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## **ENVIRONMENTAL PROTECTION**

### **SITE REMEDIATION AND WASTE MANAGEMENT PROGRAM**

#### **COMPLIANCE AND ENFORCEMENT**

##### **Underground Storage Tanks**

**Adopted Repeal and New Rule:** N.J.A.C. 7:14B-2.3 and 12.2

**Adopted Amendments:** N.J.A.C. 7:14-8.4A and 8.18, 7:14B-1.3, 1.4, 1.6, 1.7, 2.1, 2.2, 2.5, 2.6, 2.7, 3.1, 3.2, 3.5, 4.1, 4.2, 5.1 through 5.8, 6.1 through 6.5, 6.7, 7.1 through 7.4, 8.1, 8.3, 9.1, 9.2, 9.4, 9.5, 10.1 through 10.3, 10.5, 10.6, 10.8, 12.1, 12.4, 13.1 through 13.5, 13.7, 13.8, 13.10, 15.1, 15.2 through 15.4, 16.2 through 16.6, 16.8, 16.9, and 16.11, and 7:26C-9.5

**Adopted New Rules:** N.J.A.C. 7:14-8.19 and 7:14B-4.1A, 4.3, 4A, 5.10 through 5.14, 5A, 10.1A, 12.2, and 12.3

**Adopted Repeals:** N.J.A.C. 7:14B-2.4

**Proposed:** May 15, 2017 at 49 N.J.R. 1121(a)

**Adopted:** December 14, 2017, by Bob Martin, Commissioner, Department of Environmental Protection.

**Filed:** December 18, 2017, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

**DEP Docket Number:** 07-17-03

**Effective Date:** January 16, 2018

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Expiration Dates: August 31, 2024, N.J.A.C. 7:14;  
January 16, 2025, N.J.A.C. 7:14B;  
September 18, 2018, N.J.A.C. 7:26C.

The Underground Storage Tank rules, N.J.A.C. 7:14B, implement the Underground Storage of Hazardous Substances Act (State Act), N.J.S.A. 58:10A-21 et seq., and the Federal Underground Storage Tank (UST) program. The Department of Environmental Protection's (Department's) rules establish requirements for tank owners and operators, and are intended to prevent the discharge of hazardous substances into the environment from underground storage tanks (USTs). The rules apply to USTs that store motor fuel, liquid petroleum products, waste oil, and other hazardous substances regulated pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq., and its implementing rules. Hazardous substances are listed in Appendix A to the Discharge of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E. Civil administrative penalties for violations of the UST rules are codified in the Water Pollution Control Act rules, N.J.A.C. 7:14-8 and the Administrative Requirements for the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-9.5.

The Water Pollution Control Act at N.J.S.A. 58:10A-25 directs the Department to “[e]stablish standards for the construction, installation, and operation of new and existing underground storage tanks, including standards for secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, and overfill prevention, and other underground storage tank equipment.” The EPA published its final “Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training” on

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July 15, 2015 (80 Fed. Reg. 41565) (EPA UST Final Rule). Accordingly, the Department is amending its rules to conform to Federal requirements.

The Federal regulations apply to all Federally regulated UST systems in the State (which are most of the UST systems), and owners and operators of these systems must meet the Federal requirements according to the schedule in the EPA UST Final Rule. They must also meet the requirements of the existing rules that are State-specific, such as the registration requirements at N.J.A.C. 7:14B-2. There are approximately 490 sites with State-regulated heating oil UST systems, which the Federal rules do not regulate. These are referred to in the Department's UST rules as "regulated heating oil tank systems." The adopted rules applicable to regulated heating oil tank systems are substantively the same as the Federal requirements, as the Water Pollution Control Act requires.

Unrelated to the Federal UST requirements, the Department is amending the rules related to the registration of UST systems, notice to the Department prior to the start of work on an UST system, and certification of individuals performing UST services, as well as the related civil administrative penalties in the Water Pollution Control Act rules at N.J.A.C. 7:14-8, and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C-9.5.

The rule adoption can also be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules/adoptions.html>.

**Summary** of Hearing Officer's Recommendation and Agency Response

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The Department held a public hearing on this rulemaking on Thursday, June 1, 2017, at 2:00 P.M., at the Department's headquarters in Trenton. Two individuals provided oral comments at the public hearing. John Olko of the Bureau of Underground Storage Tanks within the Compliance and Enforcement Program served as Hearing Officer. After reviewing the comments received during the public comment period, the Hearing Officer has recommended that the Department adopt the proposed rules with the changes as described below in the Summary of Public Comments and Agency Responses. The Department accepts the Hearing Officer's recommendations.

The record of the public hearing is available for inspection in accordance with applicable law by contacting:

Office of Legal Affairs

Attention: DEP Docket No. 07-17-03

Department of Environmental Protection

401 East State Street, 7th floor

Mail Code 401-04L

P.O. Box 402

Trenton, NJ 08625-0402

### **Summary** of Public Comments and Agency Responses

The Department accepted comments on the proposal through July 14, 2017. The following persons timely submitted comments on the notice of proposal:

1. Bluhm, Sara, New Jersey Business & Industry Association
2. Capasso, J.R., Trenton Department of Housing and Economic Development

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3. DeGesero, Eric, and Donohue, John, Fuel Merchants Association of New Jersey
4. Egenton, Michael A., New Jersey Chamber of Commerce
5. Hart, Dennis, Chemistry Council of New Jersey and the Site Remediation Industry Network
6. Jackson, Marty, J.W. Scott Service Station Equipment Co.
7. Kubinsky, Edward, Crompco, LLC
8. Largent, Robert, Army and Air Force Exchange Service
9. Matri, Michael H., Speedway LLC
10. Risalvato, Sal, New Jersey Gasoline-Convenience-Automotive Association
11. Russo, Anthony, Commerce and Industry Association of New Jersey
12. Saba, Sam A., Petroleum Equipment Contractors Association of New Jersey
13. Worth, Josh, Wawa Inc.

The timely submitted comments and the Department's responses are summarized below.

The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

### **Rules Adopted to Comply with Federal Requirements**

#### **Class A and Class B Operator Training**

1. COMMENT: As proposed, all operators are required to complete a program developed and administered by the Department or the Department's designee. This is unnecessarily

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restrictive and does not appropriately allow for training courses offered by other qualified entities or in-house training. (1, 4, 5, 10, 11)

2. COMMENT: Class A and B operators are required to successfully pass an exam that was made available beginning on July 1, 2017. This allows Class A and Class B operators only 15 months to comply with the EPA UST Final Rule, which requires facilities to have trained operators on or before October 13, 2018. The Department estimates there are 4,500 regulated facilities in the State for which trained operators will be required. The testing and training facilities will not be able to accommodate the number of operators who will need to be trained. (1, 3, 4, 5, 10, 11)

3. COMMENT: In stakeholder discussions prior to this proposal, the Department's plans for UST operator training included online training and testing options. It is regrettable the Department has not made online training or testing options available. Only when an online course is made available to individuals seeking certification as a Class A or Class B operator, should the Department require the training course as a prerequisite to take the exam. This action requires no rulemaking in the short term; it is simply a policy-making decision which will assist the regulated community to comply with the EPA UST Final Rule. The Department should continue to offer in person classes as a voluntary option for individuals who prefer that method of training. (3)

RESPONSE TO COMMENTS 1 THROUGH 3: The Department established the operator training rules based on the EPA's Grant Guidelines to States for Implementing the Operator Training Provisions of the Energy Policy Act of 2005 (Operator Training Guidelines) and the

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EPA UST Final Rule. The Operator Training Guidelines authorize New Jersey to implement a State-specific program for operator training that meets the minimum Federal requirements. The Department began planning for the operator training program based on the requirements established by EPA, corresponded with EPA, other states, and the regulated community, and took into account the Department's resources, knowledge, and experience in regulating UST facilities in New Jersey. The Department's evaluation led to the development of combined training (UST Class A/B operator training), which provides certification for both operator classes with a single course and exam. The classroom training course is offered through a non-profit State agency, Rutgers University, and subsequent examination using the International Code Council (ICC) testing services for the Class A and Class B operators. As noted in the proposal Summary (49 N.J.R. at 1131), facilities may designate the same person as Class A and Class B operators. Class C operators are not required to attend the Department's training classes or take an examination, but must be trained according to N.J.A.C. 7:14B-5A.2(c) by a Class A or Class B operator or a training program selected by the UST facility owner and operator.

The Department considered allowing third parties to provide training for Class A and Class B operators; however, the Department determined that the resources that the Department would expend in developing qualifications for trainers and criteria for the training, as well as monitoring the courses to ensure that courses were being administered consistently and were meeting the State's needs would be greater than if the Department developed and provided the training itself. Because the Department develops and presents the training and monitors the test results, the Department can quickly adjust the training to respond to trainee/tester feedback, to meet the needs of the State's regulated facilities, and to ensure that the tests that ICC administers are appropriate based on the training.

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Shortly after the publication of the proposed rules the Department began offering the UST Class A/B operator training program to provide facilities time to comply with the requirement. The Department estimated in the proposal Summary that there are 4,500 regulated UST facilities in New Jersey. Since the publication of the proposal the Department collected new data to revise this number to an estimated 4,200 registered UST facilities. Although, 4,200 is still a substantial number of facilities, the rules provide for reciprocity with other states by allowing Class A and Class B operators to submit evidence of comparable training from another state instead of completing the State-specific training course and exam. Further, if a regulated entity has more than one facility, the same Class A and Class B operators may be identified for multiple facilities. The Department anticipates that reciprocity and designation of trained Class A and Class B operators for multiple facilities will reduce the number of individuals requiring training.

At present the training and testing of Class A and Class B operators in New Jersey is done in person; however, the rules provide the Department with flexibility to provide other formats in the future. The Department will review the training and testing program periodically to consider changes and cost saving options. Online training programs and exams can be more convenient; however, at this time the Department does not have the resources to offer an online exam with the necessary security measures and identity verification to confirm the trainee is the actual participant in the online program. The Department is continuing to explore such options. Although a number of individuals among the regulated community may prefer an online program, not all owners and operators have the resources to enable their employees to participate in an online program, and may find an interactive class more effective. The Department believes the in-person training program that it has developed provides a reasonable, sufficient, and cost-

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effective means of meeting the regulatory requirements, taking into account the Department's available resources, and the convenience and resources of the entire regulated community.

See the response to Comments 7 and 9 for additional discussion of the Department's prerequisite for training prior to passing an exam.

4. COMMENT: The proposal Summary states that the Department will develop continuing education classes with Rutgers University and proctored exams through ICC. The Department's intentions go well beyond what is required under the Federal rules (40 CFR Part 280). New Jersey is among the last states to enact operator training regulations. Many other states have developed effective internet based online training and testing programs that cost less than \$100.00 with some being free of charge. The Department's estimate of the cost of testing and training is \$250.00 to \$500.00 per trained operator, which is excessively high when compared to New York's free program or Pennsylvania's third-party training and testing costs that range from \$90.00 to \$150.00. The Department should make every effort to minimize these compliance costs accordingly. (9)

5. COMMENT: The Department's estimates of the cost of training do not take into account the time lost during travel and attendance for the training course and testing, or the travel expenses. Online training and testing would do away with much of these costs. (1, 3, 4, 5, 9, 11)

6. COMMENT: The Department should offer testing on the same day as the training classes. The Department's current program is extremely inconvenient and costly. Every person being trained loses a day of productivity for training and another for testing. These costs must be considered when assessing the expenses associated with the training and testing. (3, 10)

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RESPONSE TO COMMENTS 4 THROUGH 6: The Department estimated in the proposal (49 N.J.R. at 1140) that the cost of training and testing would be approximately \$250.00 to \$500.00 per Class A and Class B operator. The Department's training program is now in place at a cost of \$355.00 for both the training and examination. The training program is based on the resources and funding available to the Department, at a cost that reflects the expenses associated with providing a quality, State-specific operator training program. The Department has determined, based upon data from other states that have implemented operator training, that well-trained operators reduce the number of hazardous substance releases and/or violations of the UST rules. This ultimately saves the regulated community the cost of remediation and penalties.

The commenters express concern that the Department's economic impact does not consider individual's time for travel, travel expenses, and time away from work when attending the UST Class A/B operator training program. Whether the Department offers online training and testing, or in person training and testing, the individual employee seeking qualification as a Class A or Class B operator will be required to spend some amount of time away from his or her duties in order to be trained and tested. The current UST Class A/B operator training program can take up to one and a half days to complete. For the convenience of those taking the UST Class A/B operator training program, Rutgers offers the course and exam at several locations in New Jersey; ICC offers testing in New Jersey and nearby metropolitan areas (New York City, Philadelphia). There may be a nominal cost of traveling to and from the course and exam locations, but this is usually a one-time cost since in most cases the Class A and Class B operator must be trained only once. This training provides the regulated community and their employees knowledge and skills critical to safe operations of UST systems.

See the response to Comments 1 through 3 for a discussion of online training.

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7. COMMENT: The EPA UST Final Rule provides flexible and alternative training options, as well as the ability to demonstrate operator proficiency by solely passing an exam, which satisfies the EPA's requirements. The Department should allow Class A and Class B operators to pass an exam, without taking the training course. (1, 4, 5, 11)

8. COMMENT: In the absence of obtaining training in an online course, individuals should be allowed to demonstrate proficiency as a Class A or Class B operator for Federally regulated facilities solely by passing the required exam, beginning immediately and continuing through October 13, 2018 (when the Federal rules require facilities to designate Class A, Class B, and Class C operators). The provisions at N.J.A.C. 7:14B-5A.4, Retraining, are consistent with such an approach and the EPA UST Final Rule. (3)

RESPONSE TO COMMENTS 7 AND 8: The Federal Energy Policy Act of 2005 (EP Act) requires implementing agencies to develop state-specific operator training requirements as a condition of receiving Federal UST funding. The EPA's Operator Training Guidelines provide the minimum criteria a state program must meet in order to receive funding, while providing states broad latitude in the development of operator training; all persons subject to operator training are required to meet the state-specific requirements. Acceptable approaches to implementing the training are also identified in the Operator Training Guidelines and include an operator training program conducted or developed by the state or a third party with state approval, including training and an evaluation, or an appropriately administered and evaluated verification of operator knowledge (i.e., examination).

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The Department's requirements for Class A and Class B operator training can be found at N.J.A.C. 7:14B-5A.2. Each in-person course covers more than 10 subject areas, including the Department's UST regulations, the purpose and functions of the UST facility equipment, and emergency response to discharges. Many topics are specific to owning and operating an UST system in New Jersey. The ultimate purpose of operator training is to reduce the potential for releases from UST systems. While the Department could have designed an operator training program that meets no more than the minimum Federal requirements, a more robust program that provides State-appropriate information, in-class discussion, and testing is more likely to result in fewer discharges and fewer violations of the State's rules. Numerous other states, including Maryland and Connecticut, also require both training and testing. In-person training is most effective in ensuring the quality of the training, and informing and preparing the Class A and Class B operators to pass the exam and operate a compliant UST facility.

The Department's retraining requirements apply when the Department determines a facility is out of compliance with a significant requirement. The retraining requirements at N.J.A.C. 7:14B-5A.4(a) are, by their terms, the same as the initial Class A and Class B operator training and examination requirements at N.J.A.C. 7:14B-5A.2.

9. COMMENT: Reciprocity for operator training will be complicated by the need to match the Department's cumbersome operator training scope. The Department should match other states, such as New York, that allow reciprocity to any individual who is certified as an operator in any other state that has an UST program that meets Federal approval. As proposed, the Department's reciprocity provisions at N.J.A.C. 7:14B-5A.3 will allow reciprocity only if

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examinations are proctored by ICC or a similar authority. This requirement will effectively limit reciprocity opportunities for operators with UST facilities in multiple states.

Also, because the Department's rules are adopted less than a year before the EPA UST Final Rule requires facilities to designate Class A and Class B operators, there will be little time for Class A and Class B operators trained in another state to determine if they hold a reciprocity eligible certification. Upon adoption, the Department should modify N.J.A.C. 7:14B-5A.3(a)2 (the provision for other state operator training to qualify for reciprocity) as follows: The training is from a state that holds Federal UST program approval for the relevant class of operator and the UST operator can demonstrate it operates a facility in that state. Within 90 days of the effective date of this regulation, the Department will post a list on its website, [www.nj.gov/dep/enforcement/ust.html](http://www.nj.gov/dep/enforcement/ust.html), indicating the states whose training requirements are accepted by the Department. (9)

RESPONSE: The EPA has afforded states broad latitude in the development of the Class A, B, and C operator training, provided the state programs are no less stringent than the Federal program. Just as the Operator Training Guidelines authorize states to develop their own operator training programs, a similar state-specific approach applies to reciprocity.

The adopted rules allow the Department to meet the requirements of the Operator Training Guidelines by accepting reciprocity from states whose training programs are comparable to the Department's. Had the EPA developed a detailed program that all states were required to implement in the same fashion without exception, it would have simplified the reciprocity issue considerably. However, that is not the case, which means the Department must evaluate the other state programs to determine whether they are comparable to New Jersey's.

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The Department cannot assume that just because another state's program is no less stringent than the Federal program and meets the broad requirements of the Operator Training Guidelines that the training meets the Department's requirements. Therefore, the Department is not modifying the rule on adoption as the commenter suggests. The Department will post on its website at [www.nj.gov/dep/enforcement/ust.html](http://www.nj.gov/dep/enforcement/ust.html) a list of other states' Class A and Class B training programs that meet the Department's requirements and are, therefore, eligible for reciprocity.

10. COMMENT: The Department requires at least one designated operator (Class A, B, or C) present at the facility during all hours the facility is operating, including when hazardous substances are being introduced or removed from the UST system. The Department should not require that a Class A, B, or C operator be present during a delivery when the facility is closed. This is an unnecessary and costly burden, and the Federal rule includes no such requirement. Since many deliveries are made during overnight hours when a facility is closed, then it makes sense that the driver/employee of the fuel delivery company be required to be a Class C operator. The facility should have the option to post signs that meet the unmanned facility sign requirements if deliveries of hazardous substances into, or removal of hazardous substances from, the UST system occur before or after normally staffed business hours. (5, 10)

RESPONSE: N.J.A.C. 7:14B-5.14(d) provides that a facility, other than an unmanned facility, must have a designated Class A, B, or C operator present at all times the facility is operating, including when hazardous substances are introduced to or removed from an UST system. In recognition of the hardship for otherwise manned facilities that accept deliveries of hazardous substance outside of business hours, the Department provided alternatives to having an operator present after hours. The owner and operator of the facility may either contract with the supplier

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or transporter to ensure that a Class C operator is present at the delivery, or the owner and operator may post signs that meet the requirements for an unmanned facility. Under the first option, the transporter or supplier would ensure that the individual introducing hazardous substances into (or removing the hazardous substance from) the UST system has completed Class C operator training, which includes how to respond to a discharge. See the discussion of the alternatives in the proposal Summary, 43 N.J.R. at 1130.

### **Secondary Containment**

11. COMMENT: Requiring that the interstitial monitoring for piping installed prior to the operative date of this rule to be maintained for the life of the piping is more stringent than required by the EPA UST Final Rule and is therefore impermissible pursuant to N.J.S.A. 58:10A-25. An owner and operator can meet release detection requirements by performing annual line tests of the piping. The EPA has established that the performance of annual line tests at facilities that have secondarily contained piping, but do not utilize interstitial monitoring, is equally protective of the environment as performing containment sump testing every three years. In March 2015 the EPA stated, “The Federal UST requirement for secondary containment and interstitial monitoring only applies to tanks and piping installed after April 11, 2016. Owners and operators who install piping on or before April 11, 2016 may choose to use any of the release detection options listed in Subpart D of the Federal UST Regulations. They are not restricted to only interstitial monitoring” (EPA, Questions and Answers About the 2015 Underground Storage Tank Rule). (3, 10)

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12. COMMENT: The proposed rules require owners of double walled piping systems that were installed prior to the operative date of the amended rules, and who perform interstitial monitoring for release detection, to test their containment sumps and dispenser pans. The EPA has clearly stated that owners that operate double walled piping systems may use any of the release detection methods that were available to them prior to the effective date of the new rule. Therefore, an owner could choose to perform another method, such as an annual line tightness test, in lieu of interstitial monitoring as long as the piping system was installed prior to the date that secondary containment and interstitial monitoring was mandated (which is April 11, 2016, in the EPA UST Final Rule). Only owners who install double walled piping on or after April 11, 2016 should be mandated to perform interstitial monitoring on their piping systems and then test their sumps. If an owner of a piping system installed prior to April 11, 2016 registers the UST system as performing interstitial monitoring, then the owner should have to test the sumps, but the owner should still have the option to change to another method, since the requirement to perform interstitial monitoring was not in the rule for that facility's piping system. (12)

13. COMMENT: If an owner chooses to use interstitial monitoring for release detection for the UST system's double walled piping, the owner should test the sumps because the facility is relying on the sumps to be liquid-tight to contain a release of product from the primary piping. However, the owner that chose to install double walled piping and use interstitial monitoring before it was required also had other choices that he or she may use for release detection for his or her double walled piping such as annual line tightness testing, or statistical inventory reconciliation. Secondary containment and interstitial monitoring was not required and it was done proactively to help prevent releases.

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If the rule is adopted as proposed, then it is possible that owners who currently have (liquid) sensors installed and used for interstitial monitoring will consider pulling the sensors out so they do not have to test their sumps moving forward. It would be better if the owners of existing piping systems (installed prior to April 11, 2016) could choose another method of release detection for their double walled piping, such as annual line tightness testing, and continue to have the sensors in place as a back-up method of release detection. (7)

RESPONSE TO COMMENTS 11 THROUGH 13: N.J.A.C. 7:14B-4.1(a)1vi and (a)2v are more stringent than the guidance document provided by EPA online, Questions and Answers About the 2015 Underground Storage Tank Rule; however, the EPA UST Final Rule does not specify the method of release detection monitoring for secondarily contained UST systems installed before April 11, 2016. Therefore, adopted N.J.A.C. 7:14B-4.1(a)1vi and (a)2v do not violate the Water Pollution Control Act, which requires the State's rules governing Federally regulated UST systems to be substantially identical to the EPA's rules.

The Department considered adopting the Federal rule provisions verbatim, but determined that the State's rules should be specific regarding the method of release detection for secondarily contained UST systems. The adopted release detection requirement is consistent with the Department's permitting requirements described below, and also the release detection requirements for UST systems in wellhead protection areas and any tanks containing hazardous substances other than petroleum products and waste oil. As stated in the proposal Summary at 49 N.J.R. at 1123, to allow an existing UST system that has secondary containment and interstitial monitoring to discontinue interstitial monitoring or change to a less protective method is contrary to the design of the system and the purpose of the EP Act and the EPA UST Final

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Rule, which is to prevent releases to the environment. See responses to Comments 14 and 15 for further discussion on the lack of protectiveness of other methods of release detection.

N.J.A.C. 7:14B-10.1(b)1 allows an owner or operator to install or modify tanks and piping without obtaining a Department permit, provided the tank and piping are secondarily contained and interstitially monitored in accordance with N.J.A.C. 7:14B-6.4(a)2 (the release detection requirement for UST systems installed on or after September 4, 1990 in a wellhead protection area). This permit exemption has been in place since the Department's first adopted permitting requirements for UST systems in 1990 (22 N.J.R. 2758(a)), allowing installation and modification of qualifying UST systems to proceed without prior Department approval. Systems that did not meet the requirements of N.J.A.C. 7:14B-10.1(b) were subject to Department oversight through the permitting process. The owners and operators who installed secondarily contained and interstitially monitored systems chose the benefit of proceeding without a permit (and therefore without Department oversight) in exchange for installing and maintaining secondary containment and interstitial monitoring. It does not make sense for the Department to amend the rules to allow the owner and operator to stop maintaining the system that was installed.

14. COMMENT: The Department's use of the term "less protective method of release protection" at 49 N.J.R. at 1123 suggests that annual line tests represent a less protective method of release detection than the combination of interstitial monitoring and containment sump testing. Evaluation and comparison of the hourly pass/fail criteria and the sensitivity for both line testing and sump testing reveals that annual line testing is more sensitive.

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A small leak in a pressurized line can exit at close to six times the rate of detection a line test provides, can be transmitted to a leaking containment sump, be released to the environment and still not be identified as a leak when triennial testing of the sump is conducted, due to its volume being less than the sensitivity of the sump test. A comparison of the sensitivities of the methods is included with these comments.

Annual line testing coincides with the requirement to inspect sumps annually, increases the frequency of testing the line, subjects the line to test conditions, seeks out leaks in their earliest stages, and is an approved release detection method. The Department's position that allowing the UST owner and operator to elect to perform annual line testing in the place of maintaining interstitial monitoring is contrary to the EPA UST Final Rule, is more stringent than the EPA UST Final Rule, violates N.J.S.A. 58:10A-25, violates Governor Christie's Executive Order No. 2, and is less protective of the environment because the investigation to identify a leak in components is less frequent.

The Department's position is also inconsistent with N.J.A.C. 7:14B-5.11(a)2, which allows the owner and operator to either test each double walled containment device every three years, or inspected every 30 days as part of a walkthrough inspection. Likewise, it is inconsistent with N.J.A.C. 7:14B-5.10(a)1i, the equivalent citation for interstitial monitoring of spill containment devices. (3)

15. COMMENT: The Department's proposal to limit older double walled piping systems to interstitial monitoring as the only method of release detection is short sighted. Pressurized line leak detection (PLLD) is in widespread use and capable of meeting the release detection requirements of N.J.A.C. 7:14B-6.6 and 6.5. PLLD technology scrutinizes the entire piping run

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including sections of double walled piping that is otherwise not subject to secondary containment testing under the proposed Department rules. A PLLD configured for 0.2 gallon per hour leak test has detected a line leak well before a piping sump (liquid) sensor detected the leak.

Department should allow all methods of piping release detection permitted by N.J.A.C. 7:14B-6.6. This approach could enhance leak detection capability. For example, if the Department were to allow owners of older double walled piping systems to utilize PLLD to conduct 0.2 gallon per hour leak testing as a method of release detection, many UST owners and operators may elect to install PLLD and keep sump (liquid) sensors. Two redundant methods are certainly better than a single method. The EPA UST Final Rule does not require double walled UST system constructed before April 11, 2016 to use interstitial monitoring for piping release detection therefore, the Department's proposed rule exceeds the Federal requirement. (9)

RESPONSE TO COMMENTS 14 AND 15: N.J.A.C. 7:14B-6.5(a)7 describes how to conduct interstitial monitoring as release detection on an UST system, including the piping as defined at N.J.A.C. 7:14B-1.6. Interstitial monitoring is inherently more protective than other release detection methods because, when designed and operated properly, the monitoring equipment operates either continuously or no less than once every 30 days to detect any leaks from the UST system. This method is employed in conjunction with secondary containment, such as double walled tank and piping systems, secondary barriers, or internally fitted tank liners, which serve the dual purpose of permitting detection of the leak and preventing the leaking hazardous substances from being released to the surrounding environment. The key difference between interstitial monitoring and line testing is that interstitial monitoring is associated with secondary containment, which is designed to hold any hazardous substances until it can be detected and

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removed. Line testing, either annually or performed by a PLLD, does not require the secondary containment equipment that prevents the hazardous substance from reaching the environment.

Other release detection methods, such as annual line tests or PLLD, are acceptable methods of release detection; however, these testing methods do not prevent the release of hazardous substances into the environment. Secondary containment collects a leak of hazardous substance, and the monitoring equipment, such as a liquid sensor located within the containment area, detects the presence of liquid and potential leak. The adopted rules require annual testing of electronic and mechanical release detection components, such as liquid sensors and probes, as part of the UST system (N.J.A.C. 7:14B-6.1(h)) in addition to the integrity testing of containment (N.J.A.C. 7:14B-5.11). An annual line test may have a higher sensitivity of 0.1 gallons per hour (gph) for detecting a leak, and is accepted as a method of leak detection for one year. However, the piping or ancillary equipment can become compromised and potentially leak undetected at a slow rate (below 3 gph, which is the rate that activates the automatic line leak detector) during the other 364 days of the year. A PLLD can be programmed to run tests on a more frequent basis, with detection rates of 0.1 gph, 0.2 gph, and 3.0 gph and is an acceptable, reliable method of release detection for piping, but annual line tests and PLLD do not require the additional protective component of secondary containment designed to prevent a release of hazardous substances into the environment. Similarly, other release detection methods identified in N.J.A.C. 7:14B-6.5 and 6.6 are acceptable; however, with these methods the indication of a problem is given after the leak occurs. This has the potential of allowing hazardous substances to be released into the surrounding environment. The amended rules do not preclude an owner or operator of a double walled piping system from installing PLLD in addition to interstitial monitoring.

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The Department does not consider its position on maintaining interstitial monitoring for piping inconsistent with the provisions of N.J.A.C. 7:14B-5.11(a)2 or 5.10(a)1i, which allow an owner the option to perform a test instead of interstitial monitoring for double walled containment devices. UST tanks and piping contain hazardous substances on a continuous or routine basis so the Department feels it is reasonable to require tanks and piping already equipped with interstitial monitoring to maintain it as the primary method of release detection. Maintaining interstitial monitoring for secondarily contained tanks and piping is also consistent with the permitting provisions (N.J.A.C. 7:14B-10.1(b)) discussed in response to Comments 11 through 13 above. Containment devices (sumps or spill buckets) function as a secondary barrier, designed to contain hazardous substances only until they are detected and removed and, unlike tanks and piping, are accessible for visual inspections. It is important for the containment devices to function as a liquid tight structure, but integrity testing may be performed less often because the containment devices do not continuously or routinely contain hazardous substances. Spill prevention equipment and containment sumps also require visual inspection monthly and annually, respectively (N.J.A.C. 7:14B-5.12), which provides an additional method of integrity monitoring not available for tanks and piping located underground.

16. COMMENT: The EPA UST Final Rule and the Department's proposed rules require periodic testing of containment sumps used for interstitial monitoring. In addition to the great expense of conducting the test, many early iterations of secondary containment piping sumps were neither designed nor installed with provisions for future testing. Experience testing secondary containment systems in many areas outside of New Jersey reveals that under-dispenser containment is the primary challenge, as it was often installed with no way to isolate

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the dispenser containment area from the piping secondary (interstitial area). In these instances, it is often necessary to remove the entire fuel dispenser pump to gain access to the under-dispenser containment area and install a test boot to isolate the piping in order to perform testing. This dispenser removal, replacement, and test boot installation often costs significantly more than the cost of installing a PLLD to conduct 0.2 gallon per hour line testing.

The economic analysis the Department provided for piping sump testing is inadequate. A vast majority of secondary containment structures will be tight and great cost will be expended isolating this containment from piping interstitial areas. Additional cost will be incurred to perform the actual testing and dispose of hydrostatic test water. The Department's economic analysis assumes that all existing piping containment sumps are not tight, and secondary containment monitoring is the only effective method to identify leaks. (3, 9)

17. COMMENT: The owners and operators of double walled UST piping systems installed prior to April 11, 2016 should be able to choose other methods of release detection and not be forced to use or rely on interstitial monitoring. Interstitial monitoring forces owners and operators to routinely test their legacy containment sumps, which may not be able to pass a test according to current industry standards. This places a serious financial burden on owners who were proactive in the past to repair these systems when there is no incentive or requirement for owners of single-wall pressurized piping systems (which are more of a threat to the environment) to upgrade to a better technology to help prevent releases. (7)

RESPONSE TO 16 AND 17: The Department commends owners who installed UST systems with secondary containment as a protective measure before it was required. However, if the systems are to remain in use, they must be tested and maintained in accordance with their design.

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By definition, containment devices, sumps, and systems are liquid tight structures that provide containment of any release of a regulated substance. The requirement that containment devices (sumps) be tested every three years if pipes are interstitially monitored is consistent with the Federal regulations.

The Department agrees with the EPA's response to comment in its UST Final Rule, which stated, "EPA believes that both new and existing containment sumps used for interstitial monitoring need to be liquid tight so regulated substances can be contained and detected. EPA acknowledges that some containment sumps may not pass the initial test. Owners and operators will need to repair or replace failed containment. EPA believes liquid tight sumps prevent releases from reaching the environment. As with spill prevention equipment testing, EPA allows vacuum, pressure, or liquid filled methods to be used as options for testing containment sumps."

There is a variety of UST system designs and equipment that complies with the rules. Owners and operators with UST systems designed with secondary containment and interstitial monitoring must ensure that those systems are protective of the product they contain and the surrounding environment. This requirement is consistent with the intent of the permitting exemption discussed in the response to Comments 11 through 13 above. Although owners of double walled piping systems may incur expenses associated with containment sump testing and/or repairs, the Department feels the cost to repair and maintain the components of the original UST system, as designed, is a reasonable business expense. If the owner and operator fail to maintain the secondary containment, or a facility does not have secondary containment, they risk the release of hazardous substances to the environment. Proper maintenance of the UST system protects the owner and operator from the higher costs associated with remediating a release.

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18. COMMENT: The required methods for the integrity testing of containment sumps where interstitial monitoring of piping is performed are set forth at N.J.A.C. 7:14B-5.11(a)1i through (a)1iii. The EPA updated its published “Questions and Answers about the 2015 Underground Storage Tank Regulation” in May 2017, which specifically includes its determination of the protectiveness that low-level containment sump testing provides when the interstitial monitoring system positively shuts down fuel dispensing operations. The EPA used this alternative method of low-level containment sump testing to illustrate an example of a package of measures that can provide an equally protective alternative that is “no less protective” under 40 CFR 280.35(a)(1)(ii)(C) than the sump test specified in Petroleum Equipment Institute’s Recommended Practice RP1200 (PEI RP1200). Owners and operators should be permitted to rely on the EPA’s determination of protectiveness to demonstrate the low-level containment sump testing method (an example outlined by the EPA in Questions and Answers About the 2015 Underground Storage Tank Rule) is no less protective than a method required by N.J.A.C. 7:14B-5.11(a)1. (3)

19. COMMENT: The Department should modify N.J.A.C 7:14B-5.11(a)1ii on adoption to state, “Testing of the containment devices to the point where the sensor goes into alarm, ensuring positive shutdown of the system.” The Department should delete the requirement to test the sump to four inches above the highest intrusion as stated in PEI RP1200 (the incorporated code of practice). The RP1200 testing method submerges electrical components located within containment devices (sumps) that are not designed to be water tight, otherwise they would not be "explosion proof" rated. Testing a containment sump to a level above the highest intrusion also

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creates additional cost for an owner to dispose of contaminated water (300 to 500 gallons of contaminated water per sump). (10, 12)

20. COMMENT: The Department should provide clear guidance for how an owner and operator can demonstrate an alternate containment testing method as permitted by N.J.A.C. 7:14B-5.11(a)1iii and other areas of the regulation where this language is used. More specifically, is review and concurrence by the Department expected, or is this assessment solely the responsibility of the tank owner or operator? The Department should add an allowance to N.J.A.C. 7:14B-5.11 for methods determined to be acceptable by the EPA, other than the current industry standard PEI RP1200. Petroleum Marketers Association of America and the EPA have stated that alternative methods may be used to comply with the containment sump testing requirement and allowing for "low-level" testing as long as sensors are installed in the proper position in the containment sumps and these sensors are programmed for positive shut down of the turbine pumps if a leak is detected. The Department's rules need to be clear on whether or not alternative test procedures such as this will be allowed to be used to demonstrate compliance with containment sump testing and proving the containment sumps are liquid-tight. (7, 9)

RESPONSE TO COMMENTS 18 THROUGH 20: N.J.A.C. 7:14B-5.11(a)1iii allows testing of a containment device to be by a method demonstrated to be no less protective than manufacturer's requirements, or PEI RP1200, which is incorporated into the rule by reference. The Department has determined the code of practice established by PEI RP1200 is currently the best available guidance to provide owners and/or testers of containment devices and to exclude it from the adopted rule would be inconsistent with the EPA UST Final Rule. Accordingly, the Department is not modifying the rule on adoption, as suggested.

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Commenters note that the EPA has provided guidance that low-level containment sump testing under certain circumstances is no less protective than the methods allowed at N.J.A.C. 7:14B-5.11(a)1i and ii. The Department is taking the EPA's guidance under consideration. However, as the implementing agency, the Department has the responsibility to make a determination of protectiveness independently as it pertains to compliance with the Department's UST rules. This position is consistent with the EPA's UST Final Rule 40 CFR 280.35(a)(1)(ii)(C).

The Department acknowledges the concerns regarding costs and difficulties to perform the established testing method, and is evaluating alternative methods of containment device testing. The regulated community will be provided additional guidance on this matter through postings on the Department's website and through outreach by the Department's Compliance and Enforcement staff. For owners and operators seeking to perform a method of testing consistent with N.J.A.C. 7:14B-5.11(a)1iii, or similar provisions, the Department recommends the owner and/or operator check with the Department before relying on an alternate method for compliance. The Department will be able to tell them whether the method meets the rule's requirements.

21. COMMENT: Remove requirements at N.J.A.C. 7:14B-6.5 for product inventory control, specifically for systems that have double walled piping, double walled tanks, submersible turbine pump sumps and under-dispenser containment sumps. (8)

RESPONSE: The Department interprets this comment as referring to the inventory control requirements of N.J.A.C. 7:14B-6.5(a)4ii to be conducted with automatic tank gauging tests as a method of release detection. The commenter has provided no explanation or support for the

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request to remove the requirement. The requirement to conduct inventory control as part of the automatic tank gauging method of leak detection is not proposed for amendment or repeal in this rulemaking. Additionally, it is consistent with the EPA regulations. The Department is not modifying the rule on adoption.

22. COMMENT: At N.J.A.C. 7:14B-9 the Department proposes to allow only those tanks with secondary containment that remain out of service for more than 12 months to be put back in service. Single walled UST systems that have been re-lined and pass tank tightness testing should also be permitted to be put back in service after being out of service for 12 months. (10)

RESPONSE: Adopted N.J.A.C. 7:14B-9.1(c) allows owners and operators to request that an UST system with secondary containment remain out-of-service for a period of more than 12 months by submitting documentation to the Department in accordance with N.J.A.C. 7:14B-9.1(c)1 or 2. A single-walled UST system may be put back into service, provided it meets the requirements of N.J.A.C. 7:14B-9.1, and has been out of service for less than 12 months. Lining or re-lining a single walled UST involves applying a layer of dielectric material (generally epoxy) on the inside of the tank. The adopted rule allows lining of steel or fiberglass tanks determined to be structurally sound via an internal inspection, provided the internal lining is installed in accordance with the repair requirements of N.J.A.C. 7:14B-5.4. In the Department's experience, internal linings are often applied to tanks to resolve a structural failure or problem with the integrity of the tank, and in the case of single walled USTs the Department would prefer the out-of-service tank be closed and replaced with a double walled (secondarily contained) UST system.

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The secondary containment requirement for all newly installed and replaced UST systems is effectively phasing out single walled tanks. Allowing an owner and operator of a single walled UST 12-months to perform necessary repairs or upgrades, such as internal lining, on out-of-service tanks is intended to encourage the facility to act in a timely manner. Otherwise the single walled tank needs to be closed and/or replaced with a double walled UST, which aligns with the Federal and State regulatory goals of preventing environmental releases.

As discussed in the proposal Summary at 49 N.J.R. 1129, limiting requests for out-of-service extensions to UST systems with secondary containment is consistent with the EP Act and the EPA's Secondary Containment Guidelines requiring additional protective measures to prevent ground water contamination. The Department's intention in amending the rule is to prevent releases of hazardous substances. If an UST system is out of service for 12 months or more, the presence of secondary containment and compliant corrosion protection makes it less likely that the system will leak.

### **Spill and overfill prevention equipment**

23. COMMENT: The provisions of N.J.A.C. 7:14B-5.10 relating to spill and overfill prevention equipment should be revised to match the Federal rule. N.J.A.C. 7:14B-5.10(a)1ii requires testing of spill prevention equipment at the time of installation or, if installed prior to October 13, 2015, no later than October 13, 2018 and at least once every three years thereafter by using various approved methodologies. The Federal rule provides an initial interval for testing within three years of the effective date, October 13, 2015, but thereafter only requires testing

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based on manufacturer's requirements, code of practice, or method that the owner or operator demonstrates is no less protective of human health and the environment. (5)

RESPONSE: It is unclear how the Commenter is reading N.J.A.C. 7:14B-5.10. N.J.A.C. 7:14B-5.10(a)1ii requires testing of spill prevention equipment at installation and at least once every three years, which is generally equivalent to the Federal regulation at 40 CFR 280.35(a)(1)(ii). Specifically, N.J.A.C. 7:14B-5.10(a)1ii requires testing "in accordance with . . . [r]equirements developed by the manufacturer . . . , [a] code of practice developed by a nationally recognized association . . . , or . . . [a] method that the owner and operator demonstrate is no less protective of human health and the environment." The EPA UST Final Rule combines testing of containment sumps used for interstitial monitoring of piping with testing spill prevention equipment. The requirements for testing containment sumps where interstitial monitoring of piping is performed are in N.J.A.C. 7:14B-5.11.

N.J.A.C. 7:14B-5.10(b) requires owners and operators of UST systems installed prior to October 13, 2015, to perform initial testing and inspections no later than October 13, 2018 (or such later date as EPA may determine, as discussed in the response to Comment 54 and 55). This is consistent with the Federal regulations at 40 CFR 280.35(b)(1). The owner and operator of an UST system (other than a regulated heating oil tank system) installed on or after October 13, 2015, must begin the testing and inspections required by N.J.A.C. 7:14B-5.10(a) at the time of installation, which is consistent with the Federal regulations at 40 CFR 280.35(b)(2). Testing and inspections of regulated heating oil tank systems installed on or after October 13, 2015, must begin on or before October 13, 2018 (or such later date as EPA may determine, as discussed in response to Comment 54 and 55).

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24. COMMENT: The Department's rules should require testing of the spill buckets on a yearly basis rather than every three years as currently proposed. These devices deteriorate within a three-year period. The spill bucket's main function is to contain free standing product. (12)

RESPONSE: When combined with periodic visual checks via the walkthrough inspection, the required testing should adequately ensure spill prevention equipment operates properly. The requirement at N.J.A.C. 7:14B-5.10(a) that spill prevention equipment (spill buckets) be tested every three years is the same as the Federal requirements at 40 CFR 280.35. In accordance with the Water Pollution Control Act, State standards for spill prevention equipment should be substantially identical (or no more stringent than) the Federal requirements.

25. COMMENT: At N.J.A.C. 7:14B-5.10(d) the Department has expanded its requirement that both spill and overfill equipment be repaired or replaced if deficient. The Department requires spill prevention equipment to be tested every three years. The Department's rules should provide the option of installing double walled spill buckets that are both monitored by walk-through inspections and also have interstitial monitoring be deemed as meeting the requirements or tested every three years. (10)

RESPONSE: N.J.A.C. 7:14B-5.10(a)1 provides the alternative that the commenter suggests by requiring that spill buckets be constructed with two walls with interstitial monitoring and inspected at least every 30 days, or be tested every three years.

26. COMMENT: The Department should clarify the overfill inspection requirements at N.J.A.C. 7:14B-5.10(a)3. The EPA allows a supplemental high-level alarm to be used to satisfy the overfill prevention equipment inspection requirements when an overfill prevention shut off

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device installed within the fill pipe cannot be removed for inspection due to its configuration or to having become “frozen in place” over time. A high-level alarm installed to signal when the tank has reached 90 percent of capacity offers a second tier of protection and can more easily be inspected in future years. Thus, if an overfill device cannot be removed to be inspected, the owner/operator can be exempt from the three-year inspection requirement if the owner/operator installs a second overfill prevention system and initiates testing of same. The Department should allow for the same during field inspections, and should offer the regulated community suggestions on compliance alternatives. (3)

RESPONSE: The purpose of the overfill prevention equipment inspections at N.J.A.C. 7:14B-5.10(a)3 is to ensure the overfill method or device complies with the performance standards for UST system to prevent spilling and overfilling. The performance standards for overfill prevention equipment at N.J.A.C. 7:14B-4.1(a)3ii(1) through (3) provide three alternatives for compliance, including a high-level alarm. Therefore, the Department will accept a high-level alarm, provided the equipment meets the performance standard requirements of N.J.A.C. 7:14B-4.1(a)3ii, and the alarm is inspected in accordance with N.J.A.C. 7:14B-5.10(a)3. The owner of an UST system equipped with two (or three) overfill prevention devices must ensure the alternative methods of overfill prevention do not interfere with the primary overfill prevention equipment or other components of the UST system.

### **Operation and maintenance walkthrough inspections**

27. COMMENT: Proposed N.J.A.C. 7:14B-5.12(a)1ii, requiring annual containment sump inspections, is appropriate and aligns with the Federal rule. (5)

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RESPONSE: The Department acknowledges the commenter's support for the rule.

28. COMMENT: Clarify whether N.J.A.C. 7:14B-5.12(a)1ii applies to product lines. The UST rules should specify which facilities have to test, and which have to perform interstitial monitoring. Double walled systems installed prior to April 11, 2016, should be able to use annual tightness testing, statistical inventory reconciliation, or any other approved method of release detection monitoring. (10)

RESPONSE: N.J.A.C. 7:14B-5.12(a)1ii(1) through (3) require a walkthrough inspection at least once a year, or as appropriate to the UST facility. The walkthrough inspections must include a visual check of each containment device/sump, each dispenser cabinet and under-dispenser containment, and each device such as tank gauge sticks or ground water bailers located at a facility. The visual checks performed pursuant to N.J.A.C. 7:14B-5.12(a)1ii will include product lines, to the extent the piping is visible within the containment devices and dispenser cabinets being checked.

When the containment devices and under-dispenser containment are the areas where interstitial monitoring of piping is performed, the owner and operator must comply with N.J.A.C. 7:14B-5.11, Integrity testing of containment devices where interstitial monitoring of piping is performed. To ensure the containment device is functioning, the owner and operator can test each containment device at least once every three years, or if the containment device is double walled, the owner and operator can monitor and check the interstitial area (between the inner and outer walls of the structure) at least annually. The requirements to perform either testing or interstitial monitoring of containment devices is limited to those facilities interstitially monitoring the UST piping in the containment area. Most facilities will need to perform testing

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of the containment device; only the facilities that have installed double walled containment devices where interstitial monitoring or piping is performed would be able to select the second option of monitoring the interstitial area of the containment device.

Methods of release detection monitoring for double walled systems installed prior to April 11, 2016 is discussed in the Department's response to Comments 11 through 15 above.

### **Compatibility**

29. COMMENT: The EPA's updating of the compatibility section of the Federal regulations was primarily focused on petroleum containing greater than 10 percent ethanol and 20 percent bio diesel. Proposed N.J.A.C. 7:14B-5.3 does not convey the original intent of 40 CFR Part 280, and could result in older UST systems becoming obsolete. The Department should clarify N.J.A.C. 7:14B-5.3 so that the rule is consistent with Federal regulations in that proving compatibility is limited to systems containing petroleum when it contains greater than 10 percent ethanol and 20 percent biodiesel. (9)

RESPONSE: N.J.A.C. 7:14B-5.3 addresses the variety of fuel blends, in addition to alcohol blends, that have become available across the fuel market. In order to prevent releases into the environment, it is important that each UST system be compatible with the regulated substance stored in the system. The Federal rule at 40 CFR 280.32(b) states, "owners and operators must notify the implementing agency at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 10 percent biodiesel, or any other regulated substance identified by the implementing agency." The Department is the implementing agency. Accordingly, N.J.A.C. 7:14B-5.3(b), which repeats the Federal rule,

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substituting “the Department” for “the implementing agency” and providing a means of notification, is consistent with its Federal counterpart.

30. COMMENT: N.J.A.C. 7:14B-5.3(b) requires owners and operators to demonstrate compatibility of UST system equipment and components with any regulated substance that contains greater than 10 percent ethanol or greater than 20 percent biodiesel, or any other regulated substance identified by the Department. The Department should allow qualified individuals, such as professional engineers, certified tank contractors, certified lining inspectors, and manufacturer certified tank technicians to certify a tank is compatible with its contents. (10)

RESPONSE: The adopted amendments for determining compatibility are consistent with the Federal regulations at 40 CFR 280.32, and apply to the UST system equipment and components, not only to the tank. Although the commenter recommends that certain licensed or certified professionals be authorized to certify that a tank (or UST system) is compatible with its contents, the comment does not provide documentation that any of the suggested professionals is required to have knowledge or experience with compatibility or fuel blends and/or ancillary UST equipment. In the absence of such knowledge or experience, the certification of one of the identified professionals is not as protective of human health and the environment as the certification or listing of the UST system equipment or components by a nationally recognized, independent testing laboratory (N.J.A.C. 7:14B-5.3(b)1) or the written statement of compatibility from the equipment or component manufacturer (N.J.A.C. 7:14B-5.3(b)2).

### **Rules Unrelated to Federal Requirements**

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### **Regulated heating oil tank systems**

31. COMMENT: New Jersey regulates certain heating oil USTs that are not Federally regulated, which the proposed rules refer to as “regulated heating oil tank systems.” The Department's proposed amendments and new rules would require owners of regulated heating oil tank systems to comply with all of the requirements of the EPA UST Final Rule by October 13, 2018. Due to the significant revisions to rules related to such items as inspections, operator training, and record keeping, the EPA UST Final Rule felt compelled to offer a three-year phase-in period. The Department should provide the same phase-in period for regulated heating oil tank systems. (1, 3, 4, 5, 11)

RESPONSE: The rules do not require regulated heating oil tank systems to comply with all Federal standards by October 13, 2018. As stated in the proposal Summary, 49 N.J.R. at 1122, if the Federal requirement is not yet applicable (such as the spill and overfill prevention equipment provisions for UST systems at N.J.A.C. 7:14B-5.10 that do not apply until October 2018), then the rules apply to regulated heating oil tank systems and Federally regulated UST systems on the same future date. If the Federal requirement is already in effect, the Department is allowing regulated heating oil tank systems a period of time to comply with the corresponding provision in the rules, which period of time is the same as the Federal rules provided when they were promulgated. For example, the secondary containment requirements for new regulated heating oil tank systems will apply to such systems installed on and after [*180 days after publication of the adoption*].

October 13, 2018 (or such later date as EPA may determine, as discussed in the response to Comment 54 and 55), is the compliance date for such provisions as operator training, spill

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prevention equipment testing, overfill prevention equipment inspections, testing of containment devices where interstitial monitoring of piping is performed, release detection equipment testing and walkthrough inspections. Of these, only the operator training requirement has no counterpart in the Department's prior rules. The required testing and inspections are common and often routine maintenance procedures; some of these requirements, such as walkthrough inspections and parts of the release detection equipment testing, are required in the Department's prior rules.

Requiring all UST systems (of which regulated heating oil tank systems are a small subset) to comply with the rules on or before the same future date simplifies both implementation and enforcement. Delaying the requirements for implementing protective measures such as operator training and routine equipment testing and inspections is not consistent with the goals of the UST rules, which is to prevent releases of hazardous substances and groundwater contamination from USTs.

32. COMMENT: The proposed compliance date for regulated heating oil tank systems is in direct violation of N.J.S.A. 58:10A-29.b, which states the deadline for State only regulated tanks is five years after the deadline for Federally regulated tanks. (3)

RESPONSE: N.J.S.A. 58:10A-29.b extended the December 22, 1998 deadline for owners and operators to meet the requirement to upgrade tanks with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a non-residential building, i.e. solely State-regulated tanks. N.J.S.A. 58:10A-29.b does not grant solely State-regulated tanks an additional five years to comply with any UST rule amendments in perpetuity. In fact, under N.J.S.A. 58:10A-29.b an

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owner or operator was allowed to use the extension only if he or she satisfied the requirements of N.J.S.A. 58:10A-29.1. N.J.S.A. 58:10A-29.1 required the owner or operator to have entered into a contract for the provision of leak detection testing on the UST, performed the testing no later than August 31, 1999 and every 36 months thereafter, and provided a copy of such contract to the Department by December 22, 1998, in order to be entitled to the five-year extension. The Legislature adopted N.J.S.A. 58:10A-29.b and N.J.S.A. 58:10A-29.1 at the same time in 1998, a few months before the December 22, 1998 compliance deadline in the UST rules. When one reads N.J.S.A. 58:10A-29.b and N.J.S.A. 58:10A-29.1 together, it is evident that the five-year extension was intended for one-time application in 1998.

### **Wellhead protection area definition, design requirements**

33. COMMENT: When the Department's UST rules were first promulgated, the date of September 4, 1990 was established to define which USTs predated the rule and which USTs were placed in service after the rule. In much the same way, the EPA UST Final Rule established April 11, 2016 as the date after which all new USTs must meet double walled construction with interstitial monitoring requirements. Tanks placed in service prior to the effective date of the amendments, installed or modified in accordance with regulations in effect as of the date of installation, and which continue to operate in compliance with those regulations, can remain in service until such time as significant repairs are needed or replacement is elected. Nothing in the EPA UST Final Rule requires that an existing compliant tank be removed from service prior to its falling out of compliance with rules in effect at the time of installation.

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In 1990, N.J.A.C. 7:14B-4.1(b)1 was needed to specify the performance standard of tanks installed in a wellhead protection area going forward. Given that the proposed N.J.A.C. 7:14B-4.1(a)1v requires tank systems to have double walled construction, N.J.A.C. 7:14B-4.1(b) is unnecessary. Further, the proposed rule imposes a performance standard on past installations. For the past 27 years, the definition of wellhead protection area has been a simple function of distance. The Department models wellhead protection areas on two year, five year, and 12 year contaminant transport, but offers no clarity on its application. Accordingly, UST sites that are currently compliant but are not secondarily contained, or not interstitially monitored and were not previously within a wellhead protection area, may now be located within the confines of the newly defined wellhead protection area. This is a serious change that will have severe implications to small business owners who fall in this category. Many USTs have been installed after September 4, 1990 and could fall in this category.

The EPA UST Final Rule does not require regulated tanks located within 1,000 feet of an existing community water system or an existing potable drinking water well that are not now secondarily contained to install secondary containment. These tanks are subject only to the performance standards and secondary containment standards in effect at the time of installation. The citation at N.J.A.C 7:14B-4.1(b) creates a requirement that is more stringent than the Federal rule and is no longer necessary, as the Federal rule now provides the protection New Jersey sought in 1990. Accordingly, the rule should be deleted because it imposes upgrade requirements on existing, compliant tanks. Meanwhile, tanks that are older than September 1990, that are of single walled construction, and/or do not use interstitial monitoring, remain exempt from any upgrade requirement proposed under this rule regardless of proximity to a wellhead protection area, providing existing systems are maintained.

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The Department's proposal for such a significant change to the definition of wellhead protection area is disappointing, is different from the previous May 2015 proposal and documents shared with stakeholders, and violates Executive Order No. 2 paragraph 1a. (3, 10)

34. COMMENT: The proposed change to the definition of a wellhead protection area greatly expands the locations and, therefore, potentially results in many UST sites being out of compliance with the secondary containment and interstitial monitoring requirements upon the date of this rule adoption. The Federal rule allows existing tanks that were in compliance with regulations at the time of installation, on or after September 4, 1990, to remain in service until any significant repairs are needed or a replacement is elected. The Department's proposed rule imposes an upgrade requirement on existing USTs installed on or after September 4, 1990, while the Federal rule states that tanks are only subject to the performance and secondary containment standards in effect at the time of installation. The Department should remove "on or after September 4, 1990" from the regulations at N.J.A.C. 7:14B-4.1(b) and 6.4(a)2. (5)

35. COMMENT: The proposed amendment of the definition of "wellhead protection area" will require tank owners to follow New Jersey's DGS02 "Wellhead Protection Areas for Public Community Water Supply Wells in New Jersey." The Department's DGSO2 includes mapping tools based on well proximity and time of travel data. Depending on the time of travel category selected the wellhead protection area grows markedly.

This amendment to the definition is significant as N.J.A.C. 7:14B-6.4 includes requirements for facilities within wellhead protection areas. The compliance date for these facilities is September 4, 1990. The Department's redefining of a wellhead protection area has

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the potential to make many UST facilities instantaneously non-compliant with the long past September 1990 compliance date.

The Federal rules define a wellhead protection area as 1,000 feet from a public community well. Depending on the Department's DGSO2 criteria, selected wellhead protection areas can now exceed 4,000 feet in distance. The Department's economic impact assessment takes no consideration for this apparent increase in potential doubling of facilities within wellhead protection areas. There will be urgent compliance costs, as well as consulting costs in inferring the data contained in DGS02 as this is most likely beyond the capability of the average tank owner to determine. (9)

RESPONSE TO COMMENTS 33 THROUGH 35: The amended definition of wellhead protection area and the corresponding amendments to the performance standards (N.J.A.C. 7:14B-4.1) and release detection provisions (N.J.A.C. 7:14B-6.4) do not apply retroactively. UST systems installed prior to the adoption of the new and amended rules and located outside of the previously defined wellhead protection area, will not be required to comply with wellhead protection area requirements until the facility installs a new UST system. Accordingly, there will be no increased costs for compliance or economic impacts to consider with adoption of this rule provision. New tanks must take into account the amended definition of wellhead protection area, and meet the applicable standards. Additionally, the Department has determined the requirements at N.J.A.C. 7:14B-4.1(b) and 6.4(a)2 must be maintained in the adopted rule to ensure any UST systems installed in wellhead protection areas between September 4, 1990 and April 11, 2016 comply with the applicable secondary containment and release detection requirements.

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As discussed in the proposal Summary, 49 N.J.R. at 1135, the amended definition reflects up-to-date wellhead protection area delineations that conform to the definition within the State Act. The prior definition established a protection area based upon the hazardous substance stored in the UST system; however, the State Act at N.J.S.A. 58:10A-22 defines “wellhead protection area” as an aquifer area described in a plan view around a well, from within which ground water flows to the well and through which ground water pollution, if it occurs, may pose a significant threat to the water quality of the well. The wellhead protection area is delimited by the use of time-of-travel and hydrologic boundaries. According to the Basis and Background Document for the Proposed Underground Storage Tank Rules (June 1989), in support of the amendments to the UST rules that were operative in 1990 (22 N.J.R. 242(a), 22 N.J.R. 2758(a)), the prior definition intended the specific radius distances from public community or public noncommunity water systems wells serve as an interim measure until the Department could complete delineations. The Department has since completed delineations of the public community and non-community water supply wells in New Jersey and provides mapping tools, data, and delineation guidelines at the Geological and Water Survey website, <http://www.nj.gov/dep/njgs/functions/index.htm>.

### **Registration requirements and procedures**

36. COMMENT: On an annual basis, the owner or operator submits an updated financial responsibility insurance certificate when the policy number changes, which may be on a different renewal cycle than the UST registration period. For example, an owner and operator may renew the UST registration on March 1st, but the insurance policy renews on August 1st with a new

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policy number (same insurance carrier and coverage amounts). Please clarify that the annual registration satisfies the annual insurance coverage documentation, and the owner and operator is not required to send the Department an updated insurance certificate when the policy number changes at the renewal. (5)

RESPONSE: N.J.A.C. 14B-2.2(c)9 requires that the owner and each operator of a UST facility provide certain information evidencing the maintenance of financial responsibility assurance in order to obtain an initial UST facility registration. N.J.A.C. 7:14B-2.1(b)6 requires that the owner and operators amend the UST facility registration within 30 days of termination, modification, addition, or other change to the financial responsibility assurance. As observed in the rule proposal Summary, 49 N.J.R. at 1140, ordinarily financial responsibility assurance is in the form of an insurance policy, which usually is issued for a one year term. Often the term or period of coverage of a financial responsibility policy will not coincide with the annual registration renewal cycle. In such cases, the owner and operators are required by N.J.A.C. 7:14B-2.1(b)6 to amend the UST facility registration to provide the new financial responsibility insurance information not submitted at the time of registration renewal. To comply with this reporting requirement, the owner and operators typically will need to amend the UST Facility Certification Questionnaire once a year, notifying the Department of the new coverage period of the policy and the other insurance information required by the rule to demonstrate continued maintenance of financial responsibility assurance. As amended, the rule requires that the entire insurance policy (or other financial responsibility mechanism) be furnished with the amended Questionnaire. Electronic submittals of financial assurance documents through e-mail are acceptable

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and encouraged to reduce the volume of paper submittals. There is no fee for amending the Questionnaire, so the burden on the regulated community is minimal.

The requirement that the UST Facility Certification Questionnaire be amended to reflect changes in financial responsibility insurance will assist owners and operators in complying with the requirement that they maintain continued financial responsibility assurance until the UST facility is remediated, where necessary, and properly closed. As provided in 40 CFR 280.113, “An owner or operator is no longer required to maintain financial responsibility under this subpart for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 40 CFR part 280, subpart G.”

Pursuant to N.J.A.C. 7:14B-15.3, the Department has incorporated by reference the Code of Federal Regulations governing Federally-regulated UST facilities. Requiring amendment of the Questionnaire to report changes in financial responsibility insurance coverage is essential for the Department to monitor compliance of owners and operators with their continuing obligation to maintain financial responsibility assurance until proper closure of the UST facility.

The Department is particularly concerned about potential gaps in financial responsibility insurance coverage. To comply with their financial responsibility assurance requirements, owners and operators should ensure there are no gaps in coverage following issuance of the first financial responsibility insurance policy. This means that each policy renewal or succeeding policy covering a UST facility should commence when the term of the last policy ends. It also means that each policy renewal or succeeding policy should incorporate the retroactive date in the preceding policy covering the UST system. If the retroactive date in the prior financial

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responsibility policy is not picked up in the succeeding policy, a gap in the continuous financial responsibility insurance is created.

37. COMMENT: It is much more efficient for the owner or operator to certify that the UST facility is in compliance with operator training requirements, rather than designate each Class A and Class B operator on the registration. The requirement that the owner and operator amend the registration to designate each Class A and Class B operator can result in needless penalties and creates unnecessary administrative burdens for owners and operators, as well as the Department. Also, the Federal rule and other states do not have a similar requirement. (5, 13)

38. COMMENT: Only Class A operators should be listed on the UST registration. The requirement to amend the UST registration every time there is a change in Class B operators is cumbersome and burdensome to the regulated small business community. (10)

RESPONSE TO COMMENT 37 AND 38: Obtaining an UST facility registration is the initial step to determining compliance and verifying that an owner and operator have all the necessary components in place to operate the facility in accordance with UST rules. The UST registration certificate is the Department's authorization to operate the UST facility and is obtained by submitting a complete UST Facility Certification Questionnaire. Beginning in October 2018 (or a later date, as discussed in the response to Comment 54 and 55), the owner and operator must designate Class A and Class B operators. If the names of the trained Class A and B operators are included on the questionnaire, the Department can promptly and routinely confirm the facility is complying with operator training by reviewing the UST registration information. Identifying the

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Class A and Class B operators, even as the designated individuals change, allows the Department to more efficiently confirm compliance with the rules. If the names of the designated Class A and Class B operators were not required to be on the questionnaire, the only way for the Department to ensure that a facility is in compliance with training requirements would be to review the operator training records during an on-site inspection. If the Department issues a notice of violation to a facility for failure to designate a Class A or Class B operator, that violation is minor and will, in most cases, be eligible for a grace period. In many instances the owner and operator may amend the registration information during the grace period and not incur a penalty; this may not be the case if the facility is repeatedly in violation of this requirement.

39. COMMENT: New property owners that have never owned or operated a site's UST system should be exempt from the registration requirements if the new owner is going to close the UST system. Local governments frequently acquire property through involuntary means (tax foreclosure, for example) and are faced with such situations. The Department has generally waived the long-term fees for such non-labile parties after discussions with Department professionals. The exemption should be written into the regulation to prevent unwarranted billing of "innocent" and/or "voluntary" parties. Voluntary parties will continue to close discovered orphan UST systems in accordance with current Site Remediation requirements, including oversight by Licensed Site Remediation Professionals. Should registration continue to be required to track the closure, the fees (at least) should be waived. (2)

RESPONSE: It is important that the Department and the public are aware of the location of all regulated USTs (existing and closed) within the State because USTs pose a risk to public health

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and the environment, specifically ground water resources. The Department learns of USTs through questionnaires that owners and operators submit to the Department to register the UST facility.

The Federal UST program began on November 8, 1984. As of that date, each owner of a Federally regulated UST was required to notify the designated state or local agency of the existence of an UST, specifying the age, size, type, location, and uses of the tank (40 USC § 6991a). In New Jersey, the Department is the designated State agency, and notification is through the questionnaire. "Owner," for purposes of the Federal notice requirement, means, in the case of an UST in use on November 8, 1984, or brought into use after that date, any person who owns an UST used for the storage, use, or dispensing of regulated substances. As to an UST in use before November 8, 1984, but no longer in use on November 8, 1984, "owner" means any person who owned the UST immediately before the discontinuation of its use (40 USC § 6991). Federal law does not require registration of USTs that were taken out of operation on or before January 1, 1974 (40 USC § 6991a(a)(2)(A)).

Often decades have passed since an UST was last operational, in which case locating the former owner is impractical, if not impossible. Accordingly, EPA requires the new property owner to register the UST, even if the property owner is not the person who took the UST permanently out of use. "With regard to tanks in use on or after November 8, 1984, notification must be provided by the tank's current owner. If the tank was in operation on November 8, 1984, the current owner is responsible to provide notification under the statute even if the tank was permanently taken out of use after November 8, 1984, and even if the current owner was not the person who took the tank out of use. For example, if a tank was in use on November 8, 1984, but was taken out of use before it was sold to a new owner the following month, the new owner has

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the responsibility to notify even though the new owner had never used the tank to store regulated substances.” Notification Requirements for Owners of Underground Storage Tanks, 50 Fed. R. at 46602-46618 (November 8, 1985).

Consistent with the Federal requirements, the Department considers the current property owner to be responsible for compliance with the registration requirements at N.J.A.C. 7:14B-2 if the UST contained a regulated substance at any time after January 1, 1974, and has not been previously registered.

The Department first required USTs to be registered in 1988. Adopted N.J.A.C. 7:14B-3.2(b) requires the owner and operator who failed to register the UST system and pay the necessary fees when initially required in 1988 or when the tank system was installed, whichever is later, to pay a registration fee for each year that the system was not closed in accordance with the rules. The owner of property on which there is an unregistered UST system may not be responsible for all of the outstanding registration fees. When the Department receives documentation showing the date of the transfer of the property to the owner, and indicating that the new owner was not the owner and/or operator at the time initial UST registration was required, the Department will adjust the registration fee owed for the UST facility. It is not necessary for the Department to modify the rule to indicate that the new property owner is not responsible for the previous registration fees. Adopted N.J.A.C. 7:14B-3.2(b) makes it clear that the owner and operator who failed to register the UST system and pay the necessary fees is responsible for paying the previous fees. The new owner is responsible only until the UST system is taken out of service and properly closed. When an owner purchases a property with the intention of closing the UST systems on the property, there is no way to know how long it will be until the closure takes place. Until the UST system is properly closed, it remains subject

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to the requirements of the UST rules, and Department oversight. The registration fee covers that oversight. Accordingly, the Department is not modifying the rule on adoption to do away with the registration fee for property purchasers who intend to close the UST systems on the property.

40. COMMENT: The installer's license does not qualify him/her to certify the design or capabilities of the system. This is the area of expertise of an engineer. This documentation should be obtained prior to the system installation. (12)

RESPONSE: The Department interprets this comment as referring to the requirement at N.J.A.C. 7:14B-2.2(h) that a certified tank installer certify on the questionnaire that an UST system and/or an out-of-service UST system is properly designed and capable of being put into service. The certification requirements for individuals and business firms to install UST systems are set forth at N.J.A.C. 7:14B-13. When an UST system is installed, a Department-certified individual must be on site during all activities; therefore, the certified individual is most familiar with the design and installation of the UST system, including whether the system complies with the manufacturer's requirements for proper installation and operation. Although an engineer may be involved in the installation of an UST system, an engineer is not required, meaning that an engineer may not be available to provide such a certification.

The Department does not obtain information about all UST system installations prior to installation because not all UST systems are subject to permit requirements (see, for example, N.J.A.C. 7:14B-10.1(b) and (c)). For these UST systems, there is no opportunity for the Department to obtain documentation in advance of installation. Certification on the questionnaire is applicable to all UST systems.

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41. COMMENT: Throughout the proposed rules the Department refers to the “Underground Storage Tank Facility Certification Questionnaire.” The Department should also clarify in the regulations that the Department’s “NJDEP Online” interface may also be used to meet the requirements and procedures applicable to UST registrations. (9)

RESPONSE: The Underground Storage Tank Facility Certification Questionnaire is available in hard copy or online. Where the rules refer to the Underground Storage Tank Facility Certification Questionnaire, the rules are applicable to either medium. No modification of the rules on adoption is necessary.

42. COMMENT: The Department should require that the change in ownership information be provided within 30 days after the change in ownership occurs. Proposed N.J.A.C. 7:14B-2.3(b) requires notice to the Department of the change in ownership 30 days prior to an actual change in ownership. This is burdensome and prone to errors, as many ownership closings dates are changed often and greatly. (10)

RESPONSE: New N.J.A.C. 7:14B-2.3(b) requires the existing facility owner to notify the Department at least 30 days prior to the sale or transfer of the facility, and to provide information relating to the facility and the prospective owner. As discussed in the proposal Summary (49 N.J.R. at 1137), the purpose of the new notice requirement is to provide the Department advance notice of a potential sale or transfer of a facility, and an opportunity to assist the new facility owner in obtaining an UST registration certificate. An UST registration certificate is not transferrable; therefore, unless and until the new owner obtains an UST registration certificate, the new owner may not operate the facility (N.J.A.C. 7:14B-2.3(a)). The existing requirement

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that the new owner and operator amend the UST facility registration within 30 days after any change in ownership of the facility remains (N.J.A.C. 7:14B-2.1(b)3). While the new owner does have an obligation to notify the Department after the sale or transfer, the Department has found a new owner may not become aware of this requirement until a violation has occurred. Requiring the existing facility owner to notify the Department in advance of the sale or transfer allows the Department to focus compliance assistance on the prospective owner. The advance notice also allows the Department to direct correspondence to the new owner in a more timely fashion than if the Department must wait for the post-transfer notice.

The Department does not agree that the advance notice requirement is burdensome and prone to errors as a result of changes in the closing date. The rule does not require that the advance notice be provided repeatedly. This is a one-time notice, to be made at least 30 days in advance of the transfer. There is no fee associated with the notice, and the rule does not require that the notice be updated to reflect a changed closing date.

### **Release Response Plan**

43. COMMENT: N.J.A.C. 7:14B-5.5(a)2 requires the facility to provide on its emergency response plan the name and telephone numbers the person or call center responsible for operation of the facility during an emergency, including the Class A, B, or C operators, as applicable. The rule should permit the use of generic Class A/B/C titles for organizations with established continuously staffed emergency call centers and defined company procedures. Including a Class C operator name on the release response plans is a significant hardship. Large organizations may provide all employees Class C operator level training as a condition of hire. Documentation of training certificates for Class A, B, and C operators are required to be readily available at the

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facility. As such, providing anything more than a generic title for these positions represents an excessive and redundant burden that exceeds Federal requirements. (9)

RESPONSE: N.J.A.C. 7:14B-5.5 outlines the information to be included on an UST facility's release response plan. The rule requires the name and phone number of the Class A, B, or C operators "as applicable." The Department anticipates that a facility will designate one or more Class A, B, or C operators to be contacted in case of an emergency. It is not necessary that the emergency response plan identify all of a facility's Class A, B, or C operators in the release response plan, since not all of these individuals will be responsible for operation of the facility during an emergency. The facility could provide the title of an individual, rather than a name, as long as the provided telephone number will reach the person in the identified title. For those facilities that operate a full-time call center, the rule allows the facility to identify the call center on its release response plan.

44. COMMENT: The Department is proposing a new release response plan to include procedures on how to address alarms associated with release detection equipment. The Class C operator should understand the release response plan and whom to contact regarding the alarm. It is not for the Class C operator to address the alarm. (10)

RESPONSE: N.J.A.C. 7:14B-5.5(a)3 requires a release response plan to include the procedures to be followed in the event of a leak or discharge of a hazardous substance, including the procedures to address alarms associated with release detection equipment. Instructions on how to appropriately respond to release detection equipment alarms are critical to preventing or

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minimizing a discharge of hazardous substance from an UST system. The adopted rule does not require any specific individual, such as a Class C operator, to address the alarms.

Training for a Class C operator (N.J.A.C. 7:14B-5A.2(c)) includes instruction on appropriate actions and responses to alarms associated with release detection equipment or the UST system. Therefore, the Class C operator should be aware of how to respond to a release detection equipment alarm. The sooner someone responds to an alarm, the more likely that any discharge will be contained.

45. COMMENT: N.J.A.C. 7:14B-5.5(a)4 requires inclusion of the facility's Licensed Site Remediation Professional (LSRP) within the release response plan. The inclusion of the LSRP is limited to properties that are undergoing remediation activities. It should be noted that in some instances where a property has LSRP oversight, the LSRP may not be representing the tank owner or operator. There is no practical purpose of including the LSRP contact information. (9)

RESPONSE: Proposed N.J.A.C. 7:14B-5.5(a)4 required the owner and operator to include in the release response plan the name and telephone number of any retained licensed site remediation professional (LSRP). Because the release response plan is prepared on behalf of the current owner and operator, the LSRP would be one that the current owner or operator retained; the plan would not need to identify an LSRP working on behalf of a prior owner or operator.

The Department is correcting the rule on adoption to remove the requirement that the LSRP be a retained LSRP. The owner and operator must retain an LSRP to oversee remediation in the event of a discharge, but the owner and operator do not need to retain an LSRP in the absence of a discharge. Nevertheless, because timely notification and response is one way to minimize impacts of any new discharge, the owner and operator must identify an

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LSRP on the release response plan. The owner and operator may retain the LSRP's services after the discharge has occurred.

If there is an LSRP working on the site on behalf of someone other than the current owner or operator, as in the commenter's example, the Department recommends that that LSRP also be advised of the discharge, in order that the LSRP may evaluate the new discharge in relation to any ongoing site remediation efforts.

### **Fourteen Day Notification**

46. COMMENT: N.J.A.C. 7:14B-10.1A requires a 14-day notification to the Department prior to commencing certain physical on-site work activities. This requirement is unnecessary and creates a burden that could result in an inability to pump or potential shutdowns. Moreover, the Federal rule includes no similar requirement. (5)

RESPONSE: Notification to the Department at least 14 days in advance of UST installation, substantial modification, closure, and similar activities does not mean that a Department employee must be present when the work is conducted, nor does it mean that the owner or operator of the facility must schedule the work to accommodate availability of the Department. The Department will not provide approvals in response to the 14-day notification. The notice allows the Department to know in advance that the work is taking place, and allows the Department to conduct whatever inspections it determines are necessary. It also allows the Department to review its records to confirm that the contractor performing the work is properly certified, and that the facility is properly registered. The burden on the facility is minimal; notice

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is by email, and there is no cost associated with providing the notice to the Department, other than the few minutes that assembling the information may require.

47. COMMENT: The Department has made the 14-day notification the responsibility of the tank owner and operator. The Department should allow this notification to be made on the owner and operator's behalf by a Department-certified UST or environmental contractor. The use of a specific email notification address (14dayUSTnotice@dep.nj.gov) is a good idea and will facilitate communication. It is requested that the Department provide delivery confirmation for notifications so that the responsible party has adequate documentation the notification was made. Does the contractor need approval to proceed with the work activities? (6, 9, 13)

RESPONSE: The owner and operator are ultimately responsible for the UST facility and for complying with the UST rules; therefore, it is appropriate that the owner and operator be responsible for providing the notice to the Department. However, as stated in the proposal Summary at 49 N.J.R. 1138, "an individual or business firm certified to perform these work activities pursuant to N.J.A.C. 7:14B-13 can notify the Department on behalf of the owner and operator, as can a Licensed Site Remediation Professional, licensed pursuant to N.J.A.C. 7:26C-1.3." The Department is modifying N.J.A.C. 7:14A-10.1A on adoption to expressly allow a Department-certified individual or business, or an LSRP to provide notice to the Department. If either the certified individual or business or the LSRP fails to provide such notice, the owner or operator will be held responsible.

The Department will establish an automatic reply from the email address, which an owner or operator may use as confirmation that the Department received the notice. However,

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the Department cannot guarantee that the recipient's spam filter will not intercept the reply, or that some other factor will not intervene to interrupt the receipt. The Department recommends that the owner and operator maintain a record that the email was sent.

As discussed in the response to Comment 46, the Department will not issue an approval in response to the notification. Work may proceed so long as any other necessary permits and/or approvals have been obtained.

48. COMMENT: The proposed rules require notification to the Department at least 14 days prior to commencing physical on-site work related to installation, substantial modification, or closure of an UST system, or performing activities specified in N.J.A.C. 7:14B-4, 5, or 6 requiring Department approval. The Department should require notification for testing activities as well. (7)

RESPONSE: The Department does require advance notice of testing of vapor recovery systems or equipment at gasoline dispensing facilities (N.J.A.C. 7:27-16.3(j)). If the Department were to receive advance notice of all testing of all UST systems, the number of notices that the Department would receive would be overwhelming. For all testing, including of vapor recovery systems, the owner and operator must maintain documentation of the tests and the results. The Department can review the documentation during compliance inspections.

The Department requires advance notice of UST activities such as installation, substantial modification, or closure because these activities often expose areas and components of the UST system that would not otherwise be visible. The Department can inspect these hidden areas, as

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necessary. These activities also do not occur as frequently as routine UST testing, so the volume of notices is less than it would be if the rules also required advance notice of all testing.

## **Penalties**

49. COMMENT: Regarding civil administrative penalties, the proposed rules state that the Department “may” assess civil administrative penalties. The Department does not always have to assess civil administrative penalties. Often the penalties associated with the infraction do not warrant the amount of the penalty issued. If no harm has been done to the environment, no harm to the public, or no leak has been detected, the first assessment should be a warning and the UST owner should have the benefit of a 30-day window to fix the problem without a penalty assessment. It is far too often that the Department assesses excessive penalties for minor infractions. (10)

RESPONSE: The Department assesses penalties to promote compliance and deter future violations. In the Department’s experience, owners and operators who consistently comply with the rules have fewer environmental issues than owners and operators who are frequently in violation of the rules. As discussed in the proposal Summary, 49 N.J.R. at 1122 and 1134, the Department has established a penalty matrix at new N.J.A.C. 7:14-8.19 for violations of the UST rules. The penalties take into account the type and seriousness of the violation, the economic benefit to the violator as a result of the violation, the degree of cooperation or recalcitrance of the violator in remedying the violation, efforts that the violator has taken to avoid a repetition of the violation, and any unusual or extraordinary costs to the public as a result of the violation.

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The adopted rules contain base penalty amounts for all violations, along with a severity factor multiplier, based on the behavior of the violator, which could add as much as 100 percent to the base penalty. The base penalty constitutes the minimum amount the Department determines is necessary to maintain an adequate deterrent against future violations, while taking into account the inherent seriousness of the infraction and the operating history of the violator. Base penalties assume the seriousness of the violation and the conduct of the violator are as positive as can be. For owners and operators who commit non-minor violations of the rules, but who have not previously been in violation, the base penalties will minimize the amount of their penalties.

The commenter's belief of what constitutes a "minor" violation may not be the same as the Department's. The Grace Period Law, N.J.S.A. 13:1D-125 through 133, directs the Department to allow a grace period – a period of time to correct a violation and achieve compliance – for minor violations of certain environmental laws, including the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Violations of the UST rules constitute violations of the Water Pollution Control Act. If the minor violation is corrected during the grace period, the Department will not assess a penalty. Of particular importance in determining whether a violation of N.J.A.C. 7:14B is minor or non-minor is the statutory criteria that a violation be assessed to determine if it "...materially and substantially undermine[s] or impair[s] the goals of the regulatory program," or "poses minimal risk to the public health, safety and natural resources." Many of the violations pertaining to UST systems (all of which store hazardous substances) are determined to be non-minor. Discharges from UST systems have the potential to cause harm to human health and the environment, primarily through underground discharges and spills during transfer operations or deliveries. Failure of an UST system can be particularly

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problematic because more than 95 percent of the system is located underground and not visible.

It is, therefore, necessary to rely upon properly operating and maintaining sensors and other equipment to detect and alert the operator of a potential discharge. Even if a facility's violation of the UST rules does not result in a leak, and does not harm the environment or the public, the violation may still be one that materially and inherently undermines the goals of the UST regulatory program, which is to prevent discharges. For example, a violation that could cause an owner or operator to be unable to detect a discharge, although no discharge actually occurred, is such a non-minor violation.

50. COMMENT: The Department is right to use the Grace Period Law in establishing penalties for the UST rules. However, it seems nearly impossible to meet the criteria for the Grace Period Law, and too many factors can be used for the Department to not use the Grace Period Law. The commenter strongly opposes the additional criteria used for the Grace Period Law. (10)

REPOSNE: The Department acknowledges the commenter's support for the grace periods in the adopted rules. The Department interprets the remainder of the comment as concern that the factors that the Grace Period Law requires the Department to consider makes it difficult for a violation to be designated minor and qualify for a grace period. As interpreted, this comment relates to the Grace Period Law itself, rather than to its application to the adopted rules; therefore, it is beyond the scope of this rulemaking.

### **General Comments**

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51. COMMENT: New Jersey has appropriately identified the term "unmanned facility" in N.J.A.C. 7:14B-1.6 and N.J.A.C. 7:14B-5.13. (1, 4, 5, and 11)

52. COMMENT: The Department is right to require an unmanned facility post weather resistant signs providing emergency procedures and notification requirements to be followed in the event of an incident (N.J.A.C. 7:14B-5.13). (5)

RESPONSE TO COMMENTS 51 AND 52: The Department acknowledges the commenters' support for the rules.

#### **Contractor Availability/Federal Compliance Date**

53. COMMENT: The Department's proposed deviation within N.J.A.C. 7:14B-4.1 from the Federal requirements (40 CFR Part 280) prevents older double walled piping systems from using alternate piping leak detection methods and now compels the entire population of double walled piping UST facilities to test piping containment sumps by October 13, 2018. Based on experience completing similar work in other states, there is significant concern that there are not enough licensed UST contractors and testers to complete all the work in the allotted time. (9)

RESPONSE: Department records indicate there are approximately 200 companies certified in New Jersey to perform tank testing, which includes testing of containment devices where interstitial monitoring is performed. There are approximately 4,200 UST facilities in New Jersey, but not all facilities are required to perform containment testing; therefore, there are considerably fewer than 4,200 systems that need to be tested. Even if all 4,200 facilities needed testing and only half of the certified companies were available, each company would have to

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perform tests at 42 sites within the coming year. The results in an average of four tests per month for each of the 100 certified companies. This does not take into account the fact that some Department-certified companies have multiple Department-certified individuals, and are therefore able to conduct tests on more than one facility at a time. Based on these conservative calculations the Department does not believe contractor availability will inhibit the regulated community from complying with the containment testing requirement prior to the compliance deadline.

54. COMMENT: At least one national trade group has lobbied the EPA for an extension to the October 13, 2018 deadline in 40 CFR Part 280. The Department should anticipate and allow for these extensions wherever possible via the insertion of language such as “or another date acceptable to the US EPA” following every Federally imposed due date outlined within N.J.A.C. 7:14B. (9)

55. COMMENT: The regulated community is currently in the process of seeking an extension from the EPA for compliance with testing of containment sumps, under dispenser containment for interstitial monitoring, and inspection of overfill protection devices. That extension would give State regulators and the regulated community adequate time to evaluate how these alternative methods might best be implemented in compliance with the EPA Final rule. Consistent with N.J.S.A 58:10A-29.a, the Department should include in its rules a provision that incorporates any extension granted by the EPA. (3)

RESPONSE TO COMMENTS 54 AND 55: As stated in the proposal Summary, 49 N.J.R. at 1122, the Department intends that the deadlines in the Department’s rules be the same as the

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Federal deadlines as to Federally regulated USTs. As to regulated heating oil tank systems, although the Federal rule does not apply, the Department intends that the date of compliance is the same as for comparable Federally regulated systems. The Department is modifying the rules on adoption to require compliance by the later of October 13, 2018, or the date in the applicable Federal rule. October 13, 2018 is the compliance date in the EPA UST Final Rule. If the EPA changes the compliance date from October 13, 2018, the Department will publish a notice of administrative change in the New Jersey Register to modify the compliance date accordingly, for both Federally regulated UST systems and regulated heating oil tank systems.

### **Recordkeeping**

56. COMMENT: N.J.A.C. 7:14B-5 General Operating Requirements, the sections pertaining to testing of containment sumps and spill containment, conducting of walkthrough inspections and inspections of overfill containment devices within the proposal specify records must be retained for five years. The arbitrary selection of a term of five years is based on the Department needing “the testing and inspection records to be maintained for five years as a means to ensure the records are available to determine compliance during the three-year inspection cycle,” which causes confusion. The EPA only requires the records to be kept for one year.

The Department should establish a three-year record retention requirement and apply it as uniformly as possible throughout the rules, not only to the provisions of the General Operating Requirements. The retention requirements for release detection system reports, inventory records, periodic testing and inspection reports, and any other records pertinent to the facility compliance inspection program should be consistently applied and should not be of differing

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retention cycles. Inconsistency of record retention is confusion that is easily eliminated. A single record retention policy of three years is adequate to ensure records are available on the three-year inspection cycle, is sufficient to meet EPA SPA approval, and provides consistency. Furthermore, anything beyond a three-year retention violates Executive Order No. 2, paragraph 3d. (3)

57. COMMENT: N.J.A.C. 7:14B-5.11(c) requires owners and operators to keep records for five years, and five years additional after monitoring ends. At N.J.A.C. 7:14B-5.12(a)1i the Department should clarify whether a facility must maintain records beyond five additional years after monitoring ends. As stated in the proposal Summary, the EPA requires documents be retained for only one year. The Department should follow the EPA guidelines. (10)

RESPONSE: Recordkeeping is a routine business practice that is beneficial to the UST facility owner and operator and to the Department, as it records the activities and maintenance related to proper operation of the UST system. The Department considered the one-year retention period in the Federal rules and determined that it is inadequate for the State's purpose. As stated in the rule proposal, 43 N.J.R. at 1127, the Department inspects facilities on a three-year cycle. As to Federally regulated UST systems, this inspection cycle is mandated as a condition of receiving Federal funding for New Jersey's UST program. There is some flexibility in the cycle, however, and it is possible that not all facilities will be inspected during a three-year period. If records were kept only three years, necessary records may not be available to the Department.

The requirements of N.J.A.C. 7:14B-5.11(c) apply to the two methods of complying with integrity testing of containment devices where interstitial monitoring is performed, and how long to keep records associated with each method. An owner and operator with double walled

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containment devices can monitor the interstitial space between the inner and outer walls of the containment through visual checks at least every 30 days. Records to verify this containment system design shall be maintained for the entire time this method of integrity verification is performed, and for five years after it ends. If the owner and operator performs a vacuum, pressure or liquid testing method to comply with N.J.A.C. 7:14B-5.11(a)1, he or she must keep those test result records for five years.

58. COMMENT: Maintaining all the documentation required by N.J.A.C. 7:14B-4.2(b)2 is very difficult, especially if the current owner is not the original owner of the UST system. Rather than being overzealous with record keeping requirements, the Department should allow a current record of a passing cathodic protection test, and a passing tank tightness test. (10)

RESPONSE: The Department is not able to determine to which recordkeeping requirements the commenter refers. N.J.A.C. 7:14B-4.2(b)2 requires compliance with the design and construction requirements of a cathodic protection system when performing substantial modifications or upgrades involving cathodic protection (N.J.A.C. 7:14B-4.1(a)1ii(2) through (4)) and requires the use of one of four identified methods to ensure integrity of the tank (N.J.A.C. 7:14B-4.2(b)2i through iv). One of the methods at N.J.A.C. 7:14B-4.2(b)2ii requires monthly monitoring records, which is an existing rule, unchanged by this rulemaking. As for the records required by the cross reference to N.J.A.C. 7:14B-4.1(a)1ii(2) through (4), the documentation is important to verify that the steel tank's cathodic protection system complies with the applicable performance standards. A cathodic protection test and tank tightness test do not typically include the construction, design, operation, and maintenance information required by N.J.A.C. 7:14B-

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4.1(a)1ii(2) through (4). The record retention requirements for substantial modification or upgrades involving cathodic protection systems are consistent with the Federal regulations.

### **Summary of Agency Initiated Changes**

The Department is modifying N.J.A.C. 7:14B-5.10(a)3 on adoption to correct a cross reference. The proposed rule states that the inspection shall ensure that the overfill prevention equipment satisfies the requirements of N.J.A.C. 7:14B-4.1(a)3ii or iii. Exceptions to the performance standards are identified at N.J.A.C. 7:14B-4.1(a)3iv and v. In order that the inspection instructions are complete, N.J.A.C. 7:14B-5.10(a)3 must cite not only to the standards, but also to the exceptions from those standards. The correct reference should be to N.J.A.C. 7:14B-4.1(a)3ii through v.

N.J.A.C. 7:14B-6.5 identifies methods of release detection for tanks. Proposed amended N.J.A.C. 7:14B-6.5(a)7 allowed interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it provided, in part, that the monitoring system is designed, constructed, and installed to detect a leak from any portion of the tank “and/or piping” that routinely contains product. Proposed amended N.J.A.C. 7:14B-6.5(a)7i provided a specific requirement for double walled UST systems; however, the Department inadvertently omitted in the proposed amended rule language requiring that the sampling or testing method detect a leak through the inner wall of any portion of the piping that routinely contains product, as well as the tank. The requirement at N.J.A.C. 7:14B-6.5(a)7 that the monitoring system detect leaks in the tanks and/or the piping should be continued in N.J.A.C. 7:14B-6.5(a)7i; accordingly, the Department is modifying the rule on adoption to make the correction. As modified, the rule is

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consistent with N.J.A.C. 7:14B-6.6(a)3, which allows the methods of release detection at N.J.A.C. 7:14B-6.5(a)5 through 8 to be used to detect releases from piping, provided that the method is designed to detect a release from underground piping that routinely contains regulated substances.

### **Federal Standards Statement**

Executive Order 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 any State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. As set forth in the proposal Summary, 43 N.J.R. at 1122, the new rules and amendments related to secondary containment and operator training are required in order to comply with the Federal Energy Policy Act of 2005 and the EPA UST Final Rule published July 15, 2015. The Department has determined that the rules are consistent with, and do not exceed Federal requirements, except as set forth below. The new rules and amendments are consistent with the mandate of the State Act at N.J.S.A. 58:10A-25, which requires the State's rules governing Federally regulated UST systems be substantially identical to the Federal requirements for certain standards. For those tanks that are only State regulated, the new rules and amendments are consistent with the State Act's requirement to be no more stringent than the Federal requirements for Federally regulated USTs.

The Federal rules do not apply to tanks used for the storage of heating oil for consumptive use on the premises where stored. The adopted rules apply to UST systems with a capacity of 2,001 gallons or more used to store heating oil for on-site consumption in a non-residential building. Therefore, the adopted rules apply to some UST systems to which the

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Federal rules do not apply. These provisions are not promulgated under the authority of or in order to implement, comply with, or participate in any program established under Federal law to comply with a Federal program. Nevertheless, the adopted rules applicable to heating oil tanks are consistent with the State Act's requirement that the rules be no more stringent than Federal requirements for Federally regulated USTs for certain standards.

For states that receive Federal Subtitle I money, the EP Act requires secondary containment and under-dispenser containment for tanks, piping, and dispensers only if they are installed or replaced within 1,000 feet of an existing community water system or potable drinking water well. The adopted rules and amendments, consistent with the EPA's UST Final Rule, require that all new and replaced tanks and piping have secondary containment, and all UST systems have under-dispenser containment beneath new dispenser systems. Therefore, the adopted rules and amendments are broader in scope than the EP Act; nevertheless, the adopted rules and amendments are consistent with the EPA's UST Final Rule.

The rules include amendments to UST registration, permitting requirements, and certifications of individuals and business firms performing UST system services, which are unrelated to the EPA's UST Final Rule or secondary containment and operator training provisions of the EP Act. These provisions are not promulgated under the authority of or in order to implement, comply with, or participate in any program established under Federal law to comply with a Federal program. Accordingly, as to these provisions no further analysis is required.

The new rules and amendments to the Water Pollution Control Act Rules, N.J.A.C. 7:14, are adopted pursuant to the Water Pollution Control Act. N.J.A.C. 7:14-8.18 and N.J.A.C. 7:14-8.19 contain enforcement provisions applicable to the rules and amendments implementing not

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only the Secondary Containment Guidelines and the Operator Training Guidelines, but also the other requirements of the Underground Storage Tanks rules. Additionally, the Department may assess penalties pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-9 for failure to comply with the State Act or specific subchapters of the UST rule and has adopted amendments applicable to new requirements of the Underground Storage Tanks rules. The purpose of penalties is to encourage compliance and discourage noncompliance with the State Act. In some cases, the Department's penalties may be regarded as more stringent than the Federal program, in that the maximum penalty that may be assessed under the Department's rules, and as authorized by statute, is \$50,000 per day per violation. The Federal government assesses civil administrative penalties in accordance with the Federal enforcement provisions of the statute regulating underground storage tanks, 42 U.S.C. §§ 6991 et seq. The Federal law at 42 U.S.C. § 6991e(d) provides that penalties for violations of the Federal law or regulation may not exceed \$10,000 per day per violation. If a violator fails to comply with a compliance order, the Federal law allows a penalty of up to \$25,000 per day. Therefore, to the extent that the rules allow a penalty to be as much as \$50,000, the rules exceed the Federal standards. The penalty provisions will have no economic or other impact on the regulated community, unless there is a violation of the rules governing Underground Storage Tanks, N.J.A.C. 7:14B. The Department believes that exceeding the Federal standards is justified, since more than half of New Jersey's population depends on ground water sources of drinking water.

The new and amended penalty provisions at N.J.A.C. 7:14-8 include a designation of violations as either minor or non-minor, in order to comply with the State's Grace Period Law, as well as other amendments unrelated to the secondary containment and the operator training

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requirements. These amendments are not promulgated in accordance with, or to implement or comply with any standard or requirement imposed by Federal law. Accordingly, no analysis is required.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## CHAPTER 14

### WATER POLLUTION CONTROL ACT

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

(a) – (c) (No change from proposal.)

#### TABLE 1

(No change.)

#### TABLE 2

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

...

#### Subchapter 5. General Operating Requirements

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<u>Rule Citation</u>	<u>Description of Violation</u>	<u>Base Penalty</u>	<u>Type of</u> <u>Violation</u>	<u>Grace</u> <u>Period</u>
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7:14B-5.14(b)	Failure to have a Class A, Class B, and Class C operator designated for a facility at all times after October 13, 2018 *, <b>or the date provided at 40 CFR 280.240, whichever is later*.</b>	\$1,750	M	30 days
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## CHAPTER 14B

### UNDERGROUND STORAGE TANKS

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

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

1. – 2. (No change from proposal.)

3. Except as provided in (a)3iv and v below, to prevent spilling and overfilling associated with product transfer to the underground storage tank system, owners and operators shall use the following:

i. – iii. (No change from proposal.)

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iv. Flow restrictors in vent lines shall not be used to comply with (a)3ii above when overfill prevention equipment is installed or replaced after October 13, 2015\*, **or the date provided at 40 CFR 280.20, whichever is later\***.

v. (No change from proposal.)

4.-5. (No change from proposal.)

(b) – (l) (No change from proposal.)

#### 7:14B-5.5 Release response plan

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

1. – 3. (No change from proposal.)

4. The name and telephone number of \*[any retained]\* **\*a\*** licensed site remediation professional.

(b) – (c) (No change from proposal.)

#### 7:14B-5.10 Spill and overfill prevention equipment

(a) The owner and operator of an UST system with spill and overfill prevention equipment shall ensure that the equipment meets the following requirements:

1. – 2. (No change from proposal.)

3. Overfill prevention equipment shall be inspected at installation and at least once every three years. At a minimum, the inspection shall ensure that overfill prevention equipment satisfies the

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requirements of N.J.A.C. 7:14B-4.1(a)3ii \*[or iii]\* **\*through v.\***, as applicable. Inspections shall be conducted in accordance with:

i. - iii. (No change from proposal.)

(b) The owner and operator of an UST system installed prior to October 13, 2015, shall comply with (a) above beginning no later than October 13, 2018\*, **or the date provided at 40 CFR 280.35, whichever is later\***.

(c) Except as set forth at (c)1 below, the owner and operator of an UST system installed on or after October 13, 2015 shall comply with (a) above upon installation.

1. The owner and operator of a regulated heating oil tank system installed on or after October 13, 2015, and prior to (the operative date of this rule) shall comply with (a) above no later than October 13, 2018\*, **or the date provided at 40 CFR 280.35, whichever is later\***.

7:14B-5.11 Integrity testing of containment devices where interstitial monitoring of piping is performed

(a) (No change from proposal.)

(b) The owner and operator performing interstitial monitoring of UST system piping shall initiate testing of each containment device in accordance with (a) above as follows:

1. For an UST system installed prior to October 13, 2015, initial testing shall be performed no later than October 13, 2018\*, **or the date provided at 40 CFR 280.35, whichever is later\***;

2. (No change from proposal.)

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3. For a regulated heating oil tank system installed on or after October 13, 2015 and prior to (the operative date of this rule), initial testing shall be performed no later than October 13, 2018\*, **or the date provided at 40 CFR 280.35, whichever is later\***.

#### 7:14B-5.12 Operation and maintenance walkthrough inspections

(a) Beginning no later than October 13, 2018, **\*or the date provided at 40 CFR 280.36, whichever is later,\*** each UST system inspection shall include:

1. - 2. (No change from proposal.)

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

(a) (No change from proposal.)

(b) Beginning no later than October 13, 2018, **\*or the date provided at 40 CFR 280.240, whichever is later,\*** at least one of each class of operator shall be designated for a facility at all times.

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

(a) (No change from proposal.)

(b) Owners and operators of underground storage tank systems used to store motor fuel solely for use by an emergency power generator shall comply with the requirements of this subchapter in accordance with the following:

1. Systems for which installation began on or before October 13, 2015 shall comply with N.J.A.C. 7:14B-6 on or before October 13, 2018\*, **or the date provided at 40 CFR 280.10, whichever is later\***; and

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2. (No change from proposal.)

(c) – (f) (No change from proposal.)

(g) On or before October 13, 2018\*, **or the date provided at 40 CFR 280.40, whichever is later\***, owners and operators shall ensure that all underground storage tank systems, including electronic and mechanical components, are operated, maintained, and tested in accordance with the following:

1. – 3. (No change from proposal.)

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

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

1. – 6. (No change from proposal.)

7. Interstitial monitoring between the underground storage tank system and a secondary barrier immediately around or beneath it may be used, but only if the monitoring system is designed, constructed, and installed to detect a leak from any portion of the tank and/or piping that routinely contains product and also meets one of the following requirements:

i. For double walled underground storage tank systems, the sampling or testing method shall detect a leak through the inner wall in any portion of the tank **\*and/or piping\*** that routinely contains product;

ii. – iii. (No change from proposal.)

#### 7:14B-10.1A Fourteen-day notification

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(a) The owner and operator shall notify the Department at least 14 days prior to commencing physical on-site work related to the installation, substantial modification, or closure of an underground storage tank system, or performing any activity specified in N.J.A.C. 7:14B-4, 5, or 6 requiring Department approval.

1. Notification of such activities undertaken in response to an emergency shall be provided to the Department by the UST facility owner and operator \*, **an individual or business firm certified to perform the work described in (a) above, or a Licensed Site Remediation Professional, licensed pursuant to N.J.A.C. 7:26C-1.3,\*** as soon as practicable, but not to exceed 14 days after the emergency activity.

2. Notification shall be provided to the Department \*[by the UST facility owner and operator]\* by e-mail to [14dayUSTnotice@dep.nj.gov](mailto:14dayUSTnotice@dep.nj.gov) and shall include the following information in each notification:

- i. -ii. (No change from proposal.)
  - iii. The name, phone, and e-mail contact information of the owner and operator \*[submitting the notification]\*; and
  - iv. The name, phone, and e-mail contact information of the contractor performing the activities, if different from the owner and operator \*[submitting the notification]\*.
3. (No change from proposal.)