

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 73) adopted, which concluded that a penalty of \$15,000 was warranted for a gasoline service station's failure to have current registration for its underground storage tanks ("USTs"); registration of USTs is absolutely essential if the system to prevent environmental damage from faulty USTs is to have any validity. N.J. Dep't of Env'tl. Prot. v. Excellent Care, Inc., OAL Dkt. No. EWR 00084-06, 2008 N.J. AGEN LEXIS 682, Final Decision (March 14, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 420) adopted, which concluded that where the underground storage tank registration of respondent, a retail gas station operator, expired more than three years prior to the inspection date, respondent's failure to register its USTs was a moderately serious violation, and was moderately improper conduct; thus, a \$15,000 penalty was appropriate. N.J. Dep't of Env'tl. Prot. v. Egg Harbor Gas & Go, LLC, OAL Dkt. No. EWR 2907-05, 2006 N.J. AGEN LEXIS 780, Final Decision (August 21, 2006).

7:14B-2.2 Registration and certification procedures

(a) The owner or operator shall file registration and certification information on the New Jersey Underground Storage Tank Facility Certification Questionnaire.

(b) The owner or operator shall obtain all registration and certification forms from and accurately complete, sign, date, and return all such documents to the address below:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05G
PO Box 434
401 East State Street, 5th floor
Trenton, New Jersey 08625-0434
Telephone: (609) 292-2943

(c) The owner or operator shall complete the New Jersey Underground Storage Tank Facility Certification Questionnaire prior to the 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 shall, during initial registration, supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1. The facility name and location;
2. The name, location, and contact person for the facility;
3. The name and address of the facility owner;
4. 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;

5. 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

6. Provide the following information for all general liability insurance or other financial responsibility mechanisms:

- i. Type of mechanism;
- ii. Carrier or issuing institution;
- iii. Date of coverage;
- iv. Policy number (if applicable); and
- v. Policy amount (if applicable).

(e) The owner or operator shall, during Certificate renewal, supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1. Certification that the facility is in compliance with this chapter;
2. Notification of any changes to the status of the facility; and

3. Provide the following information for all general liability insurance or other financial responsibility mechanisms:

- i. Type of mechanism;
- ii. Carrier or issuing institution;
- iii. Date of coverage;
- iv. Policy number (if applicable); and
- v. Policy amount (if applicable).

(f) The owner or operator who made any change in status of the underground storage tank system since the initial registration shall supply the following information on the New Jersey Underground Storage Tank Facility Certification Questionnaire:

1. Identify whether the underground storage tank located at the owner or operator's facility is being installed, abandoned, removed, sold or transferred, or substantially modified;
2. The name and address of the owner or operator;
3. The facility name and location;
4. The identification number of the affected tank as it appears on the New Jersey Underground Storage Tank Facility Questionnaire;
5. The underground storage tank registration number (if known);
6. Specific information concerning transfer of ownership, abandonment or removal, substantial modifications and new or replacement installations, depending on which activity is applicable;

7. Certification that the facility is in compliance with this chapter; and

8. Provide the following information for all general liability insurance or other financial responsibility mechanisms:

- i. Type of mechanism;
- ii. Carrier or issuing institution;
- iii. Date of coverage;
- iv. Policy number (if applicable); and
- v. Policy amount (if applicable).

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

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

Information required on the New Jersey Underground Storage Tank Questionnaire and Standard Reporting Form added at (d) and (e).

Amended by R.1994 d.98, effective February 22, 1994 (operative January 1, 1995).

See: 25 N.J.R. 1363(a), 26 N.J.R. 1132(a).

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.197, effective May 19, 2003.

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

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (a), substituted "The owner or operator" for "Any person that owns or operates a facility"; rewrote (b); in (c), and the introductory paragraphs of (d) and (e), deleted "of a facility" preceding "shall"; in (c), inserted the second occurrence of "the"; in the introductory paragraphs of (d) and (e), inserted a comma following "shall" and deleted "at a minimum," preceding "supply"; added new (d)1; recodified former (d)1 through (d)5 as (d)2 through (d)6; and in the introductory paragraph of (f), substituted "who" for "of a facility having" and "of" for "to", and deleted ", at a minimum," preceding "supply".

7:14B-2.3 Transfer of registration

(a) A Registration Certificate issued by the Department is not transferable.

(b) The owner or operator shall notify the Department of any change in the ownership of a facility within 30 days after the contract date or the date of closing on the New Jersey Underground Storage Tank Facility Certification Questionnaire obtainable from the Department at the address provided in N.J.A.C. 7:14B-2.2(b) and in accordance with the procedures for reporting modifications set forth in N.J.A.C. 7:14B-2.4.

(c) The Department may issue to the new owner or operator a new Registration Certificate indicating all changes that appear on the New Jersey Underground Storage Tank Facility Certification Questionnaire.

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

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

System added to (b), to clarify application of requirements.

Recodified from N.J.A.C. 7:14B-2.4 and amended by R.1997 d.487, effective November 17, 1997.

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

Former N.J.A.C. 7:14B-2.3, "Signatories", repealed.

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (b), deleted "of an underground storage tank system" following "operator".

7:14B-2.4 Changes to registration

(a) The owner or operator shall amend a facility's registration to reflect any modification of any information included in the New Jersey Underground Storage Tank Facility Certification Questionnaire. Each modification shall be reported to the Department on a separate New Jersey Underground Storage Tank Facility Certification Questionnaire within 30 days after completion of the modification except as provided for in (c) below.

(b) Modifications include, but are not limited to, the following:

1. The sale or transfer of ownership of a facility;
2. The substantial modification of a facility;
3. A change in the type of hazardous substances stored at a facility.

(c) The owner or operator intending to close an underground storage tank system in accordance with N.J.A.C. 7:14B-9 shall submit a New Jersey Underground Storage Tank Facility Certification Questionnaire within seven calendar days after the closure of the tank system.

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

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

Reporting required prior to closure of tanks.

Recodified from N.J.A.C. 7:14B-2.5 and amended by R.1997 d.487, effective November 17, 1997.

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

Former N.J.A.C. 7:14B-2.4, "Transfer of registration", recodified to N.J.A.C. 7:14B-2.3.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

Added (d).

Readoption of special amendment, R.2011 d.251, effective September 8, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

Provisions of R.2009 d.361 readopted without change.

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (a), deleted "of a facility" following "operator"; and deleted (d).

7:14B-2.5 Public access to registration information

(a) All completed New Jersey Underground Storage Tank Facility Certification Questionnaires, as well as documented information pertaining to the registration, shall be considered public records pursuant to N.J.S.A. 47:1A-1 et seq.

(b) Interested persons shall request in writing an appointment to review the public records.

Amended by R.1994 d.98, effective February 22, 1994.

See: 25 N.J.R. 1363(a), 26 N.J.R. 1132(a).

Recodified from N.J.A.C. 7:14B-2.6 and amended by R.1997 d.487, effective November 17, 1997.

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

Former N.J.A.C. 7:14B-2.5, "Changes to registration", recodified to N.J.A.C. 7:14B-2.4.

(obtained from Global Engineering Documents at 15 Inverness Way East, Englewood, Colorado 80122.)

3. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or

4. NACE International Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(j) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)2iii above:

1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; or

2. NACE International Standard RP-01-95, RP0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

(k) The tank and piping installation practices and procedures described in the following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)4 above:

1. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

2. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" (obtained from P.O. Box 2380, Tulsa, OK 74101-2380); or

3. American National Standards Institute Standard B31.3, "Petroleum Process Piping," and American National Standards Institute Standard B31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum, Liquid Petroleum Gas, and Anhydrous Ammonia and Alcohols". (obtained from Global Engineering Documents at 15 Inverness Way East, Englewood, Colorado 80122.)

(l) No underground storage system shall be installed:

1. Within 50 feet of a public community supply system well, pursuant to N.J.A.C. 7:10-11.4(b)2; and

2. Within 50 feet of a nonpublic community supply system well.

Amended by R.2003 d.197, effective May 19, 2003.
See: 34 N.J.R. 4024(a), 35 N.J.R. 2304(a).
Rewrote the section.

Case Notes

Penalty of \$15,000 was appropriately assessed against a gas station operator for violating N.J.A.C. 7:14B-4.1(a)3(ii) by maintaining inoperable underground storage tank (UST) overfill devices; an inspection revealed that tank gauge sticks broken at both ends had been inserted into the fill ports of two of the three USTs, preventing the overfill devices from functioning properly. Although it was the operator's first offense, the severity of the violation weighed against reduction of the penalty from the midpoint (adopting in part, and rejecting in part, 2006 N.J. AGEN LEXIS 843). N.J. Dep't of Env'tl. Prot. v. Singh, OAL Dkt. No. EWR 2913-05, Final Decision (December 14, 2007).

7:14B-4.2 Upgrading of existing underground storage tank systems

(a) All existing underground storage tank systems shall comply with one of the following requirements:

1. The new underground storage tank system performance standards under N.J.A.C. 7:14B-4.1;

2. The upgrading requirements in sections (b) through (d) below; or

3. Closure requirements under N.J.A.C. 7:14B-9, including applicable requirements pursuant to N.J.A.C. 7:14B-8 and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C.

(b) If an owner or operator chooses to upgrade an underground storage tank, a steel tank shall be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

1. A tank may be upgraded by internal lining if the lining is installed in accordance with the requirements of N.J.A.C. 7:14B-5.4.

i. Within 10 years after installing the lining, and every five years thereafter, the lined tank shall be internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

2. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of N.J.A.C. 7:14B-4.1(a)1ii(2), (3) and (4) and the integrity of the tank is ensured using one of the following methods:

i. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system;

ii. The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with N.J.A.C. 7:14B-6.5(a)4 through 8;

iii. The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of N.J.A.C. 7:14B-6.5(a)3. The first tightness test shall be conducted prior to installing the cathodic protection system. The second tightness test shall be conducted between three and six months following the first operation of the cathodic protection system; or

iv. The tank is assessed for corrosion holes by a method that is determined by the Department to be no less protective of human health and the environment than (b)2i through iii above.

3. A tank may be upgraded by both internal lining and cathodic protection if:

i. The lining is installed in accordance with the requirements of N.J.A.C. 7:14B-5.4; and

ii. The cathodic protection system meets the requirements of N.J.A.C. 7:14B-4.1(a)1ii(2), (3) and (4).

4. Any drilling performed for the installation of the cathodic protection systems shall be performed in accordance with N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act.

(c) Metal piping that routinely contains regulated substances and is in contact with the ground shall be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and shall meet the requirements of N.J.A.C. 7:14B-4.1(a)2ii(2), (3) and (4).

(d) To prevent spilling and overfilling associated with product transfer to the underground storage tank system, all existing underground storage tank systems shall be upgraded to comply with new underground storage tank system spill and overfill prevention equipment requirements specified in N.J.A.C. 7:14B-4.1(a)3.

(e) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with the requirements of (b) above:

1. American Petroleum Institute Publication 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";

2. National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection" (obtained from: United States Environmental Protection Agency, Office of Underground Storage Tanks, Washington, D.C. 20460);

3. NACE International Standard RP-02-95 RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, "Standard for Steel underground storage tanks for Flammable and Combustible Liquids" (obtained from: 144 South Creek Drive, Houston, TX 77084-4906); or

4. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

(f) The following codes and standards, incorporated herein by reference, as amended and supplemented, shall be used to comply with the requirements of (c) above:

1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

2. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

3. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Storage Tanks and Piping Systems"; or

4. NACE International Standard RP-01-95 RP0169-96 "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

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

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

In (e), rewrote 1 and 3; in (f), substituted "RP-01-95 RP0169-96" for "RP-01-69" in 4.

Special amendment, R.2009 d.361, effective November 4, 2009 (to expire May 4, 2011).

See: 41 N.J.R. 4467(a).

In (a)3, substituted "pursuant to" for "for corrective action under", and inserted "and the Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C".

Readoption of special amendment, R.2011 d.251, effective September 8, 2011.

See: 43 N.J.R. 1077(a), 43 N.J.R. 2581(b).

Provisions of R.2009 d.361 readopted without change.

SUBCHAPTER 5. GENERAL OPERATING REQUIREMENTS

7:14B-5.1 Spill and overfill control

(a) The owner or operator shall ensure the following:

1. There shall be no release of hazardous substance at an underground storage tank facility;

2. The available volume in an underground storage tank shall always be greater than the volume of hazardous substance being transferred to the tank; and

3. The transfer operation is monitored constantly to avoid spilling and overfilling.

(b) The transfer procedures described in National Fire Protection Association Publication 385, and American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code," incorporated herein by reference, as amended and supplemented, shall be used to comply with (a)1 and 2 above.

(c) The owner or operator shall report, investigate, and remediate any discharge from the underground storage tank system in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.

(d) In order to ensure proper operation of spill containment equipment, the owner and operator shall:

1. Keep spill catchment basins, dispenser sumps and piping sumps clean of product, water and debris;

7:14B-12.3 (Reserved)

New Rule, R.1997 d.487, effective November 17, 1997.
 See: 29 N.J.R. 1593(a), 29 N.J.R. 4866(a).
 Repealed by R.2012 d.095, effective May 7, 2012.
 See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).
 Section was "Liability for compliance".

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. The request for a hearing shall be submitted to the Department at both of the addresses specified at N.J.A.C. 7:14B-12.2(a), and shall include all of the information specified at N.J.A.C. 7:14B-12.2(b). 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.

Provisions of R.2006 d.383 were readopted without change by R.2008 d.322, effective September 30, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (b), inserted the fifth sentence.

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 16) adopted, which found that the Department of Environmental Protection properly issued respondent an Administrative Order and Notice of Civil Administrative Penalty Assessment for failure to remediate the discharges at the property, failure to perform a remedial investigation, failure to perform a receptor evaluation, failure to perform a remedial investigation of groundwater, and failure to submit a Remedial Action Work Plan. The Department's only discretion with respect to the penalty amount was in the number of days for which the Department chose to assess a penalty; respondent was penalized for only eight days for a total of \$9,000, which was a fraction of the time the respondent remained out of compliance. N.J. Dep't of Env'tl. Prot. v. Kristmark Transportation, OAL Dkt. No. ESR 07837-07, 2009 N.J. AGEN LEXIS 1124, Final Decision (February 20, 2009).

SUBCHAPTER 13. CERTIFICATION OF INDIVIDUALS AND BUSINESS FIRMS**7:14B-13.1 General requirements for certification and services**

(a) No individual shall:

1. Provide any services listed at N.J.A.C. 7:14B-13.2(a) 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; or

2. Conduct remediation of 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 and N.J.A.C. 7:26C, unless that person is a licensed site remediation professional, or representative thereof. A licensed site remediation professional need not also be licensed pursuant to this subchapter in order to conduct remediation on an underground storage tank system.

(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 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 an individual certified pursuant to this subchapter or under the immediate, on-site supervision of an individual certified pursuant to this subchapter or that remediation is performed by a retained licensed site remediation professional, or representative thereof, for the purpose of complying with N.J.A.C. 7:26C. If a certified individual is not present at the underground storage tank site or a licensed site remediation professional has not been retained to conduct remediation, the owner or operator shall suspend all regulated activities in that classification of service or remediation activities, as applicable.

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

1. The individual is a permanent employee at a business firm which is certified in the classification of service, listed at N.J.A.C. 7:14B-13.2(a), 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, listed at N.J.A.C. 7:14B-13.2(a), 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 or the permanent employee of an owner or operator may perform any service, listed at N.J.A.C. 7:14B-13.2(a), 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 operator 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) An owner or operator of an underground storage tank system shall retain a licensed site remediation professional to conduct remediation pursuant to N.J.A.C. 7:26C.

(h) Certifications are not transferable.

(i) 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.

(j) 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.

(k) 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.

(l) 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 for the category of services listed at N.J.A.C. 7:14B-13.2(a) and submitted to the Department.

(m) 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 or the license number of the retained licensed site remediation professional, as applicable, shall be available upon request of the local construction official.

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

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

In (d), substituted the second and third occurrences of "an" for "a certified" and inserted "certified pursuant to this subchapter" twice; and added (m).

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

Rewrote (a) and (d); in the introductory paragraph of (e), inserted "and (g)"; in (e)1, (e)2 and (f), inserted "as listed at N.J.A.C. 7:14B-13.2(a)"; in (f), deleted "of an underground storage tank system," following "operator"; added new (g); recodified former (g) through (m) as (h) through (n); in (l), inserted "for the category of services listed at N.J.A.C. 7:14B-13.2(a)"; and in (m), inserted "or the license number of the retained licensed site remediation professional, as applicable,".

financial assurance with any supporting documentation, pursuant to a request by the Department.

(i) Within 30 calendar days after the cancellation or expiration of any form of financial assurance established to meet the requirements of this chapter, the issuing financial institution shall notify the Department in writing of the expiration or cancellation. The financial institution shall include in the notification the name of the insured policy holder, the policy number as applicable and the address of all sites covered by the financial mechanism. The written notification shall be sent to the address below:

New Jersey Department of Environmental
Protection
Bureau of Case Assignment & Initial Notice
PO Box 028
401 East State Street
Trenton, NJ 08625-0028
Attn: Registration and Billing Unit

Administrative correction.

See: 42 N.J.R. 1862(a).

Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (a), deleted "of underground storage tank systems" following "operators"; in (c), deleted "of an underground storage tank system subject to the requirements of this chapter," following "operator" and a comma following "above"; in (e), deleted "of an underground storage tank system" following "operator"; and rewrote the introductory paragraph of (g) and (g)1.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 73) adopted, which concluded that a penalty of \$15,000 was warranted for a gasoline service station's failure to have insurance for its underground storage tanks ("USTs"); the potential environmental and even human consequences of USTs are such that it is of fundamental importance that facilities with USTs have insurance. N.J. Dep't of Env'tl. Prot. v. Excellent Care, Inc., OAL Dkt. No. EWR 00084-06, 2008 N.J. AGEN LEXIS 682, Final Decision (March 14, 2008).

Initial Decision (2006 N.J. AGEN LEXIS 420) adopted, which concluded that a gas station operator's failure to maintain a record of financial responsibility for its underground storage tanks was a moderately serious violation, and was moderately improper conduct. Without adequate insurance, there was the potential to cause substantial harm to health and the environment with no ability to compensate third parties and mitigate damages; in addition, the operator derived a benefit, a savings over its competitors, from not maintaining insurance. Thus, a \$15,000 penalty was appropriate for this violation. N.J. Dep't of Env'tl. Prot. v. Egg Harbor Gas & Go, LLC, OAL Dkt. No. EWR 2907-05, 2006 N.J. AGEN LEXIS 780, Final Decision (August 21, 2006).

7:14B-15.2 Amount and scope of required financial responsibility

(a) Owners and operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the per-occurrence amounts as follows:

1. For petroleum underground storage tank systems located at petroleum marketing facilities, or facilities that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000;

2. For all other petroleum underground storage tanks: \$250,000; and

3. For underground storage tanks systems containing hazardous substances other than petroleum: \$1,000,000.

(b) Owners or operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the annual aggregate amounts as follows:

1. For one to 100 underground storage tanks: \$1,000,000; and

2. For 101 or more underground storage tanks: \$2,000,000.

(c) Owners and operators shall review the amount of per-occurrence and aggregate assurance needed whenever they acquire or install additional underground storage tanks to ensure the amount of financial responsibility assurance required at (a) and (b) above are maintained.

(d) If an adjustment in the amount of financial responsibility assurance is required pursuant to (c) above, the owner and operator shall demonstrate the adjusted amount within 30 calendar days after the tank acquisition or installation by submitting to the Department an amended New Jersey Underground Storage Tank Facility Certification Questionnaire in accordance with N.J.A.C. 7:14B-2.4.

7:14B-15.3 Incorporation of the Code of Federal Regulations by reference

(a) Unless specifically excluded by these rules, when a provision of the Code of Federal Regulations (C.F.R.) is incorporated by reference into this rule, all notes, comments, appendices, diagrams, tables, forms, figures, and publications are also incorporated by reference.

(b) Owners and operators of Federally regulated underground storage tank systems subject to 40 C.F.R. Part 280 Subpart H shall comply with this subchapter by maintaining financial assurance pursuant to 40 C.F.R. Part 280 Subpart H incorporated, in its entirety, by reference into this rule.

(c) Owners and operators of State regulated underground storage tank systems subject to the requirements of N.J.A.C. 7:14B, but not covered by (b) above, shall comply with this chapter for the amounts listed in N.J.A.C. 7:14-15.2 by complying with USEPA's Financial Responsibility Regulations at 40 C.F.R. 280 Part H incorporated by reference into this rule with the following noted exclusions:

1. 40 C.F.R. 280.98, Surety Bond;
2. 40 C.F.R. 280.100, Use of State required mechanism;
3. 40 C.F.R. 280.101, State fund of other State assurance; and

4. 40 C.F.R. 280.106(d), Local government guarantee, Local Government Guarantee With Standby Trust Made by a State.

(d) For the purposes of this subchapter, when the term, "name of State" appears in the Federal rule, it shall be replaced with the term "New Jersey"; when the term "State implementing agency" appears in the Federal rule, it shall be replaced with the term "Department of Environmental Protection"; when the term "Director" or "Director of the implementing agency" appears in the Federal rule, it shall be replaced with the term "DEP Commissioner."

(e) Prospective incorporation by reference means the ongoing process, beginning May 19, 2003, whereby all provisions of regulations incorporated into this subchapter from the Federal regulations at 40 C.F.R. 280 Part H are continually automatically updated in order to maintain consistency with the most current Federal rules. Thus, any supplements, amendments, and any other rule changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal rule, brought about by either judicial or administrative action and adopted or otherwise noticed by U.S. Environmental Protection Agency in the Federal Register, shall simultaneously amend this subchapter so this subchapter has the same meaning and status as its Federal counterpart.

(f) Provisions of 40 C.F.R. Part 280 Subpart H incorporated by reference are prospective and all internal references contained therein are also incorporated prospectively for the purposes of that provision, unless otherwise noted. Each internal reference to the Federal Register shall be interpreted to include, in addition to the Federal citation, any changes, additions and deletions made to that citation by this subchapter.

(g) Provisions of 40 C.F.R. Part 280 Subpart H that are excluded from incorporation by reference in these rules are excluded in their entirety, unless otherwise specified. If there is a cross reference to a Federal citation that was specifically excluded from incorporation, the cross referenced citation is not incorporated by virtue of the cross reference. Provisions that have been excluded from incorporation by reference are also excluded from the process of prospective incorporation by reference.

(h) Nothing in these provisions incorporated by reference from the Federal Register shall affect the Department's authority to enforce statutes or rules, permits or orders administered or issued by the Commissioner.

(i) New Federal rules, amendments, supplements and other changes at 40 C.F.R. 280 Part H brought about through administrative or judicial action adopted or otherwise noticed by USEPA in the Federal Register shall be automatically incorporated through the prospective incorporation process in this chapter.

(j) New Federal rules, amendments, supplements and other changes at 40 C.F.R. 280 Part H brought about through administrative or judicial action adopted or otherwise noticed in the Federal Register by USEPA after January 26, 1998 but prior to May 19, 2003 shall be prospectively incorporated by reference and shall be effective on May 19, 2003 and operative on August 17, 2003 or on the operative date cited by USEPA in the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption of the Federal rule in New Jersey in whole or in part, and/or proposes to otherwise amend the affected State rules.

(k) On or after May 19, 2003, new Federal rules, amendments, supplements and other changes brought about through administrative or judicial action and adopted or otherwise noticed by USEPA in the Federal Register automatically incorporated through the prospective incorporation by reference process shall be effective upon publication in the Federal Register and operative on the date cited by USEPA in the relevant Federal Register Notice, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

7:14B-15.4 Document availability

(a) Copies of the 40 C.F.R. 280 Part H as adopted and incorporated by reference herein are available for review. Publications incorporated by reference within the Code of Federal Regulations as listed at 40 C.F.R. 280 Part H, or the most currently available version, are also available for review. The Federal rule can be accessed through a hyperlink provided on the Department's internet web page at www.state.nj.us/dep/srp/regs/ust. These publications may also be reviewed by contacting the Department at:

New Jersey Department of Environmental
Protection
Site Remediation Program
PO Box 028
Trenton, NJ 08625-0028
Telephone: (609) 633-1408

(b) Copies of 40 C.F.R. 280 Part H as adopted and incorporated by reference herein, may be purchased from the following sources:

U.S. Government Printing Office
Superintendent of Documents
Mail Stop: SCOP
Washington, DC 20402-9328

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, NY 10278-0081

U.S. Government Printing Office Bookstore
Robert Morris Building
100 North 17th Street
Philadelphia, PA 19103

(c) Copies of 40 C.F.R. 280 Part H as adopted and incorporated by reference herein, are available for review at the following public libraries:

New Jersey State Library
PO Box 520, 185 West State Street
Trenton, NJ 08625-0520

Newark Public Library
5 Washington Street
Newark, NJ 07101

(d) The Office of the Federal Register, a component of the National Archives and Record Administration, has a website at www.nara.gov/fedreg which shows a current listing of files available for public inspection, Federal Registers as well as the Code of the Federal Regulations.

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

7:14B-16.1 Scope and applicability

(a) This subchapter establishes the certification program for any individual or business firm providing services on unregulated heating oil tank systems, except closure of an unregulated heating oil tank system located on a farm.

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

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

(d) As of July 6, 2009, any individual or business firm providing services on unregulated heating oil tank systems in any of the categories listed in N.J.A.C. 7:14B-16.3 shall meet the requirements of N.J.A.C. 7:14B-16.5.

Amended by R.2008 d.322, effective November 3, 2008.
See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

In (b), substituted "system services" for "systems"; and in (c), inserted "in order to provide well drilling or pump installation services on unregulated heating oil tank systems".

Administrative change.
See: 41 N.J.R. 2648(b).

7:14B-16.2 General requirements for certification

(a) No individual shall perform any service on unregulated heating oil tank systems unless the individual is certified under this subchapter or is 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 unregulated heating oil tank system shall ensure that all services performed on the unregulated heating oil tank system are performed by an individual or under the immediate, on-site supervision of an individual certified under N.J.A.C. 7:14B-13 or under this subchapter, unless exempt pursuant to (n) below. If a certified individual is not present at the unregulated heating oil tank system site, the owner or operator shall suspend all activities in that classification of service.

(e) Except as provided in (n) below, no individual shall perform any service on an unregulated heating oil tank system 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 individual or firm certified to perform services on unregulated heating oil tank systems shall perform such services pursuant to all applicable:

1. Federal and State laws, regulations and permits;
2. Local ordinances or codes;
3. Department of Community Affairs Bulletins and notices published in the "Construction Code Communicator" (www.nj.gov/dca/publications/);
4. Manufacturer's installation instructions; and

5. Industry standards, including the following, as incorporated herein by reference, as amended and supplemented, as applicable:

- i. American Petroleum Institute Publication 1604, "Closure of Underground Petroleum Storage";
- ii. American Petroleum Institute Publication 1615, "Installation of Underground Storage-Petroleum-Systems" (obtained from Global Engineering Documents at 15 Inverness Way East, Englewood Colorado 80122);
- iii. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" (obtained from P.O. Box 2380, Tulsa, OK 74101-2380);
- iv. American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";
- v. NACE International Standard RP-02-95 RP0285-2002, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, "Standard for Steel underground storage tanks for Flammable and Combustible Liquids" (obtained from: 144 South Creek Drive, Houston, TX 77084-4906);
- vi. National Fire Protection Association (NFPA) 30 "Flammable and Combustible Liquids Code", Battery-march Park, Quincy, MA 02269-9990; and
- vii. International Code Council's International Building Code at N.J.A.C. 5:23-3.14.

(g) An individual or business firm certified under this subchapter shall:

1. Cooperate in and help facilitate any audit of its pricing and business practices, conducted in accordance with industry standards and performed at the expense of the Department by a certified public accounting firm under contract to the Department; and

2. For services being performed with financial assistance from the Petroleum Underground Storage Tank Remediation Upgrade and Closure Fund (the Fund), submit documentation to the Department at the address listed in N.J.A.C. 7:14B-2.2(b) of the individual's or business firm's cost for providing the services for which the Fund is providing the financial assistance. The documentation shall include, but is not limited to, documentation of the direct cost to provide the services, and all tiers of subcontractors' costs, including, by way of example, materials, equipment rentals and services.

(h) Certifications are not transferable.

(i) 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.

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

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

(k) When a certified individual listed as the business firm's certifying individual on the certification card issued pursuant to (c) above loses his or her certification due to expiration, revocation or suspension, 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 loss of certification. The notice of the loss of certification and the replacement name of an individual certified in that classification of service shall be submitted to the Department, in writing, at the address in (j) above.

(l) When a permit is required to be obtained through the local construction office, for the purposes of providing the services described in this subchapter on an unregulated heating oil tank system, the individual's certification card and a copy of the certification for the business firm shall be made available upon request of the local construction company.

(m) An individual or business firm may replace a damaged or lost certification card or certificate by contacting the Department at the address listed in (j) above and paying the fee required by N.J.A.C. 7:14B-3.10(h).

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

Amended by R.2008 d.322, effective November 3, 2008.

See: 40 N.J.R. 2166(a), 40 N.J.R. 6440(a).

In (d), inserted " , unless exempt pursuant to (n) below" and inserted the last occurrence of "system"; rewrote the introductory paragraph of (e); in (e)1 and (e)2, substituted "The individual" for "An individual who"; deleted former (g)1; recodified (g)2 and (g)3 as (g)1 and (g)2; in the address in (j), inserted "428 E. State St."; and added (n).
Amended by R.2012 d.095, effective May 7, 2012.

See: 43 N.J.R. 1935(a), 44 N.J.R. 1339(b).

In (e)1, substituted "or" for "and" at the end.