

## Summary of Assessment of Public Comment Part 613 (Petroleum Bulk Storage – PBS)

### Introduction

This summary reflects the responses of the New York State Department of Environmental Conservation (DEC) to the main comments submitted by the public regarding the newly adopted Part 613 (the petroleum bulk storage [PBS] rule). This rulemaking was proposed on June 16, 2021 and re-noticed on November 16, 2022. Comment periods were held from June 16 through December 6, 2021 and from November 15, 2022 through January 24, 2023. Public comment hearings were held on August 17 November 30, 2021 and January 18, 2023. Approximately 77 comments were received on the PBS regulations during the two comment periods

**Main Themes** (where lists of issues are provided, the summaries of DEC responses are in brackets)

**Applicability Clarifications (Subpart 613-1; Comment 3.1.3):** Comments were received requesting clarification of the applicability of certain definitions and provisions that were either modified or added. Examples include:

- *Category 1/2/3* definitions, which were modified to apply to individual tank system components instead of the entire tank system, thus preventing new components from having to comply with older Category requirements I
- *Install* definition, as it applies to tank retrofits is to be used for the installation of a new tank within an existing tank to avoid re-excavation.
- *Petroleum mixture* definition was restated to be less convoluted, but the benchmarks for what is considered a petroleum mixture did not change.
- *Replaced* definition was broadened to apply to all tank system components.
- The 50% rule for when a piping run must be replaced was moved to Subpart 613-2 to avoid having a requirement in the Definitions section.
- *Tank* definition was updated to match the EPA counterpart, which clarifies that a skid tank could be considered a “tank” if left stationary at the same location for an extended period.
- New section 613-1.16 was copied from the current Chemical Bulk Storage (CBS) regulations (6 NYCRR 598.11) to serve as a general provision that all owner/operators must, upon DEC request, provide evidence of financial responsibility for corrective action, operation, maintenance, and closure of tanks, regardless of the tank types they have at their facility or whether or not the new Financial Responsibility requirements (Subpart 613-8) apply to them.

**Referenced Codes of Practice/Technical Standards (section 613-1.10; e.g., Comment 3.1.13):** Some commenters noted that most current referenced standards were kept, despite newer editions being available and newer equipment being designed/manufactured to these later editions. While DEC acknowledges this, any tank system/components complying with such currently referenced standards may be rendered illegal if the standards were replaced with later editions. At the same time, DEC does not intend to outlaw the use of newer technologies. As such, section 613-1.11 was created to clarify that: facilities may request non-site-specific DEC approval of newer standards before they are formally adopted in a future Part 613 rulemaking.

**Climate Change Considerations (section 613-1.15; e.g., Comment 2.2.1):** Some commenters expressed disappointment that DEC did not add new requirements aimed at mitigating climate risks in the Bulk Storage regulations, given updates to both §17-1015(1) and §40-0113(1)(b) of the

Environmental Conservation Law. While the concerns are valid, the primary objective with the rulemaking was to harmonize existing federal and state regulations on Bulk Storage and to address any discrepancies/conflicts between 40 CFR Part 280 and 6 NYCRR Parts 613 and 598. As a result, an in-depth cost-benefit analysis for the rulemaking was not required, which will be the case for new initiatives with significant associated costs, such as those required to address climate risks. DEC intends to incorporate updates to CRRRA, CLCPA, and other climate change policies in a subsequent rulemaking where those costs and other impacts can be properly evaluated.

**Transfer Activities (paragraphs 613-2.2(d)(4) & 4.2(d)(4); Comment 3.2.3):** Some commenters requested clarification on the changes to the delivery section. Along with the addition of several provisions copied from the CBS regulations, DEC modified the section to specify that transfer activities are the responsibility of either the operator when the on site or the carrier when the operator is not on site. This was done to make clear that spills/overfills during a delivery must not be left unattended for extended periods of time and that there should be no confusion between the operator and the carrier as to who addresses the spill/overfill. Operators should be aware of any deliveries that occur during their shift and be ready to respond as necessary. DEC also clarified that, as in CBS, the term “caution signs” (required to warn oncoming traffic of an occurring delivery) does not preclude any common warning devices such as traffic cones.

**Spill Reporting Responsibilities (subdivisions 613-2.4(a), 3.4(a), 4.4(a); e.g., Comment 3.2.9.1):** Many commenters requested a clarification on the entities listed in subdivisions 613-2.4(a), 3.4(a), and 4.4(a) as being responsible for the spill reporting requirements of sections 613-2.4, 3.4, and 4.4. Commenters were concerned that “any contractor in a contractual relationship with the facility owner, tank system owner, or operator” and “any other party and its contractors who have been retained as part of a business transaction relating to the facility” could be broadly construed as anyone who works for or with the facility.

DEC clarified that the list of responsible entities was added to explicitly state that reporting requirements apply to the enumerated parties when they have knowledge of an actual or suspected spill, regardless of whether they caused and/or first discovered the spill. This was done to reduce the possibility of a spill going unreported due to confusion between these entities. Timely spill reports should facilitate prompt spill response, investigation, and/or remediation from the facility. ‘Contractors’ were included to highlight that such parties are acting on behalf of the owner/operator and are thus required to report spills though the term itself is meant to describe those engaging in activities related to the PBS tank systems at the facility.

**Operator Training (section 613-2.5; e.g., Comment 3.2.10):** Some comments expressed reticence at the changes made to the Operator Training requirements. For instance, some questioned the change to the applicability of Class C Operator training, which DEC reworded to apply to “every individual [at the facility] who meets the definition of Class C Operator” to match the existing language in 40 CFR 280.241(b). Federally regulated facilities should already be in compliance with this provision.

DEC is also now requiring retesting of Class A and Class B Operators every five years, which a commenter claims is unwarranted, redundant, and costly. DEC responded that Operators are expected to know how to properly operate/maintain the tank system. Testing results in fewer preventable spills reported/cleaned up and improvements to the facility’s compliance history. Re-testing sustains those benefits, thereby fostering a proactive mindset regarding regulatory compliance. The Operator Exams continue to be free of charge and can be taken online at the user’s convenience; additionally, passing the

exam should not be difficult for “minimally competent” Operators. As such, DEC believes that retesting once every five years is not a burden.

A commenter questioned the removal of reciprocity as a pathway to Class A/B Operator authorization. DEC clarified that this was originally added to the 2015 regulations as a concession to multi-state Operators who had already been authorized by a neighboring state prior to promulgation of DEC’s own Operator Training program. However, this resulted in authorization of Operators without demonstrating either their competency as an Operator or their knowledge of DEC regulations, which is antithetical to the original purpose of Operator Training. As such, instead of requesting reciprocity, Operators will now have to take the Operator Exam.

**Out-of-Service/Permanent Closure Requirements (subparagraphs 613-2.6(a)(1)(ii), 3.5(a)(1)(ii), and 4.5(a)(1)(ii); e.g., Comment 3.2.14):** The draft Part 613 featured minor exemptions to the out-of-service requirements in the form of “standby storage” and any “facility [that] has received approval from the Department.” A commenter requested clarification of these two terms.

DEC previously exempted standby, seasonal, and surcharge (SSS) storage from the 1985 out-of-service requirements because such tanks were intended for intermittent use and do not receive/dispense petroleum on a frequent basis, unlike most PBS tank systems. In 2015, DEC also incorporated into Part 613 the 12-month clock provision from the New York State Fire Code for consistency. As required by Executive Law section 383: all tank systems that have been out of service for more than 12 months must be permanently closed, unless the tank system in question is an AST system at an “operating facility” (5704.2.13.1.3 & 5704.2.13.2.3 in the 2020 edition of the Fire Code). This provision and the SSS storage exemption were in conflict, as the 12-month clock has no such exemptions in the Fire Code. To resolve this, the SSS storage exemption was deleted before the PBS regulations were adopted in 2015. Unfortunately, this also means that the exemption for standby storage cannot exist in the new regulations, and it was also deleted.

The second exemption was intended to reflect specific situations where DEC forgoes the out-of-service requirements, often as part of a consent order with the facility. However, upon further review, DEC determined that the provision is redundant as DEC’s other enforcement authorities remain, with or without this exemption; thus, this exemption was removed as well. Consequently, the following requirement for documentation “explaining why a tank system that no longer receives or dispenses petroleum is not out of service” has also been deleted.

**Comment Period Deadline Extension/Informational Presentation (e.g., Comment 4.1.1.1):** In initial comments received during summer 2021, commenters requested an extension to the comment period deadline and/or and informational (question-and-answer) presentation on Part 613 to explain the regulatory changes. The comment period initially began on June 16, 2021, and was initially set to end on August 23. DEC extended the deadline to December 6, 2021, giving the regulated public additional time to review the draft regulations. Additionally, DEC re-noticed the rulemaking on November 16, 2022, with an additional comment period ending on January 24, 2023. Thus, additional time was provided.

## Assessment of Public Comment

### Part 613 (Petroleum Bulk Storage – PBS)

#### 1. General Comments in Support

##### 1.1. The unification of state and federal Petroleum Bulk Storage (PBS) regulations is appreciated.

Comment 1.1.1. The [commenter association] represents thousands of motor fuel retailing locations across the state that would be impacted by these regulations.

We appreciate the opportunity to comment on these regulations and extend our thanks to the Department for granting an extension of the comment period allowing affected parties more time to analyze the rulemaking.

The end product reflects countless man-hours invested by the Department to harmonize Part 613 with corresponding federal requirements. We commend the DEC staff for their meticulous efforts.

Response 1.1.1. Comment noted.

Comment 1.1.2. [Commenter] welcomes the opportunity to submit these comments in response to the New York State Department of Environmental Conservation's (DEC) proposed amendments to Title 6 of the New York State Codes, Rules, and Regulations (NYCRR) Part 613, Petroleum Bulk Storage (PBS) regulations and Title 6 NYCRR Parts 597/598, Chemical Bulk Storage (CBS) regulations.

[Commenter] has a large number of regulated petroleum bulk storage (PBS) tanks and chemical bulk storage (CBS) tanks including both above-ground storage tanks (ASTs) and underground storage tanks (USTs) and as such has a significant interest in the proposed regulations and their implementation.

We understand that DEC is proposing these regulatory amendments to harmonize the existing State requirements with the federal requirements so that State and federal regulatory requirements are more consistent. We appreciate that the proposed regulations exclude wastewater treatment tank systems from being regulated facilities under the PBS regulations where they are either an AST or a UST regulated under Sections 307(b) or 402 of the Clean Water Act, as well as excluded under the financial responsibility requirements. [Commenter] comments, set forth below, primarily concern operational flexibility for facilities where such flexibility would improve operations without a detrimental impact upon the environment, and we request clarification on the financial responsibility requirements for the local government bond rating provisions.

...

[Commenter] appreciates this opportunity to submit these comments on the DEC proposed rulemakings for the petroleum bulk storage tanks (Title 6 NYCRR Part 613) and chemical bulk storage tanks (Title 6 NYCRR Parts 597/598).

Response 1.1.2. Comment noted.

## 2. General Comments on Part 613

### 2.1. The spill report form should be modified to reflect the updated Part 613.

Comment 2.1.1. And then this is -- doesn't -- my next comment doesn't really go to any of the exact subsections of the new regs, but it goes to the spill report form. And I was just wondering and maybe suggesting that the spill report form be updated to reflect what these new regulations say. Specifically in the sense of, you know, if there can be a box added for when a spill is reported because of a suspected leak response to, you know, a release or, you know, a spill. I think those are very different things that can happen. And, you know, issues arise when a -- a new spill report number is, you know, filed and reported when really it was just a suspected leak and maybe actually that there was never really a new spill and it was historical contamination. But just having that new spill report filed and a new number issued it causes litigation headaches and can lead to, you know, delayed corrective action. And I think can just cause issues. So my suggestion is that the spill report form be updated after these new regs are finalized to kind of match what the new regs say specifically related to suspected leaks and a spill.

So, okay. Those are my comments. Thank you so much for the opportunity.

Response 2.1.1. DEC is working to resolve such technical issues on its end of spill reporting.

### 2.2. Part 613 and its corresponding guidance documents do not consider climate impacts on facilities that store petroleum.

Comment 2.2.1. The Department of Environmental Conservation has proposed amendments to its regulations on petroleum and chemical bulk storage facilities (*State Register* I.D. ##ENV-24-21-00008-P & ENV-24-21--00009-P). Comments on the petroleum bulk storage (PBS) and chemical bulk storage rules (CBS) were originally due in August, but the comment period was extended until December. Unfortunately, the hurricane season was not postponed, and since August our residents have experienced several more devastating weather events, including a storm surge warning for Long Island from Tropical Storm Henri, followed by record-breaking rainfall and deadly flooding from Hurricane Ida. The accelerating pace of climate-driven extreme weather events makes it vitally important to strengthen our efforts to mitigate the impacts of flooding and storm surges.

These efforts must include requiring additional safeguards for installations that store petroleum products and hazardous substances. In 2014, the Legislature recognized the need for consideration of climate risk including sea level rise, storm surges and flooding and enacted the "Community Risk & Resiliency Act" (Ch.355, L. 2014). This law required agencies to incorporate assessments of such risks into their processes for making decisions on permitting and funding projects. The statute explicitly incorporated such consideration into the Department's regulatory oversight of PBS and CBS facilities, in recognition that by their very nature these facilities pose particular hazards to health and safety which would be greatly exacerbated from climate-related disasters.

Specifically, Environmental Conservation Law §17-1015(1) was amended to require that, in “proposing, preparing and compiling” regulations for PBS facilities, “the department shall include consideration of the future physical climate risk due to sea level rise, and/or storm surges and/or flooding.” This statutory requirement applies to the development of regulations affecting existing as well as new tanks. With regard to CBS facilities, Environmental Conservation Law §40-0113(1)(b) was amended to include “future physical climate risk due to sea level rise, and/or storm surges and/or flooding” as environmental factors on which the Department’s regulations shall be based. Unlike other provisions of the Act, existing facilities are subject to climate risk reviews: the PBS provisions explicitly apply to regulations for “existing and new facilities,” while the CBS provisions require consideration of climate risk factors not just for design and construction but also operation, repair, maintenance, monitoring, testing and inspection of facilities, whether new or existing.

These statutory provisions explicitly require the Department to consider climate risks in developing regulations on PBS facilities and to factor consideration of such risks into its CBS facility regulations. If the Department gave any consideration to climate impacts in developing these proposals, it does not show in the proposed texts or supporting documents. All that appears are the following short sentences that would be added in new sections of the regulations:

*§613-1.15 Future climate risk. In addition to the requirements set forth in this Part, facilities must take into account the provisions of ECL section 17-1015 to comply with the provisions of this Part.*

*§598-1.18 Future Climate Risk. In addition to the other requirements set forth in this Part, all facilities must take into account the provisions of ECL Article 17 Title 10 section 15 to comply with the provisions of this Part.”* (It is unclear why this provision contains an apparent reference to the statutory provision on standards for PBS facilities. It should refer to §40-0113, which governs regulation of CBS facilities.)

The proposed PBS regulations include one climate-related addition: a new requirement for uplift protection for certain “tanks that may become buoyant because of a rise in the water table, flooding, or accumulation of water“(renumbered §613-2.2(k)(2)). However, this provision is based on an industry standard that was updated about 10 years ago and would only apply to tanks installed since October 11, 2015. Other than this, nothing in either proposal provides any information on how facility operators should “take into account” the statutory requirement for consideration of climate risks.

In fact, it appears that the only guidance that the Department has developed to date on sea level/storm surge/flooding issues concerns elevation of newly-proposed structures. This dearth of guidance is especially problematic in light of the potential risks of inaction on this topic and only marginally relevant to registered PBS and CBS facilities. Perhaps more importantly, the existing guidance does nothing to enhance protection for existing tanks. This stands in marked contrast to guidance that has been released by other jurisdictions up and down the Atlantic Coast, including the Environmental Protection Agency Region 6’s regional response team and the Province of Nova Scotia, as well as the flood guide issued by the Environmental Protection Agency’s underground storage tank (UST) program that provides detailed guidance on both underground and aboveground storage tanks at UST facilities.

In limiting its focus to new structures only, the Department ignores the fact that older tanks typically pose a greater risk of failure due to climate-related damage. Even under the proposed regulations, tanks and components installed before October 11, 2015 must meet less stringent standards than those installed after that date, and tanks and components installed before

December 27, 1986 are subject to even less stringent requirements. These tanks, which have fewer safety features and are more likely to be located near our neighborhoods and schools, would appear to present the greatest need for retrofitting and action plans to prevent climate-related failures. Addressing the risk of toxic releases from such operations is a core purpose of the Community Risk & Resiliency Act.

Instead of merely requiring facility operators to “take the statute into account,” the Department should incorporate climate hardening and response requirements into the regulations to the maximum extent practicable. DEC should include clear language in the regulations that the enforcement measures provided for in law may be used if it is determined that the location, design and condition of a tank or tanks indicate that leaking due to climate-related damage is probable. In addition, the regulations should specify that the Department will issue supplemental industry-specific guidance on mitigation measures that must be taken if, in the determination of the facility or the Department, the level of risks requires such actions.

This guidance should require consideration of physical improvements such as berm standards, secondary containment of aboveground piping and the use of stiffening rings to prevent buckling, as well as operational standards to prevent tank rupture. When significant risks are identified, a facility-specific plan for implementing protective measures should be submitted to the Department for approval. The regulations and all guidance should clearly indicate that these guidance documents are “requirements prescribed by regulation” within the meaning of Environmental Conservation Law §17-1007 (4) or §40-0011(2), and that any failures by a tank operator to take the required steps set forth in the guidance to assess climate risk and undertake any indicated equipment or operational changes may be found to constitute violations under these statutory provisions. This will ensure that the requirements of the Community Risk & Resiliency Act for PBS and CBS facilities are fully implemented.

The Department should also rethink its current reliance on the concept of a “100-year floodplain,” which is continued in the proposed regulations, since recent storms have made it clear that many more locations are vulnerable to storm surge and flooding than previously thought.

Response 2.2.1. The issues that the commenter raised are valid and do require careful consideration as part of the Community Risk and Resiliency Act (CRRA), and DEC had considered said issues in this rulemaking.

However, the primary objective of this limited rulemaking is to consolidate existing federal and state regulations on petroleum bulk storage. The commenter’s suggested additions would impose new initiatives with significant associated costs which, in turn, will necessitate an in-depth cost-benefit analysis – both of which are beyond the scope of this rulemaking.

PBS and CBS are part of the DEC Bulk Storage programs, which also includes the Major Oil Storage Facility (MOSF) regulations. Addressing the bulk storage regulations with regard to climate change will be a multi-tiered process. DER staff will meet with DEC Climate Bureau staff in May 2023 to ensure that CRRA and Climate Leadership and Community Protection Act (CLPCA) concerns are addressed appropriately, and in January 2024, DEC will initiate the revision process for PBS and MOSF.

### **2.3. DEC should update its guidance documents to reflect the updated Part 613.**

Comment 2.3.1. As part of proposing new regulations the Department should also closely evaluate existing regulations and guidance which may also include erroneous or outdated information. For example, the guidance documents posted on the website include the *2008-DER-17 Guidelines for Inspecting and Certifying Secondary Containment Systems of Aboveground Petroleum Storage Tanks at Major Oil Storage Facilities*. This document, identified as closed for public comment, still contains the draft watermark despite being dated 2008. There are other examples as well, each of which call into question the Department's attention to this important issue.

Response 2.3.1. DEC cannot issue final guidance documents until the applicable regulations have been promulgated. However, DEC is working to finalize the guidance documents, so they are available as soon as possible after the regulations are adopted.

### **3. Specific Comments on Part 613**

#### **3.1. Comments on Subpart 613-1: General Provisions.**

Comment 3.1.1. Page 1, Section 613-1.2(e) states that every “contractor in a contractual relationship with the facility owner, tank system owner, or operator, and any other party and its contractors who have been retained as part of a business transaction relating to the facility, is subject to” the various specific sections that follow.

We are unclear to whom this language applies. As drafted, this section makes anyone who has a contractual relationship with the facility responsible for the listed sections. We would request an explanation and clarification of the language.

Response 3.1.1. DEC always recommends that, regardless of party-specific spill reporting requirements, all known or suspected spills should be reported as quickly as possible. This ensures proper compliance with Article 12 of the Navigation Law (especially when the requisite leak investigation and response are ongoing) and prompt coordination between DEC and the facility can occur.

That said, there has been a lot of confusion about who is required to report known or suspected spills per the PBS regulations. Historically, there have been situations where contractors communicate information about a spill to the facility owner/operator, who then assumes that the contractor had already reported it; this results in unreported spills. To avoid this confusion – and to allow for prompt coordination on investigation and remediation – contractors have been added back to the list of entities required to report spills. ‘Contractor’, in this sense, is limited to those engaging in activities related to the PBS tank systems at the facility, on behalf of the owner/operator.

Comment 3.1.2. A definition of Biofuels would provide better understanding of what is considered biofuel.

Response 3.1.2. The term ‘biofuel’ refers to forms of fuel largely derived from biomass; in the draft Part 613, instances of the term are accompanied by references to gasoline-ethanol blends and biodiesel (“containing either greater than ten percent ethanol or greater than 20 percent biodiesel”). In addition, defining ‘biofuel’ in Part 613 now may not adequately cover any cutting-edge fuel blends that may appear in the future. As such, a ‘biofuel’ definition is not necessary.



Comment 3.1.3. Page 2, Section 613-1.3(e), (f) and (g) contains an amendment to the Category 1, 2, and 3 systems to include components of the tank.

What is the reason for this change? Does replacement of any Category 1 and 2 system component automatically re-designate the system to Category 3?

Response 3.1.3. The introduction of the Categories was originally intended to date the tank system, the implications being that the rest of the tank system was installed at the same time as the tank, and that tank systems of a certain Category are constructed a certain way (and are similarly prone to leaks). However, some tank system components have been replaced over time while others – such as the tank – were kept, thereby requiring newer components to comply with requirements for older Categories.

To rectify this, the Categories were redefined to apply to the individual tank system components instead of the entire tank system. As such, a replaced component is subject to applicable Category 3 requirements, while the other components still comply with the specific requirements effective at the time of installation.

Comment 3.1.4.1. And then I see that the term discovery was -- and this also -- this next comment pertains to Section 2.4. I see that the term discovery was added and defined rather. And I guess my comment is I'm not sure that the definition makes anything clearer. And then it also includes someone who's informed of an observation which I think is broad and may not have been ... So basically I'm saying this definition is a little bit confusing and I'm not sure it's totally consistent with the rest of Section 2.4.

Comment 3.1.4.2. Page 5, Section 613-1.3(t) defines the term “Discovery.”

The definition of “Discovery” appears broad and could be subject to various interpretations. This is especially so of the phrase “being informed of an observation.” We request clarification for the definition.

Response 3.1.4. Historically, there have been situations where contractors communicate information about a spill to the facility owner/operator, who then disregards the contractor’s report, assumes that the contractor had already reported the spill, and/or claim that the spill did not warrant reporting because they themselves did not witness the spill firsthand; as a result, the spill is not reported in a timely manner.

‘Discovery’ was added to Part 613 specifically to ensure that known and suspected spills are reported accordingly. The definition clarifies that the first person to discover a spill is not the only party responsible for reporting the spill, and that being informed of a spill also necessitates reporting. Timely spill reporting should then lead to prompt spill response, investigation, and/or remediation (as necessary) from the facility.

Comment 3.1.5. Page 8, Section 613-1.3

In Subdivision (ah), which defines heating oil, will No. 6 fuel oil be deleted in light of Chapter 591 of the Laws of 2021?

Response 3.1.5. DEC is reviewing this new statute to determine if clarification of this new rule via regulation is needed; it will not be reflected in this rulemaking.

Comment 3.1.6. Page 9, Section 613-1.3(ah) the definition of “Heating oil” is modified[;] page 11, Section 613-1.3(bb) defining “Petroleum mixture” is amended[;] and page 13, Section 613-1.3(bg)(2) adds language to the term “Replaced” to describe the removal and installation of tank system components.

Do these changes alter the current applicability and requirements of the PBS regulations? For example, how does the additional language in the “Replaced” provision affect tank systems that have components replaced?

Response 3.1.6. The changes to all three definitions are intended to clarify/simplify their meanings and do not necessarily change their applicability. ‘Replaced,’ was expanded such that the term can be used for all tank system components; the 50% rule for piping was moved to the Subpart 613-2 to avoid the imposition of requirements in the Definitions section (613-1.3).

Comment 3.1.7. *613-1.3(am) ‘Install or installation’ means the emplacement of a tank system, or any part thereof, [in] beneath, on, or above the ground. The movement of a tank from one location for use in a different location constitutes the installation of [the] a tank system. Tank retrofits that create a new primary and/or secondary wall constitute a new tank installation.*

Comment: For “install or installation”, does “retrofitted” mean an entirely new wall or some percentage of change. This could be interpreted as if any retrofit (very minor work) was done, a simple retrofit on a Cat #1 tank could mean that the entire tank system needs to be upgraded to a Cat 3 (which would likely be impossible). A definition of retrofitted would be helpful. Could a Cat #1 or #2 tank system even be retrofitted with a new containment dike because it would have to meet Cat 3 requirements and the tank codes may be different? Does retrofitting/repairing a secondary containment liner on a large bulk tank farm containing Cat #1 or #2 tanks mean that the whole facility and tank systems now need to meet Cat 3# requirements? Can a Cat #1 or Cat #2 tank be moved (same property and location) without being considered a new installation since the Cat #1 and Cat #2 tanks may not meet the Cat 3 referenced standards.

Response 3.1.7. “Retrofit” (under the definition of ‘installation’) refers to the installation of an entirely new tank (either a primary and/or a secondary wall), therefore complying with the requirements of the latest Category; a retrofit does not change the tank Category. The term does not refer to tank repairs or the installation of any other equipment.

‘Installation’ means the placement of a tank beneath, on, or above the ground; physically moving a (stationary) tank to a new location means that it is being installed at another location. The tank cannot be expected to function – as it did in its previous location – without treating it like a new tank. In its new location, the tank must be connected to new piping/ancillary equipment/etc., which necessitates pre-use/as-installed tightness testing, among other requirements. As such, the tank is subject to requirements for the latest tank Category. If a tank must be moved around a property, DEC recommends using either a temporary tank system or a mobile tank.

Comment 3.1.8.1. *613-1.3(ap) 'Lining' means a coating of [a material] noncorrodible epoxy-based resins (or an equivalent coating) that is bonded firmly to the interior surface of a tank and which is compatible with the petroleum stored, for the primary purpose of isolating the tank wall from the stored petroleum to prevent internal corrosion.*

Comment: For “Lining”, consider changing “wall” to surfaces (floor, wall, roof, appurtenances, etc.) or defining what DEC means by wall. Consider changing “prevent” to reduce or minimize.

Comment 3.1.8.2. DEC appears to use “wall” to mean any internal tank surface (lining section).

They may want a definition for wall or change the wording of “wall”. Otherwise, people may interpret wall as just the tank wall and not the floor or roof.

Response 3.1.8. The language in subdivision 613-1.3(ap) has been modified to use the term ‘interior surface’ in place of ‘wall’.

Comment 3.1.9. *613-1.3(bs) 'Tank' means [the portion of a tank system that contains much of the petroleum in the tank system] a stationary device designed to store petroleum that is constructed of non-earthen materials that provide structural support. Each section of a compartmented tank [will be] is treated as an individual tank that is part of the same tank system.*

Comment: For “Tank”, “stationary” was added to the definition. Does that mean that skid tanks that move around the site (i.e. construction site tanks) would not be considered a tank?

Response 3.1.9. A skid tank could be considered a ‘tank’ if left stationary at the same location for an extended period of time. However, the same skid tank could also be considered a ‘temporary tank system’ (subdivision 613-1.3(bv)) if used for the purpose described by the commenter – a mobile tank used around a property (e.g., a construction site) for a period of 180 consecutive days (or less) in a 12-month period.

Comment 3.1.10. *613-1.3(bw) 'Tightness test' means a test that is capable of detecting a leak from a tank system of 0.1 [gallons] gallon per hour, unless expressly stated otherwise within in this Part, with a probability of detection of at least 95 percent and a probability of false alarm of no more than [five] 5 percent (with a threshold for declaring a leak of 0.05 [gallons] gallon per hour). A tightness test is valid only if it is performed by a person who has been trained and certified or credentialed by the manufacturer/vendor [of] in the test method utilizing the testing equipment.*

Comment: For “Tightness test”, would DEC consider a pressure test in accordance with B31.3 a tightness test?

Response 3.1.10. DEC will consider adding to the list of acceptable tightness testing methods that meet the requirements of Part 613 to include more methods such as leak tests performed in accordance with ASME B31.3.

Comment 3.1.11.1. Page 18, Section 613-1.7(k)(1) reserves a place for the effective date.

What is the proposed effective date of the amended regulations?

Comment 3.1.11.2. Page 17 Subdivision 613-1.7(f), page 18, Paragraph 613-1.7 (k)(1), page 19 Subdivision 613-1.9(b), page 94 Section 613-2.5 (c)(4), page 175 Subdivision 613-4.3(e) all reserve a place for the effective date.

This comment supplements our request made in our prior submission (requesting the timing of the effective date). We respectfully request that in setting the effective date, the Department allow ample time for the regulated community to learn and understand the changes included in the adopted regulations.

Comment 3.1.11.3. [Thanks] -- for -- for having this meeting. I have a question [or] rather than a comment. Just what is the tentative, effective date of the new regulations once, you know, the DEC has had the chance to review all comments? What are the next steps and tentative effective date of the regulations. That's all I'd like to know. Thank you.

Response 3.1.11. The effective date of the regulations will be determined after the draft regulations are published in the State Register; afterwards, there will be a short window before the regulations are effective.

Comment 3.1.12. Page 19, Subdivision 613-1.9(a)(2) states, "The current registration certificate must be signed by the facility owner and displayed at all times in a conspicuous location at the facility" and page 22, Subdivision 613-1.9(c)(7)(ii) states, "Within 30 days after permanent closure, the facility owner must submit an application to the Department indicating that the tank system has been permanently closed. The application must be signed by the facility owner."

Would a designated facility representative be allowed to sign the registration certificate? This could avoid difficulties if the owner is unavailable.

Response 3.1.12. DEC already allows for authorized representatives to submit registration applications on behalf of the facility – there is a form available to include with the application to facilitate this. If the authorized representative is the same as the one designated by the facility on that form, then that should suffice.

Comment 3.1.13. Why is NY DEC referencing PEI RP 100 (2011 version) and not referencing the latest version of PEI RP 100 (2020 version) for installation standards? The latest version is PEI RP 100 is 2020 and should be the standard referenced. The latest version allows for fiberglass tank risers to be used which will help with tank corrosion issues.

Response 3.1.13. DEC recognizes that some of the standards referenced in Part 613 have newer iterations. However, tanks previously installed in accordance with a referenced standard may be made illegal if the standard was replaced with a later edition. Replacing a referenced installation standard could also result in significant costs that DEC does not intend to impose on regulated facilities at this time. Such costs will necessitate an in-depth cost-benefit analysis – something not involved in this rulemaking. As such, DEC will consider referencing newer standards (such as the 2020 edition of PEI RP 100) in a future rulemaking.

Comment 3.1.14. Many of the dates on the referenced standards are not the most current versions. Is that DEC's intent? Would using a newer version of the same standard be considered a violation of the DEC regulations? Some of the referenced standard dates may not meet OSHA or NYS

Fire Code requirements. Also, some of the standards with the older dates reference items that are considered obsolete or are not allowed in new versions of the same standard.

Response 3.1.14. See Response 3.1.13. DEC recognizes that newer, equivalent technology may conform to a later edition of standards already referenced in Part 613; as such, DEC may approve of the use of such standards through subdivision 613-1.11(a).

Replacing referenced standards with newer iterations will make illegal any existing tank system components that meet the currently referenced editions of those same standards. And as DEC has stated its intent not to impose significant costs during this rulemaking, these standards will stay as they are.

Comment 3.1.15. *613-1.13(b) Enforcement*

*(b) Where a spill of petroleum has occurred or is suspected, the Department may order the facility to inspect or test any tank system, location, and/or associated equipment which might be the source of the actual or suspected spill and to test for the tightness and structural soundness. If the facility fails to conduct such inspections and tests within ten days after receipt of the Department's order, the Department may conduct inspections or tests for tightness. The expenses of conducting such tests as ordered by the Department must be paid by the tank system owner.*

Comment: 10 days may not be an adequate time frame to safely inspect a large storage tank that needs to be emptied. Also, the availability of certified testing companies may pose issues with meeting the 10-day timeframe.

Response 3.1.15. The language of this provision says that DEC “may” respond by doing our own testing if the facility fails to conduct the testing in this timeframe. It does not mean DEC will always choose to do so depending on the circumstances. It is recommended that the facility remain in communication with the Department during this process to avoid the need for this to happen – if a facility has been in communication about what is going on and the Department agrees more time is allowable under the circumstances then that may be agreed to at the time between the parties. There may be also circumstances for example where DEC orders the facility to test the suspected source equipment and subsequently the actual source of contamination is found before the ten-day timeline thereby making the testing potentially unnecessary. Open communication is the best way to make sure that both the facility and the Department are on the same page. The priority as always is to ensure the source of contamination is located so that prompt response and containment can occur.

Comment 3.1.16. If [section] 613-1.16 (Financial Responsibility) is only applicable to USTs (as Subpart 613-8 seems to indicate) then this should be clarified.

Response 3.1.16. The language of section 613-1.16 was copied from the CBS regulations (6 NYCRR 598.11) where it acts as a general provision that applies to all owners/operators, regardless of the type of tanks located at the facility.

The language was originally taken from ECL Section 40-0113(1)(g), but also features in ECL Section 17-1005(2)(b). Neither of these provisions suggest that the authority to require financial assurance is limited to only ASTs. Both statutes also state that the Department may require proof of financial assurance particularly to ensure that facilities have adequate

assurances in the case of facility closure. As such, the provision was copied from Part 598 to Part 613 to ensure consistency and clarity.

### 3.2. Comments on Subpart 613-2: UST Systems Subject on Both Subtitle I and Title 10.

Comment 3.2.1. The below sections should be eliminated from the options for overfill protection because there are no procedures available for verifying on a 3-year basis that the overfill equipment will meet any of these requirements. PEI RP 1200 acknowledges these options in the federal regulations [;] however, the industry standard does not provide procedures for verifying the equipment meets these options because the standard recognizes that it is not possible to determine that the overfill equipment works according to (c), (d) and (e). Also, from a technical standpoint, it is not feasible for a technician to verify that the overfill equipment will meet these options. Options available should be (a) and (b) only. (c), (d) and (e) should be removed. Other states have removed these options.

*(c) restrict flow 30 minutes prior to overfilling so that none of the fittings located on top of the tank are exposed to petroleum due to overfilling;*

*(d) alert the person responsible for transfer activities with a high-level alarm one minute before overfilling so that none of the fittings located on top of the tank are exposed to petroleum due to overfilling (note: vent whistles cannot be used as high-level alarms); or*

*(e) automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to petroleum due to overfilling.*

Response 3.2.1. The primary objective of this rulemaking is to consolidate existing federal and state regulations on petroleum bulk storage. The commenter's suggested removals would have significant associated costs that DEC would have to study and evaluate in order to include them in a rulemaking. At this time, DEC does not intend to impose these changes on regulated facilities with this rulemaking.

Comment 3.2.2.1. Page 54, Section 613-2.2(a)(1) states that the Category 1 requirements are "Reserved."

There are a number of places in the proposed regulations that are marked "Reserved." Why is this so? Are these sections to be completed at a later time?

Comment 3.2.2.2. Page 54, Section 613-2.2(a)(1)

This provision says the Category 1 requirements are "Reserved." What is "Reserved" intended to mean?

Response 3.2.2. The "reserved" sections were added to structure the different technical Subparts similarly. (For example, subdivision 613-X.2(b) always refers to as-built requirements under Subparts 613-2, 3, 4, and 5, even if there are no such requirements for AST systems.) This in turn should help readers better navigate the regulations.

Comment 3.2.3. This next comment pertains to proposed Section 613-2.2(d)(4) entitled "Delivery of petroleum to UST systems". So, again, this is another section that's helpful to split out the

roles between, you know, a carrier and an operator. But it seems like in some sections the responsibilities are really well spelled out. But then in others it's kind of grey. And while I think the intent was to make it clearer, in some sections it -- I don't think it does that. For example, subsection three and four or four four and four eight and I'm not sure it's clear who was responsible for the inspections in those sections. So I just wanted to point that out.

Response 3.2.3. Subparagraph 613-2.2(d)(4)(i) has been modified to state that subparagraphs 613-2.2(d)(4)(ii) through (viii) apply to the person responsible for the transfer activities (i.e., either the operator or the carrier).

Comment 3.2.4. Also it was a little unclear what “on premises” means when it comes to an operator needing to be on premises. You know, does that mean the operator needs to be really paying attention to the delivery? Do they need to just be like physically onsite? I mean, I think that there can be some issues that come out of that. You know, if the operator is on premises but is in the bathroom or, you know, or not paying attention at all to the delivery and what's going on. But yet if they're on premises then, you know, they are responsible for everything. And then also going to that one sentence about the operator needing to be on premises, it seems like maybe the sentence could be changed to on premises and when in control of the delivery which now I think it says or. So just a suggestion there.

Response 3.2.4. Subparagraph 613-2.2(d)(4)(i) specifies that when an operator is either on premises or in control of the delivery, they are responsible for the delivery; if not, the carrier is responsible instead. This was added to ensure clarity and avoid confusion of responsibility between operators and carriers in the event of a spill/overflow during the delivery. Operators should be aware of any deliveries occurring during their shift (and be ready to respond should a spill occur).

Comment 3.2.5.1. Page 59, Subdivision 613-2.2(d)(4)(vi) states, “When a truck, rail car, or container is connected to the delivery piping, caution signs must be in place to give warning to persons approaching from any potential direction. Signs must remain in place until operations are completed, all connections are removed, and outlets properly closed.” (Underline added)

As written, the language only mentions signs and seems to preclude other traffic/hazard cone or warning devices. We suggest additional language allowing for the use of other devices be added.

Comment 3.2.5.2. Page 121, 613-2.2(d)(4)(vi) & Page 159, 613-4.2(d)(4)(vi).

These provisions would require that when a delivery vehicle is connected to delivery piping, “caution signs” must be erected “to give warning to persons approaching from any potential direction” until operations are completed, all connections are removed, and outlets are properly closed. In practice, safety cones are more commonly used for this purpose, and are more visible and recognizable to motorists than signs might be. To give facilities several options for effectively communicating a caution warning to drivers and pedestrians during delivery, we recommend changing the term “caution signs” to “caution warning devices.”

Response 3.2.5. This language was mirrored from the current paragraph 598.4(b)(4). “Caution signs” does not preclude traffic cones or any other similar warning devices.

Comment 3.2.6. PBS USTs

New subdivision Section 613-2.2(g) Periodic inspection/testing of leak detection equipment.

*(1) Connectivity inspections for electronic equipment. All electronic monitoring systems must be inspected for connectivity at 30-day intervals.*

New subdivision Section 613-2.2 (h) Periodic operation and maintenance walkthrough inspections.

*(1) Walkthrough inspection practices. One of the following types of walkthrough inspections must be performed to ensure proper operation and maintenance of UST systems:*

*(i) walkthrough inspections that, at a minimum, checks the following equipment at intervals specified below:*

*(a) every 30 days (note: fill port catch basins receiving deliveries less frequent than every 30 days may be inspected prior to each delivery):*

*(1) Fill port catch basins. ...*

*(2) Leak detection equipment ...*

CBS USTs

New subdivision 598-(f)(1)(i) Periodic operation and maintenance walkthrough inspections. *Walkthrough inspections that, at a minimum, check the following equipment at intervals specified below:*

*(a) every 30 days ... fill port catch basins ... leak detection equipment ... other equipment... .*

PBS ASTs

New subdivision Section 613-4.2(h) Periodic operation and maintenance walkthrough inspections.

*(1) Walkthrough inspection practices. Walkthrough inspections that, at a minimum, check the following equipment at 30-day intervals, must be performed to ensure proper operation and maintenance of AST systems:*

*(i) leak detection equipment/systems;*

*(ii) cathodic protection equipment/systems;*

*(iii) overflow prevention equipment ...*

Comment: [Commenter] requests that the term "monthly" inspection requirements in the current regulations remains as the regulatory requirement rather than the term "at 30-day intervals." The change from monthly in the current regulations (see, e.g., 613-4.3(a)(1)(i)) to 30-day inspection requirements in the proposed regulations is problematic due to the nature of work at a utility. Walkthroughs require staff travel and coordination in part because not all PBS or CBS facilities are staffed 24-hours a day. Having a 30-day interval rather than a monthly inspection that is tied to the daily calendar is problematic as there may be emergencies, low staffing and/or weather events that disrupt the ability to inspect PBS and CBS USTs on such an inflexible schedule. Tying the inspection schedule to the monthly calendar is more practical and easier for compliance staff to follow, reducing the risk that agencies will make mistakes that result in violations.



Response 3.2.6. The UST system walkthrough inspection requirements under clauses 613-2.2(h)(1)(i)(a) and 598-2.2(f)(1)(i)(a) were taken from 40 CFR 280.36(a)(1)(i), which specifies a frequency of 30 days. The connectivity inspections and AST system walkthrough inspection provisions were modified to match to avoid having both “every 30 days” and “monthly” in the same regulations. These requirements pertain to periodic reviews of the tank system (and its components); as long as the inspections are performed on a regular basis (i.e., reasonably close to every 30 days), DEC will use its discretion if off by a few days.

Comment 3.2.7. Thank you for allowing me to comment on changes to NYCRR Part 613 pertaining to the three-year test, new installation and repair testing for fill port catch basins and containment sumps.

For the past three years, Dri-sump Containment Tightness testing has been used and is currently accepted in 47 states. This vacuum method has passed all EPA evaluations under the [third-party] independent testing laboratory "Ken Wilcox Associates" (KWA). It has also been completely evaluated and is published as one of only 5 methods for fill and containment testing by the nationally recognized NWGLDE. It also has been accepted by state agencies and the EPA. Major sump manufacturers are working toward Dri-sump test ready sumps and fill port catch basins with specifications for their products. The EPA [third-]party evaluation by KWA, NWGLDE published evaluation and the EPA and other acceptance documents are available upon request.

Unlike the various hydrostatic test methods, Dri-sump uses a heavy vapor aerosol as the test matrix and digital lasers to completely fill and test the sumps. A high volume-low pressure vacuum is applied to the surrounding backfill which creates a negative pressure on the exterior wall of the sump. Any leaks are pin-pointed when the sub-micron heavy vapor aerosol is pulled through the leaking area and can be digitally seen inside the Dri-sump vacuum view chamber utilizing a specialized laser that creates a visual laser "line". If no leak is found [,] then the laser only creates a laser "dot". The Dri-sump technology can find leaks in electrical conduit, piping, pipe chases, penetration points, sump bottom and sump walls to test the entire sump and all ancillary equipment within the sump. It can further test the primary and secondary walls and the tightness of the interstitial space in double-wall[ed] fill catchment basins and all the various types of containment sumps. This can be accomplished in sub-zero temperatures also since there is no water. Dri-sump also has a groundwater procedure to enhance the test method in various groundwater conditions, if applicable. Finally, this test method uses no water and creates zero waste. The aerosol breaks down to non-greenhouse gasses such as oxygen and nitrogen that dissipate into the air within 10 minutes. The test time is 60 seconds. The method is capable of finding leaks to 0.05 gph. The method is currently being developed to pass the 0.005 gph enhanced leak detection requirement for California.

Please consider adding this test method as an acceptable or approved test method per the following that is found within the NYCRR proposed regulatory revisions: "a code of practice developed by a nationally recognized association or independent testing laboratory and approved by the Department."

The Dri-sump record-keeping report will also be made to include all information required per NYCRR Part 598, if applicable.

Response 3.2.7. DEC will consider adding to the list of sump testing methods that meet the requirements of subdivision 613-2.4(f) to include more methods such as Dri-Sump® Containment Tightness Testing.

Comment 3.2.8. Remove the requirements of Subdivision(c) of section 613-2.3 from the requirements for Category 2 or 3 tanks with Category 3 piping.

Any system that has been designed with the current ([s]ince April 11, 2016) 40 CFR 280 UST System design requirements (Continuously monitored Double-walled tanks/piping with STP/UDC Sumps) should be exempt from 10-day inventory reconciliation requirements.

Response 3.2.8. Inventory monitoring is a method of identifying leaks without the use of electronic equipment; that is, if a tank system is leaking but the monitoring system produces false negative results, inventory monitoring will still identify the leak. This is particularly important for underground tanks and piping where a leak may not be visible to an operator. As such, inventory monitoring has always been a required leak detection method parallel to equipment-based leak detection methods since the inception of Part 613.

In addition, the removal of inventory monitoring would make Part 613 inconsistent with 1 NYCRR Part 224 (Petroleum Products regulations), which requires it for every “retailer selling automotive fuel”. Therefore, no change will be made to the regulatory language.

Comment 3.2.9.1. Page 88, 613-2.4 is repealed and replaced. At 2.4(a) “Reporting Responsibilities” it states that the reporting requirements of subdivisions (b) and (e) apply to seven listed entities.

For the entities listed in (5) and (6), please see comments/questions above relating to contractors at page 1, 613-1.2(e).

Comment 3.2.9.2. The below sections should be eliminated from the list of those that should be required to report suspected releases to NY DEC. This is the owner’s responsibility to report suspected releases. NY DEC does not have a certification program for those contractors working on UST systems and provides no outreach or guidance to contractors working on UST systems. To require anyone that may do work on a UST system and require them to report a suspected release to NY DEC is too broad. If DEC wants to require contractors to report suspected releases, it should be very specific on what activities or instances require a contractor to report directly to NY DEC. Any good contractor will report findings that may indicate a potential release to the owner and it should be the owner’s responsibility to determine whether or not the instance requires reporting to NY DEC. Federal regulations do not require contractors to report, they require owner/operators to report.

*(5) any contractor in a contractual relationship with the facility owner, tank system owner, or operator;*

*(6) any other party and its contractors who have been retained as part of a business transaction relating to the facility;*

Comment 3.2.9.3. So the comments that I would like to be on the record are regarding the spill reporting section. This is proposed Section 613-2.4(a). Somehow there's some enumerated list of who was actually required to report which is helpful. So, like I said, my comment is on proposed Section 613-2.4(a) the enumerated list of who's required to report. I think it's very helpful. I will

just say the one section, I think it's section -- subsection five rather, any contractor in a contractual relationship seems a little bit broad. And I'm concerned that it may run into making -- like loop in an attorney who's representing an owner, tank owner or facility operator and that can get into a kind of grey area that, you know, we all should just be aware of.

Comment 3.2.9.4. We write to you on behalf of the [commenter association], regarding the proposed regulatory revisions to 6 NYCRR Part 613 (“Proposed Regulations”). Specifically, Section 613-2.4(a), which states:

*(a) ‘Reporting responsibilities.’ The reporting requirements of subdivisions (b) and (e) of this section apply to the following persons:*

*(1) the facility owner;*

*(2) the tank system owner;*

*(3) the operator;*

*(4) the carrier;*

*(5) any contractor in a contractual relationship with the facility owner, tank system owner, or operator;*

*(6) any other party and its contractors who have been retained as part of a business transaction relating to the facility;*

*(7) any person who causes a spill at the facility.*

While the addition of the new subsection (a), and enumeration of specific parties obligated to report in subparagraphs (1)-(4) and (7) indeed provides clarity, subparagraphs (5) and (6), as written, raise numerous issues and uncertainties. We are concerned that these uncertainties in the Proposed Regulations could be construed in such a way that negatively impacts an attorney’s ethical obligations. The uncertainty of subparagraphs (5) and (6) is exacerbated by the new definition of “discovery” contained in Section 613-1.3(t), as “observing, directly or indirectly, or being informed of an observation,” which makes *anyone* a person who “discover[ed]” a spill, and in light of the numerous persons potentially required to report pursuant to the proposed Section 613-2.4, the Proposed Regulations simply go too far.

First, Proposed Section 613-2.4(a)(5) is too broad. Specifically, the use of the phrase “any contractor” will cause confusion because it is not defined in the Proposed Regulations, and the ordinary meaning of the term contractor could be generally applicable in a variety of contexts. At a minimum, there needs to be specificity as to the types of parties that would be subject to this obligation and confirmation that it does not apply to attorneys. Otherwise, the regulated community and their associated service providers will not be sure as to the applicability of this obligation. Further, the phrase “in a contractual relationship” adds to the breadth of subparagraph (5), for the same reasons. If the Department intended for the phrase, “in a contractual relationship,” to be interpreted in the same manner as 33 USC §2703(d) and/or 42 USC §9601(35)<sup>1</sup>, then additional language contained within those statutes should be added to the Proposed Regulations to properly define the nature of the applicable relationships. Otherwise, subparagraph (5) is too broad, and includes persons that should not be obligated to report. Section 613-2.4(a)(5) also includes reference to any person who is “in a contractual relationship” with the facility owner, tank system owner, or operator, which the nature of the relationship has nothing to do with the petroleum on the site or environmental conditions, such as plumbers, painters, and electricians, by way of example. These types of contractors are likely unfamiliar

with the nuances of spill reporting, and would not readily understand their obligation to do so if these regulations were finalized as is.

<sup>1</sup>*The Federal Oil Spill Act, states: “[f]or purposes of subsection (a)(3) the term “contractual relationship” includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession....” See 33 USC §2703(d). The Comprehensive Environmental Response, Compensation, and Liability Act states “[t]he term “contractual relationship”, for the purpose of section 9607(b)(3) of this title, includes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession...” See 42 USC §9601(35).*

Thus, subparagraph (5) should be amended to include specific examples of the types of “contractor[s] in a contractual relationship” that are applicable to these circumstances, perhaps utilizing the language “including but not limited to.” Alternatively, Section 613-2.4(a) could be amended to include a much longer list of exactly the persons the Department believes is obligated to report pursuant to the applicable law. At the very least, the proposed Section 613-2.4 regulations should be amended to explicitly exclude attorneys from persons responsible for reporting responsibilities due to their ethical obligations to maintain confidentiality in their attorney-client communications. *See* NYS Professional Rules of Conduct, Rule 1.6.

Second, proposed Section 613-2.4(a)(6) is too broad. Similar to subparagraph (5), this subparagraph is problematic because “contractor” is not defined. Further, subparagraph (6) includes the term “business transaction” which is also not defined. It is unclear which persons the Department is trying to capture in subparagraph (6) not already included in subparagraph (5). Again, some examples are needed of the persons that fall under proposed subparagraph (6).

Comment 3.2.9.5. Page 88 new Section 613-2.4(a), page 136 new Section 613-3.4(a), and page 176 new Section 613-4.4(a) each list the persons responsible for the reporting requirements of subdivisions (b) and (e). Among the entities listed are “(5) any contractor in a contractual relationship with the facility owner, tank system owner, or operator” and “(6) any other party and its contractors who have been retained as part of a business transaction relating to the facility.”

This comment supplements those made in our original submission concerning Page 1, Section 613-1.2(e) which states that every “contractor in a contractual relationship with the facility owner, tank system owner, or operator, and any other party and its contractors who have been retained as part of a business transaction relating to the facility, is subject to” the various specific sections that follow.

It appears that these sections place responsibility for the reporting requirements upon anyone who has contractual relationship with the facility responsible. The list of entities that might have a contractual relationship with a facility that have nothing to do with PBS matters is extensive, (e.g., office supplies companies or accountants.). Thus, these provisions appear to be overly broad. We request that the named entities be removed. Also, if the contractor or those who have been retained as part of a business transaction have knowledge of a suspected leak and do not perform their reporting responsibilities, does the facility owner bear any responsibility for their failure to report?

Response 3.2.9. DEC always recommends that, regardless of party-specific spill reporting requirements, all known or suspected spills should be reported as quickly as possible. This ensures proper compliance with Article 12 of the Navigation Law (especially when the requisite leak investigation and response are ongoing) and prompt coordination between DEC and the facility can occur.

That said, the entities listed under subdivision 613-X.4(a) as being responsible for reporting suspected and actual spills are the parties likely to discover a spill when it occurs, and thus are required to report it to DEC. By clarifying that spill reporting applies to all of these parties, DEC hopes to reduce the likelihood of a spill going unreported due to confusion between the different entities; a prompt leak investigation and/or remediation can then occur subsequently.

Article 12, Part 2, Section 175 of the Navigation Law states, “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.” The carrier was included in the list mostly to reinforce the idea that carriers are not immune from spill requirements, especially when they cause the spill.

ECL Section 17-1005(1)(a) states, “The department shall promulgate rules and regulations to provide for the early detection of leaks or potential leaks by owners and operators.” The inclusion of “any contractor in a contractual relationship with the facility owner, tank system owner, or operator” and “any other party and its contractors who have been retained as part of a business transaction relating to the facility” in subdivision 613-2.4(a), is intended to highlight that such parties are acting on behalf of the owner/operator. ‘Contractor’, in this sense, is limited to those engaging in activities related to the PBS tank systems at the facility.

Comment 3.2.10. Page 92, Section 613-2.5.

Under the existing regulations, every tank facility must ensure that it has one or more Class C Operators for each UST system or group of UST systems. This would be amended to require facilities to have *every individual at that location* who meets the definition of Class C Operator become a Class C Operator. What public policy goal is that change intended to achieve? For many facilities, training additional Class C operators will be an added expense.

Response 3.2.10. Paragraph 613-2.5(a)(2) was updated to match 40 CFR Section 280.241(b) (effective October 13, 2015). Facilities referred to by the commenter should already be in compliance with this provision.

Comment 3.2.11. Page 94, Section 613-2.5(c)(2)(iii) and (iv) concerns the training of Class C operators.

Do these provisions preclude online training for Class C operators?

Response 3.2.11. DEC believes the commenter meant to refer to subparagraphs 613-2.5(e)(2)(iii) & (iv). Class C Operators are not precluded from undergoing online training, as long as they receive site-specific training pertinent to the facility for which they will be responsible (and their competency as an Operator is documented).

Comment 3.2.12.1. Page 94, Section 613-2.5(c)(4).

At present, re-testing of Class A and Class B operators is required only in the event that the Department determines their UST systems are in significant non-compliance. The new rulemaking would require periodic re-testing regardless of compliance status either within two years of final adoption of this rulemaking or five years after the date of their original Class A or Class B operator test certificate. In addition, they would have to be re-tested every five years

after that. Mandatory re-testing for Class A and B operators at facilities with documented violations is warranted. Mandatory re-testing for those with a good performance record is not. Such redundant re-testing would add another added cost for responsible gas station owners and operators, further undermining the Department's assertion that this rulemaking won't impose new costs or responsibilities on regulated parties.

Comment 3.2.12.2. Page 94, Section 613-2.5(c)(4).

#### Additional Operator Testing – UST

*New subdivision 613-2.5(c)(4) Periodic retesting. Class A and Class B Operators who possess a current and valid operator training credential by passing the Department's exam must retake the exam within the later of the following: two years after [new effective date], or five years after the date of the last valid Operator authorization certificate. Thereafter, they must be retested every five years after the date of the last valid Operator authorization certificate until the Department receives written notice and documentation that the individual either is no longer the designated Operator or inactivates their authorization.*

Comment: Current PBS UST regulations require Class A and B operators to test one time and re-testing is required only where the Department finds a UST in significant non-compliance (613-2.5 et seq.). The proposed regulations require re-testing every five years for these operators. This requirement will place a significant burden on the [commenter's] operators who will have to prepare and re-take the test instead of performing their job duties inspecting and monitoring UST systems. We understand this is a provision that is similar to the federal re-testing requirement but request that the re-testing be less frequent than every five years. As an alternative to re-testing every five years, [commenter] suggests an additional re-training when new regulations are adopted, to assure familiarity with the new regulations. If such re-training is required, [commenter] supports the Department's providing a free training module that is accessible on-line, and that the testing remain free.

Response 3.2.12. Good tank system equipment will only prevent leaks if operated and maintained properly, and knowing how to properly operate/maintain the tank system is part of the Operator's job. That is, having a competent, knowledgeable Operator will lead to fewer preventable spills having to be reported and improve the site's compliance with the PBS regulations.

To sustain the benefits of having a competent Operator (and to help them retain the knowledge necessary to be one), retesting will be required. This also fosters a proactive mindset regarding compliance with Part 613, as opposed to relying on the results of a periodic DEC inspection to tell what areas the facility must improve upon.

The Operator Exams are free of charge, has 80 questions at most (with a 2.5-hour time limit), and can be taken online at the user's convenience. Those considered to be "minimally competent" will consistently pass the Exam; however, those who are not – and perhaps applied for reciprocity to avoid taking the Exam – will fail the Exam and thus will no longer be responsible for tank systems they cannot properly operate and maintain.

DEC believes that the demonstration of competency as a Class A/B Operator (by passing the Exam) once every five years is not a burden.

Comment 3.2.13. Page 95, Section 613-2.5.

Stricken from this section would be the long-standing provision that Class A and Class B Operators who possess a current and valid operator training credential issued by any other state government that administers an exam acceptable to the Department will be considered to be in compliance. No justification is given. This action will force multi-state retailers to waste additional time and money to redundantly re-train Class A and B operators who already have valid certification from other states, contrary to the assertion that this rulemaking doesn't exert new costs or responsibilities on regulated parties.

Response 3.2.13. Reciprocity (as a pathway to NYS Class A/B Operator authorization) was granted primarily as a concession to Operators who had received authorization from a neighboring state's Operator Training program prior to promulgation of DEC's own program. However, this resulted in Operators becoming authorized without necessarily demonstrating either their competency as a Class A/B Operator or their knowledge of the DEC regulations that apply to their tank systems. This is contrary to the purpose of the Operator Training requirements, hence the removal of reciprocity as a way to become an authorized Class A/B Operator in NYS. (Instead of requesting reciprocity, prospective Operators will have to take the Operator Exam, which continues to be free of charge and can be taken online at the user's convenience.)

Comment 3.2.14. Pages 96, Section 613-2.6[(a)](3) states[,]

*“(3) When a UST system is out of service for more than 90 days, or has not received or dispensed petroleum in a 90-day period, the following must also be performed:*

- (i) empty the tank so that no more than 2.5 centimeters (one inch) of residue remains;*
- (ii) leave vent lines open and functioning; and*
- (iii) cap and secure all piping, fill ports, gauge openings, vapor returns, pump connections, ancillary equipment, and manways.” (Underline added)*

There are several provisions requiring actions (emptying, capping of lines etc. and/or the permanent closure) for tanks that are either out of service or have not received or dispensed product for certain specified time periods. See also Section 613-2.6[(a)(1)](ii) 30 days, 613-2.6[(a)](4) 12 months, page 140 Section 613-3.5, and page 180 Section 613-4.5. There appear to be exceptions for “standby storage tanks” or where a facility has received Department approval (e.g.,] Section 613-2.6[(a)(1)](ii)) though the meaning of these terms are unclear. The sections requiring the treatment of tanks that do not receive or dispense petroleum should be clarified. There are tanks used to store product for seasonal purposes (e.g.,] fuel for the next heating season) and for other reasons. These tanks continue to abide by the regulations for leak detection, monitoring, etc., but they just are not receiving or dispensing product. They should not be subject to the additional measures related to closure/removal.

Response 3.2.14. DEC understands that while most PBS tanks store petroleum to dispense in sustained activities (e.g., feeding a heater/boiler/furnace, dispensing gasoline to customers at a gas station), some tank systems hold petroleum for specific intermittent purposes. These include emergency power generation and backup heating, which are examples of “standby storage”. Standby storage tanks exclude seasonal storage tanks as the latter sees frequent use during part of the year, where the former may not see any use during the entire year. That said, where no longer receiving or dispensing petroleum is tantamount to being out of service for most tank systems, standby and seasonal storage tanks (along with surcharge storage tanks)

are, by design, not intended to receive or dispense petroleum on a frequent basis. As such, DEC exempted them from the out of service requirements in the 1985 edition of the PBS regulations.

At the same time, Part 613 must be consistent with the NYS Fire Code (per Executive Law section 383). To this end, DEC incorporated the 12-month clock provision from the Fire Code, which requires tank systems that have been out of service for more than 12 months to be permanently closed, unless the tank system in question is an AST system at an “operating facility” (5704.2.13.1.3 & 5704.2.13.2.3 in the 2020 edition of the Fire Code). The standby/seasonal/surcharge storage exemption then came into conflict with this provision, which itself has no such exemptions in the Fire Code.

To address this conflict in the 2015 rulemaking, the standby/seasonal/surcharge storage exemption was deleted from the PBS regulations; and to ensure continued consistency with the Fire Code, the exemption for standby storage in subparagraphs 613-2.6(a)(1)(ii), 3.5(a)(1)(ii), and 4.5(a)(1)(ii) has been similarly removed. Facilities should exercise such tank systems at least once a year, not only to avoid the 12-month clock provision, but also to ensure that they would work when needed (e.g., during an emergency); depending on what the tank system is storing, extended inactivity could lead to off-spec petroleum.

As for instances where “the facility has received approval from the Department”, this statement was intended to reflect unique circumstances in which DEC forgoes the out of service requirements, often in conjunction with a consent order on the facility. That said, DEC concluded that the statement is redundant; as such, it too has been removed from subparagraphs 613-2.6(a)(1)(ii), 3.5(a)(1)(ii), and 4.5(a)(1)(ii). Consequently, the requirement for documentation “explaining why a tank system that no longer receives or dispenses petroleum is not out of service” has also been deleted.

Comment 3.2.15.1. Below are comments that the [commenter association] respectfully submits to NYSDEC for consideration related to the proposed revisions to Part 613. The comments specifically pertain to Out of Service UST and AST systems (proposed language in bold and highlighted).

*613-2.6(a)(4) – When a UST system is out of service for more than 12 months, or has not received or dispensed petroleum in a 12-month period, the UST system must be permanently closed in accordance with subdivisions (b) through (e) of this section **unless the UST system is located at a facility where one or more other tank systems are in-service or if no other tank systems are in-service at a facility the facility owner notifies the Department that the tank system is out of service, has been emptied, and undergoing applicable periodic equipment testing/monitoring/inspections, walkthrough inspections and leak detection.***

*613-4.5(a)(4) – When an AST system is out of service for more than 12 months, or has not received or dispensed petroleum in a 12-month period, the AST system must be permanently closed in accordance with subdivision (b) of this section, **unless the AST system is located at a facility where one or more other tank systems are in-service or if no other tank systems are in-service at a facility the facility owner notifies the Department that the tank system is out of service, has been emptied, and undergoing applicable periodic equipment testing/monitoring/inspections, walkthrough inspections and leak detection.***



Justification: The proposed language provides owners with operational flexibility to maintain UST and AST systems in case the need arises to use these tanks in the future while ensuring that there is no potential for a leak that can cause environmental harm. The Department would receive notice regarding the out of service tank system; the out of service tanks would have to be emptied and the owner would still test/monitor/inspect the out of service tank system thus layering in levels of protection to ensure there are no petroleum leaks into the environment. Requiring permanent closure is irreversible and requires significant resources if there is an operational need to bring the tanks back on-line.

#### Comment 3.2.15.2. Out-of- Service PBS USTs – Permanent Closure

New subdivisions 613-2.6(a)(4) (UST systems subject to both Subtitle I of RCRA and Article 17, Title 10 of the Environmental Conservation Law (ECL)) and 613-3.5(b)(4) (UST systems subject to only Title 10 of the ECL)

*When a UST system is out of service for more than 12 months, or has not received or dispensed petroleum in a 12-month period, the UST system must be permanently closed in accordance with subdivisions 613-2.6 (b) through (e) of this section (for 613-3.5(a)(4), subdivisions (b) through (d)).*

Comment: The closure requirements for both 613-2.6(a)(4) and 613-3.5(b)(4) include notification requirements and methods of closure. The methods of closure require either tank system removal or filling the emptied tank "with an inert solid material (e.g., sand or concrete slurry)." (613-2.6(b)(i)). [Commenter] requests an additional option allowing an out-of-service UST system that is emptied in accordance with the regulations to remain in place so long as it meets several requirements, including that all required notifications must be made to the Department and it would remain subject to periodic equipment testing, monitoring, and inspections. Additionally, leak detection equipment that is required for active USTs would be required for these USTs. In the alternative, [commenter] requests that such an option be available where the UST is located at a facility where one or more other tank systems are in service, as is allowed for in the current AST regulations (see 613-4.5(a)(3)).

Requiring permanent tank system closure is irreversible and requires significant resources if there is an operational need to bring the tank back on-line. [Commenter] requests that the proposed regulations provide more operational flexibility to maintain existing UST and AST systems in case the need arises to reuse a tank that has been out of service for more than 12 months. As an alternative to removing a tank or filling it with an inert solid material, a regimen to monitor the empty tanks that would ensure there is no potential for a leak would assist facility owners. The Department would receive notice regarding the out of service tank system; the out of service tanks would have to be emptied in accordance with the regulations; and the facility owner would still test, monitor, and inspect the out-of-service tank system thus layering in levels of protection to ensure there are no petroleum leaks into the environment.

In addition, [commenter] requests clarification regarding when a UST tank system is in use for "standby storage" as that term is used in the new subdivisions 613-2.6(a)(1)(ii) and 613-3.5(a)(1)(ii).

Response 3.2.15. The NYS Fire Code requires the closure of all tanks that have been out of service for more than 12 months (per 5704.2.13.1.3 & 5704.2.13.2.3), except for aboveground tanks at an "operating facility"; this exception is reflected in paragraph 613-4.5(a)(4). Mirroring this exception for underground tanks is not necessary as Part 613 would then be inconsistent with the Fire Code.

For ‘standby storage’, see Response 3.2.14.

### 3.3. Comments on Subpart 613-3: UST Systems Subject Only to Title 10.

Comment 3.3.1. Page 101, 613-3.1(b)(1).

Subparagraph (i) reads “Category 1 tank requirements. Reserved.” What is “Reserved” intended to mean?

Page 115, 613-3.1(b)(4)

Proposed paragraph (4) reads “Fill port catch basins. Reserved.” What is “Reserved” intended to mean?

Page 116, 613-3.1(b)(5)

In proposed paragraph (5), Dispenser systems, what is “Reserved” intended to mean?

Response 3.3.1. See Response 3.2.2.

Comment 3.3.2. Page 88 new Section 613-2.4(a), page 136 new Section 613-3.4(a), and page 176 new Section 613-4.4(a) each list the persons responsible for the reporting requirements of subdivisions (b) and (e). Among the entities listed are “(5) any contractor in a contractual relationship with the facility owner, tank system owner, or operator” and “(6) any other party and its contractors who have been retained as part of a business transaction relating to the facility.”

This comment supplements those made in our original submission concerning Page 1, Section 613-1.2 (e) which states that every “contractor in a contractual relationship with the facility owner, tank system owner, or operator, and any other party and its contractors who have been retained as part of a business transaction relating to the facility, is subject to” the various specific sections that follow.

It appears that these sections place responsibility for the reporting requirements upon anyone who has contractual relationship with the facility responsible. The list of entities that might have a contractual relationship with a facility that have nothing to do with PBS matters is extensive, (e.g., office supplies companies or accountants.). Thus, these provisions appear to be overly broad. We request that the named entities be removed. Also, if the contractor or those who have been retained as part of a business transaction have knowledge of a suspected leak and do not perform their reporting responsibilities, does the facility owner bear any responsibility for their failure to report?

Response 3.3.2. See Response 3.2.9.

Comment 3.3.3. Out-of- Service PBS USTs – Permanent Closure

New subdivisions 613-2.6(a)(4) (UST systems subject to both Subtitle I of RCRA and Article 17, Title 10 of the Environmental Conservation Law (ECL)) and 613-3.5(b)(4) (UST systems subject to only Title 10 of the ECL)

*When a UST system is out of service for more than 12 months, or has not received or dispensed petroleum in a 12-month period, the UST system must be permanently closed in accordance with*

*subdivisions 613-2.6 (b) through (e) of this section (for 613-3.5(a)(4), subdivisions (b) through (d)).*

Comment: The closure requirements for both 613-2.6(a)(4) and 613-3.5(b)(4) include notification requirements and methods of closure. The methods of closure require either tank system removal or filling the emptied tank "with an inert solid material (e.g., sand or concrete slurry)." (613-2.6(b)(i)). [Commenter] requests an additional option allowing an out-of-service UST system that is emptied in accordance with the regulations to remain in place so long as it meets several requirements, including that all required notifications must be made to the Department and it would remain subject to periodic equipment testing, monitoring, and inspections. Additionally, leak detection equipment that is required for active USTs would be required for these USTs. In the alternative, [commenter] requests that such an option be available where the UST is located at a facility where one or more other tank systems are in service, as is allowed for in the current AST regulations (see 613-4.5(a)(3)).

Requiring permanent tank system closure is irreversible and requires significant resources if there is an operational need to bring the tank back on-line. [Commenter] requests that the proposed regulations provide more operational flexibility to maintain existing UST and AST systems in case the need arises to reuse a tank that has been out of service for more than 12 months. As an alternative to removing a tank or filling it with an inert solid material, a regimen to monitor the empty tanks that would ensure there is no potential for a leak would assist facility owners. The Department would receive notice regarding the out of service tank system; the out of service tanks would have to be emptied in accordance with the regulations; and the facility owner would still test, monitor, and inspect the out-of-service tank system thus layering in levels of protection to ensure there are no petroleum leaks into the environment.

In addition, [commenter] requests clarification regarding when a UST tank system is in use for "standby storage" as that term is used in the new subdivisions 613-2.6(a)(1)(ii) and 613-3.5(a)(1)(ii).

Response 3.3.3. See Response 3.2.15.

### **3.4. Comments on Subpart 613-4: AST Systems.**

Comment 3.4.1. *613-4.1(b)(1): Tank requirements.*

Comment: This section appears to indicate that all Category 1 flat bottom tanks on earth will need to be upgraded with leak prevention barrier and monitoring. Is that correct?

Response 3.4.1. The requirement for an underlying impermeable barrier (and the corresponding leak monitoring requirement) for an on-ground AST only appears in subclauses 613-4.1(b)(1)(ii)(c)(3) (Category 2 tank requirements) and (iii)(c)(3) (Category 3 tank requirements, respectively). The requirement does not apply to Category 1 ASTs.

Comment 3.4.2. *613-4.1(b)(3)(b) and (f): AST Systems: Design, Construction & Installation*

*(b) automatically shut off flow into the tank when the tank is no more than 95 percent full;*

*(f) automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to petroleum due to overfilling*

Comment: These two sections appear to conflict with each other. Can you clarify?

Response 3.4.2. Clauses (a) through (f) under subparagraph 613-4.1(b)(3) represent different options for overfill prevention equipment/setup, hence the ‘or’ at the end of clause 613-4.1(b)(3)(e). The two provisions identified are mutually exclusive from one another.

Comment 3.4.3. 613-4.1(b)(3)(d): *AST Systems: Design, Construction & Installation*

*(d) restrict flow 30 minutes prior to overfilling so that none of the fittings located on top of the tank are exposed to petroleum due to overfilling;*

Comment: We are not sure what this means or what this scenario would be? Restrict flow to what?

Response 3.4.3. Clause 613-4.1(b)(3)(d) generally refers to ball float valves set up to restrict the flow of petroleum into the tank during the delivery: this reduction in flow signals to the person in charge of the delivery when to stop.

Comment 3.4.4. Page 159, 613-4.2.

This section begins as follows:

*Section 613-4.2 is amended to read as follows: 613-4.2 General [operating] installation, operating, and maintenance requirements.*

*Subdivisions (a) and (c) of section 613-4.2 are repealed, and subdivision (b) is renumbered to be subdivision (i). New subdivisions (a) through (h) are added to section 613-2.2 to read as follows:” (Highlighting added.)*

It appears the highlighted reference may have been intended to say 613.4.2

Response 3.4.4. The commenter is referring to the “Text of Proposed Regulation” that DEC made available at <https://www.dec.ny.gov/regulations/93063.html>; this document explains the modifications made to the express terms. Changes to the draft Part 613 are not necessary to correct this typographical error.

Comment 3.4.5. Page 121, 613-2.2(d)(4)(vi) & Page 159, 613-4.2(d)(4)(vi).

These provisions would require that when a delivery vehicle is connected to delivery piping, “caution signs” must be erected “to give warning to persons approaching from any potential direction” until operations are completed, all connections are removed, and outlets are properly closed. In practice, safety cones are more commonly used for this purpose, and are more visible and recognizable to motorists than signs might be. In order to give facilities several options for effectively communicating a caution warning to drivers and pedestrians during delivery, we recommend changing the term “caution signs” to “caution warning devices.”

Response 3.4.5. See Response 3.2.5.

Comment 3.4.6. PBS USTs

New subdivision Section 613-2.2(g) Periodic inspection/testing of leak detection equipment.

*(1) Connectivity inspections for electronic equipment. All electronic monitoring systems must be inspected for connectivity at 30-day intervals.*

New subdivision Section 613-2.2 (h) Periodic operation and maintenance walkthrough inspections.

*(1) Walkthrough inspection practices. One of the following types of walkthrough inspections must be performed to ensure proper operation and maintenance of UST systems:*

*(i) walkthrough inspections that, at a minimum, checks the following equipment at intervals specified below:*

*(a) every 30 days (note: fill port catch basins receiving deliveries less frequent than every 30 days may be inspected prior to each delivery):*

*(1) Fill port catch basins. ...*

*(2) Leak detection equipment ...*

CBS USTs

New subdivision 598-(f)(1)(i) Periodic operation and maintenance walkthrough inspections. *Walkthrough inspections that, at a minimum, check the following equipment at intervals specified below:*

*(a) every 30 days ... fill port catch basins ... leak detection equipment ... other equipment... .*

PBS ASTs

New subdivision Section 613-4.2(h) Periodic operation and maintenance walkthrough inspections.

*(1) Walkthrough inspection practices. Walkthrough inspections that, at a minimum, check the following equipment at 30-day intervals, must be performed to ensure proper operation and maintenance of AST systems:*

*(i) leak detection equipment/systems;*

*(ii) cathodic protection equipment/systems;*

*(iii) overfill prevention equipment ...*

Comment: [Commenter] requests that the term "monthly" inspection requirements in the current regulations remains as the regulatory requirement rather than the term "at 30-day intervals." The change from monthly in the current regulations (*see, e.g., 613-4.3(a)(1)(i)*) to 30-day inspection requirements in the proposed regulations is problematic due to the nature of work at a utility. Walkthroughs require staff travel and coordination in part because not all PBS or CBS facilities are staffed 24-hours a day. Having a 30-day interval rather than a monthly inspection that is tied to the daily calendar is problematic as there may be emergencies, low staffing and/or weather events that disrupt the ability to inspect PBS and CBS USTs on such an inflexible schedule. Tying the inspection schedule to the monthly calendar is more practical and easier for compliance staff to follow, reducing the risk that agencies will make mistakes that result in violations.

Response 3.4.6. See Response 3.2.5.

Comment 3.4.7. 613-4.2(j)(4): *Repairs and Modifications*

*(4) Repairs to steel tanks must be made with steel welds or steel patches that are welded in place. Welds associated with tank repairs must be inspected and tightness tested within 30 days following the repair.*

Comment: Can non-welded repairs be made to tank segments that were not originally welded (i.e., bolted columns, bolted rafters, bolted stairs, etc.) or segments above the liquid level (i.e., roof patches?) Does DEC mean shell and floor patches below the design level? In addition, can the language be changed from 30 days to the repairs will be inspected prior to putting the tank back into service? Some repair projects can take more than 30 days.

Response 3.4.7. Non-welded repairs for ASTs generally are not “equal to or more protective than the standards of original construction or manufacturer’s specifications” (paragraph 613-4.2(j)(3)). In addition, non-welded repairs are more susceptible to leaks than welded repairs. Any repairs above the liquid level cannot be non-welded repairs as leaks could still occur from the top of the tank, should the tank be filled to (or above) its design capacity. As such, repairs to any part of the AST must consist of steel welds/patches, and this has been the case since the inception of the PBS program. (The only time non-welded repairs are allowed is if the tank is not made of steel, primarily when storing non-Class IIIB petroleum.)

Tightness testing must be performed for the weld(s) associated with the tank repair, within 30 days after the repair (regardless of the duration of the repair). Both the repair and this post-repair testing must be successfully completed before the AST system is returned to service (per subparagraph 613-4.5(a)(2)(ii)).

Comment 3.4.8. 613-4.2(j)(5): *Repairs and Modifications*

*(5) Metal pipe sections and fittings from which petroleum has leaked as a result of corrosion or other damage must be replaced.*

Comment: Can they be repaired instead of replaced?

Response 3.4.8. This provision was originally mirrored from 40 CFR 280.33; metal pipes that leaked due to corrosion or any other damage must be dug up and replaced; they cannot be repaired as repairs may not adequately prevent further leaks.

Comment 3.4.9. 613-4.2(j)(7): *Repairs and Modifications*

*(7) For a piping repair or replacement, a new piping run must be replaced when 50 percent or more of the piping run is removed, unless the piping run meets the requirements of subparagraph 4.1(b)(2)(iii) of this Subpart.*

Comment: Can DEC please clarify this requirement.

Response 3.4.9. This provision was originally mirrored from 40 CFR 280.20; if at least 50 percent of a given piping run is to be removed, then the entire piping run must be replaced with new (Category 3) piping UNLESS the existing piping is already considered to be new piping.

Comment 3.4.10. *614-4.3: Inspections and Leak Detection*

Comment: Leak detection (monitoring) is now required for all tanks and piping?

Response 3.4.10. This is simply the heading for this section; specific leak detection requirements – based on tank/piping Category/type – are found in subdivision 613-4.3(b). The leak detection requirements do not apply to all types/Categories of tanks/piping.

Comment 3.4.11. *614-4.3(a): Inspections and Leak Detection*

*(1) A method, or combination of methods, of inspection and leak detection must be provided, that:*

*(i) can assess the integrity/remaining useful life of, and detect a leak from any portion of the tank and the piping that are in contact with the ground and routinely contain petroleum;*

*(ii) is performed in accordance with an acceptable code of practice, or installed and calibrated in accordance with the manufacturer's instructions; and*

*(iii) meets the requirements of subdivisions (c) and (d) of this section, as applicable. In addition, the methods listed under paragraphs (c)(1), and (d)(1), (2), and (3) of this section must be capable of detecting the leak rate or quantity specified for that method with a probability of detection of 95 percent and a probability of false alarm of 5 percent.*

*(2) If an inspection or method of leak detection that complies with the requirements of this section cannot be implemented, the AST system must be permanently closed in accordance with subdivision 4.5(b) of this Subpart.*

*(3) If the petroleum stored will change such that the AST system would then be subject to new inspections and tests required under this section, these inspections and tests must be performed before the change occurs.*

Comments: Are single flat-bottom tanks no longer allowed? Is under tank leak detection required? Must underground piping be continuously leak monitored? Timeframe to update?

Response 3.4.11. See Response 3.4.1. The provisions that the commenter cited are the general inspection and leak detection requirements; the specific inspection/leak detection requirements state that not all tanks require leak detection, especially Category 1 ASTs that meet certain criteria. Similarly, not all piping associated with ASTs are required to be monitored for leaks. Facilities already in compliance with the leak detection requirements of the 2015 PBS regulations are also in compliance with the provisions of section 613-4.3.

Comment 3.4.12. *614-4.3(b)(1)(b): Inspections and Leak Detection*

*(b) No inspections or leak detection is required for Category 1 tanks that are:*

*(1) entirely aboveground (e.g., a tank on a rack, cradle or stilts); or*

*(2) part of AST systems storing No. 5 or No. 6 fuel oil.*

Comment: Does the exemption also mean that tightness testing is also not required? (i.e., no inspection/tightness test)?

Response 3.4.12. Tightness testing is a form of leak detection and is not required for a Category 1 tank if it meets either criterion under clause 613-4.3(b)(1)(i)(b).

Comment 3.4.13. *614-4.3(c)(2): Inspections and Leak Detection*

*(2) Ten-year inspections. Ten-year inspections must be conducted in accordance with one of the following codes of practice (refer to section 1.10 of this Part for complete citation of references):*

*(i) API Standard 653, April 2009;*

*(ii) STI SP001, September 2011; or*

*(iii) a code of practice developed by a nationally recognized association or independent testing laboratory and approved by the Department.*

Comment: The DEC may want to add language regarding the type of inspection they are seeking. There is no specific “10-year” testing requirement in API Std 653 or STI SP001. If the DEC means an internal inspection, then they should specify that otherwise an external inspection would meet the requirements of this section.

Response 3.4.13. Ten-year inspections are intended to assess the integrity of the AST and historically has meant an internal inspection. These must be performed in accordance with either API 653 (for field-fabricated ASTs) or STI SP001 (for shop-fabricated ASTs). Both standards feature internal and external inspection procedures, though the external inspections are roughly equivalent to the monthly walkthrough inspections required for AST systems, and are typically excluded from the ten-year inspection requirement.

Comment 3.4.14. Page 88 new Section 613-2.4(a), page 136 new Section 613-3.4(a), and page 176 new Section 613-4.4(a) each list the persons responsible for the reporting requirements of subdivisions (b) and (e). Among the entities listed are “(5) any contractor in a contractual relationship with the facility owner, tank system owner, or operator” and “(6) any other party and its contractors who have been retained as part of a business transaction relating to the facility.”

This comment supplements those made in our original submission concerning Page 1, Section 613-1.2 (e) which states that every “contractor in a contractual relationship with the facility owner, tank system owner, or operator, and any other party and its contractors who have been retained as part of a business transaction relating to the facility, is subject to” the various specific sections that follow.

It appears that these sections place responsibility for the reporting requirements upon anyone who has contractual relationship with the facility responsible. The list of entities that might have a contractual relationship with a facility that have nothing to do with PBS matters is extensive, (e.g., office supplies companies or accountants.). Thus, these provisions appear to be overly broad. We request that the named entities be removed. Also, if the contractor or those who have been retained as part of a business transaction have knowledge of a suspected leak and do not perform their reporting responsibilities, does the facility owner bear any responsibility for their failure to report?

Response 3.4.14. See Response 3.2.9.



Comment 3.4.15.1. Below are comments that the [commenter association] respectfully submits to NYSDEC for consideration related to the proposed revisions to Part 613. The comments specifically pertain to Out of Service UST and AST systems (proposed language in bold and highlighted).

613-2.6(a)(4) – When a UST system is out of service for more than 12 months, or has not received or dispensed petroleum in a 12-month period, the UST system must be permanently closed in accordance with subdivisions (b) through (e) of this section **unless the UST system is located at a facility where one or more other tank systems are in-service or if no other tank systems are in-service at a facility the facility owner notifies the Department that the tank system is out of service, has been emptied, and undergoing applicable periodic equipment testing/monitoring/inspections, walkthrough inspections and leak detection.**

613-4.5(a)(4) – When an AST system is out of service for more than 12 months, or has not received or dispensed petroleum in a 12-month period, the AST system must be permanently closed in accordance with subdivision (b) of this section, **unless the AST system is located at a facility where one or more other tank systems are in-service or if no other tank systems are in-service at a facility the facility owner notifies the Department that the tank system is out of service, has been emptied, and undergoing applicable periodic equipment testing/monitoring/inspections, walkthrough inspections and leak detection.**

Justification: The proposed language provides owners with operational flexibility to maintain UST and AST systems in case the need arises to use these tanks in the future while ensuring that there is no potential for a leak that can cause environmental harm. The Department would receive notice regarding the out of service tank system; the out of service tanks would have to be emptied and the owner would still test/monitor/inspect the out of service tank system thus layering in levels of protection to ensure there are no petroleum leaks into the environment. Requiring permanent closure is irreversible and requires significant resources if there is an operational need to bring the tanks back on-line.

Comment 3.4.15.2. Out-of-Service PBS ASTs – Permanent Closure

New subdivisions 613-4.5(a)(4) and (b) *When an AST system is out of service for more than 12 months, or has not received or dispensed petroleum in a 12-month period, the AST system must be permanently closed in accordance with subdivision (b) of this section, unless the AST system is located at a facility where one or more other tank systems are in-service.*

Comment: In the proposed regulations at 613-4.5(a)(4), if the AST tank is not located at a facility with in-service tanks, the owner or operator would need to close the out-of-service AST permanently in accordance with 613-4.5(b)(4)(i) or (ii) (removal of the tank or in-place closure, respectively). The in-place closure requirements now require that "all lines (including delivery piping) must be either disconnected and removed, or securely capped or plugged, and all manways must be securely fastened in place." (613-4.5(a)(4)(ii)." Similar to the points raised in the comments regarding out-of-service PBS USTs - Permanent Closure, it would be preferable to have the option to empty the AST and conduct applicable periodic equipment testing/monitoring/inspections and leak detection. [Commenter] requests that this option be available for AST tanks regardless of whether the tank is located at a facility with other tanks in service or not, with the applicable inspections and monitoring. This will provide an operational flexibility that is equally protective of the environment as an operating in-service tank.

Response 3.4.15. See Response 3.2.15.

### 3.5. Comments on Subpart 613-8: Financial Responsibility.

#### Comment 3.5.1. *Financial Responsibility for PBS UST tanks*

*New subdivision 613-8.2(c) 'Chief Financial Officer,' in the case of local government tank system owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.*

Comment: [Commenter] requests that the proposed regulations add "For [commenter], the Chief Financial Officer for purposes of subdivision 613-8(c) is the [commenter] Director of Management and Budget."

Response 3.5.1. While the entity that the commenter suggested meets the definition of 'Chief Financial Officer' (for the purposes of Financial Responsibility), DEC is not modifying the referenced provision as it only pertains to the commenter and means nothing for other regulated facilities.

#### Comment 3.5.2. *New subdivision 613-8.3 Amount and scope of required financial responsibility.*

*(a) Tank system owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:*

*(1) for tank system owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.*

*(2) for all other tank system owners or operators of petroleum underground storage tanks; \$500,000.*

*(b) Tank system owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:*

*(1) for tank system owners or operators of 1 to 100 petroleum underground storage tanks, \$1 million; and*

*(2) for tank system owners or operators of 101 or more petroleum underground storage tanks, \$2 million.*

Comment: [Commenter] requests clarification on the differences between the per occurrence amount and the annual aggregate amount, how they interact, and how to calculate a local government's full obligation under this provision.

Response 3.5.2. The per-occurrence amount refers to the maximum amount that the insurer will pay in the event of a claim/spill, regardless of the number of people injured or possible claimants, or how much property damage the spills causes. The annual aggregate amount represents that maximum amount that an insurer will cover in a year. The provisions referenced

by the commenter refer to the minimum amounts that the facility's financial responsibility mechanism must cover based on the facility throughput and the number of underground storage tanks for which the owner/operator are responsible.

Comment 3.5.3. *New subdivision 613-8.4(d)(8) Local government bond rating test. [format condensed]*

*(i) A general-purpose local government tank system owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 8.3 of this Subpart by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.*

*(ii) A local government tank system owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 8.3 of this Subpart by having a currently outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues, and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating/or each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.*

*(iii) The local government tank system owner or operator and/or guarantor must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.*

*(iv) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general-purpose local government tank system owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets must be replaced with the relevant information and the brackets deleted:*

*Letter from Chief Financial Officer*

*I am the chief financial officer of ... .*

Comment: [Commenter] requests confirmation as to the bond rating test. It appears that a local government is in compliance once it demonstrates that it meets the ratings test regardless of its dollar amount exposure under 613-8.3.

The Bond Letter requires language that states "Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test]." [Commenter] facilities at issue here include over 80 agencies and affiliates, many with multiple buildings and fleet operations that may all have PBS USTs that each agency registers with DEC. As drafted, this provision would place an incredibly time-consuming, expensive and unreasonable burden upon the [commenter] to create a centralized list of PBS USTs across more than 80 agencies and affiliates that are separately managed.

[Commenter] requests that the bonding requirements be limited to the number of tanks identified in section 613-8.3(a)(1) and (2), as suggested in the proposed regulation. Because that proposed section of the regulations sets the per occurrence and aggregate bonding amounts for local governments with over 10,000 gallons per month of petroleum products and with over 101 PBS USTs, there is no need for the listing required in the Bond Letter. [Commenter] also finds this provision confusing particularly as to how the bond rating test relates to any calculations on the per occurrence and aggregate numbers. If, as it seems a local government covers its full exposure by passing the bond ratings test, regardless of exposure level, it is not clear why the number, let alone the locations, of each of a local government's PBS USTs is relevant here.

Response 3.5.3. Local governments that pass a bond rating test (of self-insurance, as based on outstanding bond issues and ratings) are assumed to have the ability to sell bonds to pay for the full amount of a spill cleanup; in that regard, the per-occurrence amount and the annual aggregate amount – as outlined in section 613-8.3 – become somewhat irrelevant.

However, the key record for a passing bond rating test is a letter signed by the local government's chief financial officer demonstrating the financial responsibility mechanism's viability. The letter must be worded as indicated in either subparagraph 613-8.4(d)(8)(iv) or (v) and must include a list of facilities/tanks covered by the local government. While DEC understands that certain municipalities may have a long list of such tanks/facilities, it behooves the local government to include such a list in the chief financial officer's letter to determine the limits of their liability for legal and fiscal reasons.

#### **4. General Comments on Rulemaking Documents and Process**

##### **4.1. DEC should extend the public comment period and hold an informational presentation (before the end of the comment period) to explain the changes within the proposed regulations.**

Comment 4.1.1.1. Here's what New York convenience store operators have been experiencing this summer.

Due to the chronic shortage of workers that's affecting businesses statewide, many stores have had to cut back their operating hours for lack of staffing, sacrificing the opportunity to regain sales lost during the pandemic.

When the doors are open, operations are impeded by sporadic delivery delays and product shortages – everything from deli meats to beverages, from propane tanks to bagged ice, from plastic cups to paper supplies – as our distributors struggle with delays and shortages from *their* suppliers, compounded by a dearth of drivers and warehouse workers. Wholesale prices of what products and supplies are available have spiked, pinching the retailer's gross margin.

Meanwhile, some stores have placed gas pumps out of service because their built-in credit card readers crashed and need replacing, but the replacement units are back-ordered for weeks if not months, inconveniencing fuel customers already frustrated about elevated gas prices, and hurting the retailer's volume.

Shed no tears for convenience store operators. This is the business they chose, and they are adapting as best they can to the daily challenges confronting them. I offer this merely to illustrate

that retailers with underground petroleum tank systems at their convenience stores have been preoccupied with more than the usual number of major distractions during a public comment period that has coincided with their peak months of June, July and August, and therefore have not had ample time to sit down and review, line-by-line, this 284-page rulemaking.

We appreciate the Department's assertion that this rulemaking won't foist new costs or responsibilities on regulated parties. However, respectfully, past experience has taught us not to rely exclusively on such assurances. Moreover, the presentation makes it hard for anyone but full-time PBS technicians and engineers to digest. Entire sections are repealed, and new sections proposed, which must be compared side by side, word by word, to understand whether and how the tank operator's obligations could change.

[Commenter association] therefore requests that the public comment period for this rulemaking be extended by at least 60 days so that the retail community has sufficient time to develop more meaningful feedback to the Department. Thanks for your consideration.

Comment 4.1.1.2. I am writing regarding the above-mentioned Petroleum Bulk Storage (PBS) Regulations to respectfully request an extension in which to file comments.

We have not had sufficient opportunity to review everything contained in the proposal and have our technical people reviewing them at this time.

Your consideration on this matter appreciated and I thank you in advance.

Comment 4.1.1.3. These comments are filed on behalf of the [commenter association] in response to the notice published in the New York State Register on June 16, 2021 seeking public comments by August 23, 2021 on the Department's proposed amendments to its Petroleum Bulk Storage (PBS) Regulations. [Commenter association] is a trade association representing businesses that store, transport, and deliver petroleum products throughout New York State. Our members are mostly family run companies whose owners and employees work and live in the communities they serve. Thus, we have a direct interest in this rulemaking proceeding.

While we welcome the opportunity to provide comments as representatives of the regulated community (several are listed below), we reiterate our request that an informational conference be convened and an extension of the comment period be granted.

As explained by DEC, the predominant reason for amending the existing regulations is to comply with federal requirements. The Department has also stated that other changes have been made to improve the consistency and clarity of the PBS program. The express terms total 284 pages and have been difficult to analyze in the time allowed for public review.

To better comprehend the proposed modifications, we respectfully request that the Department convene an informational meeting before finalizing the regulations. We believe that the regulated community and the public would benefit from receiving information explaining the reasons for the changes. This could limit the number of inquiries, could lead to an exchange of information among the parties, and would allow for more meaningful public participation and review. Please note that [another commenter], made the request for a meeting and extension during the August 17, 2021 evening public hearing.

As stated above, [commenter association] hopes to learn more about the proposed language changes and to provide feedback prior to the finalization of the regulations. We look forward to working with the Department as it completes its amendments to the PBS regulations.

Comment 4.1.1.4. These comments are filed on behalf of the [commenter associations] in response to the Department's proposed amendments to its Petroleum Bulk Storage (PBS) Regulations. [Commenter associations] are trade associations representing businesses that store, transport, and deliver petroleum products throughout New York State. [Commenter association] members are predominately located in the counties comprising the New York City and Long Island Metropolitan region which have, in the past, received delegation of these regulations. Members of both organizations are mostly family run companies whose owners and employees work and live in the communities they serve. Thus, we have a direct interest in this rulemaking proceeding.

[Commenter associations] want to acknowledge the large amount of time and effort that the Department has spent in crafting the modifications to the rules. We are also grateful for the extension granted from the original comment deadline. However, we wish to request, once again, that an informational conference be convened prior to the adoption of these rules.

We have made several requests to the Department for an informational meeting. [Commenter association] received a response to its inquiry that a meeting may possibly be convened after the finalization of the regulations. We suggest that the preferable approach would be to have the meeting prior to the adoption of the rules. That approach would enable the Department to make any modifications without having to go through an additional rulemaking proceeding to amend the regulations. In the past, our organizations have worked with DEC in PBS rulemaking processes. We reiterate our belief that a conference could limit the number of inquiries, could lead to an exchange of information among the parties, and would allow for more meaningful public participation and review.

As stated above, [commenter associations] would welcome the opportunity to learn more about the proposed language and to meet prior to the finalization of its amendments to the PBS regulations.

Comment 4.1.1.5. I was unclear about one section and wanted to see if I could possibly get additional clarification. I believe it's subdivision 613-2.3(e) [as in Edward]. And section one about the annual tank testing. I'm unclear about the detecting of 0.5 gph from any portion of the tank.

Comment 4.1.1.6. Thank you for this opportunity. We appreciate you conducting the public hearing to better inform everybody about this regulatory filing. I'm the president of the [commenter association]. Many of our members, most of our members are tank system operators at gas stations across New York. And it's my job to explain to them in plain language exactly what the changes are that are being proposed in this new Part 613. I've been struggling the past several weeks to do that. And I find that it's technical, it's complex. You know, despite the Department's assurances that there are no new costs or new requirements sitting in there, I need to verify that and be able to explain that to our members. I'm going to be requesting that Department consider extending the public comment period so that I and others like me can have more time to fully analyze and digest the changes that are being proposed here.

Comment 4.1.1.7. Thank you for giving me the opportunity to speak. I am [commenter], the executive director for the [commenter association]. [Commenter association] represents the independent petroleum regulators throughout New York State. In the earlier meeting today [another commenter] from [another commenter association] made a request in regards to Part 613 for additional time to comment. I would also like to join in on that request, and due to the fact that the proposed changes are so lengthy and technical we would also like to request an informational meeting that would allow for questions before the regs are finalized. So, again, we

are asking for additional time to comment and for an informational meeting would be greatly appreciated. So thank you for your time and your consideration.

Comment 4.1.1.8. My name is [commenter]. I'm an attorney at [commenter association]. We are [an] environmental law firm in Rochester, New York. I just have a few quick comments but I guess I will piggyback on the prior comment before about suggesting and requesting that additional time be made available to make comments on these regulations due to their complexity and the length of, you know, the changes and everything. It took me quite some time to go through everything, and I'm sure I missed some things. And I will just, you know, make note that the [commenter association] has a petroleum spills committee, and we actually are having a symposium on September 23rd from noon to four p.m. where we hope to bring together the, you know, all the environmental industry practitioners who deal with spills, petroleum spills together. And, you know, maybe that could be another opportunity for people to get their heads together and really think about these regs and offer some good comments on them. But I just wanted to throw that out there.

Comment 4.1.1.9. I am writing on behalf of the [commenter association] to renew our request for an informational meeting on the Department's proposed modifications to 6 NYCRR Part 613 - Petroleum Bulk Storage (PBS) regulations. This request was previously made during the public hearing on August 17, 2021 and in written comments filed by [commenter association] on August 23, 2021.

As you know, [commenter association] and other parties sought an extension of the comment deadline which was granted by DEC to December 6, 2021. [commenter association] also requested that the Department convene a meeting so staff can explain the proposed modifications with the opportunity for the public to ask questions.

While the Department's extension of the comment deadline was welcome, we reiterate our request for an informal stakeholder/public meeting (neither recorded nor before the ALJ). We suggest that such a meeting be convened no later than early in November to enable the parties to prepare comments, if any, to be filed in December.

Thank you for your consideration.

Comment 4.1.1.10. I am writing on behalf of the [commenter association] to request an informational meeting on the Department's proposed modifications to 6 NYCRR Part 613 - Petroleum Bulk Storage (PBS) regulations.

My name is [commenter], and I serve as the Chief Executive Officer of [commenter association] and represent the interests of retail and wholesale home heating oil companies in the five boroughs of New York City and Nassau and Suffolk Counties in Long Island.

[Commenter association] believes a meeting would be beneficial so DEC staff can explain the proposed modifications with the opportunity for the public to ask questions.

Thank you for your consideration.

Comment 4.1.1.11. Finally, on behalf of the [commenter associations], we want to thank the Department for its hard work in revising Part 613. We appreciate and recognize the Department's time and energy and the major effort it took to revise Part 613. Given the breadth of the revisions, we would like to suggest that the Department host a number of workshops/informational meetings regarding the Proposed Regulations, in an effort ensure

maximum compliance, and perhaps even consider a one year (at least) grace period to comply with the Proposed Regulations, specifically Section 613-2.4(a).

Comment 4.1.1.12. As a footnote, we would like to point out that, unfortunately, the chosen style of presentation was migraine-inducing for the end user. Entire sections are repealed, and entire new sections are proposed for substitution. The only way to glean whether and how the UST owner or operator's obligations would change is to compare long passages of text side by side, word for word. Owners/operators should be held to high standards, but they shouldn't need a decoder ring to discern what those standards are. We wish the Department had granted requests from regulated parties to convene an interactive stakeholder meeting to help clarify the policy changes.

Response 4.1.1. The public comment period began on June 16, 2021 and was initially set to end on August 23, 2021; the deadline was extended to December 6, 2021 to give the regulated public sufficient time to review the draft regulations. As stated previously, DEC's primary objective with this rulemaking is to consolidate existing federal and state regulations. An in-depth presentation on the updated Part 613 will be held after the regulations have been finalized.