

CHAPTER 322

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

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

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

C.58:10A-22 Definitions.

2. As used in this act:
 - a. "Commissioner" means the Commissioner of the Department of Environmental Protection;
 - b. "Department" means the Department of Environmental Protection;
 - c. "Discharge" means the intentional or unintentional release by any means of hazardous substances from an underground storage tank into the environment;
 - d. "Facility" means one or more underground storage tanks;
 - e. "Hazardous substances" means motor fuels and those elements and compounds, including petroleum products which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), which are defined as hazardous substances by the department after public hearing, and which shall be consistent to the maximum extent possible with and which shall include the list of hazardous wastes adopted by the United States Environmental Protection Agency pursuant to section 3001 of the "Resource Conservation and Recovery Act of 1976," Pub.L.94-580 (42 U.S.C. s.6921), the list of hazardous substances adopted by the United States Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Control Act Amendments of 1972," Pub.L.92-500 (33 U.S.C. s.1321), the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that act (33 U.S.C. s.1317), and any substance defined as a hazardous substance pursuant to section 101(14) of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601);
 - f. "Leak" means the release of a hazardous substance from an underground storage tank into a space created by a method of secondary containment wherein it can be detected by visual inspection or a monitoring system before it enters the environment;
 - g. "Monitoring system" means a system capable of detecting leaks or discharges, or both, other than an inventory control system, used in conjunction with an underground storage tank, or a facility, conforming to criteria established pursuant to section 5 of this act;
 - h. "Nonoperational storage tank" means any underground storage tank in which hazardous substances are not contained, or from which hazardous substances are not dispensed;
 - i. "Operator" means any person in control of, or having responsibility for, the daily operation of a facility;
 - j. "Owner" means any person who owns a facility, or in the case of a nonoperational storage tank, the person who owned the nonoperational storage tank immediately prior to the discontinuation of its use;
 - k. "Person" means any individual, partnership, company, corporation, consortium, joint venture, commercial or any other legal entity, the State of New Jersey, or the United States Government;
 - l. "Residential building" means a single and multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house, or other structure designed primarily for use as a dwelling;
 - m. "Secondary containment" means an additional layer of impervious material creating a space wherein a leak of hazardous substances from an underground storage tank may be detected before it enters the environment;
 - n. "Substantially modify" means construction at, or restoration, refurbishment or renovation of, an existing facility which increases or decreases the in-place storage capacity of the facility or alters the physical configuration or impairs or affects the physical integrity of the facility or its monitoring systems;
 - o. "Test" or "testing" means the testing of underground storage tanks in accordance with standards adopted by the department;
 - p. "Underground storage tank" means any one or combination of tanks, including

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

- (1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
 - (2) Tanks used to store heating oil for on-site consumption in a nonresidential building with a capacity of 2,000 gallons or less;
 - (3) Tanks used to store heating oil for on-site consumption in a residential building;
 - (4) Septic tanks installed in compliance with regulations adopted by the department pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.);
 - (5) Pipelines, including gathering lines, regulated under the "Natural Gas Pipeline Safety Act of 1968," Pub.L.90-481 (49 U.S.C. s.1671 et seq.), the "Hazardous Liquid Pipeline Safety Act of 1979," Pub.L.96-129 (49 U.S.C. s.2001 et seq.), or intrastate pipelines regulated under State law;
 - (6) Surface impoundments, pits, ponds, or lagoons, operated in compliance with regulations adopted by the department pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.);
 - (7) Storm water or wastewater collection systems operated in compliance with regulations adopted by the department pursuant to the "Water Pollution Control Act";
 - (8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;
 - (9) Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor, or storage tanks located below the surface of the ground which are equipped with secondary containment and are uncovered so as to allow visual inspection of the exterior of the tank; and
 - (10) Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of this act pursuant to paragraphs (1) through (9) of this subsection;
- q. "Wellhead protection area" means an aquifer area described in a plan view around a well, from within which groundwater flows to the well and through which groundwater pollution, if it occurs, may pose a significant threat to the water quality of the well. The wellhead protection area is delimited by the use of time-of-travel and hydrologic boundaries;
- r. "Unregulated heating oil tank" means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of heating oil for on-site consumption in a residential building, or those tanks with a capacity of 2,000 gallons or less used to store heating oil for on-site consumption in a nonresidential building, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10% or more below the ground.

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

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

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

P.L.1991, c.123 (C.58:10A-24.3).

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

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

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

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

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

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

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

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

e. A plumbing contractor, as defined pursuant to section 2 of P.L.1968, c.362 (C.45:14C-2), engaged in the installation, repair, testing, or closure of a waste oil underground storage tank shall be exempt from the certification requirements of section 3 of P.L.1991, c.123

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

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

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

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

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

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

d. The department may establish a general certification for tank services and on-site supervisory responsibilities, and such other classes of certification for particular tank services or for on-site supervisory responsibilities as it deems appropriate, and may establish separate training, examination and working experience requirements therefor. The department shall establish a separate certification for tank testing, tank installation, tank removal, tank closure, and subsurface evaluations for corrective action, closure or corrosivity on unregulated heating oil tanks with separate training and examination requirements therefor. Any person certified to perform services on underground storage tanks at underground storage tank sites for purposes of complying with the provisions of P.L.1986, c.102 (C.58:10A-21 et seq.) shall not be required to obtain a separate certification to perform work on unregulated heating oil tanks.

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

C.58:10A-24.4 Certification, renewal.

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

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

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

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

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

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

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

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

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

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

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

department.

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

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

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

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

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

Approved January 6, 2000.