

Enforcement Discretion Memorandum Issued July 8, 2009

The DEC has issued an enforcement discretion memorandum regarding recent changes in New York State law to the definitions of "petroleum" and "facility" found in the Petroleum Bulk Storage law (Article 17, Title 10 of the Environmental Conservation Law). These changes to the definitions make the following tanks subject to the Petroleum Bulk Storage (PBS) regulations:

- tanks storing product for operational purposes (e.g., transformers, hydraulic equipment, etc.) and
- tanks storing asphaltic emulsions.

Without this enforcement discretion memorandum these tanks are required to be registered and in compliance with 6 NYCRR Parts 613 and 614 by July 21, 2009.

The Department has decided to exercise enforcement discretion at this time and not subject these tanks to the registration and storage requirements of 6 NYCRR Parts 612, 613, and 614. Further review of the regulatory requirements to be imposed upon both operational tanks and tanks storing asphaltic emulsions will be completed as part of the Department's ongoing rulemaking process for 6 NYCRR Parts 612-614, which will give all interested parties an opportunity to be heard.

Operational Tanks

The changes to the definition of "facility" and "petroleum" make operational tanks subject to the regulations. Operational tanks are tanks where the product is stored but is not consumed.

Examples of operational tanks include:

- transformers,
- electrical cable oil reservoirs,
- hydraulic lift tanks and
- tanks storing hydraulic oil that are integral to a machine.

Tanks storing asphaltic emulsions

The change in the definition of petroleum is broad enough to include asphaltic emulsion and the change in the definition of facility specifically mentions that tanks storing asphaltic emulsions are included as part of the facility.

Questions regarding this matter can be directed to DERweb@gw.dec.state.ny.us.

For the full text of the enforcement discretion, please see <http://www.dec.ny.gov/regulations/56495.html>