

APPENDIX M

**RELEVANT SECTIONS OF NEW YORK NAVIGATION LAW,  
NEW YORK ENVIRONMENTAL LAW, &  
PETROLEUM BULK STORAGE REGULATIONS  
FOR PENALTY RECOMMENDATIONS**

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#### NEW YORK NAVIGATION LAW

##### **NL-173 - Discharge of Petroleum Prohibition**

is prohibited.

This section shall not apply to discharges of petroleum pursuant to and in compliance with the conditions of a federal or state permit.

##### **NL-175 - Notification by persons responsible for discharge**

Any person responsible for causing a discharge shall immediately notify the department pursuant to rules and regulations established by the department, but in no case later than two hours after the discharge. Failure to so notify shall make persons liable to the penalty provisions of section 192 of this article. Notwithstanding the provisions of any other law, such notification to the department shall be deemed to fulfill the notification requirements of any other state or local law.

##### **NL-176 - Removal of prohibited discharges**

1. Any person discharging petroleum in the manner prohibited by section one hundred seventy-three of this article shall immediately undertake to contain such discharge. Notwithstanding the above requirement, the department may undertake the removal of such discharge and may retain agents and contractors who shall operate under the direction of such department for such purposes. The commissioner shall develop a system of immediate response type contracts with appropriate agents and contractors. Such contracts shall be subject to the approval of the state comptroller in accordance with section one hundred twelve of the state finance law, however, such approval shall not obligate to any particular contract any specific amount of monies from the fund but shall obligate from the fund on an individual basis at such contracts are utilized the actual amount required to effectuate any contract or any portion thereof. Any necessary approvals of availability of funds for a particular project in accordance with any provision of the state finance law shall be undertaken as soon as practical after clean up and removal procedures are undertaken, or such procedures are ordered by the commissioner.

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#### NEW YORK ENVIRONMENTAL CONSERVATION LAW

##### **ECL 17-0501 - General Prohibition Against Pollution**

1. It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.

##### **17-1003. Definitions**

and in this title:

1. "Facility" means one or more stationary tanks, including any associated pipes, lines, fixtures and other equipment, which are used singularly or in combination for the storage or containment of more than one thousand one hundred gallons of petroleum at the same site, but shall not include facilities licensed under article twelve of the navigation law or regulated under the federal natural gas act.
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 petroleum-based oils of any kind which have been refined, re-refined, or otherwise processed for the purpose of being burned as a fuel to produce heat or usable energy; or which are suitable for use as a motor fuel or lubricant in the operation or maintenance of an engine.
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.

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#### 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 therefore.

#### 17-1007 - Corrective actions

1. Any operator shall within forty-eight hours notify the facility owner and the department 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.

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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. 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.

#### **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. Within one year of the promulgation of the rules and regulations referred to in subdivision one of this section, all owners shall register the facility with the department. The department is authorized to assess a fee according to a schedule based on the size and type of the facility, not to exceed two hundred fifty 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 title to a facility is transferred, whichever first occurs.
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.

#### **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.

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**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 compilation of the state petroleum bulk storage code established pursuant to subdivision one of section 17-1015 of this title, and any 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 code and 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 code and any other rules and regulations required by this title, the commissioner shall first submit such code and 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 code and rules and regulations.

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5. The recording of council proceedings shall be performed by personnel of the department.
6. [Repealed by Laws of 1986, Ch. 426]

#### **17-1015 - State petroleum bulk storage code for new and substantially modified facilities.**

1. The department shall, pursuant to section 17-0303 of this article, promulgate rules and regulations establishing a state petroleum bulk storage code. In proposing, preparing and compiling such code, the department shall consult with the state petroleum bulk storage code advisory council. In addition, the department shall consult with the state fire prevention and building council to assure that the code is consistent with the uniform fire prevention and building code.
2. The department shall establish rules and regulations allowing variances from such code 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 code.
3. Beginning one year after the state petroleum bulk storage code is established, any new or substantially modified facilities shall be constructed and operated in accordance with such code and any rules and regulations pursuant to this title.

#### **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. 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.

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#### **17-1743 - Reporting of spills of liquids stored in bulk**

Any person who is the owner of or in actual or constructive possession or control of more than one thousand one hundred gallons in bulk, of any liquid, including petroleum which, if released, discharged or spilled would or would be likely to pollute the lands or waters of the state including the ground waters thereof shall, as soon as he has knowledge of the release, discharge or spill of any part of such liquid in his possession or control onto the lands or into the waters of the state including the groundwaters thereof immediately notify the department. Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

#### **71-1941 - Penalties and liability for spills of bulk liquids**

1. Except where the owner of or a person in actual or constructive possession or control of more than one thousand one hundred gallons, in bulk, of any liquid including petroleum which, if released, would or would be likely to pollute the lands or waters of the state including the groundwaters thereof can prove that the entry or presence of any part of such liquid onto such lands or into or in such waters causing or contributing to a condition therein in contravention of the standards adopted or deemed adopted by the water pollution control board or any of its legal successor was caused solely by (A) and Act of God, (B) an act of war, (C) negligence on the part of the United States or New York State Government or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or person shall be liable for a penalty of not more than two thousand five hundred dollars for an initial incident resulting in or contribution to such a contravention and for an additional penalty not to exceed five hundred dollars for each day during which such contravention or contribution thereto continues, and in addition shall be liable to the people of the state of New York for the actual costs incurred by or on behalf of the people of the state for the removal or neutralization of such liquid and for any and all reasonable measures taken or attempted to reduce, limit or diminish the extent of such contravention.

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2. Such penalty or reimbursement or both due the people of the state by reason of the liability provided in subdivision one of this section may be assessed by the commissioner by order after a hearing or hearings noticed and conducted and reviewable as provided in title nine of article seventeen, or opportunity to be heard, or be recovered in an action or actions brought by the Attorney General.
3. In assessing the amount of any such penalty the commissioner or court shall consider:
  - a. The type, extent and amount of damage which resulted from such incident.
  - b. The degree of care taken by or on behalf of the party charged to prevent the occurrence of the incident.
  - c. The efforts made by or on behalf of the party charged to reduce or mitigate the damage which resulted from the incident.

#### **PETROLEUM BULK STORAGE REGULATIONS**

##### **6 NYCRR 613.8 - Reporting of Spills and Discharges**

ncident to the

department within two (2) hours of discovery. The results of any inventory record, test or inspection which shows a facility is leaking must be reported to the department within two (2) hours of the discovery. Notification must be made by calling the telephone hotline (518) 457-7362.