(a) The owner or operator of an underground storage tank system [which] **that** is out-of-service shall:

1. [Notify the Department of such in writing, on forms obtained from the Department within five calendar days of the tank becoming out of service.] **Submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire, pursuant to N.J.A.C. 7:14B-2.4(c), within seven calendar days after the underground storage tank system is placed out of service.** The information shall

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include:

i.-iv. (No change.)

2. – 5. (No change.)

(b) (No change.)

(c) The owner or operator **of an underground storage tank system that has secondary containment** may request that the underground storage tank system remain out of service for a period of more than 12 months without having to close the tank system as required in (d) below by:

1. (No change.)

2. Submitting documentation at least 30 calendar days prior to the expiration of the 12-month period referred to in (c) above **indicating** that the requirements of (a)3 above have been completed and that**:**

i. [the] **The** system has had a release detection monitoring system operated in accordance with N.J.A.C. 7:14B-6.1 through 6.6 indicating that no discharge of hazardous substances has occurred during the operational life of the system or since the performance of a site investigation or remedial investigation performed in accordance with the provisions of the Technical Requirements for Site Remediation, N.J.A.C. 7:26E[.]**; and**

ii. Corrosion protection is being operated and maintained and shall continue to be operated and maintained in accordance with N.J.A.C. 7:14B-5.2 during the out-of-service period. If the corrosion protection is an impressed current cathodic protection (ICCP) system, the owner or operator must also demonstrate that the ICCP system has been inspected at least every 60 days,

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and will continue to be inspected at least every 60 days to verify that the system is on and working properly while the tank is out of service.

(d) **Except as set forth in (c) above,** [Any] **any** underground storage tank system [which] **that** is out of service for [greater] **more** than 12 months [without complying with the requirements of (c) above] shall be closed in accordance with N.J.A.C. 7:14B-9.2 [through 9.3].

(e) The owner or operator intending to put an out-of-service underground storage tank system back into service shall:

1. Submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.4(c), 30 calendar days prior to introducing product into the underground storage tank system including documentation that corrosion protection was operated and maintained in accordance with (c)2ii above and N.J.A.C. 7:14B-5.2 during the out-of-service period; and

2. The New Jersey Underground Storage Tank Facility Certification Questionnaire shall include a statement from a certified installer, pursuant to N.J.A.C. 7:14B-13, certifying that the system is properly designed and capable of being put back into service.

SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-10.1 Permit requirements

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(a) Any person who owns or operates, or is proposing to own or operate an underground storage tank system shall, except as specified in (b) and (c) below:

1. Obtain a permit from the Department prior to the repair, installation, substantial modification**,** or upgrade of the underground storage tank system, or performance of an activity specified in N.J.A.C. 7:14B-4, 5**,** and 6 requiring Department approval; [and]

2. Obtain a construction permit issued pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to the repair, installation**,** or upgrade of an underground storage tank system[.]**; and**

3. Comply with the notification requirements at N.J.A.C. 7:14B-2.1(g).

(b) An owner or operator of an existing or proposed underground storage tank system need not apply for a permit with the Department**, but shall provide notification pursuant to N.J.A.C. 7:14B-2.1(g),** when:

1.-5. (No change.)

(c) (No change.)

(d) The Department shall not issue a permit as required in (a)1 above unless the person who owns or operates or proposes to own or operate the underground storage tank system provides evidence in the permit application that the system shall include spill prevention, overfill prevention**, secondary containment,** and corrosion protection in accordance with N.J.A.C. 7:14B-4.1(a)1 through 3, and [appropriate] **interstitial** release detection monitoring in accordance with N.J.A.C. 7:14B-6[.1(a), 6.2 and 6.3].

(e) - (f) (No change.)

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SUBCHAPTER 12. PENALTIES, REMEDIES, AND [ADMINISTRATIVE]

ADJUDICATORY HEARING PROCEDURES

7:14B-12.1 Penalties

(a) (No change.)

(b) Upon a finding that an owner or operator has failed to comply with any requirement of the State Act or N.J.A.C. 7:14B[-2, 4, 5, 6 or 15], the Department may:

1. – 3. (No change.)

(c) (No change.)

7:14B-12.2 Procedure[s] for requesting **an adjudicatory** hearing[s after denial or revocation of registration, permits, certifications for individuals and business firms, and denial of ordinance adoption]

(a) **To request a hearing to contest an administrative order, a notice of civil administrative penalty assessment,** [A registrant, permittee, certificant or political subdivision may request an adjudicatory hearing to contest] a denial or revocation of a registration[,] **or** permit, **the denial or revocation of** a certification for an individual [and] **or** business firm, or the denial of an ordinance adoption issued **by the Department** pursuant to [N.J.A.C. 7:14B-11] **the State Act , the requester shall** within [30] **20** calendar days after receipt from the Department of a notice **or order** [of intent to deny or revoke 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 a notice of intent to deny an ordinance adoption by submitting] **submit** a written request, that contains all of the information listed in (b) below to the Department at the address specified at N.J.A.C. 7:14B-2.2(b) and at the following address:

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Office of Legal Affairs

ATTENTION: Adjudicatory Hearing Requests

Department of Environmental Protection

Mail Code 401-[042]**04L**

PO Box 402

401 East State Street, [4th] **7th** floor

Trenton, New Jersey, 08625-0402[;]

(b) – (f) (No change.)

SUBCHAPTER 13. CERTIFICATION OF INDIVIDUALS AND BUSINESS FIRMS

7:14B-13.2 Classifications of underground storage tank services

(a) (No change.)

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

1. – 3. (No change.)

4. Tank testing includes all activities required by this chapter relative to testing the physical integrity of an underground storage tank and appurtenant piping from inception of the test until removal of testing apparatus from the tank system. **Tank testing also includes all activities relative to the periodic testing of spill and overfill prevention equipment, periodic testing of secondary containment and interstitial monitoring, and periodic testing of electronic and mechanical components.** 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 system installation described in (b)1 above.

5. – 6. (No change.)

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7:14B-13.4 Eligibility

(a) Individuals not satisfying the criteria in (b) or (c) below may obtain certification by passing the proficiency examination described in N.J.A.C. 7:14B-13.5. 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. – 5. (No change.)

6. Applicants for the cathodic protection tester classification examination shall meet the following criteria:

i. (No change.)

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; **or Steel Tank Institute's Cathodic Protection Tester Certification Program**; and

iii. (No change.)

(b) – (d) (No change.)

7:14B-13.10 Denial, suspension, revocation**,** and refusal to renew a certification

(a) (No change.)

(b) Within [30] **20** 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) - (e) (No change.)

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

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

(a) (No change.)

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

1.- 3. (No change.)

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. **Tank testing also includes all activities relative to the periodic testing of spill and overfill prevention equipment, periodic testing of secondary containment and interstitial monitoring, and periodic testing of electronic and mechanical components.** 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 N.J.A.C. 7:14B-6.5(a)3 for the size and type of tank system being tested in the most current version of the “List of Leak Detection Evaluations for Underground Storage Tanks Systems” available at the time the individual submits the application for certification. The “List of Leak Detection Evaluations for Underground

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Storage Tanks Systems" is published by the National Work Group on Leak Detection Evaluations (NWGLDE), www.epa.gov/swerust1/pubs/ldlist.htm and is incorporated herein by reference as amended and supplemented.

5. – 7. (No change.)