

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

625 Broadway

Albany, New York 12233-1550

In the Matter

- of the -

PROPOSED PART 613, SUBPART 374-2 AND PARTS 596-599 OF TITLE 6 OF THE
OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF
NEW YORK (PETROLEUM BULK STORAGE, USED OIL MANAGEMENT AND
CHEMICAL BULK STORAGE)

HEARING REPORT

by

_____/s/_____
Michael S. Caruso
Administrative Law Judge

_____/s/_____
P. Nicholas Garlick
Administrative Law Judge

_____/s/_____
Richard A. Sherman
Administrative Law Judge

November 14, 2014

The New York State Department of Environmental Conservation (“Department” or “DEC”) scheduled six public hearings to provide an opportunity for comment on the Department’s proposed new regulations regarding petroleum bulk storage, used oil management and chemical bulk storage.

The purpose of this rulemaking with regard to petroleum bulk storage and chemical bulk storage is four-fold: (1) to incorporate requirements in existing State and federal law, including those relating to operator training and delivery prohibition requirements; (2) to consolidate most existing federal requirements for underground storage tanks into State regulation; (3) to increase consistency by adopting, where applicable, definitions and structure from federal regulation; and (4) to clarify existing petroleum bulk storage regulations. The goals of the used oil management rulemaking is to conform these rules with the updated petroleum bulk storage regulations and to incorporate changes to federal law. This rulemaking includes no new substantive requirements other than those required by law.

A notice of hearing was published in the Department’s *Environmental Notice Bulletin* on August 6, 2014, the *State Register* on August 6, 2014, and the Department’s website on August 6, 2014. In addition, the notice was also published on six dates (August 26 and 29, 2014 and September 2, 5, 9, and 12, 2014) in the following newspapers: the *Times Union*, *Daily Gazette*, *Rochester Democrat and Chronicle*, *Daily Record*, *New York Daily News* and *Newsday*.

The notice of hearing announced six public hearings: two in Albany on October 14, 2014; two in Rochester on October 16, 2014; and two in New York City on October 23, 2014. A public information session was also scheduled at each hearing location before the hearings began. These meetings were held to present the proposed rulemaking and respond to questions prior to the public hearing. In addition to providing members of the public with an opportunity to make oral comments, the Department also accepted written public comments until November 4, 2014.

Albany Hearings

The two hearings held in Albany on October 14, 2014 took place in Meeting Room 6 at the Empire State Plaza, in downtown Albany. The first hearing began at 3:00 p.m. and the second began at 7:00 p.m.

Approximately 15 people attended the first hearing. After opening remarks by the Administrative Law Judge and an introduction by Department Staff member Russ Brauksieck, five people made oral comments.

The first speaker was Ralph Bombardier, Executive Director of the New York State Association of Service Stations and Repair Shops. Mr. Bombardier began his remarks by requesting that New York’s regulations be aligned with federal rules which would increase efficiency for enforcement and eliminate areas where the two sets of rules conflict and are

confusing. He then proceeded to outline four areas of concern in this rulemaking that should be addressed. First, he stated that the language in the proposed regulation regarding inspections of facilities allowed unannounced inspections at any time of day or night, which is contrary to the statutory mandate. Second, he commented on the requirements for operator training and the lack of detail provided in the regulations, including ensuring that approved training is available in multiple languages, that testing be done regularly in convenient locations, and the cost of the exams be set forth in regulation. Third, he raised concerns about the requirements for the retention of as-built plans for underground storage tank systems for systems installed before the requirement was implemented. Finally, he discussed “red-tagging,” or the immediate closure of facilities in certain circumstance, which if not promptly resolved could unfairly impact small business owners and employees.

The second speaker was Steve Doheny, of the Doheny Oil Corporation, Ballston Spa, New York. Mr. Doheny is also a serving member of the Department’s Petroleum Bulk Storage Advisory Council. He stated that he believed the Department had overstepped its authority on some issues and noted as an example the inclusion of language from a guidance document into the proposed regulation regarding secondary containment. This change, he argued, would change existing law, create confusion among the regulated community, force businesses to incur unnecessary additional expenses, and increase the likelihood of violations occurring.

The third speaker was Stephen Weekes, an owner of gas stations in the Albany area. Mr. Weekes expressed concern that the proposed regulations delete the requirement that inspections of facilities occur upon reasonable notice. He noted that inspecting a facility can involve disruptions to the business and involve issues of public safety, if not properly coordinated. In circumstances where a leak or other threat to the environment is suspected, Mr. Weekes agreed that unannounced inspections are appropriate in emergency situations, but in ordinary circumstances unannounced inspections should not be used.

The fourth speaker was Jennifer Celeste, a representative of Sunoco which owns about 180 service stations in New York and provides product to another 600. Ms. Celeste made a number of points: (1) when a surprise inspection occurs, a violation should not be found if the employee on duty is physically unable to lift a manhole cover; (2) as-built plans should not be required for older stations where tanks were installed before the requirement became effective; (3) the Department should accept double wall tanks as a method of secondary containment for smaller tanks; and (4) the process for removing a red tag from a facility should be expedited.

The fifth speaker was Jim Calvin, President of the New York Association of Convenience Stores which represents about 5,000 gas stations. Mr. Calvin stated that: (1) more specificity was needed in the regulations with regard to operator training; (2) situations where a facility would be red tagged should be limited to instances where there is an imminent threat to the environment; (3) the process for removing a red tag should be expedited; (4) the secondary containment requirements should be modified to treat similar tanks the same; (5) as-built plans should not be required for older stations where tanks were installed before the requirement became effective;

(6) the regulations should be enforced against Native American tribes that operate gas stations; (7) the regulations should contain a statement that enforcement throughout the State should be uniform; and (8) inspections should be conducted upon reasonable notice, except when there is an emergency.

This hearing session concluded at 3:42 p.m. after the last speaker had concluded.

The second hearing began at 7:00 p.m. No members of the public spoke on the record and the record was closed at 7:17 p.m.

Rochester Hearings

The two hearings held in Rochester on October 16, 2014 took place at the RIT Inn and Conference Center, 5257 W. Henrietta Road, Henrietta, New York. The first hearing began at 3:00 p.m. and the second began at 7:00 p.m.

Three members of the public attended the first hearing session. After opening remarks by the Administrative Law Judge (ALJ) no attendees offered statements for the record. At approximately 3:40 p.m. the ALJ closed the hearing record.

No members of the public attended the second hearing session. The ALJ closed the hearing record at approximately 7:30 p.m.

New York City Hearings

The two hearings held in New York City on October 23, 2014 took place at St. Francis College, Founders Hall, 180 Remsen Street, Brooklyn, New York. The first hearing began at 3:00 p.m. and the second began at 7:00 p.m.

Seven people attended the first hearing. After opening remarks by the Administrative Law Judge and an introduction by Department Staff member Russ Brauksieck, two people made oral comments.

The first speaker was Donald Griffin, Environmental & Safety Manager of Citgo Petroleum Company. Mr. Griffin began his remarks pointing out that the proposed petroleum bulk storage regulation definition of “out of service” did not allow for seasonal storage, surcharge storage and standby storage as the existing regulation does. In doing so, tanks used for seasonal storage etc. would need to be permanently closed if the tanks had been out of service for twelve months in order to comply with the proposed regulation. Mr. Griffin recommended keeping the existing language in the regulation. Next Mr. Griffin questioned the secondary containment provisions and noted that the proposed change would render most of the Category 1 tanks out of compliance upon the effective date of the regulation. Mr. Griffin then commented on the requirements for cathodic protection and suggested, due to the cost and uncertainty for

operators, that the Department accept alternate methods of corrosion prevention. Mr. Griffin's last comment regarded the designated tank lining provisions contained in the proposed regulation and noted that tank liners are not required in the first instance. He pointed out that having such strict provisions pertaining to liners may have the unintended consequence of discouraging the use of liners. In addition, Mr. Griffin submitted his comments in writing.

The second speaker was David Bier of Motiva Enterprises LLC, a distributor of petroleum products. Mr. Bier began his remarks by reiterating the concern raised by Mr. Griffin related to secondary containment and Category 1 tanks. Next Mr. Bier expressed concerns regarding the overlap and interplay between the petroleum bulk storage and chemical bulk storage regulations and how they apply to petroleum products that contain additives that put them into the chemical category. Tanks are then forced to shift from one program to another and often due to another change of additives switched back to the petroleum requirements. Besides creating extra work for staff he sees little benefit in this scenario. Lastly, Mr. Bier echoed the concerns related to new permanent closure provisions for tanks out of service for more than twelve months.

This hearing session concluded at 3:43 p.m. after the last speaker had concluded.

The second hearing began at 7:00 p.m. and no members of the public were in attendance or spoke on the record. The record was closed at 7:42 p.m.