

CHAPTER 14B

UNDERGROUND STORAGE TANKS

Authority

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

Source and Effective Date

R.2003 d.197, effective April 20, 2003.
See: 34 N.J.R. 4024(a), 35 N.J.R. 2304(a).

Chapter Expiration Date

Chapter 14B, Underground Storage Tanks, expires on April 20, 2008.

Chapter Historical Note

Chapter 14B, Underground Storage Tanks, was adopted as R.1987 d.531, effective December 21, 1987. See: 19 N.J.R. 1477(a), 19 N.J.R. 2417(a).

Subchapter 4, Underground Storage Tank System Performance Standards and Engineering Requirements; Subchapter 5, Underground Storage Tank System General Operating Requirements; Subchapter 6, Monitoring Requirements for Underground Storage Tank Systems; Subchapter 7, Release Reporting and Investigation; Subchapter 8, Corrective Action; Subchapter 9, Out-of-Service Underground Storage Tank Systems and Closure of Underground Storage Tank Systems; Subchapter 10, Permitting Requirements for Underground Storage Tank Systems; Subchapter 11, Municipal Ordinances; Subchapter 12, Penalties, Remedies, and Administrative Hearing Procedures; Subchapter 13, Underground Storage Tank Loan Program; and Subchapter 15, Confidentiality, were adopted as R.1990 d.443, effective September 4, 1990. See: 21 N.J.R. 2242(a), 22 N.J.R. 2758(a).

Pursuant to Executive Order No. 66(1978), Chapter 14B was readopted as R.1992 d.498, effective November 18, 1992. See: 24 N.J.R. 2975(a), 24 N.J.R. 4523(a).

Pursuant to Executive Order No. 66(1978), Chapter 14B was readopted as R.1997 d.487, effective October 22, 1992. As part of R.1997 d.487, effective November 17, 1997, Subchapter 4, Underground Storage Tank System Performance Standards and Engineering Requirements; Subchapter 5, Underground Storage Tank System General Operating Requirements; Subchapter 6, Monitoring Requirements for Underground Storage Tank Systems; Subchapter 10, Permitting Requirements for Underground Storage Tank Systems; and Subchapter 13, Underground Storage Tank Loan Program, were repealed; and Subchapter 4, Underground Storage Tank Systems Design, Construction and Installation; Subchapter 5, General Operating Requirements; Subchapter 6, Release Detection; Subchapter 10, Permitting Requirements for Underground Storage Tank Systems; and Subchapter 13, Certification of Individuals and Business Firms, were adopted as new rules; Subchapter 8, Corrective Action, was renamed Remediation Activities; and Subchapter 15, Confidentiality, was recodified as Subchapter 14. See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).

Chapter 14B, Underground Storage Tanks, was readopted as R.2003 d.197, effective April 20, 2003. See: Source and Effective Date. As a part of R.2003 d.197, Subchapter 15, Financial Responsibility Requirements, was adopted as new rules. See, also, section annotations.

Public Notice: Notice of intent to adopt interim rules: Underground Storage Tank Rules. See: 38 N.J.R. 3927(a).

Subchapter 16, Certification of Individuals and Business Firms for Unregulated Underground Storage Tank Systems, was adopted as special new rules by R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008). See: 38 N.J.R. 4748(a).

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Reporting Releases from Clients' Underground Storage Tank Systems. Harriett Jane Olson, Kathleen T. Kneis, 21 Seton Hall L.Rev. 1041 (1991).

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SUBCHAPTER 1. GENERAL INFORMATION

7:14B-1.1 Scope

This chapter shall constitute the rules of the Department of Environmental Protection for all underground storage tank facilities regulated by N.J.S.A. 58:10A-21 et seq.

7:14B-1.2 Construction

This chapter shall be construed so as to permit the Department to implement its statutory functions and to effectuate the purposes of the law.

7:14B-1.3 Purpose

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

1. To establish the Department's underground storage tank program;
2. To implement the registration requirements of the State Act;
3. To establish Initial Registration and Annual Certification fees;
4. To implement the technical requirements of the State Act;
5. To implement the reporting requirements of the State Act;
6. To implement the corrective action requirements of the State Act;
7. To implement the permitting requirements for the State Act;
8. To implement the underground storage tank services certification requirements of the State Act;
9. To establish financial responsibility assurance requirements for remediation of discharged hazardous substances and compensating third parties for bodily injury and property damage caused by a discharge from an underground storage tank system; and
10. To protect human health and the environment of the State by ensuring sound underground storage tank management, thereby preventing, controlling, remediating and/or abating actual or potential groundwater contamination.

Amended by R.1990 d.443, effective September 4, 1990.

See: 21 N.J.R. 2242(a), 22 N.J.R. 2758(a).

Purpose amended to include technical, reporting, corrective action and permitting requirements of N.J.S.A. 58:10A-21 et seq.

Amended by R.1997 d.487, effective November 17, 1997.

See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).

Inserted new (a)8; and recodified existing (a)8 as (a)9.

Amended by R.2003 d.197, effective May 19, 2003.

See: 34 N.J.R. 4024(a), 35 N.J.R. 2304(a).

In (a), added a new 9 and recodified former 9 as 10.

7:14B-1.4 Applicability

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

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

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

2. Tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a non-residential building;

3. Tanks used to store heating oil for onsite consumption in a residential building;

4. Septic tanks installed in compliance with rules adopted by the Department pursuant to The Realty Improvement Sewerage and Facilities Act (1954), Pub. L. 1954, c.199 (N.J.S.A. 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. §§ 1678 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, Pub. L. 96-129 (49 U.S.C. §§ 2001 et seq.), or intrastate pipelines regulated under State law as approved by the Department;

6. Surface impoundments, pits, ponds, lagoons, storm water or wastewater collection systems operated in compliance with N.J.A.C. 7:14A-1 et seq.;

7. Liquid traps or associated gathering lines directly related to oil and gas production and gathering operations;

8. 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;

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

10. Any pipes, lines, fixtures or other related equipment connected to any tank exempted from the provisions of this chapter as set forth in (b)1 to 9 above, and 11 to 14 below;

11. Flow-through process tanks;

12. Wastewater treatment tanks;

13. Electrical equipment; and

14. Hydraulic lift tanks.

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

1. Tanks used to contain radioactive materials that are regulated under the Atomic Energy Act of 1954; and

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

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

(e) Underground storage tank systems identified as sumps are subject only to N.J.A.C. 7:14B-2, 3, 4.1(a), 4.1(e) through (l), 4.2, 5.2 through 5.7, 7 and 8.

(f) Underground storage tank systems storing a mixture of petroleum and other hazardous substances are considered petroleum storage tank systems if the quantity of other hazardous substances does not alter the detectability, effectiveness of remedial action, or toxicity of the petroleum to any significant degree.

(g) For the purpose of this chapter, all underground storage tank systems shall be regulated based upon the most stringent regulated use of the underground storage tank system, when there are multiple uses of the tank at the site.

Amended by R.1990 d.443, effective September 4, 1990.

See: 21 N.J.R. 2242(a), 22 N.J.R. 2758(a).

Citations corrected; (c) and (d) added.

Administrative Correction.

See: 27 N.J.R. 1978(a).

Amended by R.1997 d.487, effective November 17, 1997.

See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).

Deleted (c)3 and (d); and inserted new (d) through (g).

Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).

See: 38 N.J.R. 4748(a).

Rewrote (a).

7:14B-1.5 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

7:14B-1.6 Definitions

As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

“Abandon in place” or “abandonment in place” means a tank rendered permanently nonoperational by following the procedures in American Petroleum Institute Recommended Practice 1604, “Closure of Underground Petroleum Storage Tanks,” and left in the ground.

“Activity” means any one of the following:

1. Installation of a new underground storage tank system;
2. Closure of an underground storage tank system; or
3. Substantial modification of an underground storage tank system.

“Amendment to certification” means any change of the certification for the purpose of correction, addition or deletion of information.

“Annual aggregate” means the total remediation costs incurred within a single year for all discharges from underground storage tank systems covered by a single financial instrument.

“Annular space” means the space created between the primary and secondary container of a secondarily contained underground storage tank system.

“Aquifer” means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

“Beneath the surface of the ground” means beneath the ground surface or otherwise covered with earthen materials.

“Business firm” means any entity, whether a sole proprietorship, partnership, or corporation, which provides services to underground storage tanks, such services being required for the purposes of complying with the provisions of N.J.S.A. 58:10A-21 et seq. The service does not have to be performed for profit.

“Casing” means a pipe used to support the sides of a hole to prevent caving or the entrance of water or other fluids into the hole.

“Cathodic protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

“Close” or “closure” means the permanent elimination from service of any underground storage tank system by removal or abandonment in place.

“Commercial” means any activity involving a hazardous substance from an underground storage tank system including, but not limited to, the resale, distribution, processing and transportation of any hazardous substance, as well as the use of any hazardous substance to perform or carry out these or other activities, that results in monetary gain.

“Commissioner” means the Commissioner of the Department of Environmental Protection.

“Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

“Contaminant” means any discharged hazardous substance.

“Continuous monitoring” means a monitoring system that incorporates automatic equipment that can detect leaks and/or discharges without interruption.

7:14B-1.7 Certifications

(a) Any person making a submission to the Department pursuant to this chapter shall include the signatures and certification pursuant to (b) below.

(b) The person designated in (b)2 and (d) below shall sign and date the following certification or report:

1. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. The certification in (b)1 above shall be signed as follows:

- i. For a corporation, by a person authorized by a resolution of the board of directors to sign the document. A copy of the resolution, certified as a true copy by the secretary of the corporation, shall be submitted along with the certification;
- ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; and
- iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

(c) Any New Jersey professional engineer submitting plans in accordance with N.J.A.C. 7:14B-10.3(b)1 shall sign and submit to the Department the following certification:

"I certify under the penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this chapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(d) Any individual certified in accordance with N.J.A.C. 7:14B-13 in the classification of subsurface evaluator submitting documents in accordance with N.J.A.C. 7:14B-10.3(b)9 shall sign and submit to the Department the following certification:

"I certify under penalty of law that I have reviewed the plans for the proposed release detection monitoring system and this system is appropriate for the underground storage tank system design and hazardous substance stored and fulfills the monitoring requirements of N.J.A.C. 7:14B-6. I am aware that there are significant civil and criminal penalties for

submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(e) Any individual submitting documents in accordance with N.J.A.C. 7:14B-13.3(c) and 16.4(e) shall sign and submit to the Department the following certification:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

(f) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who submits a cathodic protection permit application in accordance with N.J.A.C. 7:14B-10.3(b)5, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that I have reviewed the plans for the proposed cathodic protection system and this system is appropriate for the underground storage tank system and fulfills the corrosion protection requirements of N.J.A.C. 7:14B-4. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(g) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who conducts or directs activities and prepares documents in accordance with N.J.A.C. 7:14B-8.5 or 9.5, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that the work was performed under my oversight and I have reviewed the report and all attached documents, and the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(h) Any individual certified as a subsurface evaluator pursuant to N.J.A.C. 7:14B-13.2(a)4, who prepares documents pursuant to N.J.A.C. 7:14B-8.5 or 9.5 for another certified subsurface evaluator who conducted or directed on-site activities, shall sign, date and submit to the Department the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this report and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate and complete in accordance with the requirements of N.J.A.C. 7:14B and N.J.A.C. 7:26E. I certify under penalty of law that the on-site work was performed by a certified sub

surface evaluator. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment.”

New Rule, R.1997 d.487, effective November 17, 1997.

See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).

Amended by R.2003 d.197, effective May 19, 2003.

See: 34 N.J.R. 4024(a), 35 N.J.R. 2304(a).

In (b), rewrote the introductory paragraph; added (f) through (h).

Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).

See: 38 N.J.R. 4748(a).

In the introductory paragraph of (e), inserted second N.J.A.C. reference.

7:14B-1.8 (Reserved)

Recodified to N.J.A.C. 7:14B-5.9 by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

Section was “Use of regulated underground storage tank systems”.

SUBCHAPTER 2. REGISTRATION REQUIREMENTS AND PROCEDURES

7:14B-2.1 General registration requirements

(a) Any person that owns or operates an underground storage tank system shall register each tank with the Department.

(b) Any person that owns or operates an underground storage tank system who notified the Department pursuant to Section 9002 of the “Hazardous Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act”, 42 U.S.C. §§ 6901 et seq., shall comply with all requirements set forth in this chapter.

(c) Any person that owns or operates an underground storage tank system shall only use such tank upon receipt of a valid Registration Certificate issued by the Department.

(d) Any person that owns or operates an underground storage tank system that began use of the tank on or before December 21, 1987 shall register the tank system with the Department no later than 60 days following this date. Any person that owns or operates an underground storage tank system that was installed after December 21, 1987 shall register the tank system with the Department 30 days prior to the use of that tank system.

(e) Any person that owned or operated an underground storage tank system which was removed from the ground on or after September 3, 1986 shall register that tank system for the period between September 3, 1986 and the date that the tank system was removed.

(f) Any owner or operator intending to close an underground storage tank system shall register the underground storage tank system with the Department before these closure activities are begun.

Amended by R.1990 d.443, effective September 4, 1990.

See: 21 N.J.R. 2242(a), 22 N.J.R. 2758(a).

Registration required prior to closure of tanks.

7:14B-2.2 Registration and certification procedures

(a) Any person that owns or operates a facility shall file registration and certification information on the New Jersey Underground Storage Tank Facility Certification Questionnaire.

(b) All registration and certification forms shall be obtained from and accurately completed, signed, dated and returned to the address below:

New Jersey Department of Environmental
Protection
Division of Remediation Support
Bureau of Fund Management, Compliance &
Recovery
PO Box 028
401 East State Street
Trenton, NJ 08625-0028
Attn: UST Registration/Certification Section

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

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

1. The name, location, and contact person for the facility;
2. The name and address of the facility owner;
3. The number and type of underground storage tank systems at the facility, including, but not limited to, contents, size, age, type of construction and other characteristics of the tank system;
4. A site plan of the facility, including the location of the tanks, lines, pumps, dispensers, fill pipes, and other features of the tank system, including the distance from existing buildings and property boundaries; and
5. Provide the following information for all general liability insurance or other financial responsibility mechanisms:
 - i. Type of mechanism;
 - ii. Carrier or issuing institution;

(h) Issuance of a replacement certification card or certificate required as a result of loss shall result in a \$30.00 fee to the individual or business firm.

New Rule, R.1997 d.487, effective November 17, 1997.
See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).
Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).
See: 38 N.J.R. 4748(a).
Section was "Fees for individual and business firm certification in underground storage tank management services". In the introductory paragraph of (a), inserted second N.J.A.C. reference.
Amended by R.2007 d.274, effective August 20, 2007.
See: 38 N.J.R. 4600(a), 39 N.J.R. 3533(a).
Updated the fee amounts throughout.

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

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

(a) Owners and operators of underground storage tank systems which are installed on or after September 4, 1990

(c) The owner or operator shall provide the following information when requesting an emergency permit:

1. The name, address and telephone number of the owner and the operator;
2. A clear and concise factual description of the nature and scope of the emergency;
3. The address and location of the facility where the emergency occurred;
4. The incident number assigned when the discharge was reported to the Department's Environmental Action Hotline in accordance with N.J.A.C. 7:14B-7.3; and
5. A description of the underground storage tank system installed or repaired, including all features necessary to be in compliance with this chapter.

(d) The Department, upon issuance of an emergency permit, shall assign to the owner or the operator of the underground storage tank system an emergency permit number. The owner or operator shall prominently display the number of the facility and make it available for on-site inspection by any authorized local, State or Federal representative.

7:14B-10.7 Permit expiration

Any permit issued pursuant to this chapter shall expire if the work authorized by the permit is not commenced within 12 months after the effective date of the permit, or if the authorized work is suspended or abandoned for a period of six months at any time after work has begun.

7:14B-10.8 Grounds for denial or revocation of permits

(a) The Department may, in its discretion based on the criteria listed in (a)1 and 2 below, deny the issuance of a permit under this subchapter upon a determination of the following:

1. The permit application is incomplete, contains inaccurate information and/or is illegible; or
2. The owner or operator fails to comply with any requirement of the State Act or this chapter.

(b) The Department may revoke a permit upon a determination of the following:

1. The permit application contains false or inaccurate information;
2. An authorized representative is denied access to the site;
3. The owner or operator fails to comply with any requirement of the State Act or this chapter; or
4. The owner or operator of an underground storage tank system is performing or has authorized an activity which is not in compliance with this chapter.

(c) The Department shall inform an owner or operator of the denial or revocation of a permit by a Notice of Intent to Deny a Permit or a Notice of Intent to Revoke a Permit. The Notice shall include:

1. The specific grounds for denial of issuance as set forth in (a) above; or
2. The specific grounds for revocation as set forth in (b) above.

(d) The Department shall serve this Notice to an owner or operator by certified mail (return receipt requested) or by personal service.

(e) An owner or operator that receives a Notice from the Department denying or revoking a permit shall not begin the proposed permitted activities or shall discontinue any on-going permitted activities.

(f) An applicant or any person, subject to the limitation on third party appeal rights set forth in P.L. 1993, c.359 (N.J.S.A. 52:14B-3.1 through 3.3), who believes himself or herself to be aggrieved, with respect to decisions made by the Department regarding any permit, permit condition, or application denial may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Requests for a contested case hearing shall be made pursuant to N.J.A.C. 7:14B-12.2.

SUBCHAPTER 11. MUNICIPAL ORDINANCES

7:14B-11.1 Local ordinance exemption

(a) This chapter supersedes any law or ordinance regulating underground storage tanks regulated subject to this chapter, enacted by a municipality, county or political subdivision thereof prior to the effective date of this chapter.

(b) No municipality, county, or political subdivision thereof shall enact any law or ordinance regulating underground storage tanks regulated subject to this chapter without express permission from the Department in accordance with N.J.A.C. 7:14B-11.2 below.

7:14B-11.2 Local ordinance enactment

(a) A municipality, county or political subdivision thereof may apply to the Department at the address listed at N.J.A.C. 7:14B-5.6(d) for authority to enact a municipal ordinance that provides rules and regulations that are more environmentally protective than this chapter. The application shall consist of the following:

1. A copy of the proposed ordinance;
2. A resolution from the governing body supporting the proposed ordinance;

3. A written statement setting forth all the provisions of the proposed ordinance which differ from those set forth, or are not found in, this chapter;
4. The legal and environmental basis for the difference;
5. All supporting facts and data; and
6. The means by which the local government will enforce the provisions of the ordinance.

Amended by R.1997 d.487, effective November 17, 1997.
See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).
Inserted (a)6; and deleted (b).

7:14B-11.3 Department determination

(a) The Department shall, within 180 days of receipt of a written petition from a municipality, evaluate the proposed municipal ordinance to determine whether the exemption is warranted and advise the municipality of its findings.

(b) The Department shall base its determination on the following criteria:

1. The municipal ordinance provides greater environmental protection for unique hydrologic conditions;
2. The municipal ordinance provides greater protection against imminent threats to human health; or
3. The municipal ordinance provides greater environmental protection for wetlands or flood plains.

(c) The Department shall provide public notice of all approvals of municipal ordinances under this section by publishing notice of each approval in the DEP Bulletin.

(d) The municipality, county or political subdivision receiving approval from the Department to adopt the ordinance shall submit to the Department a copy of the final ordinance.

(e) The municipality, county or political subdivision that is denied the right by the Department to adopt an ordinance may request an adjudicatory hearing pursuant to N.J.A.C. 7:14B-12.

Amended by R.1997 d.487, effective November 17, 1997.
See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).

SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE HEARING PROCEDURES

7:14B-12.1 Penalties

(a) Failure by any person to comply with any requirement of the State Act or this chapter may result in denial or revocation of an owner's or operator's registration or permit for the tank system; and/or denial, suspension, revocation or refusal to renew a certified individual's or business firm's certification issued pursuant to N.J.A.C. 7:14B-13 or 16.

(b) Failure by any person to comply with any requirement of N.J.A.C. 7:14B-1, 3, and 7 through 14, may result in the assessment of civil administrative penalties, pursuant to the Department Oversight of the Remediation of Contaminated Sites rules, N.J.A.C. 7:26C-10, and any other enforcement action, or any action pursuant to N.J.A.C. 7:14B-16.10.

(c) Failure by any person to comply with any requirements of N.J.A.C. 7:14B-2, 4, 5, 6 or 15 may result in the assessment of civil administrative penalties pursuant to the Water Pollution Control Act Rules, at N.J.A.C. 7:14-8.

(d) An owner, operator, certified individual or certified business firm, may request an administrative hearing for appealing a penalty issued pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or N.J.A.C. 7:14-8 by meeting the requirements of N.J.A.C. 7:14-8.4, or the Department Oversight of the Remediation of Contaminated Sites rules, at N.J.A.C. 7:26C-10.9, as applicable.

Amended by R.1997 d.487, effective November 17, 1997.

See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

Rewrote (a); in (b), inserted “, or the Oversight rules, at N.J.A.C. 7:26C-10.6, as applicable” following “N.J.A.C. 7:14-8.4”.

Amended by R.2006 d.328, effective September 18, 2006.

See: 37 N.J.R. 2923(a), 38 N.J.R. 3821(a).

In (a), inserted “and/or” preceding “denial” and deleted “; and/or the” following “N.J.A.C. 7:14B-13”; recodified part of (a) as new (b); rewrote (b); added (c); recodified former (b) as new (d); and in (d), substituted “10.9” for “10.6”.

Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).

See: 38 N.J.R. 4748(a).

In (a), inserted second N.J.A.C. reference; rewrote (b); and in (d), inserted “Department” and “of the Remediation of Contaminated Sites”.

7:14B-12.2 Procedures for requesting hearings after denial or revocation of registration, permits, certifications for individuals and business firms, and denial of ordinance adoption

(a) Within 30 calendar days from receipt of notification from the Department denying or revoking a permit, registration, or a certification of an individual or business firm issued pursuant to N.J.A.C. 7:14B-13 or 16 or denying an ordinance adoption, issued pursuant to N.J.A.C. 7:14B-11, the registrant, permittee, certificant or political subdivision, may request an adjudicatory hearing to contest such action by submitting a written request to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, 401 East State Street, Trenton, New Jersey, 08625-0402, which shall include the following information:

1. The name, address, and telephone number of the registrant, permittee, certificant, or political subdivision and its authorized representative, if any;
2. The Underground Storage Tank registration number for the facility (if applicable);

3. The registrant's, permittee's, certificant's or political subdivision's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested conditions as well as suggested revised or alternative conditions;

4. Information supporting the registrant's, permittee's, certificant's or political subdivision's factual position and proposed conditions and copies of other written documents relied upon to support the request for a hearing;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 30 calendar days after receipt of the denial or revocation by the registrant, permittee, certificant or political subdivision shall be denied by the Department.

(c) If the registrant, permittee, certificant, or political subdivision fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Pending the decision on appeal to the Department and upon a typewritten request supporting the ongoing need to use the tank, the Department may stay the revocation of the permit, for good cause shown, upon such terms and conditions as are deemed proper. The request for stay of revocation of the permit shall be included in the request for hearing.

Amended by R.1997 d.487, effective November 17, 1997.
See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).
Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).
See: 38 N.J.R. 4748(a).

In the introductory paragraph of (a), inserted second N.J.A.C. reference, deleted "and Energy" following "Protection", and inserted "401 East State Street,".

7:14B-12.3 Liability for compliance

The owner and operator of a facility shall be held jointly and strictly liable for compliance with the provisions of N.J.S.A. 58:10A-21 et seq., and this chapter and subject to penalties pursuant to N.J.S.A. 58:10A-32.

New Rule, R.1997 d.487, effective November 17, 1997.
See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).

7:14B-12.4 Civil administrative penalties for violations of N.J.A.C. 7:14B-13 and 16

(a) Any person who violates the provisions of N.J.A.C. 7:14B-13 or 16 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.

(b) If the violation is of a continuing nature, each day of 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 calendar 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) 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.

(d) 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, within 30 calendar 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.

(e) The penalty provisions of this section shall be in addition to such penalties as may be assessed pursuant to N.J.S.A. 58:10A-32.

New Rule, R.1997 d.487, effective November 17, 1997.
See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).
Special amendment, R.2006 d.383, effective October 3, 2006 (to expire April 3, 2008).
See: 38 N.J.R. 4748(a).

Section was "Civil administrative penalties for violations of N.J.A.C. 7:14B-13". In (a), inserted second N.J.A.C. reference.

SUBCHAPTER 13. CERTIFICATION OF INDIVIDUALS
AND BUSINESS FIRMS

7:14B-13.1 General requirements for certification

(a) No individual shall provide services on an underground storage tank system regulated pursuant to N.J.S.A. 58:10A-21 et seq. and this chapter for the purpose of complying with this chapter, unless the individual is certified or working under the immediate, on-site supervision of a person certified in accordance with this subchapter.

(b) The Department shall issue a certification card to an individual meeting the requirements for certification pursuant to this subchapter. The certification card shall identify the duration and classification(s), for which the individual is certified to perform services. The certified individual shall make this certification card available to the Department or its authorized agent upon request.

(c) The Department shall issue a certificate to a business firm meeting the requirements for certification pursuant to this subchapter. The certificate shall identify the classification(s) for which the business firm is certified to perform services. The business firm shall conspicuously display the certificate for public review in the business office of the business firm. If a business firm maintains a business office at more than one location, a duplicate certificate, issued by the Department, shall be conspicuously displayed at each location.

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

(e) No individual shall perform any service pursuant to N.J.A.C. 7:14B except as provided for by (f) below, unless:

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

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

(f) An owner or operator of an underground storage tank system, or the permanent employee of an owner or operator may perform any service on the owner's or operator's underground storage tank provided the individual is certified in that classification of service. Certification of the owner or oper-

ator as a business firm is not required if the owner or operator can provide to the Department proof of financial responsibility assurance in accordance with N.J.A.C. 7:14B-13.8 or 40 C.F.R. Part 280 for the remediation of a hazardous substance discharge resulting from the performance of such service(s).

(g) Certifications are not transferable.

(h) A certified individual or business firm shall notify the Department in writing, within three business days, at the address in (j) below, of any amendments to the certification, other than those created by passing an examination or the loss of the certification card or certificate.

(i) A business firm or individual performing well drilling or pump installation services at the site of an underground storage tank who is licensed to perform such services pursuant to N.J.S.A. 58:4A-11 shall not be required to be certified to perform these services pursuant to this subchapter.

(j) If a certified individual listed as the business firm's certifying individual pursuant to N.J.A.C. 7:14B-13.3(b) below, either leaves the business firm or loses his or her certification, the certified business firm shall so notify the Department, in writing at the following address:

New Jersey Department of Environmental Protection
Examination and Licensing Unit
PO Box 441
Trenton, NJ 08625-0441

Notification shall be made within three working days of the individual leaving the business firm or losing his or her certification. The Department shall withdraw the business firm's certification if a replacement name of an individual certified in that classification of service is not submitted within 30 calendar days of notification.

(k) A certified individual shall sign the certification statement pursuant to N.J.A.C. 7:14B-10.3(b) for all documents prepared pursuant to this chapter and submitted to the Department.

(l) When a permit is required to be obtained through the local construction office, for the purposes of complying with N.J.A.C. 7:14B, the individual's certification card and a copy of the certification for the business firm shall be available upon request of the local construction official.

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

(a) An individual or business firm may apply for certification in any one or more of the following classifications of underground storage tank services:

1. Installation which may be either entire system installation or release detection monitoring system installation;

2. Closure;
3. Tank testing;
4. Subsurface evaluation; and
5. Corrosion protection system analysis which may be either cathodic protection specialist or cathodic protection tester.

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

1. Entire system installation includes all activities required by this chapter to install underground storage tanks, associated piping, release detection monitoring systems, interior tank lining, and appurtenant equipment including

factory installed cathodic protection systems, from the time the ground is broken to the restoration of finished grade at the site. Entire system installation includes the performance of an internal inspection for the purpose of assessing a tank for corrosion protection and the installation of a field installed cathodic protection system when the installer is under the supervision of a cathodic protection specialist or following the plans designed by a cathodic protection specialist. Entire system installation activities include any maintenance or repair of any part of the underground storage tank system or release detection monitoring system.

- i. Individuals holding an entire system installation certification shall also be considered to hold the more limited release detection monitoring system installation certification described in (b)2 below.