

# DER-12 / Application Review Policy for PBS and CBS Registration Applications

New York State Department of Environmental Conservation

## DEC Program Policy

**Issuing Authority:** Carl Johnson

**Title:** Deputy Commissioner, Office of Air and Waste Management

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**Latest Date Revised:** Not Applicable

**I. Summary:** This program policy establishes uniform procedures for the Department's processing of Petroleum Bulk Storage ("PBS") and Chemical Bulk Storage ("CBS") registration applications.

**II. Policy:** In order to enhance compliance with the law and the regulations (6 NYCRR Parts 595-599, and 612-614), this policy establishes uniform procedures for use by Department program staff in processing applications to register or to renew a registration.

Upon request by the Department, owners and operators of PBS and CBS facilities must provide information and records relating to compliance with the requirements imposed under Parts 612-614, or Parts 595-599, respectively.

Applications to register a PBS facility or to renew a PBS registration are subject to review for completeness and accuracy of the application, and to ascertain whether the facility is in compliance with applicable requirements of Parts 612-614.

Applications to register a CBS facility or to renew a CBS registration are subject to review for completeness and accuracy of the application, and to ascertain whether the facility is in compliance with applicable requirements of Parts 595-599.

The depth of each review will vary, depending upon whether the information contained in an application and in the Department's records is sufficient to make those determinations. Where necessary for the Department's review of an application, the Department will require the applicant to verify that the subject facility is in compliance with specified requirements. Under these procedures, when the Department determines that an application is incomplete or inaccurate, the application and fee will be returned to the applicant with instructions to cure the deficiency or deficiencies. If the Department's review identifies apparent violations of Parts 612-614 (for PBS), or Parts 595-599 (for CBS), the application and check will be returned and the applicant directed to submit documentation regarding compliance. If the applicant cannot demonstrate compliance, the Department may undertake enforcement, as deemed appropriate. Nothing contained in this policy shall preclude the Department from commencing an enforcement action for failure to have valid and current information on the registration certificate or license.

### **III. Purpose and Background:**

Purpose – This program policy establishes uniform procedures for use by Department staff in processing applications to register PBS and CBS facilities and to renew such registrations. The procedures set forth in this policy are part of a broader effort by the Department to improve compliance through outreach efforts, field inspections, and followup enforcement where appropriate. The establishment of uniform procedures for processing applications will advance the Department’s goal of improving compliance in the first instance, thereby minimizing the number of facilities operating in violation of the regulations.

**PBS Background** – Chapter 613 of the Laws of 1983 (Article 17, Title 10 of Environmental Conservation Law (“ECL”)) directed the Department to promulgate rules and regulations establishing a State petroleum bulk storage code. In particular, ECL 17-1009 requires owners to register their facilities with the Department. The regulatory requirements governing the registration of PBS facilities are contained in 6 NYCRR §612.2. As a pre-condition to registering or renewing registration for its facility, an owner must submit a complete registration application along with the applicable fee. See §612.2(e). Among other information, the owner must provide specific information regarding the tank(s), including its location, type, installation date, product(s) stored, type of internal and external corrosion protection, type of secondary containment, type of leak detection, and type of overfill protection. The owner must provide similar information with respect to piping. An owner is required to certify that the information presented in the application is true, correct, and accurate. In addition to the registration obligation, a facility must comply with the requirements of Part 613 (“Handling and Storage of Petroleum”). Beginning December 27, 1986, new or substantially modified facilities had to meet the requirements of Part 614 (“Standards for New and Substantially Modified Petroleum Storage Facilities”).

**CBS Background** – Chapter 672 of the Laws of 1986 enacted the “Hazardous Substances Bulk Storage Act” (ECL Article 40) to establish a program to regulate the storage and handling of hazardous substances. As directed by ECL 40-0113, the Department adopted regulations implementing Article 40 (6 NYCRR Parts 595-599). The regulatory requirements governing the registration of CBS facilities are contained in 6 NYCRR §596.2. As a pre-condition to registering or renewing registration for its facility, an owner must submit a complete registration application along with the applicable fee. See §596.2(g). Among other information, the owner must provide specific information regarding the tank(s), including its location, type, installation date, product(s) stored, type of internal and external corrosion protection, type of secondary containment, type of leak detection, and type of overfill protection. The owner must provide similar information with respect to piping. An owner is required to certify that the information presented in the application is true, correct, and accurate. In addition to the registration obligation, a facility must comply with the requirements of Part 598 (“Handling and Storage of Hazardous Substances”) and Part 599 (“Standards for New and Substantially Modified Hazardous Substance Storage Facilities”).

**IV. Responsibility:** The Department’s Bulk Storage Program staff are responsible for implementing this policy. Should enforcement become necessary, responsibility will lie with the Department’s Regional legal staff or with the Division of Environmental Enforcement in cooperation with technical staff.

## V. Procedure:

PBS Procedure – Applications to register a PBS facility or to renew a PBS registration are subject to either one or two levels of review, depending upon whether the information provided in the application and contained in the Department’s records is sufficient to determine that the facility is in compliance with certain applicable requirements of Parts 612-614. During the first level of review (“Tier 1 Review”), the Department will review each PBS application and any corresponding Department records to determine whether:

- (a) the application is complete (i.e., provides complete responses to all applicable questions) and responses are correctly entered in accordance with the instructions;
- (b) the information provided conforms to the conditions observed by inspectors and determinations made by the Department as a result of the inspection(s);
- (c) any underground tank system is overdue for tightness testing (section 613.5);
- (d) any tank installed or substantially modified since December 27, 1986, complies with the requirements of Part 614;
- (e) any aboveground tank with a capacity of 10,000 gallons or more has secondary containment (subdivision 613.3(c)(6)); and
- (f) any tank that has been closed was closed in accordance with section 613.9, the environment around any underground tank was checked for spills, as appropriate (see 40 CFR 280.72), and the Department was notified of any spill, leak or discharge of petroleum (section 613.8).

If an application is incomplete and/or information has been entered incorrectly or if the information contained in the application does not conform to the conditions observed and determinations made by Department inspectors (items (a) and (b) above), except as provided below, Department staff will return the application and fee to the owner. The owner will be directed to complete and/or correct the application and resubmit it to the Department within a stated time period.

If the data appear to indicate that a facility is not in compliance with item(s) (c), (d), (e), and/or (f) above, Department staff will perform a second level of review (“Tier 2 Review”) or conduct an on-site inspection of the facility. In a Tier 2 Review, the applicant must verify compliance with respect to each item for which the Department cannot make a determination.

1. If any tank is overdue for a required tightness test, the Department will return the application and fee to the owner. The owner will be directed to resubmit the application and fee, along with the required tightness test report.
2. If a tank was installed or substantially modified since December 27, 1986, the Department will return the application and fee to the owner if it appears that the facility is not in compliance with Part 614. The owner will be directed to submit documentation demonstrating compliance with Part 614 and to resubmit the application and fee.
3. The Department will return the application and fee to the owner if the facility has one or more aboveground tanks with a capacity of 10,000 gallons or more and lacking the required secondary containment. The owner will be directed to submit documentation demonstrating compliance

with Section 613.3(c)(6) and to resubmit the application and fee.

4. If an underground tank(s) at the facility has been closed, the Department will return the application and fee to the owner if either of the following criteria apply: the closed tank(s) was overdue for tightness testing at the time of closure; or the tank(s) was subject to federal requirements in 40 CFR Part 280. The owner will be directed to submit documentation demonstrating that the environment around the closed tank is free from contamination, except when a petroleum spill, leak or discharge was reported in connection with the closure.

In addition to the foregoing elements, as part of each Tier 2 Review, applicants will be required to submit appropriate documentation to verify that tanks are being operated in compliance with the following requirements, as applicable:

- (i) inventory monitoring (section 613.4);
- (ii) leak detection monitoring (paragraph 613.5(b));
- (iii) cathodic protection monitoring (paragraph 613.5(b));
- (iv) monthly visual inspection (paragraph 613.6(a)); and
- (v) 10-year inspection (paragraph 613.6(b)).

Even when a Tier 2 Review is not required as part of the application review process, the Department may request an applicant to submit documentation which confirms that the facility is being operated in compliance with the above requirements (i) - (v).

In all cases, it is the facility owner's responsibility to ensure that a timely and sufficient registration application is submitted (or, if necessary, resubmitted) to the Department. Under these procedures, the Department will not issue a PBS registration or registration renewal certificate unless and until the application is deemed to be sufficient. Any PBS application or renewal application that fails to satisfy any of the foregoing requirements, as applicable, shall be deemed insufficient for purposes of Section 401 of the State Administrative Procedures Act. As such, a PBS registration certificate shall expire and not continue in effect where the owner fails to timely submit or resubmit a sufficient renewal application. As stated above, violations identified by the Department (including the failure to have valid and current information on the PBS registration certificate) are subject to enforcement.

In addition to the foregoing procedures, the Department has recently redesigned the PBS application form. The current application form and instructions are available on the Department's website at <http://www.dec.state.ny.us/website/der/bulkstor/forms/>. Effective with this policy, the Department will accept only the current application form. The Department will return any submissions using an outdated application form.

Nothing contained in these procedures relieves any owner or operator of a PBS facility of its obligation to comply with all applicable statutes and regulations, nor waives the Department's rights to undertake enforcement action, as it deems appropriate.

CBS Procedure – Applications to register a CBS facility or to renew a CBS registration are subject to either one or two levels of review, depending upon whether the information provided in the application and contained in the Department's records is sufficient to determine that the facility is in

compliance with applicable requirements of Parts 595-599. During the first level of review ("Tier 1 Review"), the Department will review each CBS application and any corresponding Department records to determine whether:

- (a) the application is complete (i.e., provides complete responses to all applicable questions) and responses are correctly entered in accordance with the instructions;
- (b) the information provided conforms to the conditions observed by inspectors and determinations made by the Department as a result of the inspection(s);
- (c) all tanks and pipes are upgraded to meet Part 599 requirements regardless of installation date (subdivisions 598.5(a) and (b));
- (d) any aboveground tank has secondary containment (subdivision 598.5(c) and section 599.9);
- (e) any tank that has been closed was closed in accordance with section 598.10, the environment around the underground storage tank was checked for releases, as appropriate (see section 598.10(e)), and the Department was notified of any release (section 595.3); and
- (f) a current Spill Prevention Report exists for the facility. This will be demonstrated by the submittal of the cover page, the table of contents, the compliance assessment (including corrective measures taken), and the dated signature page (section 598.1(k)).

If an application is incomplete and/or information has been entered incorrectly or if the information contained in the application does not conform to the conditions observed and determinations made by Department inspectors (items (a) and (b) above), except as provided below, Department staff will return the application and fee to the owner. The owner will be directed to complete and/or correct the application and resubmit it to the Department within a stated time period.

If the data appear to indicate that a facility is not in compliance with item(s) (c), (d), (e), and/or (f) above, Department staff will perform a second level of review ("Tier 2 Review") or conduct an on-site inspection of the facility. In a Tier 2 Review, the applicant must verify compliance with respect to each item for which the Department cannot make a determination.

1. If a tank was not upgraded in accordance with Part 598.5 or if a tank was installed or substantially modified since February 11, 1995, the Department will return the application and fee to the owner if it appears that the facility is not in compliance with Part 599. The owner will be directed to submit documentation demonstrating compliance with Part 599 and to resubmit the application and fee.
2. The Department will return the application and fee to the owner if the facility has one or more aboveground tanks lacking the required secondary containment. The owner will be directed to submit documentation demonstrating compliance with Section 599.9 and to resubmit the application and fee.
3. If an underground tank(s) at the facility has been closed, the Department will return the application and fee to the owner if a site assessment was not submitted. The owner will be directed to submit documentation demonstrating that the environment around the closed tank is free from contamination, except when a spill, leak or discharge was reported in connection with the closure.

4. If the requested evidence of a current Spill Prevention Report was not submitted with the application, the Department will return the application and fee to the owner. The owner will be directed to submit the required documentation with the application and fee.

In addition to the foregoing elements, as part of each Tier 2 Review, applicants will be required to submit appropriate documentation to verify that tanks are being operated in compliance with the following requirements, as applicable:

- (i) leak detection monitoring (599.5 and 598.6(b)(2));
- (ii) cathodic protection monitoring (598.6(a)(2));
- (iii) annual visual inspection (598.7(c)); and
- (iv) 5-year inspection (598.7(d)).

In lieu of items (i) through (iv), the Department reserves the right to require an applicant to submit a copy of the entire Spill Prevention Report for the facility.

Even when a Tier 2 Review is not required as part of the application review process, the Department may request an applicant to submit documentation which confirms that the facility is being operated in compliance with the preceding requirements.

In all cases, it is the facility owner's responsibility to ensure that a timely and sufficient registration application is submitted (or, if necessary, resubmitted) to the Department. Under these procedures, the Department will not issue a CBS registration or registration renewal certificate unless and until the application is deemed to be sufficient. Any CBS application or renewal application that fails to satisfy any of the foregoing requirements, as applicable, shall be deemed insufficient for purposes of Section 401 of the State Administrative Procedures Act. As such, a CBS registration certificate shall expire and not continue in effect where the owner fails to timely submit or resubmit a sufficient renewal application. As stated above, violations identified by the Department (including the failure to have valid and current information on the CBS registration certificate) are subject to enforcement.

In addition to the foregoing procedures, the Department has recently redesigned the CBS application form. The current application form and instructions are available on the Department's website at <http://www.dec.state.ny.us/website/der/bulkstor/forms/>. Effective with this policy, the Department will accept only the current application form. The Department will return any submissions using an outdated application form.

Nothing contained in these procedures relieves any owner or operator of a CBS facility of its obligation to comply with all applicable statutes and regulations, nor waives the Department's rights to undertake enforcement action, as it deems appropriate.

## **VI. Related References:**

**PBS References:** Article 17, Title 10 of the Environmental Conservation Law ("ECL") and 6 NYCRR Parts 612-614 contain provisions relating to the bulk storage of petroleum. Relevant enforcement provisions are contained in ECL Article 71, Title 19. Article 12 of the Navigation Law ("NL") prohibits the discharge of petroleum and contains related provisions concerning the reporting of

petroleum discharges, liability for cleanup and removal, and enforcement. 6 NYCRR Part 611 establishes environmental priorities and procedures for the cleanup and removal of petroleum discharges. [See also 40 CFR 280 Underground Storage Tanks (Federal Regulations).]

**CBS References:** Article 37 and Article 40 of the ECL. 6NYCRR Parts 595-599 contain provisions relating to the bulk storage of hazardous substances. Relevant enforcement provisions are contained in ECL Article 71, Titles 37 and 43. [See also 40 CFR 280 Underground Storage Tanks (Federal Regulations).]

## Responsiveness Summary

### Application Review Policy for PBS and CBS Registration Applications -- Comments and Responses

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The June 15, 2005 issue of the Environmental Notice Bulletin (ENB) published a notice by the Department of Environmental Conservation (the Department) inviting public comment on a proposed policy to establish uniform procedures for the Department's processing of petroleum bulk storage (PBS) and chemical bulk storage (CBS) registration applications. The June 15<sup>th</sup> notice announced a 30-day comment period in connection with the proposed policy and the availability of the full text of the document. In addition, the Department directly notified the following organizations of the proposal and opportunity for comment: the New York Association of Convenience Stores; the Empire State Petroleum Association, Inc.; the New York State Petroleum Council; and the New York State Association of Service Stations and Repair Shops, Inc.

Two entities submitted comments on the proposal – ExxonMobil Refining & Supply Company (ExxonMobil), and the New York Association of Convenience Stores (NYACS). Each entity's comments and Department's corresponding response are presented below:

#### ExxonMobil Comments

1. The proposed changes will serve to simplify and clarify requirements for the regulated community.
2. With regard to Section A of the PBS and CBS applications, it would be helpful to have a published list of descriptions to more clearly identify the facilities that fit under the "type of facility" categories.
3. With regard to Major Petroleum Facility Licenses, does the application form require the insertion of the SPDES number?
4. The Department should develop an electronic system for the submission and processing of applications.

#### Department Responses

1. The Department appreciates the positive comment. Further, the uniform procedures will facilitate compliance.
2. The Department will clarify the application instructions regarding "type of facility".
3. The application process for major facilities is not covered by the proposed policy. However, the SPDES number has been on the application for over a decade.
4. The Department is in the process of developing such a system.

5. The Department should simplify the application process with regard to substantial tank modifications and information corrections.

6. The Department should provide additional information to assist in the submission of a “complete application” thus avoiding the need for a Tier 2 review.

5. To ease the task of reporting substantial tank modifications and information corrections, facility owners may request pre-printed application forms from the Department by calling (518) 402-9543.

6. The Department agrees and will add information to the application instructions to facilitate the submission of a complete application. However, the Department reserves the right to request any applicant to submit data for a Tier 2 review.

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### **NYAC Comments**

1. The Department does not explain how the draft policy differs from existing policy or practice.

2. The 30 day comment period is insufficient.

3. “The draft policy would declare that ‘a PBS registration certificate shall expire and not continue in effect where the owner fails to timely submit or resubmit a sufficient renewal application.’ Under no circumstances should DEC bureaucrats be granted authority to effectively suspend an otherwise compliant operator’s PBS registration in this manner absent a clear finding that the operator is deliberately withholding vital information from the renewal application What’s the goal here –

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### **Department Responses**

1. The proposed policy announced the establishment of uniform procedures for the Department’s review PBS and CBS applications, which seek to improve regulatory compliance in the first instance. Differences from existing practice may be readily inferred from the announced policy – i.e., that applications presently are not subject to such uniform review procedures.

2. In response to a concern from NYAC about the comment period, on June 24, 2005, the Department offered NYAC additional time to comment, if needed. NYAC did not request additional time.

3. The Department’s statutory obligation is protect the environment against releases of petroleum and hazardous substances. Approximately 17,000 spills/releases are reported in New York State each year, costing hundreds of millions of dollars to remediate. Many are the result of regulatory violations. It is the facility owner’s responsibility to achieve and maintain compliance with applicable regulatory requirements, such that operation of the facility will not threaten the

to ensure compliance in order to protect groundwater, or to bust chops for not properly saluting the DEC flag?”

4. “The draft asserts that ‘The procedures set forth in this policy are part of a broader effort by the Department to improve compliance through outreach efforts, field inspections, and followup enforcement where appropriate.’ That approach sounds great in theory, but within certain DEC regions, it doesn’t match the experience of our retail members. Enforcement is not a ‘followup’ to the field inspection. Rather, levying fines has become the sole purpose of the field inspection. DEC headquarters preaches education as the pathway to compliance, but regional personnel practice punishment.”

environment. In accordance with its statutory obligation, the Department will not issue a registration or registration renewal certificate unless and until the application and other relevant information demonstrate compliance.

4. The PBS and CBS programs are established regulatory programs well known to the regulated community, as evidenced by the more than 38,000 registered PBS facilities and 1,600 CBS facilities. Since their inception, the Department has expended considerable time and resources providing education and outreach to the regulated community. The Department believes that the proposed policy will improve compliance and thereby protect the environment.