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UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES (UST) ACT
(as of 08 February 2017)

58:10A-21. Findings, declarations

The Legislature finds and declares that millions of gallons of gasoline and other hazardous substances are stored prior to use or disposal, in underground storage tanks; that a significant percentage of these underground storage tanks are leaking due to corrosion or structural defect; that this leakage of hazardous substances from underground storage tanks is among the most common causes of groundwater pollution in the State; and that it is thus necessary to provide for the registration and the systematic testing and monitoring of underground storage tanks to detect leaks and discharges as early as possible and thus minimize further degradation of potable water supplies. The Legislature further finds and declares that with the enactment by the United States Congress of the "Hazardous and Solid Waste Amendments of 1984," Pub.L. 98-616 (42 U.S.C. s. 6991) it is necessary to authorize the Department of Environmental Protection to adopt a regulatory program that permits the delegation of the authority to carry out the federal act, but also recognizes the need of this State to protect its natural resources in the manner consistent with well-established environmental principles.

L. 1986, c. 102, s. 1, eff. Sept. 3, 1986.

58:10A-22 Definitions.

2. As used in this act:
 - a. "Commissioner" means the Commissioner of the Department of Environmental Protection;
 - b. "Department" means the Department of Environmental Protection;
 - c. "Discharge" means the intentional or unintentional release by any means of hazardous substances from an underground storage tank into the environment;
 - d. "Facility" means one or more underground storage tanks;
 - e. "Hazardous substances" means motor fuels and those elements and compounds, including petroleum products which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), which are defined as hazardous substances by the department after public hearing, and which shall be consistent to the maximum extent possible with and which shall include the list of hazardous wastes adopted by the United States Environmental Protection Agency pursuant to section 3001 of the "Resource Conservation and Recovery Act of 1976," Pub.L.94-580 (42 U.S.C. s.6921), the list of hazardous substances adopted by the United States Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Control Act Amendments of 1972," Pub.L.92-500 (33 U.S.C. s.1321), the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that act (33 U.S.C. s.1317), and any substance defined as a hazardous substance pursuant to section 101(14) of the "Comprehensive

Environmental Response, Compensation, and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601);

f. "Leak" means the release of a hazardous substance from an underground storage tank into a space created by a method of secondary containment wherein it can be detected by visual inspection or a monitoring system before it enters the environment;

g. "Monitoring system" means a system capable of detecting leaks or discharges, or both, other than an inventory control system, used in conjunction with an underground storage tank, or a facility, conforming to criteria established pursuant to section 5 of this act;

h. "Nonoperational storage tank" means any underground storage tank in which hazardous substances are not contained, or from which hazardous substances are not dispensed;

i. "Operator" means any person in control of, or having responsibility for, the daily operation of a facility;

j. "Owner" means any person who owns a facility, or in the case of a nonoperational storage tank, the person who owned the nonoperational storage tank immediately prior to the discontinuation of its use;

k. "Person" means any individual, partnership, company, corporation, consortium, joint venture, commercial or any other legal entity, the State of New Jersey, or the United States Government;

l. "Residential building" means a single and multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house, or other structure designed primarily for use as a dwelling;

m. "Secondary containment" means an additional layer of impervious material creating a space wherein a leak of hazardous substances from an underground storage tank may be detected before it enters the environment;

n. "Substantially modify" means construction at, or restoration, refurbishment or renovation of, an existing facility which increases or decreases the in-place storage capacity of the facility or alters the physical configuration or impairs or affects the physical integrity of the facility or its monitoring systems;

o. "Test" or "testing" means the testing of underground storage tanks in accordance with standards adopted by the department;

p. "Underground storage tank" means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground. "Underground storage tank" shall not include:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used to store heating oil for on-site consumption in a nonresidential building with a capacity of 2,000 gallons or less;

(3) Tanks used to store heating oil for on-site consumption in a residential building;

(4) Septic tanks installed in compliance with regulations adopted by the department pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.);

(5) Pipelines, including gathering lines, regulated under the "Natural Gas Pipeline Safety Act of 1968," Pub.L.90-481 (49 U.S.C. s.1671 et seq.), the "Hazardous Liquid Pipeline Safety Act of 1979," Pub.L.96-129 (49 U.S.C. s.2001 et seq.), or intrastate pipelines regulated under State law;

(6) Surface impoundments, pits, ponds, or lagoons, operated in compliance with regulations adopted by the department pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.);

(7) Storm water or wastewater collection systems operated in compliance with regulations adopted by the department pursuant to the "Water Pollution Control Act";

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(9) Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor, or storage tanks located below the surface of the ground which are equipped with secondary containment and are uncovered so as to allow visual inspection of the exterior of the tank; and

(10) Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of this act pursuant to paragraphs (1) through (9) of this subsection;

q. "Wellhead protection area" means an aquifer area described in a plan view around a well, from within which groundwater flows to the well and through which groundwater 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;

r. "Unregulated heating oil tank" means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons or less used to store heating oil for on-site consumption in a nonresidential

building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground.

L.1986,c.102,s.2; amended 1994, c.14, s.1; 1999, c.322, s.1.

58:10A-23. Registration of underground storage facilities.

3. a. The owner or operator of a facility shall, within 180 days of the effective date of this act, on forms and in a manner prescribed by the commissioner, register that facility with the department. The department may extend the registration period for an additional 180 days.

b. The commissioner shall, within 120 days of the effective date of this act and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations to provide for the registration of all facilities in the State, prescribing the forms and procedures therefor.

This registration shall require the following:

- (1) The name and address of the owner and operator of the facility;
- (2) A site plan of the facility indicating the number and location of the underground storage tanks;
- (3) The date of installation of each of the underground storage tanks;
- (4) Any other relevant information requested by the commissioner.

These rules and regulations shall provide for the periodic, but in no case more frequent than annual, certification by the owner or operator of the facility that the information contained on the registration remains unchanged. The owner or operator of a facility shall, within 30 days of completing the activities for which a permit was acquired pursuant to section 4 of this act, register or reregister, as the case may be, in accordance with the provisions of this section.

L.1986,c.102,s.3; amended 1991,c.1,s.1.

58:10A-24. Permit for modification

An owner or operator of a facility proposing to replace, install, expand or substantially modify the facility shall obtain a permit therefor from the commissioner. The commissioner shall not issue a permit unless the owner or operator demonstrates that:

a. The facility is constructed of materials that meet or exceed the standards contained in, and is installed in a manner consistent with, the State Uniform Construction Code adopted pursuant to the "State Uniform Construction Code Act," P.L. 1975, c. 217 (C. 52:27D-119 et seq.) and with the rules and regulations adopted pursuant to this act;

b. The facility is equipped with either an approved method of secondary containment or a monitoring system;

c. The facility utilizes corrosion control features necessary to protect the structural integrity of underground storage tanks susceptible to corrosion.

L. 1986, c. 102, s. 4, eff. Sept. 3, 1986.

58:10A-24.1 No tank services on underground storage tank; exceptions.

1. a. Except as provided in subsection b. of this section, a person shall not perform, except in accordance with the provisions of this act, tank services on an underground storage tank at an underground storage tank site required for purposes of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), including, but not limited to, tank testing, tank installation, tank removal, tank repair, installation of monitoring systems, and subsurface evaluations for corrective action, closure, and corrosivity. Except as provided in subsection b. of this section, a person shall not perform, except in compliance with the provisions of this act, tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank. Routine maintenance performed on appurtenant pipes, lines, fixtures, and other related equipment on an unregulated heating oil tank may be performed by a person who is not certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3).

b. Subsection a. of this section shall not apply to a person performing tank closure on an underground storage tank located on a farm or an unregulated heating oil tank located on a farm. A person performing tank closure on an underground storage tank located on a farm or an unregulated heating oil tank located on a farm shall comply with the guidelines and the criteria established pursuant to subsection c. of this section. For the purposes of this section, "farm" shall mean land that qualifies for a special tax assessment pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), or any land less than five acres in area that would otherwise qualify for that farmland assessment and that has produced agricultural or horticultural products with a wholesale value of \$10,000 or more annually for at least the two successive years immediately preceding the year in which the tank removal is performed.

c. Within 90 days of the effective date of P.L.1997, c.430, the department shall implement guidelines establishing a protocol for the performance of tank closures on a farm. Within 18 months of the effective date of P.L.1997, c.430, the Department of Environmental

Protection, in consultation with the Department of Agriculture and the State Soil Conservation Committee, shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt criteria for the performance of tank closures on farms. Both the guidelines and the criteria shall be developed with the objectives of reducing the cost and increasing the efficiency of the process of tank closure while also ensuring environmental protection and public safety.

L.1991,c.123,s.1; amended 1997, c.430, s.1; 1999, c.322, s.2.

58:10A-24.2 Services on underground storage tanks by certified persons; exceptions.

2. a. A business firm shall not engage in the business of performing services on underground storage tanks at underground storage tank sites for purposes of complying with the requirements of P.L.1986, c.102 (C.58:10A-21 et seq.), or tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank, unless the business firm has been certified in accordance with section 3 of P.L.1991, c.123 (C.58:10A-24.3), by certification of the owner, or, in the case of partnership, a partner in the firm, or, in the case of a corporation, an executive officer of the corporation.

b. Except as provided pursuant to subsection b. of section 1 of P.L.1991, c.123 (C.58:10A-24.1), any service performed on an underground storage tank at an underground storage tank site for the purpose of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.), or tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank, shall be performed by, or under the immediate on-site supervision of, a person certified by the department in accordance with section 3 of P.L.1991, c.123 (C.58:10A-24.3).

c. A business firm or other person performing well drilling or pump installation services at the site of an underground storage tank or an unregulated heating oil tank who is licensed to perform such services pursuant to section 7 of P.L.1947, c.377 (C.58:4A-11), shall not be required to be certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3), or to perform those services under the supervision of a person certified thereunder.

d. Professional engineers licensed pursuant to P.L.1938, c.342 (C.45:8-27 et seq.) shall be exempt from the certification requirements of section 3 of P.L.1991, c.123 (C.58:10A-24.3) and from the payment of a recertification or renewal fee required pursuant to section 4 of that act (C.58:10A-24.4), but shall be required to obtain a certification card issued by the department at no charge and to make the card available for inspection by a State or local official when performing tank services on an underground storage tank at an underground storage tank site or on an unregulated heating oil tank. Professional engineers exempt pursuant to this subsection shall be required to attend a department approved training course on the department's rules and regulations concerning underground storage tanks within one year of certification or recertification.

e. A plumbing contractor, as defined pursuant to section 2 of P.L.1968, c.362 (C.45:14C-2), engaged in the installation, repair, testing, or closure of a waste oil underground

storage tank shall be exempt from the certification requirements of section 3 of P.L.1991, c.123 (C.58:10A-24.3) and from payment of a recertification or renewal fee required pursuant to section 4 of that act (C.58:10A-24.4), but shall be required to obtain a certification card issued by the department at no charge and to make the card available for inspection by a State or local official when performing tank services on an underground storage tank. Plumbing contractors exempt pursuant to this subsection shall be required to attend a department approved training course on the department's rules and regulations concerning underground storage tanks within one year of certification or recertification. A plumbing contractor engaged in the installation, repair, testing, or closure of an unregulated heating oil tank or an underground storage tank that is not a waste oil tank shall be required to comply with section 3 of P.L.1991, c.123 (C.58:10A-24.3).

L.1991,c.123,s.2; amended 1997, c.430, s.2; 1999, c.322, s.3.

58:10A-24.3 Examinations for certification to perform services on underground storage tanks.

3. a. The department shall establish and conduct examinations for certifying that a person is qualified to perform services on underground storage tanks at underground storage tank sites for purposes of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) and for tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks. Application to the department for examination for certification shall be made in a manner and on such forms as may be prescribed by the department. The department may prescribe training or continuing education, experience or other requirements as a condition for taking a certification examination, or for recertification. The filing of an application shall be accompanied by a nonrecoverable application fee of \$35.00 to cover the costs of processing the application and conducting examinations. No person shall be certified by the department unless he or she satisfactorily completes the examination and satisfies any other requirements of this act, or of the department adopted pursuant thereto.

b. Notwithstanding the provisions of subsection a. of this section, any person who files, within 300 days of the effective date of this act, an application for certification under this subsection, and demonstrates to the department that he or she has adequately performed services on underground storage tanks at underground storage tank sites for at least five consecutive years immediately preceding the filing of the application, shall be certified without examination upon payment of an application and certification fee. Within one year of certification, a person certified pursuant to this subsection shall submit to the department evidence of attendance at a department approved training course on the department's rules and regulations concerning underground storage tanks. One year from the effective date of this act, no person applying for certification pursuant to this subsection shall perform services requiring certification until certified by the department.

c. A person certified pursuant to subsection b. of this section shall comply with the examination and other requirements adopted by the department pursuant to subsection a. of this section as a precondition for filing for a renewal of a certification issued pursuant to subsection b. of this section.

d. The department may establish a general certification for tank services and on-site supervisory responsibilities, and such other classes of certification for particular tank services or for on-site supervisory responsibilities as it deems appropriate, and may establish separate training, examination and working experience requirements therefor. The department shall establish a separate certification for tank testing, tank installation, tank removal, tank closure, and subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks with separate training and examination requirements therefor. The certification program for persons who perform services on underground storage tanks or on unregulated heating oil tanks shall include standards for pricing, customer service, compliance with applicable rules and regulations, adequate submissions to the department, and any other standards relevant to the performance, qualifications, and business practices of persons or business firms seeking certification. Any person certified to perform services on underground storage tanks at underground storage tank sites for purposes of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) shall not be required to obtain a separate certification to perform work on unregulated heating oil tanks.

L.1991,c.123,s.3; amended 1999, c.322, s.4; 2006, c.58, s.6.

58:10A-24.4 Certification, renewal.

4. a. Certification shall be for a three-year period. Renewal of a certification, or recertification, shall be made to the department at least 60 days prior to the expiration date of the certification, and shall be accompanied by evidence of attendance at a department approved training course, within the preceding 12 months, on the department's rules and regulations concerning underground storage tanks or on tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks. Certification shall not be transferable. No certification or recertification shall be issued until a certification fee of \$250.00 has been paid in full to the department. Application and certification fees shall be in an amount sufficient to cover the costs to the department of administering and enforcing the provisions of this act and may be adjusted by the department through the adoption of rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A person shall have 90 days from the expiration date of a certification to renew an expired certification, after which date the person shall be required to apply for a new certification. The 90-day grace period shall not entitle a person to perform any services for which certification is required.

b. As a condition of certification or recertification, a business firm shall be required to provide the department with evidence of financial responsibility for the performance of services provided pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.), for the performance of tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks, and for the cleanup or mitigation of a hazardous substance discharge resulting from the performance of such services. Financial responsibility shall be in an amount to be determined by the department but in no case less than \$250,000. Financial responsibility may be in the form of insurance, a surety bond, letter of credit, or other security posted with the department, or self-insurance, as may be prescribed by the department. If the financial responsibility is in the form of insurance, a surety bond, or

similar device, the business firm shall promptly notify the department of any cancellation or change in coverage. Financial responsibility in the amount and form required by the department shall be maintained for the term of certification by the business firm.

A copy of the certification shall be conspicuously displayed for public review in the business office of a firm engaged in tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks or engaged in providing services for underground storage tanks at underground storage tank sites. If a firm maintains a business office at more than one location, the certification shall be conspicuously displayed at each location.

L.1991,c.123,s.4; amended 1999, c.322, s.5.

58:10A-24.5 Denial, revocation, etc. of certification.

5. a. The department may deny, suspend, revoke, or refuse to renew a certification for good cause, including:

(1) a violation, or abetting another to commit a violation, of any provision of this act, or of P.L.1986, c.102 (C.58:10A-21 et seq.), or rule or regulation adopted, or order issued under either act;

(2) making a false statement on an application for certification or other information required by the department pursuant to this act, or P.L.1986, c.102;

(3) misrepresentation or the use of fraud in obtaining certification, in performing tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank, or in performing underground storage tank services;

(4) failure to meet the standards or requirements of the certification program, including standards relevant to the performance, qualifications, and business practices of persons or business firms who perform tank services.

b. Before suspending, revoking, or refusing to renew a certification, the department shall afford the applicant or certificate holder an opportunity to be heard in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. Suspension, revocation, or refusal to renew a certification shall not bar the department from pursuing against the applicant or certificate holder any other lawful remedy available to the department.

d. Any business firm or person whose certification is revoked shall be ineligible to apply for certification for three years from the date of the revocation.

e. If the department has reason to believe that a condition exists that poses an imminent threat to the public health, safety or welfare, it may order the certificate holder to cease

operations pending the outcome of the hearing.

L.1991,c.123,s.5; amended 1999, c.322, s.6; 2006, c.58, s.7.

58:10A-24.6. Violations, penalties

a. If a person violates any of the provisions of this act or any rule or regulation adopted, or order issued, thereunder, the department may institute a civil action in a court of competent jurisdiction for injunctive or other appropriate relief to prohibit and prevent the violation, and the court may proceed in the action in a summary manner.

b. Any person who violates the provisions of this act, or any rule or regulation adopted, or order issued, hereunder, is liable to a civil administrative penalty of not more than \$5,000 for the first offense, not more than \$10,000 for the second offense, and \$25,000 for the third and each subsequent offense. If the violation is of a continuing nature, each day of violation subsequent to receipt of an order to cease the violation constitutes an additional, separate and distinct offense. No civil administrative penalty shall be levied except subsequent to the notification of the violator by certified mail or personal service. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute the violation; a statement of the amount of the civil penalty to be imposed; and a statement of the violator's right to a hearing. The violator shall have 20 days from receipt of notice within which to deliver to the department a written request for a hearing. Subsequent to the hearing and upon a finding that a violation has occurred, the department may issue a final order assessing the amount of the penalty. If no hearing is requested, the notice shall become a final order upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Agreement to, or payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied.

c. Any person who violates the provisions of this act, is liable to a civil penalty of not more than \$5,000 for the first offense, not more than \$10,000 for the second offense, and \$25,000 for the third and each subsequent offense. Any person violating an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection a. of this section, or who fails to pay a civil administrative penalty when due and owing as provided in subsection b. of this section, is subject to a civil penalty not to exceed \$25,000 per day of the violation. Each day's continuance of a violation constitutes a separate and distinct violation. Any penalty imposed under this subsection may be recovered with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Law Division of the Superior Court shall have jurisdiction to enforce "the penalty enforcement law."

d. The department may compromise and settle any claim for a penalty under this section in such amount as the department may determine to be appropriate and equitable under all of the circumstances.

e. Any person who fails to contest or to pay, in whole or in part, a penalty imposed pursuant to this section, or who fails to agree to a payment schedule therefor, within 30 days of the date that the penalty is due and owing, shall be subject to an interest charge on the amount of the

penalty from the date that the amount was due and owing. The rate of interest shall be that established by the New Jersey Supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

f. The penalty provisions of this section shall be in addition to such penalties as may be assessable pursuant to section 12 of P.L.1986, c.102 (C.58:10A-32) for violations of that act.

g. All penalties, monies, and any interest thereon, assessed and collected pursuant to this section shall be deposited into the "New Jersey Spill Compensation Fund," established pursuant to section 10 of P.L.1976, c.141 (C.58:10-23.11i) for use for any of the authorized purposes of the fund. The provisions of this subsection shall not apply to penalties assessed and collected pursuant to section 12 of P.L.1986, c.102 (C.58:10A-32).

L.1991,c.123,s.6.

58:10A-24.7 Guidelines, rules, regulations.

7. The Department of Environmental Protection shall, within 120 days of the effective date of this section, establish guidelines to implement the provisions of this act, and shall, within 180 days of the effective date of this section, establish rules and regulations for such implementation.

L.1999,c.322,s.7.

58:10A-24.8 Interim rules, regulations establishing certification program.

8. a. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Department of Environmental Protection shall adopt, after notice, interim rules and regulations establishing a program for the certification of persons qualified to perform tank testing, tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks as provided in P.L.1999, c.322 within 60 days after the effective date of this act. The rules and regulations shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted by the department in accordance with the provisions of the "Administrative Procedure Act."

b. Upon the adoption of interim rules and regulations pursuant to this section, a grant or loan from the fund to close or replace an unregulated heating oil tank may only be made to reimburse the applicant for work performed by a person certified pursuant to section 3 of P.L.1991, c.123 (C.58:10A-24.3).

L.2006,c.58,s.8.

58:10A-24.9 Required DEP submissions copied to municipality.

9. Any person who performs tank installation, tank removal, tank closure, or subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil

tank shall provide to the governing body of the municipality in which the tank is located, copies of any submissions required by the Department of Environmental Protection concerning the tank installation, tank removal, tank closure, and subsurface evaluations for corrective action, closure or corrosivity on an unregulated heating oil tank within 10 days after their submission to the department.

L. 2006,c.58,s.9.

58:10A-25. Rules, regulations

5. a. The commissioner shall, within one year of the effective date of P.L.1986, c.102 (C.58:10A-21 et seq.), adopt, pursuant to the "Administrative Procedure Act," rules and regulations which:

(1) Establish a schedule for the testing of all facilities, taking into account the age of the underground storage tank, the hazardous substance stored therein, the proximity of the underground storage tank to potable water supplies, and the soil resistivity and other corrosive conditions which may precipitate a discharge, and for the periodic testing for structural integrity of facilities utilizing secondary containment which do not incorporate a monitoring system, and the reporting of results thereof to the department;

(2) Establish 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 standards adopted pursuant to this paragraph shall be substantially identical to the relevant standards adopted by the United States Environmental Protection Agency pursuant to 42 U.S.C. s.6991 et seq. for the regulation of underground storage tanks. The standards adopted by the department for any underground storage tank not regulated pursuant to 42 U.S.C. s.6991 et seq. shall not be more stringent than the standards adopted by the United States Environmental Protection Agency for underground storage tanks regulated pursuant to 42 U.S.C. s.6991 et seq. Notwithstanding any other provision in this paragraph to the contrary, standards adopted by the department for any underground storage tank located in a wellhead protection area may be more stringent than the standards adopted by the United States Environmental Protection Agency for underground storage tanks pursuant to 42 U.S.C. s.6991 et seq.;

(3) (Deleted by amendment, P.L.1994, c.14).

(4) Require the maintaining of records of any monitoring or leak detection system, inventory control system or underground storage tank testing system;

(5) Require the reporting of any discharges and the corrective action taken in response to a discharge from an underground storage tank;

(6) Require the taking of corrective action in response to a discharge from an underground

storage tank by the owner or operator of the underground storage tank;

(7) Require the owner or operator of an underground storage tank to prepare plans for the closure of an underground storage tank to prevent the future discharge of hazardous substances into the environment;

(8) Require the maintaining of evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a discharge; and

(9) (Deleted by amendment, P.L.1994, c.14).

(10) Require the notification of the department and local agencies of the existence of any operational or nonoperational underground storage tanks.

b. In developing the regulations required pursuant to this section the department shall consider the regulations concerning underground storage tanks adopted by the United States Environmental Protection Agency pursuant to the "Hazardous and Solid Waste Amendments of 1984," Pub.L.98-616 (42 U.S.C. s.6991 et al.) and shall use the recommendations and standard procedures of the following organizations:

(1) American Petroleum Institute (API), 1220 L Street, N.W., Washington, D.C. 20005;

(2) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103;

(3) NACE International, P.O. Box 218340, Houston, Texas 77218;

(4) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269; and

(5) Underwriters Laboratories (UL), 333 Pfingston Road, Northbrook, Illinois 60062.

c. The Department of Community Affairs shall adopt in the State Uniform Construction Code the rules and regulations adopted by the department pursuant to this section within 60 days.

L.1986,c.102,s.5; amended 1994,c.14,s.2.

58:10A-26. Monthly inspections

Monitoring systems shall be installed, maintained, and operated in accordance with the manufacturer's requirements. Each monitoring system shall be inspected at least monthly to determine that it is functionally unimpaired.

L. 1986, c. 102, s. 6, eff. Sept. 3, 1986.

58:10A-27. Inventory records

The owner or operator of a facility shall maintain inventory records for each underground storage tank which shall, at a minimum, record daily hazardous substance transfers and a periodic average. These records shall be maintained at the site of the facility for at least one year.

L. 1986, c. 102, s. 7, eff. Sept. 3, 1986.

58:10A-28. Leaks, discharges

a. If the inventory records maintained pursuant to section 7 of this act or a monitoring system indicates a leak or discharge, the owner or operator of the facility shall, within 24 hours of discovery, notify the department and the appropriate local health agencies of the leak or discharge.

b. Upon notification, the department shall promptly conduct an inspection to determine the extent and impacts of the leak or discharge.

c. Upon a finding that the leak or discharge is not an imminent threat to the proximate groundwater resources or public health or safety, the commissioner shall order the owner of the underground storage tank to remove, replace, or repair the underground storage tank, establish a date by which the removal, replacement, or repair shall be effected, and take any other action, or require the owner of the tank to take any action, necessary to abate, contain, clean up, or remove, or any combination thereof, the leak or discharge.

d. Upon a finding that the leak or discharge has entered or threatens groundwater resources or public health or safety, the commissioner shall order the immediate removal of the contents of the underground storage tank, and shall take, or require the owner of the underground storage tank to take, all other appropriate actions necessary to abate, contain, clean up, or remove, or any combination thereof, the discharge.

e. If the commissioner provides for the removal, replacement or repair of an underground storage tank by any person other than the owner, or takes other appropriate actions necessary to mitigate the adverse effects of a leak or discharge, the costs of these measures shall be borne by the owner of the underground storage tank.

L.1986,c.102,s.8; amended 1991,c.1,s.2.

58:10A-29 Requirements to meet standards for underground storage tanks.

9. a. The department shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (52:14B-1 et seq.), requiring the owner or operator of a facility to meet the 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 overflow prevention, and

other underground storage tank equipment adopted pursuant to paragraph (2) of subsection a. of section 5 of P.L.1986, c.102 (C.58:10A-25). The deadlines for compliance with the standards shall be identical to those deadlines established by the United States Environmental Protection Agency pursuant to 42 U.S.C. s.6991 et seq. for all underground storage tanks, including those underground storage tanks not regulated pursuant to 42 U.S.C. s.6991 et seq.

b. Notwithstanding the provisions of subsection a. of this section to the contrary, and except as provided in section 2 of P.L.1998, c.59 (C.58:10A-29.1), the deadline for compliance for underground storage tanks with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a non-residential building shall be five years after the deadline established pursuant to subsection a. of this section.

L.1986,c.102,s.9; amended 1991, c.1, s.3; 1994, c.14, s.3; 1998, c.59, s.1.

58:10A-29.1 Requirement for contract for leak detection testing.

2. The owner or operator of any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a non-residential building who does not meet the deadline for compliance pursuant to subsection a. of section 9 of P.L.1986, c.102 (C.58:10A-29), shall, no later than December 22, 1998, enter into a contract for the provision of leak detection testing on the underground storage tank using a method that is accepted by the Department of Environmental Protection, which testing shall be performed no later than August 31, 1999 and at least once every 36 months thereafter. The owner or operator of the underground storage tank shall provide a copy of the contract to the Department of Environmental Protection by December 22, 1998 and shall notify the department of the results of the test within 15 days of its performance. If an owner or operator of an underground storage tank fails to comply with the testing and notification requirements specified in this section, then the deadline for compliance shall not be extended as provided in subsection b. of section 9 of P.L. 1986, c. 102 (C.58:10A-29) and the owner or operator who fails to comply with the deadlines established in subsection a. of section 9 of P.L. 1986, c. 102 shall be subject to the penalties as provided in section 10 of P.L.1977, c.74 (C.58:10A-10).

L.1998,c.59,s.2.

58:10A-30. Inspection authority

The department shall have the authority to enter, at reasonable hours, any property or place of business where underground storage tanks or nonoperational storage tanks are or may be located to inspect any underground storage tank or nonoperational storage tank, and to photograph any records related to the operation of an underground storage tank or a nonoperational storage tank; to obtain samples or evidence of a discharge from any underground storage tank or nonoperational storage tank, or from the surrounding air, soil, or surface or groundwater; and to conduct monitoring or testing of any underground storage tank or nonoperational storage tank or the surrounding air, soil or surface or groundwater. The owner or operator of a facility or a nonoperational storage tank shall allow and cooperate with any action taken by the department pursuant to the provisions of this section.

L. 1986, c. 102, s. 10, eff. Sept. 3, 1986.

58:10A-30.1. Underground storage tank inspection program, established

2. There shall be established an underground storage tank inspection program in the Department of Environmental Protection pursuant to provisions of the amendment of subparagraph (b) of paragraph 6 of Article VIII, Section II of the State Constitution, adopted at the 2003 general election and effective December 4, 2003 providing therefor.

L.2004,c.6,s.2.

58:10A-31. Rules, regulations

11. The commissioner may adopt, pursuant to the "Administrative Procedure Act," any rules and regulations in addition to those required pursuant to this act, necessary to carry out the provisions of this act, including rules and regulations imposing fees for the processing of initial registrations pursuant to section 3 of this act and for any renewal thereof, and for processing permits required pursuant to section 4 of this act.

Registration fees shall be established for subsequent registrations and shall not exceed the estimated yearly cost of implementing the provisions of this act. The commissioner may consider the size, contents and the location of the underground storage tanks in establishing these fees. The fee that may be imposed upon the owner or operator of a facility which comprises only two or more tanks used to store heating oil for on-site consumption in a residential building, where no individual tank has a capacity of more than 2,000 gallons, may not exceed \$100 for that facility for an initial registration or a renewal thereof. These fees shall be deposited in the General Fund. The Legislature shall annually appropriate to the department an amount equivalent to the amount anticipated to be collected as fees charged under this section for the purposes of administering the provisions of this act.

L.1986,c.102,s.11; amended 1992,c.147,s.2.

58:10A-32. Penalties

A person violating the provisions of this act is liable to the penalties prescribed in section 10 of P.L. 1977, c. 74 (C. 58:10A-10).

L. 1986, c. 102, s. 12, eff. Sept. 3, 1986.

58:10A-33. Exemption

The owner or operator of a facility equipped with a monitoring system who has obtained a permit for groundwater discharges pursuant to section 6 of P.L. 1977, c. 74 (C. 58:10A-6) is exempt from the requirements of section 9 of this act.

L. 1986, c. 102, s. 13, eff. Sept. 3, 1986.

58:10A-34. Other powers unaffected

Nothing in this act shall be construed to limit the department's authority to respond to, or remove or clean up, a discharge pursuant to the provisions of any other State or federal law.

L. 1986, c. 102, s. 14, eff. Sept. 3, 1986.

58:10A-35. Local laws superseded

a. It is the intent of the Legislature that the program established by this act for the regulation of underground storage tanks constitute the only program regulating underground storage tanks in this State. To this end no municipality, county, or political subdivision thereof shall enact any law or ordinance regulating underground storage tanks, and, further, the enactment of this act shall supersede any law or ordinance regulating underground storage tanks enacted by a municipality, county or political subdivision thereof prior to the enactment of this act.

b. However, the department shall develop criteria for determining in which case a municipal ordinance more stringent than the provisions of this act is warranted. If the conditions in the municipality are deemed to meet the criteria developed pursuant to this subsection, the ordinance is hereby deemed to be effective and not preempted and the municipality may enforce and administer its provisions. The department shall have 180 days to determine whether an ordinance meets the criteria developed pursuant to this section.

c. Any municipality, county or political subdivision may petition the department for a modification of any rule adopted under this act. The petition shall be forwarded to the department together with a written statement setting forth all provisions of the municipal ordinance which differ from the criteria identified, the reasons for the differences, and all supporting facts and data. The department shall evaluate the petition using the criteria adopted under subsection b. of this section and accept or reject the petition in a written statement which shall include the basis for the department's determination.

When the department determines that a rule change is justified it shall evaluate the applicability of that rule change on a regional or areawide basis and modify the rules to provide areawide requirements as appropriate.

L. 1986, c. 102, s. 16, eff. Sept. 3, 1986.

<END>