

ENVIRONMENTAL

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New Enforcement Rules for the New York Petroleum Bulk Storage Program



On July 21, 2009, the New York State Department of Environmental Conservation (“DEC”) began enforcing certain modifications to the New York State Petroleum Bulk Storage (“PBS”) program. The major modifications to the PBS program include revision to the definitions of “facility” and “petroleum” to include tanks that were not formerly regulated by the DEC under the PBS program. As discussed below, although the latter modification has a direct impact upon the regulation of “operational tanks,” including transformers containing dielectric or other oil, the DEC has decided to exercise its discretion at this time and not assess owners of such tanks for violation of the PBS regulations.

Prior to the recent revisions, a facility was subject to regulation under the PBS program if it had one or more stationary tanks that have a combined storage capacity of over eleven hundred (1,100) gallons of petroleum at the same site. Through modification of the term “facility,” such regulation has been expanded to also include any tank whose capacity is greater than 110 gallons where ten percent or more of the volume of the tank is underground.

Significantly, the definition of “petroleum” has been modified to include “all fractions of crude oil.” This change makes the following tanks subject to the PBS regulation in New York: (1) tanks storing products for operational purposes (e.g., transformers, hydraulic machines, etc.); and (2) tanks storing asphaltic emulsions. On July 8, 2009, the DEC issued its PBS Enforcement Discretion Directive (“Directive”) in response to industry concerns over the regulation of such tanks. In the Directive, the DEC states that it has decided to exercise enforcement discretion at this time and will not subject these tanks to registration and the requirements of 6 N.Y.C.R.R. Parts 613 and 614 until such time as the DEC regulations are revised. Any newly regulated tanks, other than those mentioned above, were required to be registered with the DEC by July 21, 2009 through a modification of the existing PBS license or filing of a registration.

The DEC has not released an anticipated date for its rule-making process to revise the PBS program regulations and address the operational compliance concerns. We recommend that owners and operators assess the impacts of these regulatory changes on their New York operations. ■

If you require further information on this proposed rule and its impact on your organization, please contact any of the Environmental Practice Area members listed on the front of this Alert.