

P.L. 1999, CHAPTER 322, *approved January 6, 2000*  
Senate Committee Substitute (*First Reprint*) for  
Senate, No. 1613

1   **AN ACT** concerning heating oil tanks, and amending P.L.1986, c.102  
2       and P.L.1991, c.123.

3  
4       **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7       1. Section 2 of P.L.1986, c.102 (C.58:10A-22) is amended to read  
8 as follows:

9       2. As used in this act:

10      a. "Commissioner" means the Commissioner of the Department of  
11 Environmental Protection;

12      b. "Department" means the Department of Environmental  
13 Protection;

14      c. "Discharge" means the intentional or unintentional release by  
15 any means of hazardous substances from an underground storage tank  
16 into the environment;

17      d. "Facility" means one or more underground storage tanks;

18      e. "Hazardous substances" means motor fuels and those elements  
19 and compounds, including petroleum products which are liquid at  
20 standard conditions of temperature and pressure (60 degrees  
21 Fahrenheit and 14.7 pounds per square inch absolute), which are  
22 defined as hazardous substances by the department after public  
23 hearing, and which shall be consistent to the maximum extent possible  
24 with and which shall include the list of hazardous wastes adopted by  
25 the United States Environmental Protection Agency pursuant to  
26 section 3001 of the "Resource Conservation and Recovery Act of  
27 1976," Pub.L.94-580 (42 U.S.C. s.6921), the list of hazardous  
28 substances adopted by the United States Environmental Protection  
29 Agency pursuant to section 311 of the "Federal Water Pollution  
30 Control Act Amendments of 1972," Pub.L.92-500 (33 U.S.C. s.1321),  
31 the list of toxic pollutants designated by Congress or the  
32 Environmental Protection Agency pursuant to section 307 of that act  
33 (33 U.S.C. s.1317), and any substance defined as a hazardous  
34 substance pursuant to section 101(14) of the "Comprehensive  
35 Environmental Response, Compensation, and Liability Act of 1980,"  
36 Pub.L.96-510 (42 U.S.C. s.9601);

37      f. "Leak" means the release of a hazardous substance from an  
38 underground storage tank into a space created by a method of

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly floor amendments adopted December 9, 1999.

- 1 secondary containment wherein it can be detected by visual inspection  
2 or a monitoring system before it enters the environment;
- 3 g. "Monitoring system" means a system capable of detecting leaks  
4 or discharges, or both, other than an inventory control system, used in  
5 conjunction with an underground storage tank, or a facility,  
6 conforming to criteria established pursuant to section 5 of this act;
- 7 h. "Nonoperational storage tank" means any underground storage  
8 tank in which hazardous substances are not contained, or from which  
9 hazardous substances are not dispensed;
- 10 i. "Operator" means any person in control of, or having  
11 responsibility for, the daily operation of a facility;
- 12 j. "Owner" means any person who owns a facility, or in the case  
13 of a nonoperational storage tank, the person who owned the  
14 nonoperational storage tank immediately prior to the discontinuation  
15 of its use;
- 16 k. "Person" means any individual, partnership, company,  
17 corporation, consortium, joint venture, commercial or any other legal  
18 entity, the State of New Jersey, or the United States Government;
- 19 l. "Residential building" means a single and multi-family dwelling,  
20 nursing home, trailer, condominium, boarding house, apartment house,  
21 or other structure designed primarily for use as a dwelling;
- 22 m. "Secondary containment" means an additional layer of  
23 impervious material creating a space wherein a leak of hazardous  
24 substances from an underground storage tank may be detected before  
25 it enters the environment;
- 26 n. "Substantially modify" means construction at, or restoration,  
27 refurbishment or renovation of, an existing facility which increases or  
28 decreases the in-place storage capacity of the facility or alters the  
29 physical configuration or impairs or affects the physical integrity of the  
30 facility or its monitoring systems;
- 31 o. "Test" or "testing" means the testing of underground storage  
32 tanks in accordance with standards adopted by the department;
- 33 p. "Underground storage tank" means any one or combination of  
34 tanks, including appurtenant pipes, lines, fixtures, and other related  
35 equipment, used to contain an accumulation of hazardous substances,  
36 the volume of which, including the volume of the appurtenant pipes,  
37 lines, fixtures and other related equipment, is 10% or more below the  
38 ground. "Underground storage tank" shall not include:
- 39 (1) Farm or residential tanks of 1,100 gallons or less capacity used  
40 for storing motor fuel for noncommercial purposes;
- 41 (2) Tanks used to store heating oil for on-site consumption in a  
42 nonresidential building with a capacity of 2,000 gallons or less;
- 43 (3) Tanks used to store heating oil for on-site consumption in a  
44 residential building;
- 45 (4) Septic tanks installed in compliance with regulations adopted  
46 by the department pursuant to "The Realty Improvement Sewerage

1 and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.);

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

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

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

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

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

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

25 q. "Wellhead protection area" means an aquifer area described in  
26 a plan view around a well, from within which groundwater flows to the  
27 well and through which groundwater pollution, if it occurs, may pose  
28 a significant threat to the water quality of the well. The wellhead  
29 protection area is delimited by the use of time-of-travel and hydrologic  
30 boundaries.

31 r. "Unregulated heating oil tank" means any one or combination of  
32 tanks, including appurtenant pipes, lines, fixtures, and other related  
33 equipment, used to contain an accumulation of heating oil for on-site  
34 consumption in a residential <sup>1</sup>[or nonresidential]<sup>1</sup> building, <sup>1</sup>or those  
35 tanks with a capacity of 2,000 gallons or less used to store heating oil  
36 for on-site consumption in a nonresidential building, <sup>1</sup>the volume of  
37 which, including the volume of the appurtenant pipes, lines, fixtures  
38 and other related equipment, is 10% or more below the ground.

39 (cf: P.L.1994, c.14, s.1)

40

41 2. Section 1 of P.L.1991, c.123 (C.58:10A-24.1) is amended to  
42 read as follows:

43 1. a. Except as provided in subsection b. of this section, a person  
44 shall not perform, except in accordance with the provisions of this act,  
45 tank services on an underground storage tank at an underground  
46 storage tank site required for purposes of complying with the

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

13 b. Subsection a. of this section shall not apply to a person  
 14 performing tank closure on an underground storage tank <sup>1</sup>located on  
 15 a farm<sup>1</sup> or an unregulated heating oil tank located on a farm. A person  
 16 performing tank closure on an underground storage tank <sup>1</sup>located on  
 17 a farm<sup>1</sup> or an unregulated heating oil tank located on a farm shall  
 18 comply with the guidelines and the criteria established pursuant to  
 19 subsection c. of this section. For the purposes of this section, "farm"  
 20 shall mean land that qualifies for a special tax assessment pursuant to  
 21 the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1  
 22 et seq.), or any land less than five acres in area that would otherwise  
 23 qualify for that farmland assessment and that has produced agricultural  
 24 or horticultural products with a wholesale value of \$10,000 or more  
 25 annually for at least the two successive years immediately preceding  
 26 the year in which the tank removal is performed.

27 c. Within 90 days of the effective date of P.L.1997, c.430, the  
 28 department shall implement guidelines establishing a protocol for the  
 29 performance of tank closures on a farm. Within 18 months of the  
 30 effective date of P.L.1997, c.430, the Department of Environmental  
 31 Protection, in consultation with the Department of Agriculture and the  
 32 State Soil Conservation Committee, shall, pursuant to the  
 33 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 34 seq.), adopt criteria for the performance of tank closures on farms.  
 35 Both the guidelines and the criteria shall be developed with the  
 36 objectives of reducing the cost and increasing the efficiency of the  
 37 process of tank closure while also ensuring environmental protection  
 38 and public safety.

39 (cf: P.L.1997, c.430, s.1)

40

41 3. Section 2 of P.L.1991, c.123 (C.58:10A-24.2) is amended to  
 42 read as follows:

43 2. a. A business firm shall not engage in the business of performing  
 44 services on underground storage tanks at underground storage tank  
 45 sites for purposes of complying with the requirements of P.L.1986,  
 46 c.102 (C.58:10A-21 et seq.), or tank testing, tank installation, tank

1 removal, tank closure, or subsurface evaluations for corrective action,  
2 closure or corrosivity on an unregulated heating oil tank, unless the  
3 business firm has been certified in accordance with section 3 of  
4 P.L.1991, c.123 (C.58:10A-24.3), by certification of the owner, or, in  
5 the case of partnership, a partner in the firm, or, in the case of a  
6 corporation, an executive officer of the corporation.

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

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

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

37 e. A plumbing contractor, as defined pursuant to section 2 of  
38 P.L.1968, c.362 (C.45:14C-2), engaged in the installation, repair,  
39 testing, or closure of a waste oil underground storage tank shall be  
40 exempt from the certification requirements of section 3 of P.L.1991,  
41 c.123 (C.58:10A-24.3) and from payment of a recertification or  
42 renewal fee required pursuant to section 4 of that act  
43 (C.58:10A-24.4), but shall be required to obtain a certification card  
44 issued by the department at no charge and to make the card available  
45 for inspection by a State or local official when performing tank  
46 services on an underground storage tank. Plumbing contractors

1 exempt pursuant to this subsection shall be required to attend a  
2 department approved training course on the department's rules and  
3 regulations concerning underground storage tanks within one year of  
4 certification or recertification. A plumbing contractor engaged in the  
5 installation, repair, testing, or closure of an unregulated heating oil  
6 tank or an underground storage tank that is not a waste oil tank shall  
7 be required to comply with section 3 of P.L.1991, c.123  
8 (C.58:10A-24.3).

9 (cf: P.L.1997, c.430, s.2)

10  
11 4. Section 3 of P.L.1991, c.123 (C.58:10A-24.3) is amended to  
12 read as follows:

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

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

46 c. A person certified pursuant to subsection b. of this section shall

1 comply with the examination and other requirements adopted by the  
2 department pursuant to subsection a. of this section as a precondition  
3 for filing for a renewal of a certification issued pursuant to subsection  
4 b. of this section.

5 d. The department may establish a general certification for tank  
6 services and on-site supervisory responsibilities, and such other classes  
7 of certification for particular tank services or for on-site supervisory  
8 responsibilities as it deems appropriate, and may establish separate  
9 training, examination and working experience requirements therefor.

10 The department shall establish a separate certification for tank testing,  
11 tank installation, tank removal, tank closure, and subsurface  
12 evaluations for corrective action, closure or corrosivity on unregulated  
13 heating oil tanks with separate training and examination requirements  
14 therefor. Any person certified to perform services on underground  
15 storage tanks at underground storage tank sites for purposes of  
16 complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et  
17 seq.) shall not be required to obtain a separate certification to perform  
18 work on unregulated heating oil tanks.

19 (cf: P.L.1991, c.123, s.3)

20  
21 5. Section 4 of P.L.1991, c.123 (C.58:10A-24.4) is amended to  
22 read as follows:

23 4. a. Certification shall be for a three-year period. Renewal of a  
24 certification, or recertification, shall be made to the department at least  
25 60 days prior to the expiration date of the certification, and shall be  
26 accompanied by evidence of attendance at a department approved  
27 training course, within the preceding 12 months, on the department's  
28 rules and regulations concerning underground storage tanks or on tank  
29 testing, tank installation, tank removal, tank closure, or subsurface  
30 evaluations for corrective action, closure or corrosivity on  
31 unregulated heating oil tanks. Certification shall not be transferable.  
32 No certification or recertification shall be issued until a certification  
33 fee of \$250.00 has been paid in full to the department. Application and  
34 certification fees shall be in an amount sufficient to cover the costs to  
35 the department of administering and enforcing the provisions of this  
36 act and may be adjusted by the department through the adoption of  
37 rules and regulations pursuant to the "Administrative Procedure Act,"  
38 P.L.1968, c.410 (C.52:14B-1 et seq.). A person shall have 90 days  
39 from the expiration date of a certification to renew an expired  
40 certification, after which date the person shall be required to apply for  
41 a new certification. The 90-day grace period shall not entitle a person  
42 to perform any services for which certification is required.

43 b. As a condition of certification or recertification, a business firm  
44 shall be required to provide the department with evidence of financial  
45 responsibility for the performance of services provided pursuant to  
46 P.L.1986, c.102 (C.58:10A-21 et seq.) , for the performance of tank

1 testing, tank installation, tank removal, tank closure, or subsurface  
 2 evaluations for corrective action, closure or corrosivity on  
 3 unregulated heating oil tanks, and for the cleanup or mitigation of a  
 4 hazardous substance discharge resulting from the performance of such  
 5 services. Financial responsibility shall be in an amount to be  
 6 determined by the department but in no case less than \$250,000.  
 7 Financial responsibility may be in the form of insurance, a surety bond,  
 8 letter of credit, or other security posted with the department, or  
 9 self-insurance, as may be prescribed by the department. If the financial  
 10 responsibility is in the form of insurance, a surety bond, or similar  
 11 device, the business firm shall promptly notify the department of any  
 12 cancellation or change in coverage. Financial responsibility in the  
 13 amount and form required by the department shall be maintained for  
 14 the term of certification by the business firm.

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

23 (cf: P.L.1991, c.123, s.4)

24

25 6. Section 5 of P.L.1991, c.123 (C.58:10A-24.5) is amended to  
 26 read as follows:

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

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

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

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

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

45 c. Suspension, revocation, or refusal to renew a certification shall  
 46 not bar the department from pursuing against the applicant or



1 certificate holder any other lawful remedy available to the department.

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

5 e. If the department has reason to believe that a condition exists  
6 that poses an imminent threat to the public health, safety or welfare,  
7 it may order the certificate holder to cease operations pending the  
8 outcome of the hearing.

9 (cf: P.L.1991, c.123, s.5)

10

11 7. (New section) The Department of Environmental Protection  
12 shall, within 120 days of the effective date of this section, establish  
13 guidelines to implement the provisions of this act, and shall, within  
14 180 days of the effective date of this section, establish rules and  
15 regulations for such implementation.

16

17 8. Section 7 of this act shall take effect immediately and the  
18 remainder of this act shall take effect 180 days after enactment.

19

20

21

22

23 Requires DEP certification to perform certain services on unregulated  
24 heating oil tanks.