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ENVIRONMENTAL PROTECTION

Site Remediation Program

Underground Storage Tanks

Certification to perform services on unregulated heating oil tank systems

Proposed Amendments: N.J.A.C. 7:14B-1, 3, 12 and 13; 7:26C-2, 10 and 11;
and 7:26E-3 and 5

Proposed Readoption: N.J.A.C. 7:14B-16

Proposed New Rules: N.J.A.C 7:14B-13.9 and 16.10

Authorized By: Lisa P. Jackson, Commissioner,
Department of Environmental Protection

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

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

DEP Docket No: 03-08-04/400

Proposal Number: PRN 2008-2008-03-08-04/400

A public hearing concerning this proposal will be held on:

Date: June 13, 2008

Time: 1 p.m.

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street

Trenton, NJ 08625

Submit written comments by (60 days after publication) to:

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Leslie W. Ledogar, Esq.

Attention: DEP Docket Number: _____

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

P.O. Box 402

Trenton, New Jersey 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone presenting oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittals on disk or CD must not be access-restricted (locked or read-only), in order to facilitate use by the Department of the electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at www.state.nj.us/dep/srp/regs.

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 requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

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The Underground Storage Tank rules, N.J.A.C 7:14B, set forth the Department's requirements for underground storage tank registration, construction and operation, and the procedures for remediating a discharge from an underground storage tank system. These rules also contain the requirements for the Department's certification program for individuals and business firms who seek Department certification to work on regulated underground storage tank systems and unregulated heating oil tank systems.

The New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 (the Act) at N.J.S.A. 58:10A-24.2 prohibits a person from performing services on either regulated underground storage tanks (USTs) or on unregulated heating oil tanks unless that person is certified in accordance with N.J.S.A. 58:10A-24.3. N.J.S.A. 58:10A-24.3 requires the Department to establish and conduct examinations to certify persons as qualified to perform services on regulated USTs and on unregulated heating oil tanks. Unregulated heating oil tanks include all residential heating oil tanks and all non-residential underground storage tanks containing heating oil used for onsite consumption with an aggregate capacity of 2000 gallons or less, the volume of which is 10 percent or more below the ground.

The intent of the certification program is to ensure that only qualified individuals knowledgeable about installing, closing, testing and remediating regulated underground storage tanks and unregulated heating oil tank systems service these tanks. The Department adopted rules establishing a certification program for individuals and business providing services on regulated USTs in 1997 at N.J.A.C 7:14B-13.

The Department adopted, by special adoption, a certification program, codified at N.J.A.C 7:14B-16, which requires that a contractor providing services on an unregulated heating oil tank system pass a proficiency test in each area for which certification is being sought. See 38 N.J.R. 3927 (September 18, 2006) for the notice of intent to adopt interim rules, and 38 N.J.R. 4748(a) (November 6, 2006) for the special adoption of those rules.

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The amendments to the Act specify that the interim rules shall be effective for a period not to exceed 18 months, or April 3, 2008. Thereafter, the rules may be amended, adopted or readopted by the Department in accordance with the Administrative Procedures Act.

This rule action proposes to readopt N.J.A.C. 7:14B-16 with amendments. As part of this proposal, the Department is also proposing minor amendments to N.J.A.C. 7:14B-1, 3, 12 and 13, as explained in greater detail below.

The Department is also proposing new rules at N.J.A.C. 7:14B-13.9 and N.J.A.C. 7:14B-16.10 concerning professional business practices to be followed by certified individuals or business firms providing services on regulated underground storage tanks and unregulated heating oil tank systems. As described in more detail below, these proposed new rules will provide a measure of consumer protection to the owners and operators of these tanks.

In addition to readopting the certification program for individuals and business firms providing services to the owner and operators of unregulated heating oil tank systems, the Department is also proposing amendments to the Department Oversight of the Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C (Oversight Rules) and the Technical Requirements for Site Remediation Rules, N.J.A.C. 7:26E (Technical Requirements) to help facilitate and speed up remediation of contamination from homeowner tanks.

Most of the unregulated heating oil tank systems in New Jersey are homeowner tanks. Generally, the remediation of discharges from these tanks is relatively straightforward and the discharge poses a low risk to public health and the environment. However, these cases represent the majority of the cases in the Department's voluntary cleanup program, and these remediations are conducted with the Department's oversight via a memorandum of agreement. Of the over 18,000 cases in the Department's database

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of known contaminated sites, 6,000 are voluntary cleanup cases, and approximately 4,000 of the voluntary cleanup cases are homeowner cases.

The Department has only 250 to 300 case managers to oversee the remediation of all 18,000 cases, including 13 case managers in the Northern Field Office and 13 case managers in the Southern Field Office. In order to focus the Department's limited resources on the more complex remediation cases which pose a greater risk to public health and the environment, the Department is proposing rules that modify its oversight of homeowner cases. First, the Department is proposing to establish a process whereby the owner of an unregulated heating oil tank system (usually a homeowner) receives a no further action (NFA) letter from the Department by employing an individual or business firm certified pursuant to N.J.A.C 7:14B-13 or 16 to remediate any discharge from the tank system. The Department's experience in overseeing the remediation of discharges from unregulated heating oil tank systems has shown that in most of these cases, the contamination from the discharge has been limited to soils and ground water contained within the boundaries of the tank owner's property. Remediation of these discharges is relatively straightforward, and clearly defined by the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. Therefore, limited, if any, Department oversight is required to ensure that the discharge is remediated in a manner that ensures the protection of public health and the environment.

This process mirrors the Department's successful Cleanup Star program, which was established as a pilot in 2004. The Cleanup Star program allows pre-qualified environmental professionals to investigate and remediate certain properties and areas of concern with limited Department oversight subject to possible audit. Under the Cleanup Star Program, the Department has established strict criteria for the pre-qualification of environmental professionals. The criteria have been designed to identify individuals whom by virtue of education, experience, and third party certification can be assumed to be sufficiently competent to remediate contamination at sites and areas of concern such as unregulated heating oil tank systems in accordance with the Technical Requirements

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and with limited Department oversight. These individuals will be known as “Cleanup Stars.” Details about the program can be found at www.nj.gov/dep/srp/cleanupstar.

After evaluation of the pilot program, the Department has determined that it was successful in achieving its goal, namely, to limit direct Department oversight of low complexity cases resulting in a more expedited remediation of these cases and allowing Department case managers to focus on the more contaminated and complex sites. Therefore, the Department is proposing to amend the Oversight Rules at N.J.A.C. 7:26C-2.5 to require an owner of an unregulated heating oil tank system to use an individual or business firm certified pursuant to N.J.A.C. 7:14B-13 or 16 to remediate a discharge from the tank system in order to get the NFA letter from the Department contemplated by N.J.A.C. 7:26C-2.6.

To ensure that discharges from these tanks are remediated in a manner that is protective of public health and the environment, the Department is proposing that the certified individual and business firm submit several documents to the Department. The documents include a certification that the tank and any resulting contaminants are eligible for the program pursuant to N.J.A.C. 7:26C-2.5, a certification that the remediation was performed pursuant to the Technical Requirements for Site Remediation, a completed Unregulated Heating Oil Tank System Questionnaire which summarizes the work that the contractor performed in order to remediate the discharge, and a Remedial Action Report prepared pursuant to the Technical Requirements at N.J.A.C. 7:26E-6.7. The Department will conduct an audit of about 20 percent of these cases by reviewing all of the submitted documents, including the Remedial Action Report, in order to ensure the integrity of the program. The Department’s cost to conduct these audits is included in the \$400 fee that is being proposed at N.J.A.C. 7:26C-9.2(a)3.

To be consistent with the proposed rules designed to reduce the necessity for homeowners to obtain Departmental oversight, the Department is proposing two additional amendments to its rules. The first is to the Oversight Rules at N.J.A.C. 7:26C-

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11.2(a)1, which would remove the requirement that an applicant for a loan or grant from the Petroleum Underground Storage Tanks Remediation, Upgrade and Closure Fund must include a statement in the application that the remediation is being conducted in accordance with an oversight document. The second adds a new provision to the Technical Requirements at N.J.A.C. 7:26E-5.2(c) which states that a remedial action selection report does not have to be submitted to the Department for review if the site or area of concern being remediated is an unregulated heating oil tank system.

Proposed amendments to the Underground Storage Tank Rules

Subchapter 1, General Information, describes the scope of the chapter, namely that it constitutes the Department's rules for underground storage tank operation and management. This subchapter contains definitions of terms and certification requirements for anyone making a submission to the Department.

The Department proposes to amend N.J.A.C 7:14B-1.1 to clarify that the chapter applies to individuals and business firms regulated by the Act as well as to underground storage tank systems.

N.J.A.C 7:14B-1.3 sets forth the purpose of the chapter. The Department proposes to add a new paragraph 11 to N.J.A.C 7:14B-1.3(a) which would state that one of the purposes of N.J.A.C 7:14B is to establish a certification program for individuals and business firms to provide certain services on regulated underground storage tank systems and unregulated heating oil tank systems as specified the Act at N.J.S.A. 58:10A-24.

N.J.A.C 7:14B-1.4 states to whom the chapter applies. The Department proposes to add the word "systems" to the end of N.J.A.C 7:14B-1.4(a) to clarify that the chapter contains the requirements for an unregulated heating oil tank or equipment related to the unregulated heating oil tanks, including the appurtenant pipes, lines, fixtures and other related equipment.

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N.J.A.C 7:14B-12.1 sets forth the penalties for chapter violations. The Department proposes to amend N.J.A.C. 7:14B-12.1(b) to correct the citation to the section entitled “Denial, revocation, and refusal to renew a certification” from N.J.A.C 7:14B-16.10 to 16.11.

N.J.A.C 7:14B-13 contains the rules that pertain to certification of individuals and business firms that provide certain services on regulated underground storage tank systems. The Department proposes to delete the word “certified” when it appears before the word “individual” in the first sentence of N.J.A.C 7:14B-13.1(d) and add the phrase “certified pursuant to this subchapter” after the word “individual” in this sentence to clarify that the certification that the individual must hold is one granted pursuant to N.J.A.C 7:14B-13.

The Department proposes to add a new subsection (m) to N.J.A.C 7:14B-13.1 requiring an individual and business firm certified pursuant to N.J.A.C 7:14B-13 to comply with the professional business practices described in N.J.A.C 7:14B-13.9 as a general requirement for certification.

The Department proposes to add the phrase “of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq.” to N.J.A.C 7:14B-13.4(a)1i when referring to the experience needed to be eligible for certification pursuant to N.J.A.C 7:14B-13 to clarify that the experience must be with performing the work on regulated underground storage tank systems. The same amendment is also proposed for N.J.A.C 7:14B-13.4(a)2i, 3i, 4i, and 6i.

The Department proposes to add the phrase “on equipment that satisfies the requirements of N.J.A.C 7:14B-6.1(a)3 and 6.5(a)3” to N.J.A.C 7:14B-13.4(a)4i to clarify that the experience to be used to obtain certification must be experience with equipment that provides meaningful test results as demonstrated by the standard used for

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release detection in regulated underground storage tanks. This same language is also being proposed for the eligibility requirements for unregulated heating oil tank systems at N.J.A.C 7:14B-16.5(a)4i.

The Department proposes to amend N.J.A.C 7:14B-13.4(a)7 to add “physical or chemical” science” to the list of bachelor degrees that an applicant for the subsurface evaluation of unregulated heating oil tank systems classification examination may hold in order to be eligible to take the examination. The Department’s experience in implementing existing Subchapter 13 has shown that individuals that hold a bachelor’s degree in physical sciences or chemistry would be qualified to be certified as a subsurface evaluator. This same language is also being proposed for the eligibility requirements for unregulated heating oil tank systems at N.J.A.C 7:14B-16.5(a)7i.

Proposed new N.J.A.C 7:14B-13.9, professional business practices, describes the professional business practices that an individual or business firm must meet in order to be certified to provide services on regulated underground storage tank systems. This section is being proposed to reflect the amendments to the Act at N.J.S.A. 58:10A-24.3d4 that require the Department to include in its certification program standards for pricing and customer service. N.J.A.C 7:14B-13.9 is intended to provide a measure of consumer protection to owners and operators of regulated underground storage tank systems who hire certified individuals and business firms to provide services to their tanks. The professional business practices being proposed herein include the following:

- N.J.A.C 7:14B-13.9(a)1 - The individual or business firm shall perform all services in accordance with all Federal, State and local rules and regulations.
- N.J.A.C 7:14B-13.9(a)2 – The individual and business firm shall employ fair and reasonable pricing and business practices.

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- N.J.A.C 7:14B-13.9(a)3 - The individual and business firm shall provide all prospective clients a list of the standard price for the services identified by N.J.A.C 7:14B-13.9(c).
- N.J.A.C 7:14B-13.9(a)4 - The individual and business firm shall present their Department issued certification card to all prospective clients upon request.
- N.J.A.C 7:14B-13.9(b) - The individual and business firm must enter into a contract with a client when providing any service listed in N.J.A.C 7:14B-13. The contract must contain such items as a clear and detailed description of the work activities to be performed; a list of all materials, equipment, tools and personnel; the maximum contract price that cannot be exceeded without written amendment; estimated timeframes for completion of the work; and a listing of all services which exceed the requirements of the local, State or Federal rules and regulations.
- N.J.A.C 7:14B-13.9(c) – Upon request of the client, a standard price list of the services provided by the individual or business firm such as the categories of labor and the daily/hourly rate; rates for heavy equipment, instrumentation, vehicles and ancillary equipment that is separately billed; variable costs such as subcontracted services, transport and disposal of wastes; listing of government fees; and ancillary administrative costs.
- N.J.A.C 7:14B-13.9(d) - Contains the requirements for individuals and business firms providing services with financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund (the Fund). These requirements include submitting documentation to the Department for the costs of the services for which the Fund is providing financial assistance, and an agreement that the individual or business firm will

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cooperate and help facilitate a Department audit of the individual or business firm's pricing and business practices.

- N.J.A.C 7:14B-13.9(e) – Upon the Department's request, the individual or business firm agrees to provide the Department with any information that will aid in a review of loan and grant applications and complaints against the individual or business firm. The information shall include such things as subcontractor invoices, receipts for rental equipment, material purchases and miscellaneous costs necessary to conduct remediation such as local police traffic control, and documents associated with services provided such as copies of field notes, manifests and timesheets.

The Department proposes to recodify N.J.A.C 7:14B-13.9, concerning the denial, suspension, revocation and refusal to renew a certification, as N.J.A.C 7:14B-13.10.

The Department proposes to add a new paragraph 5 to existing N.J.A.C 7:14B-13.9(a) (recodified as N.J.A.C 7:14B-13.10(a)) to reflect that a violation of the new provision at N.J.A.C 7:14B-13.9 requiring an individual and business firm to adhere to the professional business practices described therein is a criterion the Department may use to deny, suspend, revoke or refuse to renew a certification issued pursuant to N.J.A.C 7:14B-13.

The Department proposes to add a new paragraph 6 to existing N.J.A.C 7:14B-13.9(a) (recodified as N.J.A.C 7:14B-13.10(a)) to clarify that the Department may deny, suspend, revoke or refuse to renew a certification issued pursuant to N.J.A.C 7:14B-13 if an individual or business firm violates any provision of N.J.A.C 7:14B, the Technical Requirements, N.J.A.C. 7:26E, the Oversight rules, N.J.A.C. 7:26C, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control

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Act, N.J.S.A. 58:10A-1 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or of an order issued pursuant to any of these Acts.

The Department proposes to add the phrase “system services” to the end of N.J.A.C. 7:26B-16.1(b) to clarify that an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide services on regulated underground storage tank systems is also certified to perform those services pursuant to N.J.A.C 7:14B-16.

The Department proposes to amend N.J.A.C. 7:26B-16.1(c) to clarify that an individual or business firm licensed to perform well drilling or pump installation pursuant to N.J.S.A. 58:4A-11 is not required to be certified pursuant to N.J.A.C 7:14B-16 to provide well drilling services to unregulated heating oil tank systems.

The Department proposes to amend N.J.A.C. N.J.A.C 7:14B-16.2(d) which provides that owners or operators of unregulated heating oil tank systems shall ensure that the services performed on their tank systems requiring a permit from local officials are performed by a individual or under the immediate, on-site supervision of an individual certified pursuant to N.J.A.C 7:14B-13 or 16, unless the requirement for a certified individual is exempted by N.J.A.C 7:14B-16.2(k).

The Department proposes to delete the lead in sentence to N.J.A.C 7:14B-16.2(e), exempting individuals who are permanent employees at a certified business firm or working under the immediate on-site supervision of a certified individual from following the requirements in (f) and (g), which are the requirments that pertain to unregulated heating oil tank systems. This sentence is antithetical to the intent of the subsection and was adopted in error. N.J.A.C 7:14B-16.2(e) is supposed to mirror the intent of the analogous provision in N.J.A.C. 7:26B-13.1(e) concerning who may work on regulated underground storage tanks. The Department is proposing to replace the deleted sentence with the following lead-in sentence: “Except as exempted by (k), below, no individual shall perform any service on an unregulated heating oil tank system unless”. The

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Department is also making grammatical edits to paragraphs 1 and 2 so that the language fits with the new lead in sentence.

The Department proposes to add to N.J.A.C 7:14B-16.2(j) the street address for the Examination and Licensing Unit.

The Department proposes to add a new subsection (k) to N.J.A.C 7:14B-16.2 to provide an exemption to the requirement that an individual must be certified or working under the immediate on-site supervision of a certified person in order to perform any service on an unregulated heating oil tank system. The exemption only applies if the service being rendered is repair or maintenance that falls into the category of “entire unregulated heating oil tank system installation” when the local authorities do not require a permit to perform the repair or maintenance. The regulated community has informed the Department that there are many maintenance activities that are routinely performed by service people who are not usually certified in accordance with N.J.A.C 7:14B-16. Most service people would not meet the education and experience requirements of N.J.A.C 7:14B-16 to become certified. The regulated community was concerned that without this exemption, the certification program would greatly interfere with the service portion of their business, since even simple maintenance work would require a certified individual. In order to distinguish between routine maintenance activities and more complex activities where certification would be needed, the Department is proposing that if the local government requires a permit for the activity, the individual performing the activity needs to be certified by the Department.

The Department proposes to amend N.J.A.C 7:14B-16.3(b)1 to add the phrase “requiring a permit from local officials” in order to make the provision consistent with proposed new N.J.A.C 7:14B-16.2(k) which provides that an individual or business firm is not required to be certified in the classification of unregulated heating oil tank system installation when performing repair or maintenance if a permit is not required from a municipal construction official.

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The Department proposes to amend N.J.A.C 7:14B-16.3(b)1iii to clarify that the category of entire unregulated heating oil tank system installation does not include routine maintenance performed on appurtenant pipes, lines, fixtures and other related equipment if a permit for the installation is not required from the local officials. This amendment is necessary to make the provision consistent with proposed N.J.A.C 7:14B-16.2(k).

The Department proposes to amend N.J.A.C 7:14B-16.3(b)5i by deleting the requirements that a Department certified subsurface evaluator witness the tank and/or piping removal and inspect the tank system for possible holes. The Department included this requirement in the interim adoption in order to mirror the same provision in N.J.A.C 7:14B-13.(b)5 for subsurface evaluators of regulated tanks. Since the adoption, the Department has realized that for unregulated tanks this requirement is not necessary because municipal authorities inspect these tanks. To require a Department certified subsurface evaluator would result in a duplicative effort.

The Department proposes to amend N.J.A.C 7:14B-16.5(a)1i to add an additional criterion for eligibility to take the exam in the category of entire unregulated heating oil tank system installation. The applicant would be eligible to take the exam if s/he has five years experience and has participated in at least 12 installations, no fewer than two installations of which must have occurred during each year of experience. The Department is adding this criterion because members of the regulated community have stated that they often need more time to gain the experience required by the Department to sit for the exam. The Department is also proposing to add this requirement to N.J.A.C 7:14B-16.5(a)2i, 3i, 4i and 6i.

The Department proposes to amend N.J.A.C 7:14B-16.5(a)4i to require that the requisite experience in tank testing was done on equipment that satisfies the requirements of N.J.A.C 7:14B-6.1(a)3 and 6.5(a)3. These provisions provide a standard for the type of

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equipment to be used and tests to be performed on tanks to determine if there has been a release from the tanks.

The Department proposes a new N.J.A.C 7:14B-16.10, professional business practices, which describes the professional business practices that an individual and business firm must meet in order to be certified to provide services on unregulated underground storage tank systems. This section is being proposed to reflect the amendments to the Act at N.J.S.A. 58:10A-24.3d4 requiring the Department to include standards for pricing and customer service in its certification program. N.J.A.C 7:14B-16.10 is intended to provide a measure of consumer protection to owners and operators of unregulated underground storage tank systems who hire certified individuals and business firms to provide services to their tanks. The subsections of this section are the same as those being proposed at N.J.A.C 7:14B-13.9.

Proposed amendments to the Department Oversight of the Remediation of Contaminated Sites Rules

Subchapter 2 of the Oversight rules contains the provisions that pertain to oversight documents and no further action letters. The Department proposes to amend the title of Subchapter 2 to include “remediation of unregulated heating oil tank systems” to reflect that the Department’s proposed amendments to N.J.A.C. 7:26C-2.5 describing the way in which an owner of an unregulated heating oil tank system shall obtain an NFA letter from the Department.

N.J.A.C. 7:26C-2.1(a) sets forth the scope of the subchapter. The Department proposes to replace the scope statement at N.J.A.C. 7:26C-2.1(a)3 with a new statement that reflects that the Department is amending the scope of Subchapter 2. The Department proposes that Subchapter 2 will no longer require a person to request that the Department review a remedial action report for an unregulated heating oil tank system. Instead, the Department is proposing language at N.J.A.C 7:14B-2.1(a)3 which states that the scope of Subchapter 16 includes the procedures for owners and operators of unregulated heating

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oil tank systems to obtain an NFA letter from the Department by using an individual and business firm certified in the category of subsurface evaluation pursuant to N.J.A.C 7:14B-13 or 16.

The Department proposes to amend the title of N.J.A.C. 7:26C-2.5 from “Review of a remedial action report for remediation of discharges from unregulated heating oil tank systems” to “Remediation of discharges from unregulated heating oil tank systems” to reflect the Department’s proposed amendments to N.J.A.C. 7:26C-2.5.

The Department proposes to replace existing N.J.A.C. 7:26C-2.5, which outlines the process whereby a person may request the Department’s review of a remedial action report for remediation of a discharge from an underground storage tank not regulated pursuant to N.J.A.C 7:14B, with new requirements for an owner of an unregulated heating oil tank system to obtain an NFA letter pursuant to N.J.A.C. 7:26C-2.6 for remediation of a tank system. Proposed new N.J.A.C. 7:26C-2.5 provides that in order for an owner of an unregulated heating oil tank system to obtain an NFA, s/he must employ an individual and business firm that is certified in the category of subsurface evaluation pursuant to N.J.A.C 7:14B-13 or 16 to remediate the discharge from the tank in lieu of obtaining Department oversight through a memorandum of agreement. As explained in more detail below, this proposed section, at N.J.A.C. 7:26C-2.5(d), also sets forth the circumstances under which the an owner must obtain Department oversight of the remediation in order to get an NFA, regardless of whether a certified individual or business firm conducted the remediation.

As explained in the summary above, the experience of the Department in overseeing the remediation of unregulated heating oil tank systems has shown that the remediation of the majority of these tank systems is similar and relatively straightforward when compared to remediation of other types of contaminated sites. Based on this knowledge, the Department developed a pilot program known as the “Cleanup Star” program, whereby contractors that demonstrated to the Department their proficiency,

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knowledge and experience in remediating discharges from underground storage tank systems were allowed to remediate low impact contaminated sites without Department oversight. This program has proven to be successful in remediating these sites in an expedited manner. The Department is proposing to codify the part of this program concerning unregulated heating oil tank systems in the rules governing the certification program at N.J.A.C 7:14B-13 and 16. This would allow owners of unregulated heating oil tank systems (mostly homeowners) to remediate discharges from their tank systems and obtain NFA letters from the Department without the need for Department oversight in the form of a MOA. This will result in unregulated underground storage tank cases being remediated more quickly. It will also benefit the Department by allowing for more effective use of its limited resources by allowing Department staff to focus on overseeing the remediation of more complex contaminated sites.

The Department proposes a new N.J.A.C. 7:26C-2.5(a) that requires an owner of an unregulated heating oil tank system to obtain an NFA letter concerning the remediation of a discharge from the system by employing the services of an individual and business firm certified in the category of underground storage tank subsurface evaluation pursuant to N.J.A.C 7:14B-13 or 16 to conduct the remediation. This provision supplants the Department's current requirement that an owner of an unregulated heating oil tank system requiring remediation to obtain Department oversight of the remediation through a MOA in order to obtain an NFA letter from the Department.

Proposed new N.J.A.C. 7:26C-2.5(b) outlines the documents and fixed oversight cost that the Department must receive prior to issuing an NFA letter. These documents include two certifications concerning the veracity of the information being submitted to the Department; a completed unregulated heating oil underground storage tank remediation questionnaire; the fixed oversight cost of \$400, which is required to cover the Department's cost to issue the NFA letter and audit the certified contractor program; and a remedial action report prepared pursuant to the Technical Requirements at N.J.A.C. 7:26E-6.7 to be used by the Department for auditing purposes.

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The Department proposes a new N.J.A.C. 7:26C-2.5(c) which provides the address to which the person responsible for conducting the remediation is required to submit the information required by N.J.A.C. 7:26C-2.5.

Proposed new N.J.A.C. 7:26C-2.5(d) lists the circumstances in which an owner of an unregulated heating oil tank system must obtain Department oversight in order to obtain an NFA. These circumstances include instances where the discharge from the tank system results in an Immediate Environmental Concern (IEC); ground water contamination resulting from the discharge is within 100 feet of a potable well; groundwater contamination resulting from the discharge has migrated beyond the property boundaries; a vapor intrusion investigation is warranted; the discharge impacts a surface water body or wetlands; a restricted or limited restricted use remedial action is being implemented at the site; any variance from the Technical Requirements is being used as part of the remediation; the remedy includes a discharge requiring a NJPDES permit-by-rule or an on-scene coordinator pursuant to the Water Pollution Control Act; or the remediation is required to be conducted or is already being conducted pursuant to an Administrative Consent Order or is required by an Administrative Order or a Judicial Order. The Department has determined that these situations result in more complex cases requiring direct Department oversight to ensure that the site is being remediated so that it is protective of public health and the environment.

Subchapter 9 of the Oversight Rules concerns oversight costs, including the fees that are paid to the Department to reimburse it for the work it does in overseeing the remediation of contaminated sites. The Department proposes to amend the entry at N.J.A.C. 7:26C-9.2(a)3 to include the phrase “Unregulated Heating Oil Tank System Remediation Questionnaire and” to reflect that the \$400 fee is required for Department review the Questionnaire or a remedial action report if Department oversight is required pursuant to N.J.A.C. 7:26C-2.5(d). This fixed oversight cost will be used by the Department to implement this program, including the audit of certified contractors

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conducting remediation work on unregulated heating oil tank systems without

Department oversight pursuant to N.J.A.C. 7:26C-2.5 and the issuance of the NFA letters.

Subchapter 10 of the Oversight rules concerns civil administrative penalties and requests for adjudicatory hearings. The Department proposes to amend the violations table at N.J.A.C. 7:26C-10.4(c)4 to add the grace period designations and base penalty amounts for proposed new N.J.A.C. 7:26C-2.5(a) and N.J.A.C. 7:26C-2.5(d). All of these provisions are designated as non-minor because violations of these provisions would undermine the intent of the program and cannot be corrected within a grace period.

The Department proposes to amend the violations table at N.J.A.C. 7:26C-10.4(c)5 to correct the penalties for non-minor violations of N.J.A.C 7:14B-13 and 16. The Act at N.J.S.A. 58:10A-24.6 and the Underground Storage Tank rules at N.J.A.C 7:14B-12.4(a), cap the civil administrative penalty that the Department can assess at \$5,000 for the first offense. The violations table at N.J.A.C. 7:26C-10.4(c)5 lists the base penalties for non-minor violations of N.J.A.C 7:14B-13 and 16 as \$12,000 which is consistent with non-minor violations of other rule provisions that are not subject to the limitations of the Act and N.J.A.C 7:14B-12.4(a). However, the Department proposes to amend the table to limit the base penalties for violations of N.J.A.C 7:14B-13 and 16 to \$5,000 in order to be consistent with the Act and the UST rules.

The Department is also proposing to amend the violations table at N.J.A.C. 7:26C-10.4(c)5 to add the grace period designation and base penalty amounts for violations of the new sections added to the UST rules at N.J.A.C 7:14B-13.9 and 16.10, which describe the professional business practices with which an individual or business firm must comply with in order to receive Department certification.

Subchapter 11 of the Oversight rules contains the rules that govern the petroleum underground storage tank remediation upgrade and closure fund (the Fund). The Department proposes to amend N.J.A.C. 7:26C-11.2(a)1 to delete the requirement that an

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applicant for a loan or grant from the Fund include in the application a statement that the remediation is being conducted in accordance with an oversight document executed pursuant to N.J.A.C. 7:26C. This proposed amendment is necessary in order to be consistent with the Department's proposed amendment to N.J.A.C. 7:26C-2.5 requiring owners of unregulated heating oil tank systems to employ Department certified contractors to conduct the remediation of discharges from these systems without Department oversight to obtain an NFA letter from the Department.

Proposed amendments to the Technical Requirements for Site Remediation

Subchapter 3 of the Technical Requirements concerns preliminary assessments and site investigations. The Department proposes to delete the provision in N.J.A.C. 7:26E-3.13(c)3v that exempts the person responsible for conducting the remediation of an area of concern that consists of a storage tank storing heating oil for on-site consumption in a one to four family residential building where there has been no groundwater impact from submitting the site investigation summary table data as an electronic deliverable to the Department. This data is routinely generated in an electronic format, and therefore would not pose an additional burden on the person responsible for submitting the summary table.

Subchapter 5 of the Technical Requirements concerns remedial action selection. The Department proposes to amend N.J.A.C. 7:26E-5.2(c) to exclude persons responsible for conducting the remediation of unregulated heating oil tank systems from the requirement to submit a remedial action selection report to the Department for approval unless the person is required to enter into a Memorandum of Agreement or Administrative Consent Order with the Department pursuant to the Oversight Rules at N.J.A.C. 7:26C-2.5(d). This amendment is necessary in order to be consistent with proposed new N.J.A.C. 7:26C-2.5 which requires owners of unregulated heating oil tank systems to employ a contractor certified pursuant to N.J.A.C 7:14B-13 or 16 to remediate a discharge from the tank system to obtain an NFA letter in lieu of obtaining Department oversight of the remediation. This requirement includes discharges that contaminate

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ground water as long as the groundwater contamination has not migrated from the property where the discharge originated.

Social Impact

The remediation of contaminated sites improves the overall quality of the environment for the use and enjoyment of the citizens of New Jersey. The proposed readoption of the UST rules that established a certification program for individuals and business firms performing work on unregulated heating oil tank will have a positive social impact on the citizens of New Jersey by ensuring that individuals and business firms that provide services to owners and operators of underground storage tank systems, whether or not regulated by N.J.A.C 7:14B, will have the requisite knowledge and experience in providing services to tank systems in a manner that is protective of public health and the environment.

The proposed amendments to the Oversight Rules at N.J.A.C. 7:26C-2.5 will result in a positive social impact by eliminating cases which pose a low environmental risk, such as cases involving most discharges from unregulated heating oil tank systems (for the most part, homeowner cases) from the Department's caseload, thus allowing Department staff to focus its efforts on cases that pose a higher risk to the citizens of New Jersey. N.J.A.C. 7:26C-2.5 requires an owner of an unregulated heating oil tank system to obtain an NFA letter concerning the remediation of a discharge from the system by employing the services of an individual and business firm certified in the category of underground storage tank subsurface evaluation pursuant to N.J.A.C 7:14B-13 or 16 to conduct the remediation. This requirement supplants the current practice of the owner entering into a memorandum of agreement with the Department in order to obtain Department oversight of the remediation of the discharge, and thus receive an NFA letter. Because the contamination from these sites generally poses a low environmental risk, the Department considers them low priority cases. However, there is a high volume of these "homeowner" cases assigned to Department personnel for oversight. Establishing a

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system whereby homeowners are required to use Department certified contractors to perform the remediation of the site in order to receive an NFA letter instead of obtaining Department oversight will result in a positive social impact by freeing up limited Department resources to focus on the sites posing greater risks to public health and the environment.

The proposed amendment to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.2(c), which states that a remedial action selection report is not required if the site or area of concern being remediated is an unregulated heating oil tank system unless the person responsible for conducting the remediation is required to obtain an Memorandum of Agreement or Administrative Consent Order pursuant to the Oversight Rules at N.J.A.C. 7:26C-2.5(d) will not have a social impact. The majority of remediations of unregulated heating oil tank systems do not require the person responsible for conducting the remediation of the tank system to submit a remedial action selection report.

Economic Impact

Once the Department actually implements the certification program for individuals and business firms performing work on unregulated heating oil tank systems at N.J.A.C 7:14B-16, the Department anticipates that this may have a negative economic impact on those individuals and business firms that were not previously certified pursuant to N.J.A.C 7:14B-13. In addition, N.J.A.C 7:14B-16, proposed for readoption, requires the certified individual or business firm to maintain evidence of financial responsibility assurance, such as a liability insurance policy, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of services on unregulated heating oil tank systems. For example, the cost of obtaining a liability insurance policy ranges from \$4,000 to \$14,000. However, the increased cost of obtaining liability insurance would not be borne by a single certified individual or business firm since the cost of the insurance would decrease as the pool of contractors needing insurance increases. Once implemented, N.J.A.C 7:14B-16 may also have a negative economic

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impact on the citizens of New Jersey if the business firms required to maintain evidence of financial responsibility assurance due to becoming certified pursuant to N.J.A.C 7:14B-16 pass these costs on to their customers. This possible cost increase to the customer will be offset by the economic benefit that the customer will get from the Professional Business Practice requirements in N.J.A.C 7:14B-13.9 and 16.10, such as the requirement to provide all prospective clients a list of the standard price for each service being rendered and to enter into a contract which details the work being done and the maximum contract price that cannot be exceeded without written amendments to the contract.

Eliminating the need to obtain Department oversight for the remediation of discharges from unregulated heating oil tank systems to obtain an NFA letter may have a positive impact to the extent that decreased direct Departmental oversight may help homeowner real estate transactions to proceed more rapidly. However, the direct cost of Departmental oversight will not change because the fixed oversight cost to obtain Department oversight for review of a remedial action report concerning an unregulated heating oil tank system at N.J.A.C. 7:26C-9.2(a) will continue to be \$400. The Department is proposing that the cost to submit an Unregulated Heating Oil Underground Storage Tank Remediation Questionnaire required by N.J.A.C. 7:26C-2.5 to obtain an NFA letter is \$400. Therefore, there will be no additional cost to owners of unregulated heating oil tank systems to obtain an NFA letter.

Environmental Impact

The proposed readoption of the UST rules establishing a certification program for individuals and business firms providing services to unregulated heating oil tank systems at N.J.A.C 7:14B-16 will have a positive environmental impact by ensuring that individuals and business firms performing work on unregulated heating oil tank systems have the requisite knowledge to conduct the work in a manner that is protective of public health and the environment.

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The proposed amendments to the Oversight Rules at N.J.A.C. 7:26C-2.5 will result in a positive environmental impact by eliminating cases that pose a low environmental risk to public health and the environment, such as cases involving discharges from unregulated heating oil tank systems, from the Department's caseload, allowing the Department to focus its limited resources on overseeing remediations that pose the greatest environmental risk.

Federal Standards Statement

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

On September 23, 1988, the EPA published, in the Federal Register, regulations governing underground storage tank systems. These rules (40 C.F.R. 280) define an underground storage tank and the regulated universe of underground storage tanks; construction standards for new and existing tank systems; monitoring standards for new and existing tank systems; registration requirements for tank systems; operational requirements for tank systems; closure requirements; and investigation requirements when tank systems are removed, have discharged or are suspected to have discharged.

Although New Jersey has rules at N.J.A.C 7:14B concerning underground storage tank systems which mirror the Federal requirements, the underground storage tank systems that are the subject of the proposed readoption of N.J.A.C 7:14B-16 are those that are not regulated by the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq, or the Underground Storage Tank Rules, N.J.A.C 7:14B.

In addition, N.J.A.C. 7:14B-16 sets forth the requirements for certification of individuals and firms to perform services on unregulated heating oil tank systems. The requirement for certification was mandated by N.J.S.A. 58:10A-24. There is no designated

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certification program in the Federal regulations. The Federal regulations do not set up or require certification of any type of contractor. Therefore, the Department's certification program, as mandated by State law, does not contain any standards or requirements that exceed Federal law or standards. Accordingly, no further analysis is required pursuant to Executive Order 27 (1994) and P.L. 1995, c.65.

Jobs Impact

The proposed readoption of N.J.A.C 7:14B-16, which established a certification program for individuals and business firms providing services to unregulated heating oil tank systems, may have an impact on jobs in New Jersey, both positive and negative. The rules proposed for readoption will create the opportunity for more jobs for parties who seek certification for providing services on unregulated heating oil tank systems. The negative impact will be due to parties that are currently providing these services and do not wish or are unable to obtain certification, thus will be precluded from performing those services upon adoption of these amendments.

The proposed amendments to N.J.A.C 7:26C-2 of the Oversight Rules requiring owners and operators of unregulated heating oil tank systems to employ an individual and business firm certified pursuant to N.J.A.C 7:14B-13 or 16 to obtain an NFA letter from the Department will not have an impact on jobs in New Jersey. Current practice for owners and operators of unregulated heating oil tank systems is to employ a contractor to perform the services needed to obtain an NFA letter from the Department. Thus, the proposed provisions at N.J.A.C. 7:26C-2.5 will not result in the increase or decrease in jobs for parties performing these services.

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Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed the proposed amendments and determined that agricultural operations will not be impacted by the proposed rule amendments. Farm owners often elect to hire environmental consultants to conduct an evaluation of residual soil contamination from unregulated heating oil tank systems containing heating oil and gasoline for farming equipment. The amendments being proposed herein do not impact whether or not a farmer will hire an environmental consultant. Thus the amendments will not affect agriculture in New Jersey.

Regulatory Flexibility Statement

In accordance with the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full time employees. Small businesses to which the proposed rule amendments will apply include any small business that provides service to or owns an unregulated heating oil tank system.

The rules proposed for readoption and the accompanying amendments being proposed herein may affect small businesses that do not have or are unable to obtain certification to provide services to unregulated heating oil tank systems. N.J.A.C 7:14B-16 requires Department certification in order to provide the certain services to unregulated heating oil tank systems. Proposed N.J.A.C. 7:26C-2.5 requires owners of unregulated heating oil tank systems to employ a Department certified contractor to obtain an NFA letter from the Department. Therefore, having Department certification will give small businesses that are certified a marketing advantage over small businesses that are not certified.

The proposed rules may also have a negative affect on small businesses since the proposed rules at N.J.A.C 7:14B-16.9 require businesses engaged in performing unregulated heating oil tank system services to maintain evidence of financial

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responsibility assurance. The cost of obtaining a liability insurance policy ranges from \$4,000 to \$14,000. However, the increased cost of obtaining liability insurance, would not be borne by a single certified individual or business firm since the cost of the insurance would decrease as the pool of contractors needing insurance. Finally, the proposed rules at N.J.A.C 7:14B-16.10 requires individuals and business firms performing services on unregulated heating oil tank systems to pay certain fees. However, the most costly fees for obtaining or renewing certification are distributed over the three year period of the certification.

N.J.A.C 7:14B-16.2(a) requires that certification in the category of entire unregulated heating oil tank system installation is not required when performing a repair if the local authorities do not require a permit to perform this activity. Therefore, small businesses that perform these types of repairs will not be affected by the proposed readoption of this provision.

Because the Department is currently in the process of setting up the certification program for individuals and businesses involved with unregulated home heating oil tanks, it is unable to estimate the number of small businesses to which the rules proposed for readoption will apply. The proposed rule amendments do not contain different or additional reporting requirements for small businesses.

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Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). As stated in the Jobs Impact statement above, the majority of sites that this proposed readoption and accompanying amendments will affect are homeowner sites. Some of these sites may be located within smart growth areas that are identified in the State Plan. The proposed readoption of the rules at N.J.A.C 7:14B that require the certification of individuals and business firms providing services to regulated and unregulated underground storage tanks will have a positive impact on the State's achievement of smart growth and the implementation of the State Plan by ensuring that the parties providing these services are qualified and knowledgeable of environmental requirements, regulations and statutes. In addition, the proposed amendments that limit Department oversight of the remediation of unregulated heating oil tank systems will free case managers to oversee the remediation of brownfield cases and move these sites through the remediation process more quickly and efficiently.

Full text of the rules proposed for readoption appears at N.J.A.C. 7:14B-16.

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

UNDERGROUND STORAGE TANK RULES

SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.1 Scope

This chapter shall constitute the rules of the Department of Environmental Protection for all underground storage tank facilities and individuals and business firms regulated by the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

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7:14B-1.3 Purpose

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

1. – 8. (No change.)

9. To establish financial responsibility assurance requirements for remediation of discharged hazardous substances and compensating third parties for bodily injury and property damage caused by a discharge from an underground storage tank system; [and]

10. To protect human health and the environment of the State by ensuring sound underground storage tank management, 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.

7:14B-1.4 Applicability

(a) This chapter contains the requirements for the registration, operation, design, construction and installation, permitting, release reporting and investigation, remediation, and closure of underground storage tanks and underground storage tank systems that contain hazardous substances, as well as the requirements for certification of individuals and business firms performing services on underground storage tanks and underground storage tank systems and on unregulated heating oil tank[s] systems.

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(b) – (g) No change.

SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE HEARING PROCEDURES

7:14B-12.1 Penalties

(a) (No change.)

(b) Failure by any person to comply with any requirement of N.J.A.C. 7:14B-1, 3 or 7 through 14, may result in the assessment of civil administrative penalties, pursuant to the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-10, and any other enforcement action, or any action pursuant to N.J.A.C. 7:14B-16.[10]11.

(c) – (d) (No change.)

SUBCHAPTER 13. CERTIFICATION OF INDIVIDUALS AND BUSINESS FIRMS

7:14B-13.1 General requirements for certification

(a) – (c) (No change.)

(d) The owner or operator of an underground storage tank system shall ensure that all services performed on regulated underground storage tank systems pursuant to N.J.S.A. 58:10A-21 et seq. and this chapter are performed by [a certified] an individual certified pursuant to this subchapter or under the immediate, on-site supervision of [a certified] an individual certified pursuant to this subchapter. If a certified individual is not present at the underground storage tank site, the owner or operator shall suspend all regulated activities in that classification of service.

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(e) – (l) (No change.)

(m) An individual and business firm certified under this subchapter shall comply with the professional business practices referenced in N.J.A.C. 7:14B-13.9.

7:14B-13.4 Eligibility

(a) Individuals not satisfying the criteria in N.J.A.C. 7:14B-13.4(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. Applicants for the entire system installation classification examination shall meet the following criteria:

i. Either a minimum of two years experience performing installations of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. with participation in at least five installations during each year of experience or nine months experience with participation in at least 25 installations of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. in that nine-month period;

ii. – iii. (No change.)

2. Applicants for the release detection monitoring system installation classification examination shall meet the following criteria:

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- i. Either a minimum of two years experience performing installations of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. with participation in at least five installations during each year of experience or nine months experience with participation in at least 25 installations of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. in that nine-month period;
 - ii. – iii. (No change.)
3. Applicants for the closure classification examination shall meet the following criteria:
 - i. Either a minimum of two years experience performing closures of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. with participation in at least five closures during each year of experience or nine months experience with participation in at least 25 closures of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. in that nine-month period; and
 - ii. (No change.)
4. Applicants for the tank testing classification examination shall meet the following criteria:
 - i. A minimum of two years experience performing tank testing services of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. on equipment that satisfies the requirements of N.J.A.C 7:14B-6.1(a)3 and 6.5(a)3 with participation in at least five tank tests during each year of experience or nine months experience with participation in at least 25 tank tests of

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underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. within that nine-month period;

ii. – iii. (No change.)

5. (No change.)

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

i. A minimum of two years experience performing cathodic protection system testing of underground storage tank systems regulated pursuant N.J.S.A. 58:10A-21 et seq. with participation in at least five [tank] tests during each year of experience or nine months experience with participation in at least 25 tests of underground storage tank systems regulated pursuant to N.J.S.A. 58:10A-21 et seq. within that nine-month period;

ii. – iii. (No change.)

7. Applicants for the subsurface evaluation classification examination shall meet the following criteria:

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

ii. – iii. (No change.)

(b) – (d) (No change.)

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7:14B-13.9 Professional business practices

(a) An individual and business firm certified pursuant to this subchapter shall:

1. Perform all services in accordance with all applicable Federal, State and local rules and regulations;

2. Employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department;

3. Provide all prospective clients a list of the standard price for the services identified in (c), below; and

4. Present a copy of the Department-issued certification card to all prospective clients upon request.

(b) When providing a service required by this chapter, an individual or business firm certified pursuant to this subchapter shall enter into a written contract with the client. The contract shall contain the following provisions:

1. Clear and detailed descriptions of the work activities to be performed;

2. Lists of all materials, equipment, tools and other incidentals necessary for the execution of the proposed work activities;

3. Lists of the number and types of personnel necessary for the execution of the proposed work activities;

4. The maximum contract price that cannot be exceeded without written amendments to the contract;

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5. Estimated time frames for the completion of the work activities listed in the contract; and

6. A listing and description of all services in the contract which exceed the requirements of the applicable local, State or Federal rules and regulations.

(c) Upon request by the client, an individual or business firm certified pursuant to this subchapter shall provide the client with a written standard price list of the services that it provides such as:

1. The categories of labor and the daily/hourly rates;

2. Daily and weekly rates for heavy equipment, instrumentation, vehicles and any ancillary equipment that is separately billed;

3. Variable costs such as subcontracted services, transport and disposal of wastes;

4. A listing of all applicable governmental fees and costs typically associated with the contracted service, including but not limited to all applications, local and State permits, State oversight and inspection; and

5. All ancillary administrative costs typically incurred such as document reproduction costs, mailing costs and phone calls.

(d) For services being performed with financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund (the Fund), the certified individual or business firm shall:

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1. Submit documentation to the Department at the address listed in N.J.A.C.

7:14B-2.2(b) of the individual or business firm's cost for providing the services for which the Fund is providing the financial assistance. The documentation shall include, but is not limited to, documentation of the direct cost to provide the services, and all tiers of subcontractors' costs such as materials, equipment rentals and services; and

2. Cooperate in and help facilitate an audit by the Department of the individual or business firm's pricing and business practices conducted with industry standards and performed at the expense of the Department by a Certified Public Accounting firm under contract to the Department.

(e) Upon request by the Department, provide the Department with any and all information that will aid in its review of loan and grant applications, investigation of complaints against the certified individual or business firm, investigation of known or suspected discharges of hazardous substances, and investigation of any known or suspected violation of this subchapter. This information shall include, but shall not be limited to the following:

1. All direct subcontractor invoices for services such as, but not limited to, laboratory analyses, well drilling, contaminated soil disposal, oil/water/sludge disposal, vacuum truck services, property restoration, engineering services, etc.;

2. All receipts for rental equipment, including, but not limited to, sampling equipment or instrumentation, heavy equipment, etc.;

3. All receipts for material purchases, including, but not limited to, clean fill material, top soil, stone, etc.;

4. All receipts for miscellaneous costs necessary to conduct remediation such as local police traffic control and local permits; and

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5. Documents associated with the services provided for underground storage tank systems such as copies of field notes, contracts, manifests, timesheets, and invoices.

7:14B-13.[9]10 Denial, suspension, revocation and refusal to renew a certification

(a) The Department may deny, suspend, revoke, or refuse to renew a certification issued pursuant to N.J.A.C. 7:14B-13 for good cause, including:

1. - 2 (No change.)

3. Misrepresentation or the use of fraud in obtaining certification or performing underground storage tank services; [or]

4. Failure to attend a Department approved course on the regulations as required pursuant to N.J.A.C. 7:14B-13.4(d)[.] ;

5. Failure to adhere the professional business practices listed in N.J.A.C. 7:14B-13.9; or

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

(b) – (e) (No change.)

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

7:14B-16.1 Scope and Applicability

(a) (No change.)

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

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

(d) (No change.)

7:14B-16.2 General requirements for certification

(a) - (c) (No change.)

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

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

Except as provided in (k), below, no individual shall perform any service on an unregulated heating oil tank system unless:

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

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

(f)-(i) (No change.)

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

New Jersey Department of Environmental Protection
Examination and Licensing Unit
428 E. State St.
P.O. Box 441
Trenton, NJ 08625-0441

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(k) Certification in the classification of entire unregulated heating oil tank system installation at N.J.A.C 7:14B-16.3(a)1i, is not required when performing repair or maintenance if a permit is not required from a municipal construction official to perform this activity.

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

(a) (No change.)

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

1. Entire unregulated heating oil tank system installation includes all activities required to install unregulated heating oil tanks, associated piping, release detection monitoring systems, interior tank lining, and appurtenant equipment including factory installed cathodic protection systems, from the time the ground is broken to the restoration of finished grade at the site. Entire unregulated heating oil tank system installation of unregulated heating oil tank systems shall be performed in accordance with N.J.A.C 7:14B-16.2(f). Entire system installation includes the performance of an internal inspection for the purpose of assessing a tank for corrosion protection and the installation of a field installed cathodic protection system when the installer is under the supervision of a cathodic protection specialist or following the plans designed by a cathodic protection specialist. Entire unregulated heating oil tank system installation activities include any maintenance or repair of any part of the unregulated heating oil tank system or release detection monitoring system requiring a permit from municipal construction officials.

i. – ii. (No change.)

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

2. – 4 (No change.)

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

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

ii. – v. (No change.)

6. – 7. (No change.)

7:14B-16.5 Eligibility

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

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

i. Either a minimum of two years experience performing installations with participation in at least five installations during each year of experience, or nine months experience with participation in at least 25 installations in that nine-month period, or five years experience with participation in at least 12 installations with no less than two installations during each year of experience;

ii. – iii. (No change.)

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

i. Either a minimum of two years experience performing release detection monitoring installations with participation in at least five installations during each year of experience, or nine months experience with participation in at least 25 installations in that nine-month period or five years experience with participation in at least 12 installations with no less than two installations during each year of experience;

ii. – iii. (No change.)

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

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

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period or five years of experience with participation in at least 12 closures with no less than two closures during each year of experience; and

ii. (No change.)

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

i. A minimum of two years experience performing tank testing services on equipment that satisfies requirements of N.J.A.C 7:14B-6.1(a)3 and 6.5(a)3 with participation in at least five tank tests during each year of experience or nine months experience with participation in at least 25 tank tests within that nine-month period or five years experience with participation in at least 12 tank tests with no less than two tank tests during each year of experience;

ii. – iii. (No change.)

5. (No change.)

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

i. A minimum of two years experience performing cathodic protection system testing with participation in at least five tank tests during each year of experience [or], nine months experience with participation in at least 25 tests within that nine-month period, or five years experience with participation in at least 12 tests with no less than two tests during each year of experience;

ii. – iii. (No change.)

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

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

ii. – iii. (No change.)

(b) – (c) (No change.)

7:14B-16.10 Professional Business Practices

(a) An individual or business firm certified pursuant to this subchapter shall:

1. Perform all services in accordance with all applicable Federal, State and local rules and regulations;

2. Employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department;

3. Provide all prospective clients a list of the standard price for the services identified in (c), below; and

4. Present a copy of the Department issued certification card to all prospective clients upon request.

(b) When providing any service required by this chapter, an individual and business firm certified pursuant to this subchapter shall enter into a written contract with the client. The contract shall contain the following provisions:

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1. Clear and detailed descriptions of the work activities to be performed;
2. Lists of all materials, equipment, tools and other incidentals necessary for the execution of the proposed work activities;
3. Lists of the number and types of personnel necessary for the execution of the proposed work activities;
4. The maximum contract price that cannot be exceeded without written amendments to the contract;
5. Estimated time frames for the completion of the work activities listed in the contract; and
6. A listing and description of all services in the contract which exceed the requirements of applicable local, State or Federal rules and regulations.

(c) Upon request by the client, an individual or business firm certified pursuant to this subchapter shall provide the client with a written standard price list of the services that it provides such as:

1. The categories of labor and the daily/hourly rates;
2. Daily and weekly rates for heavy equipment, instrumentation, vehicles and any ancillary equipment that is separately billed;
3. Variable costs such as subcontracted services, transport and disposal of wastes;

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4. A listing of all applicable governmental fees and costs typically associated with the contracted service, including but not limited to all applications, local and State permits, State oversight and inspection; and

5. All ancillary administrative costs typically incurred such as document reproduction costs, mailing costs and phone calls.

(d) For services being performed with financial assistance from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund (the Fund), the certified individual or business firm shall:

1. Submit documentation to the Department at the address listed in N.J.A.C. 7:14B-2.2(b) of the individual or business firm's cost for providing the services for which the Fund is providing the financial assistance. The documentation shall include, but is not limited to, documentation of the direct cost to provide the services, and all tiers of subcontractors' costs such as materials, equipment rentals and services; and

2. Cooperate in and help facilitate an audit by the Department of the individual or business firm's pricing and business practices conducted with industry standards and performed at the expense of the Department by a Certified Public Accounting firm under contract to the Department.

(e) Upon request by the Department, provide the Department with any and all information that will aid in its review of loan and grant applications, investigation of complaints against the certified individual or business firm, investigation of known or suspected discharges of hazardous substances, and investigation of any known or suspected violation of this subchapter. This information shall include, but shall not be limited to, the following:

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1. All direct subcontractor invoices for services such as but shall not be limited to laboratory analyses, well drilling, contaminated soil disposal, oil/water/sludge disposal, vacuum truck services, property restoration, and engineering services;

2. All receipts for rental equipment, including but not limited to sampling equipment or instrumentation, and heavy equipment;

3. All receipts for material purchases, including, clean fill material, top soil, and stone;

4. All receipts for miscellaneous costs necessary to conduct remediation such as local police traffic control and local permits; and

5. Documents associated with the services provided for underground storage tank systems such as copies of field notes, contracts, manifests, timesheets, and invoices.

7:14B-16.10 Recodify as 7:14B-16.11 (No change in text.)

CHAPTER 26C
DEPARTMENT OVERSIGHT OF THE REMEDIATION OF
CONTAMINATED SITES

SUBCHAPTER 2 OVERSIGHT DOCUMENTS, [AND] NO FURTHER ACTION LETTERS, AND REMEDIATION OF UNREGULATED HEATING OIL TANK SYSTEMS

7:26C-2.1 Scope

(a) This subchapter identifies:

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1. – 2. (No change.)

3. [The procedures for a person to acquire the Department's review of a remedial action report for a discharge, onto the lands but not into ground water, from an underground storage tank that is not regulated by Underground Storage Tanks rules, N.J.A.C. 7:14B] The procedures for owners and operators of unregulated heating oil tank systems to obtain No Further Action letters pursuant to N.J.A.C. 7:26C-2.6 for remediation of discharges from their unregulated heating oil tank system by using an individual or business firm certified in the classification of subsurface evaluation pursuant to N.J.A.C. 7:14B-13 or 16 in lieu of obtaining Department oversight through a memorandum of agreement; and

4. (No change.)

(b) – (c) (No change.)

7:26C-2.5 [Review of a remedial action report for remediation]Remediation of discharges from unregulated heating oil tank systems

[(a) Any person may request the Department's review of a remedial action report for remediation of a discharge from an underground storage tank not regulated pursuant to Underground Storage Tanks rules, N.J.A.C. 7:14B, and from which there is a discharge onto the lands but not into groundwater as provided below. The person seeking the Department's review shall pay a fixed oversight cost in lieu of entering into a memorandum of agreement with the Department.

(b) The person requesting that the Department review a remedial action report in accordance with (a) above shall submit to the Department:

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1. A remedial action report prepared pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.6;
2. The following information certified in accordance with N.J.A.C. 7:26C-1.2(a)1:
 - i. The date that the discharge from the underground storage tank was reported in accordance with N.J.A.C. 7:1E-5, or the incident number;
 - ii. A statement that the underground storage tank is not regulated pursuant to Underground Storage Tank rules, N.J.A.C. 7:14B;
 - iii. A statement that the discharge has been remediated and the remedial action report has been prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-6.6; and
 - iv. As statement that the discharge from the underground storage tank has not contaminated groundwater; and that one of the following applies:
 - (1) Soil contamination is no longer present above the most stringent soil remediation standard;
 - (2) An alternate cleanup criterion is being requested; or
 - (3) A deed notice is included to address remaining soil contamination above the residential soil cleanup criteria pursuant to N.J.A.C. 7:26E-8; and
3. The fixed oversight cost pursuant to N.J.A.C. 7:26C-9.2. The fixed oversight cost is nonrefundable and shall be submitted with each and every submittal made to the Department pursuant to this section.]

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(a) Except as provided in (d) below, in order for the person responsible for conducting the remediation of discharges from an unregulated heating oil tank system as defined in the Underground Storage Tank rule at N.J.A.C 7:14B-1.6, to obtain a no further action letter from the Department as described in N.J.A.C. 7:26C-2.6, that person shall employ an individual working for a business firm certified in the category of underground storage tank subsurface evaluation pursuant to the Underground Storage Tank Rules at N.J.A.C. 7:14B-13 or 16 to conduct the remediation in lieu of obtaining Department oversight.

(b) The Department will issue a no further action letter in accordance with N.J.A.C. 7:26C-2.6, upon receipt and review of the following:

1. A certification by the individual certified pursuant to N.J.A.C 7:14B-13 or 16 to perform the remediation that states: I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I may be committing a crime if I make a written false statement, which I do not believe to be true, accurate and complete. I hereby certify that the area of concern being remediated does not meet any of the criteria listed at N.J.A.C. 7:26C-2.5(d) and that the remediation performed was pursuant to, and in compliance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. In addition, I certify that I have provided direct on-site supervision of the remediation. Moreover, I understand that should I discover contamination, I will provide written notice to the owner of the unregulated heating oil tank system as to that discovery. I am also aware that if I knowingly direct or authorize the violation of any statute, I can be personally liable for the penalties;

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2. A completed Unregulated Heating Oil Underground Storage Tank Remediation Questionnaire. This questionnaire includes questions about general information concerning the location of the site, the site owner, and the documents being submitted to the Department, as well as site specific information such as the conditions at the site, the soil and ground water samples taken and the remedial action taken to remediate the site. The questionnaire may be obtained from the Department's website at <http://www.state.nj.us/dep/srp/unregulatedtanks>;

3. The applicable fixed oversight cost as set forth at N.J.A.C. 7:26C-9.2;
and

4. A Remedial Action Report prepared pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-6.7.

(c) All submissions required by this section shall be made to :

Site Remediation Program
New Jersey Department of Environmental Protection
401 E. State St.
P.O. Box 028
Trenton, NJ 08625-0028

(d) The person responsible for conducting the remediation of the unregulated heating oil system shall obtain Department oversight of the remediation of a discharge from unregulated heating oil tank system in order to obtain a No Further Action letter pursuant to N.J.A.C. 7:26C-2.6 if any of the conditions in 1 through 9 below apply. Department oversight shall be through a Memorandum of Agreement, Administrative Consent Order, Administrative Order or Judicial Order, as applicable pursuant to this chapter.

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1. The discharge from the unregulated heating oil tank system results in an immediate environmental concern condition as defined by the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8;

2. Ground water contamination resulting from the discharge from the unregulated heating oil tank system is within 100 feet of a potable well which is located either within the property boundaries or beyond the property boundaries of the property on which the discharge occurred;

3. Ground water contamination resulting from the discharge from the unregulated heating oil tank system has migrated beyond the property boundaries of the property on which the discharge occurred;

4. The discharge from the unregulated heating oil tank system results in conditions which require a vapor intrusion investigation pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.4(h)3viii;

5. The discharge from the unregulated heating oil tank system impacts any surface water body or wetlands;

6. The person responsible for conducting the remediation is implementing a restricted or limited restricted use remedial action as defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8;

7. The remediation of the discharge includes any variance from the Technical Requirements for Site Remediation pursuant to N.J.A.C. 7:26E-1.6(c) or (d);

8. The remedy includes a discharge to groundwater requiring a New Jersey Pollution Discharge Elimination System permit-by-rule pursuant to the Technical

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Requirements for Site Remediation at N.J.A.C. 7:26E-6.3(c), or an On-Scene Coordinator Discharge Authorization pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et. seq., and the Federal National Oil and Hazardous Substance Pollution Contingency Plan (NCP) regulations at 40 CFR Part 300; or

9. The remediation is required by or in the process of being conducted pursuant to an Administrative Consent Order, Administrative Order or a Judicial Order.

SUBCHAPTER 9. OVERSIGHT COSTS

7:26C-9.2 Fixed oversight costs

(a) The applicable fixed costs required by this section upon submittal to the Department of each request or submission are as follows:

1. – 2. (No change.)

3. Unregulated Heating Oil Tank System

Remediation Questionnaire and

Remedial action report [for tanks

not regulated by N.J.A.C 7:14B] * \$400.00

4. (No change.)

* This is limited to underground storage tanks not regulated by N.J.A.C. 7:14B.

(b) – (c) (No change.)

SUBCHAPTER 10 CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:26C-10.4 Civil administrative penalty determination

(a) – (b) (No change.)

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

1. through 3. (No change.)

4. The Department Oversight of the Remediation of Contaminated Sites, N.J.A.C.

7:26C

Subchapter and Violation	Citation <u>7:26C -</u>	Type of <u>Violation</u>	Grace Period <u>(Days)</u>	Base <u>Penalty</u>
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* * *

2	Oversight Documents and No Further Action Letters			
	<u>Failure to employ an individual working for a business firm certified by the Department in the category of underground storage tank subsurface evaluation to conduct the remediation of an unregulated heating oil tank system.</u>	<u>7:26C-2.5(a)</u>	<u>NM</u>	<u>\$5,000</u>

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	<u>Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that is required by an Administrative Consent Order, an Administrative Order or a Judicial Order.</u>	<u>7:26C-2.5(d)1</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that is impacting any surface water body or wetlands.</u>	<u>7:26C-2.5(d)2</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that results in an Immediate Environmental Concern condition.</u>	<u>7:26C-2.5(d)3</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that results in conditions which require a vapor intrusion investigation.</u>	<u>7:26C-2.5(d)4</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system which causes ground water contamination that has migrated beyond the property boundaries of the property on which the discharge has occurred.</u>	<u>7:26C-2.5(d)5</u>	<u>NM</u>		<u>\$5,000</u>

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	<u>Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that requires any variance from the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-1.6(c) or (d).</u>	<u>7:26C-2.5(d)6</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system that implements a restricted or limited restricted use remedial action.</u>	<u>7:26C-2.5(d)7</u>	<u>NM</u>		<u>\$5,000</u>
	<u>Failure to obtain Department oversight of the remediation of a discharge from an unregulated heating oil tank system for which a NJPDES permit-by-rule is required for the remediation pursuant to N.J.A.C. 7:26E-6.3(c).</u>	<u>7:26C-2.5(d)8</u>	<u>NM</u>		<u>\$5,000</u>

* * *

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

Subchapter and Violation	Citation	Type of Violation	Grace Period (Days)	Base Penalty
	<u>7:26C -</u>			

13	Certification of Individuals and Business Firms			
	Failure to be certified in accordance with N.J.A.C. 7:14B-13 or work under the immediate, on-site supervision of a certified	7:14B-13.1(a)	NM	[\$12,000] <u>\$5,000</u>

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	individual while performing services on underground storage tank systems regulated pursuant to N.J.A.C. 7:14B.				

	Failure to ensure all services performed on regulated underground storage tank systems pursuant to N.J.A.C. 58:10A-21 et seq. and N.J.A.C. 7:14B are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-13.1(d)	NM		[\$12,000] <u>\$5,000</u>
	Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-13.1(e)1	NM		[\$12,000] <u>\$5,000</u>
	Failure of an individual performing services on a regulated underground storage tank system to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-13.1(e)2	NM		[\$12,000] <u>\$5,000</u>

	<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to comply with the professional business practices described in N.J.A.C 7:14B-13.9</u>	<u>7:14B-13.1(m)</u>	<u>NM</u>		<u>\$5,000</u>

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	Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-13.	7:14B-13.7(d)	NM		[\$12,000] <u>\$5,000</u>

	Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-13.8, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.	7:14B-13.8(a)	NM		[\$12,000] <u>\$5,000</u>
	<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to perform all services in accordance with all Federal, State and local rules and regulations.</u>	<u>7:14B-13.9(a)1</u>	<u>NM</u>		<u>\$5,000</u>

Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department. 7:14B-13.9(a)2 NM \$5,000

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<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide all prospective clients with a list of the standard price for the services provided.</u>	<u>7:14B-13.9(a)3</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to enter into a written contract with a client that contains all of the provisions of N.J.A.C 7:14B-13.9(b).</u>	<u>7:14B-13.9(b)</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide a standard price list of the services that it provides upon request of the client.</u>	<u>7:14B-13.9(c)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.</u>	<u>7:14B-13.9(d)1</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.</u>	<u>7:14B-13.9(d)2</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-13 to provide the Department with all information that will aid in its review of loan and grant</u>	<u>7:14B-13.9(e)</u>	<u>NM</u>		<u>\$5,000</u>

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applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.

16 Certification Of Individuals And Business Firms For Unregulated Underground Storage Tank Systems

Failure to be certified in accordance with N.J.A.C. 7:14B-16 or work under the immediate, on-site supervision of a certified individual while performing services on unregulated heating oil tank systems.	7:14B-16.2(a)	NM	[\$12,000] <u>\$5,000</u>
Failure of an owner or operator of an unregulated heating oil tank system to ensure all services performed on unregulated heating oil tank systems are performed by a certified individual or under the immediate, on-site supervision of a certified individual.	7:14B-16.2(d)	NM	[\$12,000] <u>\$5,000</u>
Failure of an individual performing services on unregulated heating oil tank systems to be employed by a certified firm and be certified in the same category of service as the firm.	7:14B-16.2(e)1	NM	[\$12,000] <u>\$5,000</u>
Failure of an individual performing services on unregulated heating oil tank systems to be employed by a certified firm and work under the immediate on-site supervision of an individual certified in the same category of service as the firm.	7:14B-16.2(e)2	NM	[\$12,000] <u>\$5,000</u>

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<p><u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to perform services on unregulated heating oil tank systems pursuant to all applicable regulations, permits, local ordinances and codes, Department of Community Affairs Bulletins and notices, manufacturer installation instructions and industry standards.</u></p>	<p><u>7:14B-16.2(f)</u></p>	<p><u>NM</u></p>	<p><u>\$5,000</u></p>
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<p><u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to comply with the professional business practices described in N.J.A.C 7:14B-16.10.</u></p>	<p><u>7:14B-16.2(g)</u></p>	<p><u>NM</u></p>	<p><u>\$5,000</u></p>
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<p>Performance of services for which certification is required after the expiration of a certification issued pursuant to N.J.A.C. 7:14B-16.</p>	<p>7:14B-16.8(d)</p>	<p>NM</p>	<p>[\$12,000] <u>\$5,000</u></p>
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<p>Failure to maintain evidence of financial responsibility assurance pursuant to N.J.A.C. 7:14B-16.9, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of such services.</p>	<p>7:14B-16.9(a)</p>	<p>NM</p>	<p>[\$12,000] <u>\$5,000</u></p>
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<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to perform all services in accordance with all Federal, State and local rules and regulations.</u>	<u>7:14B-16.10(a)1</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to employ fair and reasonable pricing and business practices in all of its dealings with clients and the Department.</u>	<u>7:14B-16.10(a)2</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to provide all prospective clients with a list of the standard price for the services provided.</u>	<u>7:14B-16.10(a)3</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to enter into a written contract with a client that contains all of the provisions of N.J.A.C 7:14B-16.10(b).</u>	<u>7:14B-16.10(b)</u>	<u>NM</u>		<u>\$5,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to provide a standard price list of services to the client.</u>	<u>7:14B-16.10(c)</u>	<u>M</u>	<u>30</u>	<u>\$3,000</u>
<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to submit documentation to the Department of the individual and business firm's cost for providing the services for which the Fund is providing financial assistance.</u>	<u>7:14B-16.10(d)1</u>	<u>M</u>		<u>\$3,000</u>

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<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to cooperate in and help facilitate an audit by the Department of the individual and business firm's pricing and business practices.</u>	<u>7:14B-16.10(d)2</u>	<u>NM</u>	<u>\$5,000</u>
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<u>Failure of an individual or business firm certified pursuant to N.J.A.C 7:14B-16 to provide the Department with all information that will aid in its review of loan and grant applications, investigation of complaints of discharges of hazardous substances or any suspected violation of this subchapter.</u>	<u>7:14B-16.10(e)</u>	<u>NM</u>	<u>\$5,000</u>
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SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION UPGRADE AND CLOSURE FUND

7:26C-11.2 Application for loans and grants

(a) An applicant for a loan and/or a grant from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund shall submit an application on forms available from the Department and a written request, certified in accordance with N.J.A.C. 7-26C-1.2(a)1, to the Department which includes the following information:

1. [A statement by the applicant that the remediation is being conducted in accordance with an oversight document executed pursuant to N.J.A.C. 7:26C or that] If the application is for a loan and/or grant that concerns the upgrade or closure of an underground storage tank regulated pursuant to N.J.A.C 7:14B, a statement that the upgrade or closure is being conducted pursuant to N.J.A.C. 7:14B. The statement

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shall include, as applicable, the name of the Department bureau overseeing the remediation, the program interest name and program interest number (preferred ID) if known and the name of the assigned Department case manager.

2. – 14. (No change.)

(b) - (c) (No change.)

TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.13 Site investigation report

(a) – (b) (No change.)

(c) The site investigation report shall also include the following data and information:

1. – 2. (No change.)

3. A table summarizing all sampling results, including sample location, media, sample depth, field and laboratory identification numbers, analytical results, and comparison to applicable remediation standards organized by area of concern:

i. – iv. (No change.)

v. The data in the summary table shall be presented both as a hard copy and an electronic deliverable using the format outlined in detail in the Site Remediation Program's Electronic Data Interchange Manual in effect as of the

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date the report is submitted. The Electronic Data Interchange Manual may be obtained at <http://www.state.nj.us/dep/srp/hazsite/index.html> or by calling (609) 292-9418. Electronic deliverables are not required if the summary table is prepared as part of the remediation of a specific discharge event [or for an area of concern that consists of a storage tank storing heating oil for on-site consumption in a one to four family residential building where there has been no groundwater impact].

(1) - (3) (No change.)

4. – 8. (No change.)

(d) (No change.)

SUBCHAPTER 5: REMEDIAL ACTION SELECTION

7:26E-5.2 Remedial action selection report

(a) – (b) (No change.)

(c) A remedial action selection report is not required if the site or area of concern being remediated is an unregulated heating oil tank system, unless the person responsible for conducting the remediation is required to enter into a Memorandum of Agreement, Administrative Consent Order, Administrative Order or Judicial Order in order to obtain a No Further Action letter pursuant to the Department Oversight of the Remediation of Contaminated Sites Rules at N.J.A.C. 7:26C-2.5(d).

(c) Recodify as (d) (No change in text.)

[(d)] (e) (No change in text.)

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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23, permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize this proposal.

Date: _____

Lisa P. Jackson, Commissioner
Department of Environmental Protection