

Assessment of Public Comment

Parts 596-599

Chemical Bulk Storage (CBS)

Below are the responses to the comments submitted by the regulated community to the New York State Department of Environmental Conservation (DEC) regarding the proposed revisions to the Chemical Bulk Storage (CBS) regulations. This rule making was proposed on August 6, 2014 and included an extended 90-day comment period that ended on November 4, 2014. A statewide webinar with nearly 500 participants was held on August 26, 2014 to explain the proposed rules and answer questions. Six public information meetings/hearings were held across the State in September and October 2014 to further explain the proposed rules and receive comments.

Comments on §596

Comment 1: We support the Agency's definition change from non-stationary tank to container.

Response 1: Comment noted.

Comment 2: Notice of Inspections.

Although raised in the previous comments on the preliminary draft regulations, the Commenter would like to reiterate that DEC's practice of conducting unannounced inspections as a matter of right is anti-productive. The Commenter respectfully requests that DEC reconsider this determination and provide 72-hour advance notice for inspections, in proposed section 596.1(e) to allow the appropriate staff to be on hand to assist in providing access to tank systems with minimal disruption to business operations.

Alternatively, the Commenter requests that if DEC is unwilling to include any such restriction in the regulations, DEC clarify in its regulatory guidance that 72-hour advance notice will be provided except in emergency cases.

Response 2: DEC considers the text of section 596.1(e) to represent no change in DEC's inspection authority or practice. Section 596.1(e) is consistent with the provisions drawn from the former section 596.1(e). Although the great majority of DEC's inspections are preannounced, some are unannounced. The statute (ECL section 40-0109(1)) provides that DEC, at reasonable times, may enter and inspect a facility and examine its records. DEC needs to be able to determine the actual state of compliance of any facility absent a notification period during which conditions could be changed. Absent an emergency situation, DEC staff does not intend to seek entry to a facility outside of normal business hours.

Comment 3: Subdivision 596.2(c) requires a registration to be renewed every two years. Please consider changing the renewal cycle to five years to be consistent with other DEC programs.

Response 3: The registration cycle is set by statute (ECL section 40-0107(1)) to be every two years so DEC cannot make this change.

Comment 4: Subdivision 596.2(j) requires that the design and working capacity of each tank in a tank system be labeled on each tank; however, 599.3(a) and 599.17 indicate that the storage capacity and working capacity should be marked at the tank fillport/gauge. Is this difference in the labeling requirements at tank and fillport/gauge intentional?

Response 4: The difference was not intentional. DEC has modified sections 599.3(a) and 599.17 to require labeling showing the design and working capacities of the tank.

#### Comments on §597

Comment 5: We would like to see 597.4(b)(3)(iii) eliminated from the list of requirements to not report a spill of a reportable quantity to secondary containment. This item requires the spill to be cleaned up within two hours of discovery. This time frame is not attainable for most spills in the Chemical Bulk Storage program. In most cases, once a material is spilled to containment it becomes undesirable to use in the process. If outside resources had to be called to pump out the material from the containment or the material needed to be transferred to another tank, it may not be able to be accomplished within two hours. Another example is that if the material had to be drained to the sewer, this needs to be regulated and not disposed of all at once. This may also take longer than two hours. If this item cannot be eliminated altogether, we ask the time frame be increased to 24 hours.

Response 5: If a significant spill occurs and will not be cleaned up in two hours, facility staff will be required to report the spill. It is not necessary to clean up the spill within two hours, just report it. The purpose of this section is to say that minor spills that are not released to the environment and are cleaned up quickly do not need to be reported.

Comment 6: The proposed CBS regulations do not clarify reporting requirements for continuous releases associated with HVAC units. Clarification is necessary given the confusing state of current continuous release reporting requirements.

Response 6: The text of paragraph 597.4(b)(4) was drawn from, and is consistent with, the text of former paragraph 595.3(a)(5). DEC does not understand what part of the reporting requirement could be different or causing confusion.

## Comments on §598

Comment 7: We are a small operation in North Tonawanda with one registered AST - a 1000 gallon sodium hydroxide (NaOH) tank (operational). We've never had any spills and are compliant with the current regs. How will any of these changes affect our plant, if at all? Additional training? New or different registration?

Response 7: Since this rule making is aimed at achieving consistency between State and federal rules rather than making substantive changes, if a facility is in compliance with the previous rules, it will be in compliance with the revised rules.

Comment 8: PROPOSED 6 NYCRR Part 598 - There is no reference to Underwriters Laboratories (UL) Standards although Underwriters Laboratories Canada (ULC) is listed. Add the following UL Standards for the United States:

(j) References. Citations used in this Part refer to the publications listed [below] {in this subdivision}. These publications are available for inspection at the Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7020. Copies may be purchased directly from the publisher at the address shown.

{(22) UL 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," December 1996 edition, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

{(23) UL 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids," December 2006 edition, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

{(24) UL 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids," February 2006 edition, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

{(25) UL 971A, "Metallic Underground Fuel Pipe," October 2006 edition, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

{(26) UL 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks," January 2007 edition, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

Response 8: DEC will consider mandating compliance with more recent industry standards as part of a future rule making.

## Comment 9: 6 NYCRR 598-13 Delivery Prohibition

Commenter is concerned that the provisions of proposed 598-13 dealing with delivery prohibition could create a significant hardship for tank operators if enforcement actions are

not properly applied. Commenter operates very complex, yet extremely reliable electric, gas and steam systems for its customers. The ability to operate tank systems is a key component in maintaining reliability. The Company recommends that additional guidance documents be issued to NYSDEC field inspectors to clarify the tagging process and related procedures to be used before a tank system is "red-tagged." The process to remove the tag could take days, possibly compromising the ability of the Company to operate important systems associated with reliable service.

Furthermore, with respect to termination for delivery prohibition, we urge that compliance submission review and tag removal be performed within a shorter timeframe.

Response 9: DEC will issue appropriate guidance to inspectors regarding the process of imposing delivery prohibitions. With respect to the removal of tags, DEC intends to act as expeditiously as possible and any tag must be removed within two business days after a decision by DEC that all Tier 1 and Tier 2 conditions at the facility have been resolved.

Comments on §599

Comment 10: SECTION 599.3. New underground tanks (d)

Add Steel Tank Institute/Steel Plate Fabricators Association (STVSPF A) sti-P3, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks," revised January 2013: It is an important national consensus specification that is not listed.

Response 10: DEC will consider mandating compliance with more recent industry standards as part of a future rule making.

Comment 11: SECTION 599.3. New underground tanks (c)

There is no reference to Underwriters Laboratories (UL) Standards although Underwriters Laboratories Canada (ULC) is listed. Add the following UL Standards for the United States:

(3) All new underground tanks must meet the criteria of this subdivision and must be designed, constructed and installed or certified by a qualified engineer or technician in accordance with one of the following:

(i) ULC Standard S603;

(ii) ASTM D4021-92 (see [subdivision] 598.1 {j} of this section); or

(iii) any other consensus code, practice or standard developed by a nationally recognized association or independent testing laboratory which meet the specifications of this subdivision.

{(iv) UL 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," December 1996 edition, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

{(v) UL 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks," January 2007 edition, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

Response 11: DEC will consider mandating compliance with more recent industry standards as part of a future rule making.

Comment 12: SECTION 599.3. New underground tanks (d)

Add polyurethane, a more accepted coating for external protection of steel underground tanks. This newer corrosion protection technology meets or exceeds all current Underwriters Laboratories (UL) 1746 underground-protected steel storage tank standards.

Response 12: DEC will consider mandating compliance with more recent industry standards as part of a future rule making.

Comment 13: SECTION 599.4. Secondary containment for underground tanks (b)

Add liquid outlets as additional penetrations.

[iii] {(3)} there must be no penetrations of any kind through the outer wall into the tank, except {liquid outlets}, top entry manholes and fittings required for filling the tank, venting the tank, or monitoring the tank;

Response 13: DEC has modified the language to clarify that fittings are used for filling and emptying the tank.

Comment 14: SECTION 599.4. Secondary containment for underground tanks (b)

The interstice of the tank does not normally contain an inert gas or liquid as it is open to the tanks electronic leak detection probe. Change the sentence to read as follows:

[v] {(5)} the outer wall must be capable of containing an inert gas or liquid at a pressure greater than the maximum internal pressure of the inner wall.

Response 14: DEC declines to make the suggested revision because the tanks are required to be intentionally designed to contain an inert gas or liquid at a pressure greater than the maximum internal pressure of the inner wall.

Comment 15: SECTION 599.8. New aboveground tanks (b)

There is no reference to Underwriters Laboratories (UL) Standards although Underwriters Laboratories Canada (ULC) is listed. Add the following UL Standards for the United States:

(2) All new aboveground [storage] tanks must be designed, constructed and installed or certified by a qualified engineer or technician in accordance with one of the following:

(i) API 650,

(ii) API 620;

(iii) CAN4-S601-M84;

(iv) CAN4-S630-M84;

(v) ASTM D4097-88;

(vi) ASTM D3299-88, (see {section} 598.1 {j} of this Title); or

(vii) a comparable consensus code, standard or practice developed by a nationally recognized association or independent testing laboratory which meet the standards of this section.

{(viii) UL 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," December 1996 edition, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

{(ix) UL 2085 - Protected Aboveground Tanks for Flammable and Combustible Liquids, Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, IL 60062-2096.}

Response 15: DEC will consider mandating compliance with more recent industry standards as part of a future rule making.

Comment 16: SECTION 599.8. New aboveground tanks (d)

Add polyurethane, a more accepted coating for external protection of steel aboveground tanks.

Response 16: DEC has determined that polyurethane does not need to be included in this listing as the regulations allow for the use of other suitable dielectric materials.