

# Environmental Conservation

## ARTICLE 17 WATER POLLUTION CONTROL

### TITLE 10 CONTROL OF THE BULK STORAGE OF PETROLEUM

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§ 17-1001. Legislative findings and declarations.

The legislature finds and declares that the lands and waters of New York state constitute an irreplaceable resource upon which is founded the well-being of public health, economic vitality and the state's environment; that these resources may be contaminated by spills and leaks of petroleum from active and abandoned petroleum bulk storage facilities; that once contaminated the quality of these resources cannot be completely restored to their original state; and that contamination of these resources must be prevented through improved safeguards in storage and handling.

The legislature declares these spills and leaks to be a threat to the public welfare of the state and hereby exercises the power of the state to prevent these spills and leaks from occurring through the establishment of a state petroleum bulk storage code for new and substantially modified facilities.

§ 17-1003. Definitions.

As used in this title:

1. "Facility" means a single property or contiguous or adjacent properties used for a common purpose which are owned or operated by the same person on or in which are located:
  - a. one or more stationary tanks which are used singularly or in combination for the storage or containment of more than one thousand one hundred gallons of petroleum; or
  - b. any tank whose capacity is greater than one hundred ten gallons that is used for the storage or containment of petroleum, the volume of which is ten percent or more beneath the surface of the ground.

This term shall not include:

- (1) facilities licensed under article twelve of the navigation law;
- (2) facilities regulated under the federal natural gas act;
- (3) a heating oil tank used for on premises consumption at the same site which is not interconnected to any other heating oil tank and is used to store or contain less than one thousand one hundred gallons of petroleum unless such tank is located on a site that otherwise meets the definition of facility given in this subdivision;

(4) tanks eleven hundred gallons or less used to store motor fuel (gasoline or diesel products) for non-commercial purposes (not for resale) at a farm or residence, unless such tank or tanks are located on a site that otherwise meets the definition of facility given in this subdivision;

(5) tanks used to store or contain asphalt, however, tanks used to store or contain asphaltic emulsions are included; or

(6) tanks which have been permanently closed in accordance with regulations promulgated pursuant to section 17-1005 of this title.

2. "Substantially modified facility" means the reconditioning or replacement of an existing tank or installation of a new tank at a facility.

3. "Operator" means any person who leases, operates, controls or supervises a facility.

4. "Owner" means any person who has legal or equitable title to a facility.

5. "Petroleum" means:

a. crude oil and any fraction thereof;

b. any mixture containing crude oil or any fraction thereof; and

c. synthetic forms of lubricating oil, dielectric oils, insulating oils, hydraulic oils and cutting oils.

Such term shall not include:

(1) hazardous waste defined pursuant to section 27-0903 of this chapter;

(2) substances meeting the definition of hazardous substance pursuant to section 40-0105 of this chapter;

(3) animal or vegetable oils that do not contain crude oil or fractions thereof; or

(4) substances that are gases at standard temperature and pressure.

6. "Electronic monitoring system" means an electronic leak detection system, approved by the department, containing a warning system capable of operating on a continuous basis to detect petroleum prior to its reaching ground or surface waters.

7. "Tank" means a stationary device designed to store petroleum, which is constructed of non-earthen materials that provide structural support. The term "tank" includes all associated pipes, lines, fixtures and other ancillary equipment. The term "tank" does not include septic tank; surface impoundment, pit, pond or lagoon; storm-water or wastewater collection system; flow-through process tank; or liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

8. "Spill" or "leak" means any escape of petroleum from the ordinary containers employed in the normal course of storage, transfer, processing or use.

#### § 17-1005. Leak detection.

1. a. The department shall promulgate rules and regulations to provide for the early detection of leaks or potential leaks by owners and operators.

b. Such rules and regulations shall provide for daily measurements and inventory records for petroleum in each facility using a gauge, gauge stick or automatic gauging system as well as product receipt and disbursement records. The department may exempt facilities which are not engaged in the resale of petroleum from the requirements of this paragraph.

2. a. The department shall establish minimum standards and schedules for testing and inspection of those portions of facilities which are over ten years old. Such schedules shall be based on such factors as inventory methods and electronic monitoring systems; facility age, condition and construction type; soil conditions, location of facility relative to water supplies and other environmental factors.

b. The department shall establish, by rule and regulation, criteria whereby facilities are properly closed and thereby released from testing and inspection requirements. The department may require the owner to provide financial assurances to ensure that the facility is properly closed. Any decision by the department with respect to requiring such financial assurances and the methods or instruments which are to be used shall be accompanied by a finding regarding the public interest and shall set forth the reasons therefor.

§ 17-1007. Corrective actions.

1. Any operator shall within forty-eight hours notify the facility owner and the department, and if the facility is located within any county, or city of a population of one million or more which filed with the department a written declaration under subdivision two of section 17-1017 of this title which is approved by the commissioner in written findings the operator shall also notify such county or city of a population of one million or more, of any abnormal loss or gain detected through daily inventory which cannot be explained by inaccurate record keeping, temperature variations, or other causes not related to leakage. For the purposes of this subdivision, "abnormal loss or gain" shall mean a loss or gain of three-quarters of one percent or greater of the total volume of petroleum handled over a period of ten days.

2. Where a leak or spill of petroleum is suspected or appears probable, the department may order the owner to inspect that tank or tanks or associated equipment suspected to be leaking and to test for tightness and structural soundness or may prohibit delivery pursuant to subdivision four of this section. If the owner fails within ten days to conduct such tests as required under this subdivision, the department may conduct such tests for tightness or structural soundness. The reasonable expenses of conducting such tests incurred by the department shall be paid by the owner.

3. It shall be unlawful to continue operation of any leaking tank or associated equipment of a facility. The contents of such tank or equipment shall be promptly removed.

4. The department may prohibit deliveries of petroleum to any tank (i) that is leaking or (ii) where a leak appears probable. If the source of the leak or a probable leak cannot be determined, the department may prohibit deliveries to any tank or tanks that may be the probable source of a leak until such time as the source has been identified, at which time the prohibition on delivery will apply to the leaking tank or tanks. In addition, the department may prohibit deliveries of petroleum to any tank that is in violation of any requirement prescribed by regulation pursuant to this title related to:

- a. installing required equipment for spill prevention, overfill protection, leak detection, corrosion protection or secondary containment;
- b. performing leak detection or inspections of tank systems;
- c. properly operating or maintaining leak detection; or
- d. properly operating or maintaining spill, overfill or corrosion

protection equipment.

(i) The department shall attach a tag to the tank or tanks to identify those tanks to which delivery is prohibited and provide a written notice to the owner and operator specifying the reasons for the prohibition of delivery. The department may consider not prohibiting deliveries of petroleum for up to one hundred eighty days after a determination is made that the facility or tank meets the conditions in this subdivision if such prohibition would jeopardize the availability of, or access to, fuel in any rural and remote areas unless the department has determined that the condition at the facility endangers public health, safety or the environment.

(ii) As promptly as possible thereafter, not to exceed fifteen days, the commissioner shall provide the owner or operator an opportunity to be heard and to present proof that such condition or activity does not violate the provisions of this section or of the rules or regulations adopted pursuant to this title. The commissioner shall adopt rules and regulations describing the procedure to be followed in the prohibition of petroleum deliveries. In adopting such rules and regulations the department shall allow for the owner or operator at any time to submit information to the department to demonstrate that the owner or operator is in compliance with the requirements or has corrected the violation that prompted the department to prohibit deliveries of petroleum and to allow the tank or tanks to be, as promptly as possible, brought back into operation, not to exceed two business days from the department's determination that a tank is in compliance. The department shall use its best efforts to timely determine compliance. The commissioner shall draft such rules and regulations and submit them to the state petroleum bulk storage advisory council for comments within six months of the effective date of this subparagraph.

(iii) Unless otherwise authorized by the department, no person shall tamper with or remove, or cause the tampering with or removal of, a tag attached to any tank under the provisions of this subdivision.

(iv) No person shall deliver, cause the delivery of, deposit, or accept petroleum to any tank or tanks to which a tag is affixed pursuant to this subdivision.

#### § 17-1009. Registration.

1. The department shall consult with the state petroleum bulk storage advisory council to compile a list of facilities within the state. Within thirty days of the promulgation of rules and regulations in accordance with section 17-1005, section 17-1007, and this section of this title, the department shall make available, upon request, a copy of such rules and regulations.

2. All owners shall register the facility with the department. In cases where there are multiple tank owners at a facility, the owners of the tanks may designate one of the tank owners to be an authorized representative to register the tanks. The department is authorized to assess a fee according to a schedule based on the size and type of facility, not to exceed five hundred dollars per facility. Such fee shall be paid at the time of registration or registration renewal. Registration shall be renewed every five years or whenever ownership of a facility is transferred, whichever occurs first. The owner shall notify the department when the authorized representative or operator of the facility changes. In addition to such registration requirements and pursuant to leak detection requirements set forth in section 17-1005 of

this title, notwithstanding any other provision of law, rule or regulation, the department shall duly notify the facility owner of the requirement for such owner to perform the required tightness test on a petroleum bulk storage tank no less than forty-five days prior to the date of the test expiration on the tank. All fees collected pursuant to this subdivision shall be deposited in the New York environmental protection and spill compensation fund established pursuant to section one hundred seventy-nine of the navigation law. The owner must submit, with each application for registration or registration renewal, a five-year fee as follows:

Combined Storage Capacity at Facility	5-Year Fee
Greater than 110 gallons to 1,100 gallons	\$0 per facility
Greater than 1,100 gallons to less than 2,000 gallons	\$100 per facility
Greater than 2,000 gallons to less than 5,000 gallons	\$300 per facility
5,000 gallons to less than 400,000 gallons	\$500 per facility

3. The owner shall, within thirty days prior to reconditioning or replacement of an existing tank or installation of a new tank at a facility, notify the department in writing of such reconditioning, replacement or installation.

4. Owners who become newly subject to registration requirements of this section must, within one year of becoming subject to this section, register the facility and complete any modifications to tanks at the facility to be in compliance with the regulations promulgated pursuant to this title.

§ 17-1011. Access to records and facilities.

1. Every owner or operator shall, upon reasonable notice of the commissioner or his designee, permit a duly designated officer or employee of the department at all reasonable times to have access to and to copy all books, papers, documents and records relating to the daily measurement and inventory of petroleum stored at a facility.

2. Any duly designated officer or employee of the department may, at reasonable times and upon reasonable notice of the commissioner or a designee, enter and inspect any facility, provided that such officer or employee shall be accompanied by the owner or operator or their designee.

§ 17-1013. State petroleum bulk storage advisory council.

1. There is hereby created within the department the "state petroleum bulk storage advisory council" hereinafter referred to as the "council". Such council shall consist of seven members, at least one of whom shall be a representative of operators other than owners in the state, at least one of whom shall be a representative of owners in the state, at least one of whom shall be a representative of municipal corporations, and at least two of whom shall be representatives of organizations whose prime function is the protection of natural resources and enhancement of the environmental quality of the state. The members of the council shall be appointed by the commissioner within three months of the effective date of this title. Each member shall be, by professional training or

experience and attainment, qualified to analyze and interpret matters pertaining to bulk storage of petroleum.

2. One member shall be elected chairman of the advisory council by a majority vote of the members of such council.

3. The members of the council shall serve without compensation for their services as members of the council, except that each of them may be allowed the necessary and actual expenses which he shall incur in the performance of his duties under this section.

4. The council shall have the power, duty and responsibility to:

a. Serve as a working forum for the exchange of views, concerns, ideas, information and recommendations relating to the bulk storage of petroleum.

b. Advise the department on the proposal, preparation and revision of the rules and regulations necessary to carry out the provisions of this title.

c. Request and receive from the department at each meeting of the council any portions of the rules and regulations then available for review, whether in final or draft form, and any supporting documents or other pertinent data.

d. Before promulgation of the rules and regulations required by this title, the commissioner shall first submit such rules and regulations to the council for review. The council shall, within sixty days of such submission, recommend in writing to the commissioner any suggested modifications to such rules and regulations.

5. The recording of council proceedings shall be performed by personnel of the department.

§ 17-1015. State petroleum bulk storage standards.

1. The department shall, pursuant to section 17-0303 of this article, promulgate rules and regulations establishing standards for existing and new petroleum bulk storage facilities which shall include, but not be limited to, design, equipment requirements, construction, installation and maintenance. In proposing, preparing and compiling such rules and regulations, the department shall include consideration of the future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable. The department shall consult with the state petroleum bulk storage code advisory council in proposing, preparing and compiling such rules and regulations. In addition, the department shall consult with the state fire prevention and building code council to assure that such rules and regulations are consistent with the uniform fire prevention and building code.

2. The department shall establish rules and regulations allowing variances from such standards provided that it can be demonstrated to the department that an alternate design, practice or method of storage provides environmental protection equal to or greater than the requirements of such standard.

3. The department shall promulgate rules and regulations establishing training requirements for operators of petroleum bulk storage facilities. The department shall specify training requirements for:

a. persons having primary responsibility for on-site operation and maintenance of storage tank systems;

b. persons having daily on-site responsibility for the operation and maintenance of storage tank systems; and

c. daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from a storage tank system.

§ 17-1017. Preemption of local law.

1. Except as provided in subdivision two of this section, any local law or ordinance which is inconsistent with any provision of this title or any rule and regulation promulgated hereunder shall be preempted.

2. a. Any local law or ordinance of any county, or of any city of a population of one million or more, which is inconsistent with the provisions of this title or any rules or regulations promulgated hereunder shall not be preempted if such local law or ordinance provides environmental protection equal to or greater than the provisions of this title or any rules or regulations promulgated hereunder, and such county or city files with the department a written declaration of its intent to administer and enforce such local law or ordinance which is approved by the commissioner in written findings which set forth the terms of such approval.

b. When any county, or city of a population of one million or more, files with the department a written declaration of its intent to administer and enforce such local law or ordinance which is approved by the commissioner in written findings which set forth the terms of such approval, the department shall continue to administer and enforce any provision of this title with respect to any public authority created under the public authorities law and the public authority shall notify in writing any such county, or city of a population of one million or more when the public authority registers or reregisters a facility with the department.