

DER - 18 / Petroleum Bulk Storage - New Nonmetallic Underground Piping

New York State Department of Environmental Conservation

DEC Program Policy

Issuing Authority: Carl Johnson

Title: Deputy Commissioner, Office of Air and Waste Management

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Latest Date Revised: Not Applicable

I. Summary: This program policy sets forth the Department’s policy regarding nonmetallic underground piping at Petroleum Bulk Storage (“PBS”) facilities.

II. Policy: On or after January 1, 2006, only fiberglass and flexible underground piping that has been certified as meeting Underwriters Laboratory (“UL”) standard UL-971 (revised effective July 1, 2005) will comply with 6 NYCRR §614.14(d). Any nonmetallic piping installed on or after that date that lacks such certification shall be deemed a violation of 6 NYCRR §614.14(d). This program policy applies only to nonmetallic piping and is not intended as guidance for metal piping.

III. Purpose and Background: This program policy provides guidance to Department Staff and the regulated community regarding compliance with 6 NYCRR §614.14(d). That regulation requires:

“Pipes, fittings and adhesives must be designed, fabricated, and factory tested in accordance with generally accepted structural, material and performance standards for pressurized underground piping systems.”

In general, a consensus standard reflects generally accepted standards. Accordingly, an owner or operator who installs piping that satisfies the applicable consensus standard is deemed to comply with 6 NYCRR §614.14(d).

On October 30, 1995, Underwriters Laboratories, Inc. (“UL”) established Standard UL-971, “Nonmetallic Underground Piping for Flammable Liquids,” the only consensus standard in the United States for thermoset rigid piping (commonly known as FRP or fiberglass piping) and thermoplastic nonrigid piping (commonly known as flexible piping). In January 2004, UL revised that standard with an effective date of July 1, 2005.

A product that satisfies the requirements of UL-971 will display a mark that reflects certification by UL. To obtain that certification, a piping manufacturer must submit its product to UL for testing. The testing process for determining compliance with UL-971 is lengthy and involves several elements, each of which must be satisfied before UL will certify the piping. In addition, a manufacturer must await UL approval before commencing production, as the UL certification applies only to product manufactured after the date of approval.

The Department estimates that there are between 10 to 12 manufacturers that produce fiberglass piping and flexible piping for sale in the United States. To date, only one manufacturer of fiberglass piping and one manufacturer of flexible piping have received UL-971 certification. The Department has learned that a few other manufacturers anticipate receiving certification by the end of 2005. The reason for so few manufacturers obtaining UL certification is unknown. It is unclear whether the industry had sufficient time to comply with UL-971 or a problem exists with the standard itself that makes compliance with the standard more difficult to achieve than was anticipated. Regardless of the reason, more time is needed for other piping manufacturers to obtain UL-971 certification and begin producing compliant product. The Department believes that an additional six months from UL's announced effective date of July 1, 2005 will provide sufficient time for more manufacturers to obtain UL-971 certification and commence production of compliant piping. Accordingly, the Department delayed until January 1, 2006 recognition of UL-971 (revised effective July 1, 2005) as reflecting generally accepted standards for new fiberglass and flexible underground piping for purposes of satisfying the requirements of 6 NYCRR §614.14(d).

IV. Responsibility: The Department's Central Office Division of Environmental Remediation staff are responsible for implementing this program policy, in cooperation with Regional PBS staff and in consultation with the Division of Environmental Enforcement.

V. Procedure: Fiberglass and flexible underground piping installed at a PBS facility before January 1, 2006, which has been certified as meeting UL-971 (adopted October 30, 1995) shall be deemed to comply with the requirements of 6 NYCRR §614.14(d). Beginning January 1, 2006, only fiberglass and flexible underground piping which has been certified as meeting UL-971 (revised effective July 1, 2005) will comply with 6 NYCRR §614.14(d). Any nonmetallic piping installed on or after that date that lacks such certification shall be deemed a violation of 6 NYCRR §614.14(d) and subject to appropriate enforcement action. Enforcement may include, among other things, penalties and removal of noncompliant piping. The Department reserves the discretion to approve other consensus standards relating to nonmetallic piping. Nothing in this program policy affects the right of a PBS facility owner or operator to request a variance from 6 NYCRR §614.14(d).

VI. Related References:

- ◆ Navigation Law, Article 12
- ◆ Article 17, Title 10 of the Environmental Conservation Law ("ECL") and 6 NYCRR Parts 612-614
- ◆ Division of Environmental Enforcement Program Policy: DEE-22 ("Petroleum Bulk Storage Inspection Enforcement Policy")
- ◆ Division of Environmental Remediation Program Policy: DER- 12 ("Application Review Policy for PBS and CBS Registration Applications").

RESPONSIVENESS SUMMARY

Petroleum Bulk Storage - New Nonmetallic Underground Piping

The Department prepared and caused to be published in the November 2, 2005 *Environmental Notice Bulletin* a notice of its intention to delay until January 1, 2006, recognition of UL Standard 971 (revised effective July 1, 2005) as satisfying the requirements of 6 NYCRR §614.14(d). Beginning January 1, 2006, only fiberglass and flexible underground piping which has been certified as meeting UL-971 (revised effective July 1, 2005) will comply with 6 NYCRR §614.14(d). Any nonmetallic piping installed on or after that date that lacks such certification shall be deemed a violation of 6 NYCRR §614.14(d).

In accordance with ECL 3-0301(2)(z), the November 2nd notice provided information on how the full text of the draft policy could be obtained and invited public comment for the thirty-day period ending December 2, 2005. The notice also provided a website address where members of the public could obtain a copy of the draft policy.

The sole comment on the draft policy was submitted by a manufacturer of non-metallic underground piping that has been certified as meeting UL-971. That comment questioned whether the proposed delay in recognizing UL-971 as satisfying the requirements of 6 NYCRR §614.14(d) will bring more manufacturers to the market place. The Department fully considered that issue during the development of the Policy and concluded that more time is needed for manufacturers to obtain UL-971 certification and begin producing compliant product. Six months provides time for the industry to come into compliance with the new standard, but going beyond six months would allow old pipe to be installed that puts the environment at risk due to failures of the old flex pipe. Therefore, the Department has determined to adopt the Policy with no changes.