

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF AIR AND WASTE MANAGEMENT

TANK MANAGEMENT BRANCH

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 (7 **Del.C.** Ch. 60 & 74)

7 DE Admin. Code 1351

PROPOSED

SAN # 2008-20 and 2008-23

1351 Regulations Governing Underground Storage Tank Systems

PART G: Requirements For Contractor Certification

1.0 General Requirements for Contractor Certification

1.1 General Provisions

1.1.1 Certification is required for business entities contracting for, or engaged in UST System work which includes the following:

1.1.1.1 Installation

1.1.1.2 Retrofit

1.1.1.3 Removal or Closure in Place

1.1.2 Certification is required for individuals supervising the following UST System related work:

1.1.2.1 Installation

1.1.2.2 Retrofit

1.1.2.3 Removal or Closure in Place

1.1.3 Upon completion of all requirements, the Department shall issue a certificate to business entities and a wallet card to supervisors, endorsed for the appropriate UST System activities they are certified to perform.

1.1.4 Proof of certification shall be provided immediately upon request by representatives from the Department while individuals are performing UST System work requiring certification. Proof of certification shall consist of a valid card issued by the Department certifying that Contractor Certification requirements have been met. All UST System work requiring certification shall immediately cease if proof of certification is not provided.

1.1.5 Any individual or business entity that is certified shall notify the Department of any name or address change within thirty (30) days of such change.

1.1.6 Any individual or business entity who is certified shall notify the Department of any pending litigation against them involving any type of construction or any environmental or regulatory compliance, within ten (10) days of receipt of notice of that litigation.

1.2 Qualification Requirements for Certification

1.2.1 Business Entities

1.2.1.1 A business entity may apply for certification for one or more UST System activities.

1.2.1.2 All business entities engaged in Installation, Retrofit, Removal or Closure in Place of UST Systems shall meet the following requirements for certification:

1.2.1.2.1 Submit to the Tank Management Branch a complete application form and attach appropriate documentation of experience and training with the required application fee; and

1.2.1.2.2 Provide proof of general liability insurance in the amount of \$1,000,000 and Contractor's Pollution Liability Insurance in the amount of \$250,000; and

1.2.1.2.3 Score 80% or more correct on an examination given by the Department.

1.2.1.3 In the event that an applicant scores less than 80% on the examination, they may request to sit for the examination at the next regularly scheduled examination or within thirty (30) days, whichever is less.

1.2.1.4 An applicant who has not scored 80% or more on the test after three tries shall wait six (6) months before submitting a new application and retesting.

1.2.2 Individual On-site Certification

1.2.2.1 Each site where UST System Installation, Retrofit, Removal or Closure in Place occurs shall have a minimum of one individual, certified for the UST System activity to be performed, present at all times while work is occurring. This individual shall be a permanent employee of the business firm performing the UST System activity and the business firm shall be certified for the UST System activity being performed.

1.2.2.2 Individuals engaged in Installation, Retrofit, Removal or Closure in Place of UST Systems shall meet the following requirements for certification:

1.2.2.2.1 Submit to the Tank Management Branch a complete application form with the required application fee; and

1.2.2.2.2 Submit proof of applicable training or experience for type of work for which the individual is to be certified; and

1.2.2.2.3 Score 80% or more correct on an examination to be given by the Department for each activity for which the individual wishes their certification to apply.

1.2.2.3 In the event that an individual scores less than 80% on the examination, they may request to sit for the examination at the next regularly scheduled examination or within thirty (30) days, whichever is less.

1.2.2.4 An individual who has not scored 80% or more on the test after three tries shall wait six (6) months before submitting a new application and retesting.

1.3 Application for Certification Requirements

1.3.1 All applications shall be submitted in writing on forms supplied by the Department. Copies of such forms may be obtained from DNREC.

1.3.2 Each application shall contain a verified statement by the applicant for certification or, its duly authorized representative, that they and any person employed by the applicant on any UST System installation, Retrofit, or tank closure, ~~will~~ shall be provided with a copy of these regulations and ~~will~~ shall be required to abide by all applicable rules and regulations promulgated by the Department.

1.3.3 The completed application shall be sent to the address specified in the application package and shall be accompanied by a non-refundable fee of \$250 for business entities or \$100 for individuals.

1.3.4 The Department shall notify the applicant in writing no later than thirty (30) days from receipt of the certification application of the issuance or denial of the certification, or the need for further information in order to process the application. Denial of certification for cause shall be explained by the Department at the time of denial.

1.3.5 Any applicant denied for cause may appeal in writing within ten (10) days of receipt of denial. Each reapplication requires a new application fee.

1.3.6 Certification shall be valid for a period of two years from the date of issuance.

1.4 Standards of Performance for Certified Companies and Supervisors

1.4.1 All certified individuals and companies are required to meet the following ~~S~~Sstandards of ~~P~~Pperformance:

1.4.1.1 All UST System work performed as a Certified Contractor shall be performed according to accepted engineering practices and procedures and applicable OSHA safety procedures contained in 29 CFR 1910.

1.4.1.2 All required notifications and applications shall be submitted to the Department as specified in the Regulations.

1.4.1.3 Any deviation from standard practices and procedures shall be approved by the Department in writing.

1.4.1.4 Installation of UST Systems and all associated equipment shall be in accordance with the conditions in the Department's approval letter, the manufacturer's specifications, or procedures detailed in the current version of PEI RP 100. In the event of conflicting wording in these documents, the Department's approval letter shall take precedence, followed by the manufacturer's specifications, and finally PEI RP 100.

1.4.1.5 Any contractor installing equipment requiring a manufacturer's certification shall have a current manufacturer's certification for that product and shall provide it immediately upon a request byfrom representatives from the Department.

1.4.1.6 Removal or Closure in Place of an UST System shall be performed in accordance with the procedures detailed in the current version of API 1604, and API 2015.

- 1.4.1.7 Contractors shall report within twenty-four (24) hours to the Tank Management by calling 302-395-2500 and the Department when required in accordance with 7 Del.C. Chapter 60, by calling 1-800- 662-8802 ~~within twenty four (24) hours~~, any Release of a Regulated Substance, or confirmed or suspected contamination of soil, surface or groundwater from Regulated Substances observed while performing services as a certified contractor. This notification shall be submitted to the Department in writing within forty-eight (48) hours of observing. When a reportable release is noted, the notification may be submitted jointly by the eOwner, eOperator, and certified contractor.
- 1.4.1.8 All paperwork resulting from performing certified UST System activities shall be submitted to the Department within sixty (60) days of the completion of UST System activities at a site.
- 1.4.1.9 Copies of all paperwork generated as a result of certified UST System work performed shall be retained for a minimum of three (3) years.

1.5 Requirements for Renewal of Certification

- 1.5.1 A certificate holder who intends to seek renewal of their certificate shall submit a notice to renew the certificate at least sixty (60) days prior to its expiration. Upon receipt of such notice, the Department shall furnish a renewal application to the certificate holder.
- 1.5.2 The certificate holder shall submit the completed form to the Department at least thirty (30) days prior to expiration of the certificate.
- 1.5.3 The Department shall notify the applicant in writing no later than thirty (30) days from receipt of the certification application of the issuance or denial of the certification, or the need for further information in order to process the application. Denial of certification for cause shall be explained by the Department at the time of denial. Each reapplication requires a new application fee.
- 1.5.4 Any applicant denied certification for cause may appeal in writing within ten (10) days of receipt of denial.
- 1.5.5 Certification shall be valid for a period of two (2) years from the date of issuance.
- 1.5.6 In the event the certificate holder fails to renew the certification before the expiration date, the certification will expire. Any certificate holder whose certification has expired shall be required to reapply for certification. If the expiration period has been two (2) years or more, the applicant shall apply as a first time applicant.
- 1.5.7 A person whose certification renewal is denied for cause may not reapply for certification for two (2) years from the date of denial.

1.6 Denial of Certification

- 1.6.1 The Department may deny certification if it determines that the applicant has not demonstrated the ability to comply fully with applicable requirements or a standard of performance. The Department may deny any request for certification for cause including, but not limited to:
 - 1.6.1.1 Fraudulently or deceptively attempting to obtain a certification.
 - 1.6.1.2 Failure at any time to meet the qualifications for certification or failure to comply with any provision or requirement of any rules and regulations adopted by the Department.

- 1.6.1.3 Denial or revocation of certification or decertification in any other State. A review panel will evaluate each State's regulations and the reason for denial or decertification on an individual basis.
 - 1.6.1.4 Failure to submit an application or provide all required information.
 - 1.6.1.5 If any information exists to indicate that the person has failed to meet obligations under a contract or has failed to safely perform any UST System project.
 - 1.6.1.6 Has demonstrated repeated deficiencies in performing UST System work.
 - 1.6.1.7 A court has found that the applicant has violated any law for the protection of the environment, or that the applicant breached any duty owed in the performance of UST System related work.
- 1.6.2 The Department shall notify the applicant in writing no later than thirty (30) days from receipt of the certification application of the issuance or denial of the certification, or the need for further information in order to process the application. Denial of certification for cause shall be explained by the Department at the time of denial.
- 1.6.3 Any applicant denied certification for cause may appeal in writing within ten (10) days of receipt of denial. Each reapplication requires a new application fee.
- 1.6.4 A person whose certification is denied for cause may not reapply for certification for two (2) years from the date of denial.
- 1.7 Suspension or Revocation of Certification
- 1.7.1 The Department may, for cause or for violation of this Regulation or applicable DNREC regulations, suspend and or revoke any certification issued under this regulation. Further, in any circumstances where any certificate holder has demonstrated the inability or reluctance to follow safety precautions or project specifications, or has violated a standard of performance, the certification may be suspended or revoked.
 - 1.7.2 Upon notification of suspension or revocation of the certification, the certificate holder shall surrender their proof of certification to the Department within the time period specified in the notice.
 - 1.7.3 A certificate holder whose certification has been suspended or revoked shall not bid, contract, subcontract or directly perform any work involving UST Systems within the State of Delaware during the period of suspension or revocation.
 - 1.7.4 Any officer, director, partner, or owner with a controlling interest of any business entity whose certification has been suspended or revoked shall not serve as an officer, director, or partner, or have a controlling interest, in another business entity certified or applying for certification in Delaware during the period of suspension or revocation. Violation of the foregoing may result in suspension or revocation of the latter business entity's certification.
 - 1.7.5 No certificate holder whose certification was suspended or revoked shall participate in another business entity as a shareholder, officer, director, partner, or profit-sharing employee or investor during the period of suspension or revocation. Violation of the foregoing may result in suspension or revocation of all certificates involved.

- 1.7.6 A certificate holder whose certification has been suspended or revoked for cause in any other State or municipality may have the Delaware certification immediately suspended or revoked.
- 1.7.7 If a certificate holder is barred from bidding on UST System projects for any Federal, State, or local government project, that person's certification may immediately be suspended or revoked within the State of Delaware.
- 1.7.8 In addition to the above, causes for suspension or revocation include, but may not be limited to the following:
 - 1.7.8.1 Providing false information to the Department.
 - 1.7.8.2 Shows evidence of a mental or physical impairment ~~such as (but not limited to)~~ including but not limited to, use of alcohol or drugs, as determined by the Department, which may interfere with the safe performance of UST System work.
 - 1.7.8.3 Knowingly or recklessly disregarding safe work practices while performing UST System work.
 - 1.7.8.4 Failure to comply with any applicable regulations or procedures administered by the Department.
 - 1.7.8.5 Failure to meet the standards of performance in Section 1.4.
 - 1.7.8.6 Failure to comply with the terms of a Notice of Violation or Secretarial Order issued by the Department.
 - 1.7.8.7 Direct violation of applicable DNREC, Occupational Safety & Health Administration (OSHA) or Environmental Protection Agency (EPA) regulations.
 - 1.7.8.8 Failure to comply with contract specifications.
 - 1.7.8.9 Any acts of fraud or conviction of an act of fraud.
 - 1.7.8.10 When any person, claims to have been damaged or injured by the gross negligence, incompetence, fraud, dishonest dealing or misconduct in the practice of contracting on the part of any person certified hereunder shall file suit upon such claims in any of the courts of record in Delaware and recover judgment in such case, revoke the certificate under which such person is operating at the time of the aforementioned violations.
 - 1.7.8.11 Any action deemed by the Department as worthy of suspension and/or revocation.
- 1.7.9 If the Department acts to suspend or revoke any certification under the provisions of this Section, the Department shall promptly notify the certificate holder in writing, by certified mail, of the reason for suspension or revocation. The notice of suspension or revocation will provide necessary information concerning the right to appeal.
- 1.7.10 A person whose certification is suspended or revoked under this Section shall surrender the Certificate to the Department within the time period specified in the notice.
- 1.7.11 A person whose certification is revoked may not reapply for certification for two (2) years from the date of revocation.

1.8 Appeals

1.8.1 Appeal Procedures

- 1.8.1.1 Any business entity or individual who is initially denied certification, denied renewal of certification, or whose certification is suspended or revoked may request an evidentiary hearing before an impartial hearing officer.
- 1.8.1.2 This request shall be made in writing to the Department within ten (10) days of the initial notification of denial, suspension or revocation.
- 1.8.1.3 The evidentiary hearing shall be scheduled by the Department within fourteen (14) days of a written request.

1.8.2 Evidentiary Hearing Procedures

- 1.8.2.1 The Hearing shall be audio recorded by the Hearing Officer but no transcript is necessary. The audio recording shall be kept for at least 90 days from the date that the Department makes its final decision in the matter. Respondents are entitled to have legal counsel present. Witnesses are sworn before testifying. The Hearing Officer decides all objections to evidence.
- 1.8.2.2 The Hearing shall proceed in the following order:
 - 1.8.2.2.1 A brief opening statement is made by the prosecution, then the Respondent, if they so choose.
 - 1.8.2.2.2 The prosecution presents witnesses. After the prosecution is finished with the direct examination of a witness, the Respondent may cross-examine the witness.
 - 1.8.2.2.3 The Respondent presents witnesses. The Respondent may testify. The Respondent and any witnesses for the respondent are subject to cross-examination by the prosecution.
 - 1.8.2.2.4 Closing statements are made by the prosecution and then the Respondent.

1.8.3 The Hearing Officer's Written Report and Decision

1.8.3.1 Introductory Information

- 1.8.3.1.1 Introductory information in the Report and Recommendation includes the date, time and place of the hearing, the persons present and their capacities, and the witnesses who testified.

1.8.3.2 Findings of Fact

- 1.8.3.2.1 The Hearing Officer shall make findings of fact based on the sworn testimony and exhibits entered into evidence at the hearing. Conflicting testimony is noted. If the Hearing Officer chooses to place more weight and credibility on certain testimony in evidence, the reasons are given. If critical testimony is uncontroverted by the opposing party, the Hearing Officer should say so. Evidence that is excluded or given less weight because of objection should be so noted. Exhibits relevant to the decision should be referenced and attached.

1.8.3.3 Conclusions of Law

1.8.3.3.1 The Hearing Officer should explicitly state: "I make the following conclusions of law." This section applies facts to the applicable statute or law.

1.8.3.4 Decision

1.8.3.4.1 The Hearing Officer shall then make a decision based on the Findings of Fact and Conclusions of Law.

1.8.3.5 Procedures

1.8.3.5.1 The written Report and Decision shall be sent to the Respondent by hand-delivery or regular and certified U.S. Mail. The cover letter by the Hearing Officer shall inform the Respondent of the decision and shall state that the Respondent has the right to appeal the decision to the Environmental Appeals Board at that time.

1.8.3.6 Burden of Proof

1.8.3.6.1 The Hearing Officer's Report and Recommendation should explicitly state that the Hearing Officer finds the prosecution proved, or did not prove, its case by a preponderance of evidence.

1.8.3.6.2 Any applicant whose denial, suspension or revocation is upheld by the hearing officer may appeal to the Environmental Appeals Board. Appeals to the Environmental Appeals Board shall be in writing and shall be within ten (10) days of receiving notice of denial, suspension or revocation from the hearing officer.

12 DE Reg. 1267 (04/01/09) (Prop.)