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## Environmental LAW

### New rules for petroleum bulk storage

The Petroleum Bulk Storage Program administered by the New York Department of Environmental Conservation addresses the storage, handling and dispensing of petroleum products.

The law originally applied to "all aboveground and underground petroleum storage facilities with a combined storage capacity over 1,100 gallons" except oil production facilities.

In July 2008, it was revised to address coverage for additional tanks and facilities not regulated by the DEC, and compliance with federal petroleum tank requirements under the Energy Policy Act of 2005.

First, the amendments to the scope of coverage increase the types of tanks and size of tanks that are covered under the program. The existing definition of petroleum is expanded to include all fractions of crude oil or any fraction of such oil, including lubricating oil, hydraulic oil, cutting oil, fuels, greases, petroleum spirits and used oil.

The definition of facility has been expanded so that it addresses the existing locations with combined storage capacity of more than 1,100 gallons, as well as newly included locations with tanks with capacities of more than 110 gallons, and where 10 percent or more of the tank is underground.

Significantly, the newly covered tanks are required to be registered with the DEC, and in compliance with the PBS regulations, by July 21.

As a consequence, facility owners or operators will need to determine whether tanks on their properties need to be added to the facility's existing PBS registration or newly registered with DEC. A review of the applicable standards and checklist may provide a starting point to comply with the new regulatory standards.

If the owner determines that new tanks must be registered, however, it is necessary to take the additional step of ensuring they are in compliance with other PBS provisions related to tightness, inventory monitoring records, corrosion protection, secondary containment and leak monitoring.

The PBS law also has been revised to conform with the federal Energy Policy Act provisions regarding equipment, delivery prohibitions and operator training. Equipment changes include adding the federal mandate that all federally regulated underground storage tanks installed after Feb. 8, 2006 have secondary containment for the entire tank system, i.e. tank, piping and under-dispenser.

Significantly, the Act requires states to prohibit deliveries

when spill prevention is not installed, and to consider the prohibition of deliveries for failure to correct operational violations. As a result, the revised PBS authorizes the DEC to prohibit petroleum deliveries when a tank is leaking or where a leak is probable. Delivery may be prohibited when there are violations of the requirements to install equipment for spill prevention, overflow protection, leak detection, corrosion protection, or secondary containment; and for violations of requirements to properly operate or maintain leak detection, spill, overflow or corrosion protection equipment. In the event a leak exists or is probable, the DEC can mandate testing by the owner, prohibit delivery or, if the owner fails to perform testing within 10 days, the DEC can conduct the tests and recover the costs from the owner. If the DEC determines that deliveries should be prohibited, it will attach a tag to the tank and provide written notice of the reasons to the owner. At that point, the DEC has up to 15 days to provide the owner with an opportunity to contest the delivery stoppage and present proof that the conditions are not in violation of the PBS law.

Finally, the federal statute requires training for operators of each petroleum facility. The law requires trainings for three types of operators: persons with primary responsibility for the on-site operation and maintenance of tank systems (Class A); persons that have daily on-site responsibility for operation and maintenance of tank systems (Class B); and on-site employees with primary responsibility for addressing emergencies presented by spills and releases for tank systems (Class C).

In order to satisfy the training requirement, each type of operator will be required to have their competency evaluated. Pursuant to the EPA, operators must be trained and tested by Aug. 8, 2012. As a result, the DEC must develop appropriate training programs to satisfy the requirements.

The statutory amendments were intended to strengthen the PBS program and ensure compliance with federal law. Tank owners should evaluate their facilities carefully in light of the new provisions as non-compliance with the revised law could lead to DEC enforcement actions or, in the case of leaking or potentially leaking tanks, a delivery prohibition that could halt petroleum sales.

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