

Storage Tanks

New York Proposes to Consolidate State, Federal Requirements for Underground Tanks

New York rules for bulk storage of petroleum and chemicals, as well as for management of used oil, would be revised and updated to reflect statutory and regulatory changes under a proposal issued Aug. 6 by the state Department of Environmental Conservation.

To simplify compliance, DEC said, the proposal would consolidate existing state and federal regulations for underground storage tanks—except for provisions governing financial responsibility—into one rule.

The proposal also would reflect the requirements of the federal 2005 Energy Policy Act, including facility operator training requirements, and grant authority to prohibit delivery of petroleum and hazardous substances to tanks that are leaking, may be leaking or are being operated in significant noncompliance, the department said.

Public comments are due Nov. 4 on the proposal, which reflects informal comments received in response to the issuance of a draft in August 2013. The department also plans an online briefing and a series of public meetings around the state on the plan.

The DEC proposal is meant to bring the state's "highly detailed and prescriptive" rules for bulk storage of petroleum and chemicals and management of used oil into step with legal changes, attorney David J. Freeman, of the Gibbons PC law firm in New York, said in an e-mail to Bloomberg BNA.

It also aims to resolve inconsistencies across DEC rules, he said.

Substantive Impact Seen

Some of the changes will have "a substantive impact on the regulated community," he said, including provisions under which the obligation to register storage tanks would fall to the property owner.

The proposal also would incorporate federal requirements for operator training for underground storage tanks, clarify the definition of "reportable quantity" for spills of hazardous waste and update the list of hazardous substances to be consistent with federal law, Freeman said.

Alita J. Giuda, an attorney with the West Firm PLLC in Albany, said in an e-mail message to Bloomberg BNA that the proposal to overhaul the storage requirements meets the state's goal of providing clarity and consistency. Notably, she said, it would step up operator training requirements.

Although the state has stringent reporting requirements for petroleum releases, the proposed revision to the chemical bulk storage rules would appear to weaken the reporting requirements for hazardous substance spills, according to Lawrence Schnapf of the Schnapf LLC law firm in New York.

Under the proposal, the reporting obligation would be triggered by a release that exceeds a reportable quantity, Schnapf told Bloomberg BNA. "Because it is usually not possible to determine the quantity of historic releases, this could create a reporting loophole that would exempt owners or operators of property from reporting historic contamination," he said.

Schnapf also noted that the proposed definition of "facility owner" includes those with legal or equitable title. "Since purchasers who have signed a contract may be considered to have equitable title, the proposed [regulations] could be construed as imposing reporting obligations on purchasers who discover petroleum contamination during due diligence," he said.

Other substantive changes would broaden the scope of underground storage tank rules, Schnapf added. Also, making the UST rules consistent with federal law would allow enforcement delegation to the DEC, both Schnapf and Freeman said.