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ENVIRONMENTAL PROTECTION

SITE REMEDIATION PROGRAM

Underground Storage Tanks Rules

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

Authorized By: Mark N. Mauriello, Acting Commissioner,
Department of Environmental Protection.

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

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

DEP Docket Number: 16-09-10/624

Proposal Number: PRN 2009-__

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

Leslie W. Ledogar, Esq.

Attention: DEP Docket Number: _____

Office of Legal Affairs

New Jersey Department of Environmental Protection

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P.O. Box 402

Trenton, New Jersey 08625-0402

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

This rule proposal document can be viewed or downloaded from the Department's web page at <http://www.nj.gov/dep/rules>.

The agency proposal follows.

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Summary

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

The Underground Storage of Hazardous Substances Act (the Act), N.J.S.A. 58:10A-21 et seq., was first enacted in 1986. The purpose of the Act was to ensure the proper operation and management of underground storage tanks. The Underground Storage Tank rules (UST rules) at N.J.A.C. 7:14B, which implement the Act, first became effective in 1987. At that time, the UST rules contained the registration requirements; in 1990, the Department promulgated the remainder of the rules, including the requirements for construction, operation, maintenance and closure, and for the remediation of leaking USTs.

The UST rules were scheduled to expire on October 20, 2009, pursuant to N.J.S.A. 52:14B-5.1. The expiration date was extended by 180 days to April 18, 2010, pursuant to N.J.S.A. 52:14B-5.1c as a result of the timely filing of this proposal to readopt the rules. The Department has evaluated the rules at N.J.A.C. 7:14B, and has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated, and has determined to readopt them without amendment as explained in more detail below.

The Legislature recently enacted the Site Remediation Reform Act (SRRA), P.L. 2009, c. 60, to reform the site remediation process by creating a Licensed Site Remediation Professional (LSRP) program in New Jersey. The legislation requires all persons responsible for conducting the remediation of a contaminated site (except for the remediation of discharges from unregulated heating oil tanks) to utilize the services of an LSRP, and will substantially change the process of remediating sites in New Jersey, including sites being remediated pursuant to the UST rules. The SRRA at N.J.S.A. 58:10C-29 requires the Department to adopt interim rules to implement the SRRA that may include amendments to rules adopted pursuant to other laws. Accordingly, the Department has determined to readopt the UST rules without amendment at this time to

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avoid their sunset, and will adopt any necessary amendments to the UST rules as a part of the interim rules implementing the SRRA.

The following is a summary of the rules proposed for re-adoption.

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

Subchapter 2, Registration Requirements and Procedures, sets forth the requirements and the procedures for registering underground storage tanks. Included in this subchapter are the procedures for transferring tank registration due to a change in ownership and for making changes to the registration due to modifications to the underground tank facility.

Subchapter 3, Fees, sets forth the Department's fees for registering underground storage tanks and program oversight cost fees for the Department's review of various permits and reports, and provides the procedure for paying fees.

Subchapter 4, Underground Storage Tank Systems: Design, Construction and Installation, provides performance standards for new tanks and requirements for upgrading existing tanks.

Subchapter 5, General Operating Requirements, sets forth the Department's requirements for operating underground storage tanks, including requirements for spill and overfill control, corrosion protection and recordkeeping.

Subchapter 6, Release Detection, contains the general and specific requirements for tanks containing petroleum and waste oil and other hazardous substances, and for tanks located in wellhead protection areas. This subchapter includes methods of release detection for tanks and piping, and recordkeeping requirements.

Subchapter 7, Release Reporting and Investigation, sets forth requirements for reporting releases to the Department and requirements for investigating a suspected release. This subchapter also contains sampling and analytical requirements for confirming a release.

Subchapter 8, Remediation Activities, contains the requirements regarding remediation in response to discharges from underground storage tanks.

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Subchapter 9, Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems, contains the requirements for closing different types of underground storage tanks and sets forth recordkeeping and reporting requirements.

Subchapter 10, Permitting Requirements for Underground Storage Tank Systems, requires the owner or operator of a underground storage tank to obtain a permit from the Department prior to repair, installation, substantial modification or upgrade of an underground storage tank system. This subchapter contains the procedures for the Department's review, granting or denial of permit applications.

Subchapter 11, Municipal Ordinances, prohibits a municipal, county or political subdivision from enacting any law or ordinance that supersedes this chapter unless that law is are more environmentally protective.

Subchapter 12, Penalties, Remedies and Administrative Hearing Procedure, sets forth the Department's protocols for assessing penalties for non-compliance with this chapter and provides the administrative hearing procedures to be utilized by an owner or operator when the Department denies or revokes a permit, registration or certification.

Subchapter 13, Certification of Individuals and Business Firms, sets forth the Department's procedures to certify individuals and businesses to provide services on an underground storage tank systems.

Subchapter 14, Confidentiality, sets forth the Department's procedures on the scope and exchange of information that is deemed to be confidential.

Subchapter 15, Financial Responsibility Requirements, sets forth the Department's procedures for the creation, maintenance, and access of funds dedicated to the remediation of a discharge from a regulated underground storage tank and for the compensation of third parties for bodily injury and property damage caused by such a discharge.

Subchapter 16, Certification of Individuals and Business Firms For Unregulated Heating Oil Tank Systems, establishes a certification program for individuals and business firms who perform work on unregulated heating oil tanks.

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Social Impact

The rules proposed for re adoption will continue to have a beneficial social impact. Discharges from underground storage tank systems have the potential to cause severe harm to public health and safety and the environment. Hazardous substances from underground storage tanks can threaten ground water and potable water sources, create vapor hazards that can have immediate dangers of explosion and long term health risks. Contamination caused by these discharges lowers property values, creates real estate transfer problems and can render land unfit for development and use. Experience with the UST rules has shown that the underground storage tank system installation and design standards, general operating conditions and closure site investigation requirements all have contributed to the elimination or early detection of discharges to prevent or reduce these negative impacts. In addition, financial responsibility assurance requirements help to ensure that tank owners and operators have the monetary means of meeting their responsibilities related to a discharge so that public funds will not be needed to conduct the remediation or pay injured third parties. The rules for the certification program for individuals and business firms performing work on unregulated heating oil tanks have a positive social impact on the citizens of New Jersey by ensuring that individuals and business firms that provide services to owners and operators of underground storage tank systems, whether or not regulated by N.J.A.C. 7:14B, will have the requisite knowledge and experience in providing services to tank systems in a manner that is protective of public health and the environment.

Economic Impact

The rules proposed for re adoption will continue to have a beneficial economic impact due to the prevention of releases. On average, it costs approximately \$150,000 to remediate a release from an underground storage tank system. The corrosion protection requirements of the rules has helped reduce the number of releases, thereby reducing the annual cost to remediate UST sites Statewide.

The performance standards, general operating requirements and monitoring requirements provide the regulated community with a number of options for complying with the corrosion protection and release detection monitoring requirements. These

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options mean that an owner or operator of an underground storage tank system can choose the most cost effective manner by which to achieve compliance, thus affording a positive economic impact.

The cost of meeting the financial responsibility requirements of these rules will vary depending on several factors including which mechanism is chosen, the size and condition of the facility, and the amount of any deductible. For those owners and operators capable of self-insuring or obtaining a corporate guarantee, the costs incurred could be as low as the administrative costs of preparing a letter from the financial officer and reporting changes to the Department on the New Jersey Underground Storage Tank Facility Certification Questionnaire.

Other mechanisms, such as letters of credit, can cost one to three percent of the total amount mandated and require collateral almost equal to the amount of assurance required. A letter of credit may, therefore, cost from \$5,000 to \$60,000 per year, when available. Based on information from the insurance industry, the cost of commercial pollution liability insurance is generally based on a variety of factors such as age and condition of a facility, and will cost between \$1,000 to \$10,000 per facility annually. Some insurers may require engineering and site inspections prior to issuance of a policy. These costs will be above and beyond the annual premiums associated with maintenance of a valid policy.

Risk retention groups and municipal pools may require initial capitalization contributions by its members in addition to an annual premium. The costs, therefore, for this mechanism would be similar to commercial insurance with the addition of capitalization costs. If the pool suffers high or unexpected losses, additional capitalization could be needed.

There is a beneficial economic impact of requiring financial assurance to owners and operators of underground storage tanks, the general public, and the environment. The cost of insurance, compared to the costs of a cleanup or third party damages, makes financial assurances beneficial for owners and operators. The assurance to the public that the means to pay for remediation of discharges is available benefits human health and the environment.

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The certification program has helped to ensure that the requirements imposed by this chapter and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., are carried out by only competent, experienced individuals and business firms, thereby resulting in the proficient implementation of these requirements. In order to become certified to perform work associated with underground storage tanks, an individual must pay certain fees. For example, individuals are required to apply for certification, pay an application fee of \$50.00 and, if fulfilling all prerequisites for certification, pay a certification fee of \$375.00. Before renewal of an individual's certification, the individual must also complete a required course on New Jersey Underground Storage Tank Regulations that may cost between \$100.00 and \$500.00. All of these costs are for the three-year duration of a certification. The goal is to ensure that the individual remains up to date with the requirements of a particular classification. Although there is a cost to those seeking certification, overall costs of complying with the Underground Storage Tank Rules are minimized because the certification program ensures proficient implementation of the rules, thereby encouraging a reduction in mistakes and an increase in operational efficiency.

The certification program rules require the certified individual or business firm to maintain evidence of financial responsibility assurance, such as a liability insurance policy, for the mitigation or remediation of a hazardous substance discharge resulting from the performance of services on unregulated heating oil tank systems. The cost of obtaining a liability insurance policy can range from \$4,000 to \$14,000. However, the increased cost of obtaining liability insurance would not be borne by a single certified individual or business firm, since the cost of the insurance would decrease as the pool of contractors needing insurance increases. The rules may also have a negative economic impact on the citizens of New Jersey if the business firms that are required to maintain evidence of financial responsibility assurance due to becoming certified pass these costs on to their customers. This possible cost increase to the customer will be offset by the economic benefit that the customer will get from the professional business practice requirements, such as the requirement to provide all prospective clients with a list of the standard price for each service being rendered, and to enter into a contract that details the

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work being done and the maximum contract price that cannot be exceeded without written amendments to the contract.

Environmental Impact

The rules proposed for reoption will continue to have a positive environmental impact in New Jersey. The environmental impact of discharges from underground storage tanks can seriously impact both ground and surface waters and can cause exposure to hazardous vapors. The far-reaching impacts can affect human health and safety and the environment. Environmental impacts from property damage and remediation costs can range far beyond an owner and operator's ability to pay without a financial assurance mechanism. Therefore, requiring owners and operators of underground storage tank systems to maintain financial responsibility not only protects them from monetary losses, but ensures the community at large of the means for performing timely remediations of discharges. Owners and operators who maintain financial responsibility assurance are more likely to complete a cleanup in accordance with the Department's rules. The certification programs have a positive environmental impact by ensuring that individuals and business firms performing work on underground storage tanks and on unregulated heating oil tank systems have the requisite knowledge to conduct the work in a manner that is protective of public health and the environment.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rule-making document a Federal Standards Analysis. The Department has identified various areas in the rules that exceed the standards set forth in the corresponding Federal provisions.

The Federal regulations governing underground storage tank systems, 40 C.F.R. 280, define what an underground storage tank is, the regulated universe of underground storage tanks, construction standards for new and existing tank systems, monitoring standards for new and existing tank systems, registration requirements for tank systems, operational requirements for tank systems, closure requirements, and investigation

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The New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. (the Act), specifies that the standards for new tank construction, release detection monitoring and upgrades of existing tank systems are to be identical to the Federal regulations concerning tanks that are regulated by both the Federal and State governments. The Act requires the Department to develop standards for the construction, installation and operation of new and existing underground storage tank systems that are no more stringent than those set by the EPA for those tank systems that are regulated by New Jersey but not by the Federal government. The Act authorizes the Department to adopt appropriate standards that may be more stringent than those set by the EPA for those underground storage tanks systems within wellhead protection areas. The statute sets the deadlines for compliance with these items to be the same as those set in the Federal regulations. Sections of the Federal regulations have been incorporated into N.J.A.C. 7:14B where appropriate.

The following discussion provides a subchapter-by-subchapter analysis of the rules proposed for readoption as compared to the Federal regulations.

Subchapter 1. General Information

N.J.A.C. 7:14B-1.1, 1.2, 1.3 and 1.5 do not require comparison to Federal law or regulations since these sections do not impose any standards or requirements on the regulated community.

N.J.A.C. 7:14B-1.4 sets forth the categories of underground storage tank systems that are subject to N.J.A.C. 7:14B. N.J.A.C. 7:14B-1.4 includes subject matter that is comparable to the Federal regulations at 40 C.F.R. 280.10. The rules concerning applicability contain total and partial exemptions for certain types of underground storage tank systems based on similar exemptions provided by Federal regulations and the Act.

N.J.A.C. 7:14B-1.4 Total exemptions

N.J.A.C. 7:14B-1.4(b) sets forth the types of underground storage tank systems that are completely exempted from regulation under N.J.A.C. 7:14B. N.J.A.C. 7:14B-

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1.4(b) contains 14 exemptions for underground storage tank systems that are similar to the exemptions that are provided by Federal regulations at 40 C.F.R. 280.10 and 280.12.

N.J.A.C. 7:14B-1.4(b)2 differs from the Federal regulations at 40 C.F.R. 280.12 since N.J.A.C. 7:14B-1.4(b)2 applies only to a facility with a capacity of 2,000 gallons or less. N.J.A.C. 7:14B-1.4(b)2 is based on the identical exemption provided by the Act, specifically N.J.S.A. 58:10A-22p(2).

N.J.A.C. 7:14B-1.4(b)4 provides an exemption for septic tanks that is based on the exemption provided by both the Act (specifically, N.J.S.A. 58:10A-22p(4)), and the Federal regulations at 40 C.F.R. 280.12. N.J.A.C. 7:14B-1.4(b)4 differs from the Federal regulations by limiting the exemption only to those septic tanks that are installed pursuant to The Realty Improvement Sewerage and Facilities Act (1954), N.J.S.A. 58:11-23 et seq. This provision only clarifies that the exemption is limited to septic tanks installed in accordance with the applicable laws in New Jersey, and thereby does not exceed the applicable Federal regulation. The State of New Jersey has a strong interest in ensuring that all related statutes and rules provide a coordinated and consistent approach to regulated activities.

N.J.A.C. 7:14B-1.4(b)6 provides an exemption for surface impoundments, pits, ponds, lagoons, storm water or wastewater collections operated in compliance with N.J.A.C. 7:14A, and differs from the Federal regulations at 40 C.F.R. 280.12 only with regards to the reference to N.J.A.C. 7:14A. As discussed above, this provision does not exceed any Federal regulation but merely ensures a coordinated framework of regulated activities.

The Federal regulations at 40 C.F.R. 280.10(b) contain four total exemptions for underground storage tank systems that are not incorporated into the Department's rules at N.J.A.C. 7:14B. N.J.A.C. 7:14B does not incorporate the Federal exemption for an underground storage tank system containing RCRA waste in order to provide a unified regulatory framework for all underground storage tank systems regulated by the State of New Jersey. The Department regulates underground storage tank system containing RCRA waste under N.J.A.C. 7:14B rather than creating a duplicate set of regulations that would pertain only to these types of underground storage tank systems. The Department's programs that administer the Federal RCRA program refer to N.J.A.C. 7:14B for

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operation, maintenance and closure requirements. Therefore, a separate regulation for RCRA underground storage tank systems would be superfluous. In addition, the Act does not make any provisions for exempting an underground storage tank system that contains RCRA waste.

N.J.A.C 7:14B does not incorporate the Federal exemption at 40 C.F.R. 280.10(b)(4), for an underground storage tank system with a capacity of 110 gallons or less. The Act does not authorize the Department to exempt an underground storage tank system solely based on size. As previously stated, small quantities of hazardous substances discharged to ground water can result in the need for remediation or treatment prior to potable use. The Department is authorized to regulate a small underground storage tank system based on statutory authority and safety concerns, thereby precluding their exemption in the UST rules. In reality, no underground storage tanks 110 gallons or less in size are registered with the Department. Therefore, Executive Order No. 27(1994) and P.L. 1995, c.65 do not require any further analysis.

N.J.A.C 7:14B does not incorporate the Federal exemption for de minimis quantities. The Federal regulations exempt an underground storage tank that contains a de minimis quantity of hazardous substances. The Federal regulations do not define "de minimis quantity." The preamble to the Federal regulations (Federal Register Volume 53, Number 185, Page 37108) leaves the determination of de minimis quantity to the state programs.

The Department has determined that it is not appropriate to include any exemption for an underground storage tank that contains a de minimis quantity of a hazardous substance. This is based on the same rationale as described above concerning the exemption of a small underground storage tank. A discharge of a "de minimis" quantity of hazardous substances from an underground storage tank system will cause the same amount of harm to the environment, regardless of the size of the underground storage tank system. Therefore, an exemption based solely on the quantity of hazardous substances contained in the underground storage tank system does not adequately protect human health, safety and the environment.

Additionally, New Jersey's environmental statutory scheme does not permit discharges based on de minimis quantities. For example, the Spill Compensation and

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Control Act, N.J.S.A. 58:10-23.11 et seq., requires that all discharges of a hazardous substance are to be remediated. There are no exemptions or waivers for de minimis quantities. Additionally, the 1994 amendments to the Act contain similar “zero-tolerance” provisions concerning the potential discharge of hazardous substances from an underground storage tank system. The Act at N.J.S.A. 58:10A-25(a)(5) requires “the reporting of any discharges and the corrective action taken in response to a discharge from an underground storage tank.” Therefore, the underground storage tank system is regulated pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B if any quantity of a hazardous substance can be measured.

N.J.A.C 7:14B partially incorporates the Federal exemption for an underground storage tank system that is expeditiously emptied after use. N.J.A.C. 7:14B-1.6 defines a “sump” as “any pit or reservoir that meets the definition of an underground storage tank (including pipes, troughs or trenches connected to it) that serves to collect or contain a hazardous substance for no more than 48 hours.” The Department's definition of sump incorporates the underground storage tank systems identified in the Federal regulations at 40 C.F.R. 280.10(b)(6). The Department's rules limit the compliance requirements for underground storage tank systems that meet the definition of a sump. The Department requires that sumps meet some of the design, construction, installation and operational requirements of N.J.A.C. 7:14B-4 and 7:14B-5, as well as the release reporting and remediation requirements of N.J.A.C. 7:14B-7 and 7:14-8, respectively, because of the increased potential threat posed by underground storage tank systems that are infrequently used. The Department's experience in administering the underground storage tank program supports the regulation of sumps, due to common problems caused by corrosion and improper installation. The placement of a metallic underground storage tank system in the ground will naturally result in corrosion affecting the integrity of the underground storage tank system. Infrequent use of the underground storage tank system may allow corrosion to remain undetected until a hazardous substance is stored in the underground storage tank system. Any hazardous substances placed in the underground storage tank system effected by corrosion or improper installation would be released into the environment.

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An owner or operator of an underground storage tank system that is completely exempt from Federal regulation but not from N.J.A.C. 7:14B will incur certain costs associated with compliance with the Department's regulations for underground storage tank systems. The registration fee for an underground storage tank system is currently \$150.00 for a three year period. Expenses, such as the price of the tank and piping, would already be borne by the tank owner and would not be included as additional expenses. Additional expenses may include testing of corrosion protection, \$350.00 every three years, and tank tightness testing, \$500 - \$1,000 every three years.

N.J.A.C. 7:14B-1.4 Partial exemptions

N.J.A.C. 7:14B-1.4(c) and (d) sets forth the types of underground storage tank systems that are partially exempted from regulation under N.J.A.C. 7:14B. N.J.A.C. 7:14B-1.4(c) specifies the underground storage tank systems that are required only to comply with registration, release reporting and investigation, remedial activities and fees. N.J.A.C. 7:14B-1.4(d) outlines the design, construction and installation requirements for underground storage tank systems which are categorized as sumps.

N.J.A.C. 7:14B-1.4(c) exempts two types of underground storage tank systems from all requirements except for registration, payment of fees, release reporting and investigation, and remedial action. The Federal regulations at 40 C.F.R. 280.10(c) provide similar partial exemptions to specified underground storage tank systems, except that Federal partial exemptions include registration and release reporting and investigation requirements. The only additional cost for operating these systems in New Jersey is the registration fee of \$150.00 every three years.

The Department requires all underground storage tank systems regulated pursuant to the Act and these rules to be registered in order to keep an inventory of the location, size and contents. The registration of underground storage tank systems significantly enhances the Department's ability to address the problem of an unknown source of contamination that is migrating through the environment. The ability of the Department to rapidly detect the source of migrating contamination helps to mitigate the potential impact to human health, safety and the environment and helps to reduce the amount of financial resources necessary to remediate the contaminated site. Information concerning

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an existing or closed underground storage tank system is an integral component of the Department's administration of the underground storage tank program.

The Act, specifically N.J.S.A. 58:10A-25(a)10, requires that the Department establish rules requiring that the Department and local authorities are notified of the existence of any operational or nonoperational underground storage tank systems. Therefore, the Department requires any underground storage tank system that is regulated by these rules to be registered in accordance with N.J.A.C. 7:14B-2.

N.J.A.C. 7:14B-1.4(c) requires an owner or operator of an underground storage tank system listed at N.J.A.C. 7:14B-1.4(c) to comply with the release reporting and investigation requirements of N.J.A.C. 7:14B-7. As stated above, the Federal regulations exempt the N.J.A.C. 7:14B-1.4(c) types of underground storage tank systems from release reporting and investigation requirements. The State of New Jersey's environmental statutory framework requires an owner or operator of an underground storage tank system to immediately report any releases from the underground storage tank system upon discovery. The Act at N.J.S.A. 58:10A-25(a)5 requires the reporting of any discharges from an underground storage tank into the environment. The Spill Act and the Water Pollution Control Act require an owner or operator to report any discharges. The requirements of N.J.A.C. 7:14B-7 are intended to ensure that appropriate preventive measures are implemented as soon as a release is detected in order to minimize any impact to the environment. N.J.A.C. 7:14B-7 outlines the procedures for an owner or operator to respond to early indications that a release may have incurred. N.J.A.C. 7:14B-7 sets forth the appropriate investigative measures to confirm a suspected release.

When an owner or operator of an underground storage tank system suspects that a release has occurred, an investigation of the system must be performed to confirm or deny the release within seven calendar days. This investigation includes activities which impose no additional cost to the owner or operator, such as checking all records of system calibration, deliveries and inventory, and checking the monitoring systems to ensure they are operating properly. Any wells used for product or vapor monitoring of the tank system may be checked for signs of a release. If the suspected release can be shown to be a false alarm, no further investigation is necessary by the system owner or operator. The

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owner or operator is required to notify the Department only after a release has been confirmed or the suspected release cannot be denied.

N.J.A.C. 7:14B-1.6 Definitions

New Jersey's definition of hazardous substance is significantly broader than the Federal definition. The Act defines a hazardous substance to include any of the wastes, compounds and process by-products defined in a variety of Federal statutes. The definition at N.J.A.C. 7:14B-1.6 not only encompasses all hazardous substances and wastes defined by four Federal laws, it also includes all other defined hazardous substances in New Jersey.

N.J.A.C. 7:14B-1.7 contains certification statements to be signed by tank owners and consultants upon submission of documents to the Department. There is no Federal counterpart to this requirement. However, requiring certification does not increase any costs associated with the operation of an UST.

Subchapter 2. Registration Requirements and Procedures

N.J.A.C. 7:14B-2 contains the registration requirements for underground storage tank systems. As stated earlier in the Summary, one of the main purposes of registration is to document and inventory the location, size and contents of all underground storage tank systems. The registration program provides the Department with the necessary data to make an informed decision regarding unknown contamination sources in order to mitigate the spread of contamination through the environment.

The Federal regulations, specifically 40 C.F.R. 280.22, require a regulated underground storage tank system to be registered with the applicable state agency (in New Jersey, that agency is the Department). As originally enacted, N.J.S.A. 58:10A-23(a) required the owner or operator of a facility to register an underground storage tank system with Department no later than 180 after the effective date of the statute (September 3, 1986). The Federal regulation requires registration of tank systems which were not removed or abandoned-in-place as of May 8, 1986, whereas the State requires registration of tank systems which were not closed as of September 3, 1986. The four-

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month period difference in coverage is inconsequential and becomes less important to the Department and the regulated community with the passage of time.

Subchapter 3. Fees

N.J.A.C. 7:14B-3.5 sets forth a fee schedule and direct billing formula which are applied to all oversight activities performed by the Department.

The Federal program is funded through a combination of appropriations, taxes on specific petroleum activities and Federal trust mechanisms. Any activities conducted by the various USEPA units involved in administering the Federal program are covered by these funding mechanisms. The Federal government does not charge any fees to an owner or operator of an underground storage tank system to implement the Federal underground storage tank program. The Federal underground storage tank program is administered by the various state programs. The State is responsible for implementing and funding the Underground Storage Tank program's registration, permit review, remediation workplan and report reviews.

The Department's UST program does not receive any appropriation from the General Treasury Fund; rather, it relies on fees, Federal government grants, and reimbursement of Department oversight costs from responsible parties for its entire budget. The Department's assessment of fees and oversight costs pursuant to N.J.A.C. 7:14B-3 is not comparable to the Federal regulations governing underground storage tank systems. Accordingly, Executive Order No. 27 (1994) and P.L. 1995, c. 65, do not require any further analysis.

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

N.J.A.C. 7:14B-4.1 sets forth design, construction and installation requirements for all underground storage tank systems installed on or after September 4, 1990. These requirements are substantially identical to the applicable Federal regulations at 40 C.F.R. 280.20, Subpart B.

N.J.A.C. 7:14B-4.1(b) sets forth construction and release detection monitoring standards for new tank systems installed within wellhead protection areas that vary from the requirements for all other underground storage tank systems. The Federal regulations

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do not contain separate construction and release detection monitoring standards for an underground storage tank system located in an environmentally sensitive area.

Accordingly, the Department's rules governing an underground storage tank system located within a wellhead protection area exceed the requirements of the applicable Federal regulations. N.J.S.A. 58:10A-22(q) and 58:10A-25(a)(2) authorize the Department to define wellhead protection areas and to establish tank construction, release detection monitoring and upgrade standards which may be more stringent than the Federal regulations. The Legislature recognized that the potential for a discharge from an underground storage tank system located in close proximity to a well poses a significant threat to the water quality of the well. The aerial extent of the wellhead protection area is determined by the use of time-of-travel and hydrologic boundaries.

An owner or operator of a new underground storage tank system located within a wellhead protection area is required to install a secondarily contained system with interstitial release detection monitoring in order to comply with the requirements of N.J.A.C. 7:14B-4.1. The owner or operator will incur the additional costs of only secondary containment when compared with an equivalent single-walled tank system (approximately 50 percent more for the cost of materials for a double walled 10,000 gallon UST, or \$17,900 as compared to \$11,100). Although interstitial monitoring is mandated for the system within the wellhead protection area, some form of release detection monitoring is required for all tank systems. The cost to install a monitoring system is dependent upon the monitoring system chosen. It is possible that the cost of installation of a release detection monitoring system for a single walled tank system is greater than that for a secondarily contained system, resulting in a smaller cost differential than previously noted.

The requirements of N.J.A.C. 7:14B-4.1 ensure that any release from an underground storage tank system will be detected and contained before a discharge occurs. An owner or operator of an underground storage tank system that does not meet the N.J.A.C. 7:14B-4.1 specifications, and who allows the discharge of a hazardous substance within a wellhead protection area, may be responsible for conducting a soil and groundwater remediation. The average cost of a soil and groundwater remediation within a wellhead protection area is \$500,000 plus any costs incurred to ensure that all affected

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persons have an alternative water source. It is difficult to quantify all potential impacts to the community or person that is affected by the contamination of a well. The costs involved solely for remediation efforts obviate the need to assign a monetary amount to the impact to the community or person for the purpose of this analysis. Based on the above analysis, the preventive costs required by proposed N.J.A.C. 7:14B-4.1(b) are minimal when compared to the potential costs of remediation.

N.J.A.C. 7:14B-4.1(l) prohibits the installation of an underground storage tank system within 50 feet of a public community or non-public community supply system well. This provision is consistent with the relevant water supply regulations at N.J.A.C. 7:10-11.7(b). Since N.J.A.C. 7:10-11.7(b) already requires the well owner to obtain all property within a 50 radius of the well and prohibits any potential source of contamination from existing within that boundary, no hardship or additional expense will be placed on any tank owner or operator. The Federal regulations at 40 C.F.R. 280 do not involve siting issues. Accordingly, Executive Order No. 27 (1994) and P.L. 1995, c. 65, do not require any further analysis.

The Federal regulations are also silent with respect to the installation of a new tank system near a non-community supply well. Although a prohibition for the storage of hazardous substances near a non-community supply system well is not mentioned in any New Jersey rule, the Department has determined that the same level of protection should be applied to these water systems. N.J.A.C. 7:14B-4.1(l) prohibits the installation of a tank system within 50 feet of a non-public community supply system well. The 50-foot prohibition represents only an approximate travel time of 10 days, significantly less time than the one-month period within which most monitoring is performed. The Federal regulations at 40 C.F.R. 280 do not involve siting issues. Accordingly, Executive Order No. 27 (1994) and P.L. 1995, c. 65, do not require any further analysis.

N.J.A.C. 7:14B-4.2 sets forth the upgrade requirements for existing tank systems. For all systems but those located within wellhead protection areas, the requirements are identical to the Federal requirements. To ensure continued water quality in wellhead protection areas, the owner or operator of an underground storage tank system is required to perform a site investigation in accordance with the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, before any permit is issued to upgrade the

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underground storage tank system. When a discharge from the underground storage tank is identified, the Department will issue a permit only if the owner or operator has notified the Department of the discharge, initiates measures to repair the leaking portion of the tank system and has developed or submitted a plan for the remediation of the site to the Department. These procedures help to ensure that historical discharges in wellhead protection areas will be identified and remedial efforts initiated to prevent or mitigate discharges from affecting supply wells. The cost of the initial site investigation includes obtaining and chemically analyzing at least four soil borings and preparing a report documenting the work performed. The cost ranges from \$5,000 to \$10,000.

Subchapter 5. General Operating Requirements

N.J.A.C. 7:14B-5 sets forth the general operating requirements for underground storage tank systems. As required pursuant to N.J.S.A. 58:10A-25(a)2, N.J.A.C. 7:14B-5 is substantially identical to the applicable Federal regulations at 40 C.F.R. 280, Subpart C, except for records retention, release response plan and fill port marking.

N.J.A.C. 7:14B-5.2(a)4 and 5.6 require the owner or operator of a facility to maintain all operational records, such as corrosion protection tests, installation checklists, and records of repairs and monitoring until the Department approves that they may be discarded. The equivalent Federal regulations at 40 C.F.R. 280.31(d) and 280.45 require that an owner or operator maintain documentation for a specified period of time.

The Department's recordkeeping requirements benefit the owner, operator and the Department. The maintenance of records beyond the date of underground storage tank closure ensures continued access to documentation that will facilitate the determination of a historical discharge or resolve operational questions that may have relevance long after the underground storage tank is closed. The retention of records may save the owner or operator additional expenses of performing a site investigation when the documentation may be used to confirm the integrity of the underground storage tank.

The Federal regulations assume that periodic inspections will be conducted by state or local authorities on a regular basis. While periodic inspections remain a State and local objective, limited State and local resources preclude using periodic inspections as the only mechanism to assess the historical status of an underground storage tank system.

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Therefore, the retention of records is a critical factor to resolve historical operational questions.

An owner or operator will incur minimal costs in order to comply with the record retention requirements. The records can be stored in file boxes at the facility or at another location where they would be readily available upon request. The cost of the file boxes and paper is less than \$200.00. A conservative estimate for a site investigation of a facility containing three 10,000 gallon underground storage tanks is \$10,000 or greater.

The record retention requirements place only an incidental financial and resource burden on an owner or operator. The owner or operator is required to conduct all these activities regardless of the recordkeeping requirements. The only cost to the owner is the compilation of records and the storage of documents. The cost-benefit analysis supports the Department's rationale for requiring that these records be retained when compared to remedial activities that may be required in absence of such records.

N.J.A.C. 7:14B-5.5 requires every underground storage tank system owner or operator to maintain a release response plan on-site. The release response plan consists of a list of the appropriate people and agencies to contact in the event of a suspected or confirmed release from an underground storage tank system. The Federal regulations do not contain any provision for a release response plan.

The need to maintain a release response plan at an underground storage tank facility is based on common sense and reasonable safety concerns and is already implemented by many owners or operators as a practical business consideration. Another factor that supports the need for the release response plan is that many underground storage tank facilities are operated by individuals who have little if any knowledge or understanding of tank system construction or the underground storage tank regulations.

The Department's experience demonstrates that not all owners or operators have considered the need for a release response plan or have taken the minimal efforts necessary to develop a plan. The list of contact persons and telephone numbers ensure early reporting of potential problems to those persons who are knowledgeable and can initiate an appropriate response.

An owner or operator can create a release response plan in accordance with N.J.A.C. 7:14B-5.5 without the need to employ an environmental consultant or other

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professional. The owner or operator will only incur minimal costs in addition to the time required to compile the necessary information. The release response plan may prevent or help to mitigate an impact to the environment which could result in the need for a site investigation or remedial action. Therefore, the benefit of a release response plan clearly outweighs the potential environmental and financial impact that may occur if a person has to waste time during a crisis trying to determine who should be called and what response actions should be initiated.

N.J.A.C. 7:14B-5.8 requires an owner or operator to mark the fill ports to the underground storage tank system in accordance with the standards developed by the American Petroleum Institute (API). The Federal regulations do not contain a similar provision. Many owners or operators currently mark all fill ports to identify the product stored in the underground storage tank system for safety and business considerations. A marked fill port provides an additional control on the introduction of a hazardous substance into an underground storage tank system to ensure that an underground storage tank system is not filled with a substance for which it is not intended. Marked fill ports also provide immediate identification of product storage which may expedite an inspection or investigation of an underground storage tank system.

An owner or operator is required to purchase paint and apply it to the fill ports. The cost for several paint containers will be less than \$50.00. The potential environmental and financial impact of inadvertently filling an underground storage tank system with a hazardous substance for which the tank was not designed, evinces the dollar cost, time and effort necessary to comply with proposed N.J.A.C. 7:14B-5.8.

N.J.A.C. 7:14B-5.9 specifically places liability upon tank owners, tank operators and firms that supply facilities which are not registered or are known to be leaking. Although no Federal regulation is as specific, the UST rule requirement is based on 40 C.F.R. 280.22 and 280.62, which require registration of all facilities and removal of product from leaking tanks.

Subchapter 6. Release Detection

N.J.A.C. 7:14B-6 incorporates the release detection requirements established in the Federal regulations at 40 C.F.R. 280, Subpart D. As required pursuant to N.J.S.A.

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58:10A-25(a)2, N.J.A.C. 7:14B-6 is substantially identical to the applicable Federal regulations.

The Federal regulation, 40 C.F.R. 280.40, requires that all underground storage tank systems be monitored for releases no later than December 22, 1993. N.J.A.C. 7:14B-6.1 sets no date for initiation of release detection monitoring but, since the Federal deadline is past, requires release detection monitoring of all existing and new underground storage tank systems.

The requirement for release detection monitoring of heating oil underground storage tank systems imposes costs upon the tank owner that are not imposed by the Federal regulations. For new or existing tank systems that are double walled, an owner or operator may choose to manually inspect the interstitial space. The total cost of monitoring is the time it takes to complete the task. Other forms of release detection monitoring require an investment in either equipment, such as the installation of monitoring wells, or periodic expenditures for a tank tester. The estimated range of costs for monitoring will be approximately \$500.00 to \$1,000.00 every three years for testing of the tank system, or an initial expense of \$50.00 to \$10,000 for the installation of a monitoring system (\$50 for manual testing and up to \$10,000 for electronic monitoring equipment), or \$2,500 to \$4,000 for the installation of each tank field monitoring well.

N.J.A.C. 7:14B-6.4 provides the release detection monitoring requirements for underground storage tank systems located within wellhead protection areas. As previously described above, an owner or operator will incur costs for the installation, construction, operation and monitoring of an underground storage tank system that is located in a wellhead protection area. The cost-benefit analysis discussed above demonstrates that the Department's stricter requirements for underground storage tank systems in wellhead protection areas is economically supported and technically achievable.

The recordkeeping requirements for the monitoring systems are codified at N.J.A.C. 7:14B-6.7. The substantive information that is required to be recorded is similar to the Federal regulation at 40 C.F.R. 280.45. As previously addressed in the discussion of the UST rules at N.J.A.C. 7:14B-5 for record retention requirements, the rules require a longer retention schedule. See the discussion above for the cost-benefit analysis

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Subchapter 7. Release Reporting and Investigation

N.J.A.C. 7:14B-7 requires an owner or operator to investigate suspected releases of hazardous substances. Upon confirmation of a release, the owner or operator is required to notify the Department in accordance with N.J.A.C. 7:14B-7.3(a). N.J.A.C. 7:14B-7 is similar to the Federal regulations at 40 C.F.R. 280, Subpart E. The Department's requirements exceed the requirements of the Federal regulations, specifically 40 C.F.R. 280.50(c), concerning the timing for review of inventory records to determine whether a release has occurred. The Federal regulations require the evaluation of inventory control records for findings outside the limits set in the applicable manual tank gauging and inventory control regulations, for a two-month period before the owner or operator must consider the discrepancy a "release" requiring further investigation. N.J.A.C. 7:14B-7.1(a) considers a one-month inventory control plus 130 gallons discrepancy to indicate a release requiring further action.

The requirements for investigating a suspected release are the same under the Federal regulations and these rules. The difference is limited to the timing of the triggering event. The Department's experience in investigating suspected releases and overseeing subsequent remedial actions demonstrates that the initiation of an investigation immediately upon discovery of a suspected release can significantly decrease both the environmental impact of a discharge and the financial impact to the owner or operator to respond to the discharge.

In the case of a falsely suspected release, the owner or operator will incur minimal costs to implement the investigative requirements of N.J.A.C. 7:14B-7.2. The owner or operator is required to allocate several hours to reviewing the relevant records and visually examining the physical underground storage tank facility.

Conversely, the owner or operator may confirm that a release has occurred and can implement the necessary remedial activities one month earlier than would be required under Federal regulations. The owners' or operators' timely response will mitigate the

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migration of hazardous substances and the impact of the contamination. The time variance between the one month and two month response to inventory record discrepancies may represent the difference between a minor soil remedial action and a groundwater investigation.

The Department's requirement of investigating an inventory control discrepancy based on one month rather than based on two months as required in the Federal regulations represents a reasonable and cost-effective method to prevent or minimize any potential impact to the environment from a leaking underground storage tank system. The cost to discover a "false-positive" release is minimal (measured in hours rather than dollars, since the investigation does not necessarily require capital expenditures beyond allocation of salary costs) when compared to the environmental and financial damage that may ensue from a month-long continuous discharge from an underground storage tank system.

N.J.A.C. 7:14B-7.2(a)5 restricts the use of precision tests as an investigative tool to those situations where a previous precision test had indicated a release occurred and it can be demonstrated that the results of the failed test are unreliable. The Department's experience demonstrates that precision tests have limited beneficial results when used to confirm or disprove a suspected release. A precision test is not used to investigate the entire underground storage tank system in a manner to allow an owner or operator to draw definite conclusions concerning the integrity of the underground storage tank system. Therefore, the Department does not encourage precision testing.

The Federal regulations at 40 C.F.R. 280.52 authorize an owner or operator to conduct a precision/tightness test as part of the investigation of a suspected release. The Department's requirements for investigation of suspected releases employs the best available technology to address suspected releases and is consistent with the Federal regulations. Accordingly, Executive Order No. 27(1994) and P.L. 1995, c.65 do not require any further analysis.

Subchapter 8. Remediation Activities

N.J.A.C. 7:14B-8 sets forth the procedural requirements for remediating a discharge from an underground storage tank system with the oversight of the

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Underground Storage Tank program. The technical requirements for conducting a remediation can be found at N.J.A.C. 7:26E.

The Federal regulations at 40 C.F.R. 280, Subpart F address procedural and technical corrective action requirements. The Federal regulations provide schedules for completing corrective actions but authorize the State to adopt other schedules and requirements.

The requirements of N.J.A.C. 7:14B-8 are different from the Federal regulations regarding specific schedules and the procedures to implement and document corrective actions. For example, 40 C.F.R. 280.62, 280.63, and 280.64 require a report documenting the initial abatement action within 20 calendar days of identifying a discharge, a report documenting the initial site characterization (remedial investigation) within 45 calendar days of identifying a discharge, and a report documenting free product removal, if applicable within 45 calendar days of identifying a discharge, respectively. The Department's schedule of 120 calendar days allows an owner or operator adequate time to complete the initial abatement activities and the remedial investigation and to begin free product removal before submitting the report. This decreases costs to an owner and operator because it focuses available resources to addressing remedial actions and reduces paperwork by limiting the number of reports to be prepared and submitted to the Department. Therefore, N.J.A.C. 7:14B-8 does not contain any standards or requirements that exceed the standards or requirements imposed by the applicable Federal regulations at 40 C.F.R. 280, Subpart F and no further analysis is required pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65.

Subchapter 9. Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems

N.J.A.C. 7:14B-9.1 sets forth the requirements for an owner or operator to maintain an out-of-service underground storage tank system.

The Federal regulations at 40 C.F.R. 280.70 outline the requirements for an owner or operator to temporarily maintain an out-of-service underground storage tank system for a period of time greater than 12 months. The Federal regulations make a distinction

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between a temporary closure of underground storage tank systems based on their compliance status with upgrading requirements.

The Federal regulations allow an underground storage tank system that is in compliance with upgrade requirements to remain out-of-service indefinitely if the underground storage tank system is empty and complies with corrosion protection. The Federal regulations do require a site investigation be performed if the underground storage tank system will remain out-of-service for a period greater than 12 months and has not been properly upgraded with cathodic protection.

The Department's rules encourage an owner or operator to remain vigilant about the underground storage tank system until permanent closure and ensure that a historical examination of the underground storage tank system can be obtained throughout the life of the system.

N.J.A.C. 7:14B-9.1(c) does not make the same distinction between upgraded and non-upgraded underground storage tank system for an owner or operator to maintain an out-of-service underground storage tank system for a period of time greater than 12 months and is, therefore, more stringent than Federal requirements. N.J.A.C. 7:14B-9.1(c) requires an owner or operator maintaining an out-of-service underground storage tank system for a period of time greater than 12 months to conduct a site investigation prior to the expiration of the 12 month period except where release detection monitoring has been implemented in accordance with the rules for the operational life of the underground storage tank system or since the last site investigation.

The monitoring devices required pursuant to this chapter are limited to detecting future discharges and do not provide any support concerning historical discharges prior to their use. An underground storage tank system that is fully upgraded may still have previously discharged hazardous substances into the environment. Under the Federal regulations, any historical discharges may remain undetected for an indefinite period of time.

N.J.A.C. 7:14B-9.1(c) reflects a balanced approach to evaluating underground storage tank systems for historical and current discharges. The Department's requirement that a site investigation be completed as a prerequisite to maintaining an out-of-service underground storage tank system provides a baseline to evaluate historical discharges.

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The Department's reliance on release detection monitoring sets forth the current status of the underground storage tank system since the baseline investigation. N.J.A.C. 7:14B-9.1(c) reinforces the beneficial impact to the owner or operator of proper release detection monitoring.

N.J.A.C. 7:14B-9.2 requires an owner or operator to give at least 30 calendar days notice to the Department and the local and county health department prior to closing a regulated underground storage tank system. The Federal regulations at 40 C.F.R. 280.71 require a 30 calendar day notification only to the implementing agency.

The notice provision in the Federal regulations is intended to afford a regulating authority time to inspect an underground storage tank system closure. The Department's rules at N.J.A.C. 7:14B-9.2(a)1 require notice to local and county authorities, since they are charged with inspecting underground storage tank system closures within their respective jurisdictions. An owner or operator may notify local officials on the same forms that are used for submittals to the Department. Therefore, the owner or operator will incur only those additional costs necessary to copy or complete a second form. These incidental costs are minimal when compared to the need to ensure that local authorities are apprised of pending underground storage tank system closures and are able to direct their limited resources to inspecting potentially hazardous conditions within their jurisdiction.

N.J.A.C. 7:14B-9.2(c) sets forth the requirements for an owner or operator to complete or submit a closure plan for an underground storage tank system. The Federal regulations do not contain equivalent requirements concerning closure plans. N.J.A.C. 7:14B-9.2(c) does not exceed the Federal law because the Department does not require an owner or operator to submit a closure plan for review. Rather, the Department reviews and responds to any closure plans submitted by an owner or operator who elects to have the Department review the plan prior to implementation. The Department charges \$450.00 to review and respond to the submission of a closure plan. Therefore, based on the voluntary nature of the submission of a closure plan, no further analysis is required pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65.

The New Jersey Uniform Construction Code, N.J.A.C. 5:23, requires an owner or operator to obtain a demolition permit from the local construction office. N.J.A.C.

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7:14B-9.2(a)3 requires that an owner or operator send a copy of the Department's notice with the application for a local demolition permit. There is no corresponding requirement in the Federal regulations. The requirement provides consistency with the New Jersey Uniform Construction Code and alerts an owner or operator to their obligations to the local construction office. It does not require an owner or operator to take any actions beyond what is required by the New Jersey Uniform Construction Code. The requirement merely incorporates the requirement for consistency and to provide additional notice to an owner or operator. No further analysis is required pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65.

N.J.A.C. 7:14B-9 and the Federal regulations at 40 C.F.R. 280.72 require that an owner or operator of an underground storage tank system conduct a site investigation at the time of permanent closure. The Federal regulations require an owner or operator to submit the results of the site investigation only in those circumstances when contamination is discovered. Pursuant to N.J.A.C. 7:14B-9.5, an owner or operator is required to submit the results of the site investigation to the Department, regardless of whether or not contamination is identified.

The fee for Department review of a site investigation report and remedial investigation report is \$750.00 and \$1,500, respectively. The submission of the site investigation report or remedial investigation report to the Department ensures that the closure and remediation were performed in accordance with this chapter and the relevant technical requirements of N.J.A.C. 7:26E. The Department's review allows an owner or operator to cure any deficiencies at the time of closure, and may prevent the need to reinvestigate the underground storage tank system at a later date. Generally, a subsequent reinvestigation of the underground storage tank system to correct problems related to the closure will cost significantly more than if the problems are addressed at the time of closure, because the longer a discharge of hazardous substances remains undetected, the longer the contact of the hazardous substance with soil and groundwater and the more chance for it to migrate, making remediation more difficult and expensive.

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Subchapter 10. Permitting Requirements for Underground Storage Tank Systems

N.J.A.C. 7:14B-10 sets forth the activities for which an owner or operator is required to obtain a permit prior to installing, repairing or upgrading an underground storage tank system. The Federal regulations do not require permits for these activities.

The Federal regulations rely on a contractor to comply with accepted industry standards and to properly document the installation, repair or upgrade an underground storage tank system. The Department's experience demonstrates that a permitting process is necessary for the Department to meet the stated goals of the Underground Storage Tank program. Further, the installation, repair or upgrade is a critical point in the operational life of an underground storage tank system where an ounce of prevention is worth more than any quantity of cure.

The fee for the Department's review and response to a permit is \$450.00 and is minimal when compared to the cost of system repair and environmental remediation. Installation of improper equipment could result in premature failure of the underground storage tank system which may necessitate replacement of equipment and the requirement for a site investigation to determine whether a discharge has occurred. As previously stated, a site investigation will cost a minimum of \$10,000 with additional expenditures if contamination is discovered.

The Department's permitting process is designed to incorporate a minimum amount of prevention at a critical time of the operational life of an underground storage tank system where a problem can be readily identified and corrected. The potential environmental and financial consequences of an improper installation, repair or upgrade support the Department's permitting process.

Subchapter 11. Municipal Ordinances

The intent of N.J.S.A. 58:10A-21 et seq. is to standardize the rules concerning underground storage tank systems Statewide. To this end, N.J.S.A. 58:10A-35 invalidates any underground storage tank rule that a municipality had enacted prior to the effective date of the Act. In addition, it requires the Department to develop procedures so municipalities may develop ordinances regarding underground storage tanks. Subchapter 11 states the minimum requirements with which municipalities must comply before the

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Department will authorize a local ordinance regarding regulated underground storage tank systems. There is no equivalent section in the Federal regulations.

The result of standardization of the rules is uniformity of regulation and thus prevention of duplication of effort among the regulatory bodies throughout New Jersey and a decrease in the cost of government. Whereas previously, each town had different requirements for tank owners, any enforcement action or regulatory oversight had to be performed by that town. Standardization allows the Department, the county health agencies and the local construction and health agencies to perform these functions. Any decision as to who would perform the function is predicated upon the immediacy of the problem and personnel considerations.

The standardization of the rules also decreases the costs of tank services to the underground storage tank owners and operators. Statewide uniformity allows contractors to act more efficiently due to the predictability of the requirements, thus decreasing the time and effort required to perform a service.

Subchapter 12. Penalties, Remedies and Administrative Hearing Procedures

N.J.A.C. 7:14B-12 sets forth a penalty schedule for noncompliance with any section of the UST rules, and provides the procedures for requesting hearings after denial or revocation of registration, permits, certifications for individuals and business firms, and denial of ordinance adoption.

The Federal government may assess civil administrative penalties in accordance with 42 U.S.C. § 6991e(d). This statute provides that the penalties may be \$10,000 per day per violation for each underground storage tank in violation of the implementing regulations. In accordance with 42 U.S.C. § 6991e(a), a penalty of \$25,000 per day may be assessed for each day of a continuing violation of an order.

The penalty provisions of N.J.A.C. 7:14B-12 are similar in their structure to the Federal penalty scheme. 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 is \$50,000 per day per violation. The mandatory penalty provisions currently implemented by the Department were promulgated in accordance with requirements imposed by 1990 amendments to the New Jersey Water Pollution Control Act, which

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requires the Department to impose, without discretion, mandatory minimum civil administrative penalties against a violator who has committed a serious violation or who has been determined to be a significant noncomplier. The Department believes that the financial effects of these mandatory penalties will be minimal. No additional expenses will be incurred during routine business activities; expenses incurred as a result of mandatory penalties will occur only where there are certain violations of the standards set forth in these rules.

Subchapter 13. Certification of Individuals and Business Firms

N.J.A.C. 7:14B-13 sets forth the requirements for certification of individuals and firms to perform services on regulated UST systems. The requirement for certification is mandated by N.J.S.A. 58:10A-24.1 through 24.6.

There is no designated certification program in the Federal regulations. The Federal regulations do allow certain underground storage tank activities to be performed by a person certified by an implementing agency. (For example, see 40 C.F.R. 280.20(e)(2).) Therefore, the Department's certification program as mandated by State law, does not contain any standards or requirements that exceed Federal law or standards. Accordingly, no further analysis is required pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65.

Subchapter 14. Confidentiality

N.J.A.C. 7:14B-14 sets forth the administrative requirements for an owner or operator to assert a claim of confidentiality for information submitted to the Department. Confidentiality procedures are available to any owner or operator that elects to request that the Department keep specified information, submitted to the Department, confidential and separate from public records.

The procedures set forth at N.J.A.C. 7:14B-14 are voluntary and can only be invoked in accordance with the proposed procedures. The application of the confidentiality procedures to the Underground Storage Tank program is not based on any Federal authority or comparable provision. Therefore, no further analysis is required pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65.

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Subchapter 15. Financial Responsibility Requirements

The Department's rules at N.J.A.C. 7:14B-15 ensure consistency with the Federal regulations at 40 C.F.R. Part 280. The Federal financial responsibility requirements pertain to Federally regulated underground storage tanks containing petroleum, excluding tanks containing heating oil for on-site consumption and underground chemical storage tanks. However, New Jersey regulates many additional underground storage tanks, including all Federally-regulated tanks, as well as some excluded by Federal law. All of the underground storage tank systems regulated by New Jersey are required to comply with the UST rules' financial assurance requirements because discharges from these tanks can, and do, cause serious environmental damage. To ensure consistent, non-duplicative requirements, N.J.A.C. 7:14B-15 incorporates the Federal financial responsibility requirements, but allows owners and operators that are subject to Federal financial responsibility requirements and who are currently using an approved financial mechanism pursuant to 40 C.F.R. Part 280 to continue to use that same mechanism to satisfy both the State and Federal law.

Subchapter 16. Certification of Individuals and Business Firms for Unregulated Underground Storage Tank Systems

N.J.A.C. 7:14B-16 sets forth the requirements for certification of individuals and firms to perform services on unregulated heating oil tank systems. The requirement for certification is mandated by N.J.S.A. 58:10A-24. There is no designated certification program in the Federal regulations. The Federal regulations do not set up or require certification of any type of contractor. Therefore, the Department's certification program, as mandated by State law, does not contain any standards or requirements that exceed Federal law or standards. Accordingly, no further analysis is required pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65.

Jobs Impact

The rules proposed for readoption will continue to have a positive impact on jobs in New Jersey. Implementation of the rules requires owners and operators of

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underground storage tanks to engage the services of people skilled in laboratory consulting and environmental technology.

The requirements for financial mechanisms provides funding for unexpected remediation costs and may prevent small businesses that cannot afford a costly remediation from going bankrupt, resulting in lost jobs. Jobs at insurance companies and banking institutions that issue commercial mechanisms may be created or maintained as a result of these rules.

The certification program for individuals and business firms providing services to regulated and unregulated heating oil tank systems create the opportunity for jobs for parties who seek certification for providing services on unregulated heating oil tank systems.

Agriculture Industry Impact

The Department has evaluated this rulemaking to determine the nature and extent of the impact of the rules proposed for readoption without amendments on the agriculture industry. In general, farmers are exempt from the requirements of the Underground Storage Tank Rules. N.J.A.C. 7:14B-1.4(b) exempts from the rules farm tanks of 1,100 gallons or less used for storing motor fuel for noncommercial purposes. Farm owners often elect to hire environmental consultants to conduct an evaluation of residual soil contamination from unregulated tank systems containing heating oil or gasoline for farming equipment, but the rules do not impact whether or not a farmer will hire an environmental consultant. Thus, the rules will not have an impact on the agricultural community in New Jersey.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full time employees. The rules proposed for readoption without amendments will apply to all owners and operators of regulated underground storage tank systems that store hazardous substances. The Department estimates that over 7,000 underground storage tank system owners and

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operators are small businesses as defined in the New Jersey Regulatory Flexibility Act, and therefore, will be affected by these rules. The types of small businesses to which the rules apply include independent gasoline service stations, fleet services, and heating oil companies. Many contractors and businesses certified pursuant to N.J.A.C. 7:14B-13 that perform services on underground storage tank systems are classified as small businesses. The Department estimates that 80 percent of the business firms that seek certification are small businesses.

The various compliance requirements and their associated costs are discussed in the Summary, Economic Impact and Federal Standards Analysis above.

In order to comply with the requirements of the rules proposed for readoption without amendments, it is likely that small businesses will need to engage the services of consultants and/or professional engineers. The capital and operating costs of complying with the underground storage tank system upgrade, operating and monitoring requirements at N.J.A.C. 7:14B-4, 5 and 6 vary from approximately \$3,000 to \$100,000 depending upon whether the owner or operator has already installed state of the art equipment and whether any existing equipment can be or needs to be replaced. The cost of complying with N.J.A.C. 7:14B-5.1 and 5.6, which require visual inspections of spill catchment basins, piping sumps and dispenser pans, and documentation that the visual inspections have been completed, are negligible since they merely require a visual inspection and entry of the results of the inspection in a ledger book. If a discharge of hazardous substances is suspected, the cost of complying with the remediation requirements at N.J.A.C. 7:14B-7, 8 and 9 could vary from \$2,000 for a site investigation to over \$1,000,000 if a discharge is confirmed and groundwater must be remediated. The costs of the certification requirements of N.J.A.C. 7:14B-13 are discussed in the Economic Impact statement above.

The financial responsibility assurance rules impose the requirement for maintaining financial responsibility assurance, and for recordkeeping and reporting for large industry and small businesses alike. There is no differentiation in the requirements by the size of a business other than the fact that a higher annual aggregate amount of assurance is needed for a business that owns a larger number of underground storage tanks. The rules do not exempt small businesses from all or part of the reporting,

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recordkeeping or other compliance requirements. A discharge of hazardous substances endangers public health safety and welfare, and cannot be correlated to the size of the business. However, to minimize adverse economic impact on small businesses, the rules offer a choice of mechanisms for obtaining financial responsibility assurance, some of which will be more economically feasible and attainable for small businesses. There should be no capital costs to obtain a financial assurance mechanism unless the owner and operator choose to use a risk retention group to demonstrate financial responsibility. Risk retention groups require "buy-in" to capitalize the group. Otherwise, annual premiums or payments for renewal of a mechanism will be the only costs involved.

The rules apply to all small businesses that own or operate regulated underground storage tanks. This includes all tanks which contain any quantity of any substance deemed hazardous on a list developed by the Department, any quantity of motor fuel stored for commercial use, and all heating oil tanks of 2,001 gallons or more for on-site consumption at businesses or commercial operations.

EPA estimates that small businesses own or operate about 72 percent of the motor fuel outlets in the United States while only 24 to 41 percent of all underground storage tank owners or operators in general industry (excluding motor fuel outlets) meet the definition of small businesses. Applying those percentages to the more than 9,000 active facilities regulated by New Jersey law, nearly 7,000 small businesses are potentially affected by these rules.

Reporting requirements imposed by the rules are not burdensome. They include reporting the type and amount of financial assurance on a UST Facility Questionnaire already required by N.J.A.C. 7:14B-2. Although no other submissions are initially required, proof of a valid financial responsibility assurance mechanism is required upon request from an authorized person.

The rules proposed for readoption may affect small businesses that do not have or are unable to obtain certification to provide services to either regulated underground storage tanks or to unregulated heating oil tank systems. N.J.A.C. 7:14B-13 and 16 require Department certification in order to provide the certain services to UST systems. Small businesses whose employees are not certified may not service UST systems.

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Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan), N.J.S.A. 52:18A-196 et seq. The Department has evaluated this rulemaking to determine the nature and extent of the impact of the rules proposed for re adoption without amendments on smart growth and on the implementation of the State Plan. The rules proposed for re adoption without amendments support the principles of smart growth by encouraging the cost-efficient and timely cleanups of discharges from underground storage tanks, many of which are associated with brownfield sites that are then returned to beneficial use. Remediating discharges from underground storage tanks improves the quality of the State's natural resources. Thus, ensuring remediation of discharges from underground storage tanks supports the goals of the State Plan, including conserving New Jersey's natural resources, revitalizing its Urban Centers and protecting the quality of its environment

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the rules proposed for re adoption without amendments to determine their impact, if any, on the affordability of housing. Because these rules concern underground storage tank registration, construction and operation, and provide for the remediation of sites contaminated by a discharge of a hazardous substance, the Department has determined that the rules will impose an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the rules proposed for re adoption without amendments to determine their impact, if any, on smart growth development. Because

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these rules concern underground storage tank registration, construction and operation, and provide for the remediation of sites contaminated by a discharge of a hazardous substance, they do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning areas 1, 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:14B.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of this proposed readoption. I hereby authorize the proposal of this readoption.

Date: _____

Mark N. Mauriello, Acting Commissioner
Department of Environmental Protection