

Regulatory Impact Statement

Amendments to 6 NYCRR Part 613

Petroleum Bulk Storage

1. STATUTORY AUTHORITY

Introduction

The State law authority that empowers the New York State (State) Department of Environmental Conservation (DEC) to regulate the storage and handling of petroleum is found in two sets of statutes. The first set of statutes is found in Article 12 of the Navigation Law (NL), sections 170 through 197, entitled “Oil Spill Prevention, Control, and Compensation” (Article 12). Article 12 was enacted in 1977 and focused primarily on establishing liability for petroleum discharges or releases and the licensing of very large bulk storage facilities. The second set of statutes is found in Title 10 of Article 17 of the Environmental Conservation Law (ECL), sections 17-1001 through 17-1017, entitled “Control of the Bulk Storage of Petroleum” (Title 10). Title 10 was enacted in 1983 and included requirements that extended regulation to relatively small and mostly commercial bulk storage facilities. DEC’s regulations promulgated on the basis of these laws are currently found at 6 NYCRR Parts 610, 611 and 613 and cover, in pertinent part, the storage and handling of petroleum at facilities that use underground storage tank (UST) systems and aboveground storage tank (AST) systems.

With the passage of Article 12 and Title 10, the State Legislature preceded Congress’s enactment, during 1984, of a statutory framework aimed at regulating some of the same types of facilities. The federal laws, found at Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 USC sections 6991 through 6991m, entitled “Regulation of Underground Storage Tanks” (Subtitle I), are, as the title indicates, limited to UST systems.

General Authority to Regulate Sources of Land and Water Pollution

ECL section 1-0101 declares it to be the policy of the State to conserve, improve, and protect its natural resources and environment and to control water and land pollution in order to enhance the health, safety, and welfare of the people of the State and their overall economic and social well-being. Section 1-0101 further expresses, among other things, that it is the policy of the State to coordinate the State's environmental plans, functions, powers, and programs with those of the federal government and other public and private organizations to the end that the State may fulfill its responsibility as trustee of the environment for present and future generations.

ECL section 3-0301 provides that it shall be the responsibility of DEC to carry out the environmental policy of the State. In furtherance of that mandate, ECL section 3-0301(1)(a) gives DEC authority to “[c]oordinate and develop policies, planning and programs related to the environment of the State and regions thereof” ECL section 3-0301(1)(b) directs DEC to promote and coordinate management of, among other things, water and land resources “to assure their protection, enhancement, provision, allocation, and balanced utilization consistent with the environmental policy of the State and take into account the cumulative impact upon all of such resources in making any determination in connection with any license, order, permit, certification or other similar action or promulgating any rule or regulation, standard or criterion.” Pursuant to ECL section 3-0301(1)(m), DEC is empowered to “[p]revent pollution through the regulation of the storage, handling and transport of . . . liquids . . . which may cause or contribute to pollution.” ECL section 3-0301(2)(a) permits DEC to adopt rules and regulations to carry out the purposes and provisions of the ECL. ECL section 3-0301(2)(m) gives DEC authority to “adopt such rules, regulations, and procedures as may be necessary, convenient, or desirable to effectuate the purposes of this chapter.”

ECL section 17-0303(3) permits DEC to “make, amend and repeal rules and regulations for the storage of liquids likely to pollute the waters of the state including, but not limited to, standards for the construction,

installation, maintenance, protection and diking of tanks used to store any such liquids and their associated structures, piping, valves, fittings, fixtures and outlets, in conjunction with the promulgation of which, the [DEC] shall consider codes and practices of industries concerned with the handling and storage of such liquids and the time required for persons engaged in such industries to conform with such rules and regulations.”

Authority to Regulate PBS Facilities

In Title 10, the Legislature “declare[d] that the lands and waters of New York State constitute an irreplaceable resource upon which is founded the well-being of public health, economic vitality, and the state’s environment,” and that these resources may be contaminated by spills of petroleum from Petroleum Bulk Storage (PBS) facilities (facilities). Petroleum spills are a threat to the public welfare and Title 10 empowers DEC to prevent spills through the establishment of rules governing facilities. See ECL section 17-1001. The standards that DEC must establish include, but are not limited to, requirements governing the design, construction, installation, maintenance, and closure of facilities. Title 10 also specifies that DEC establish certain registration, leak detection, testing and inspection, corrective action, operator training, and variance requirements. See ECL sections 17-1005, 17-1007, 17-1009, and 17-1015.

Authority Regarding Spill Prohibition, Reporting, and Containment

It is “unlawful for any person . . . to discharge into [waters of the State] organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by [the Department] pursuant to section 17-0301.” ECL section 17-0501.

All discharges of petroleum that are not pursuant to and in compliance with the conditions of a State or federal permit are prohibited. NL section 173.

Any person responsible for causing a petroleum discharge must immediately notify DEC of the

discharge, but in no case later than two hours after the occurrence of the discharge. NL section 175.

Any person who has caused an unauthorized discharge of petroleum must immediately undertake to contain such discharge. NL section 176(1).

DEC and the State Comptroller are authorized to adopt, amend, repeal, and enforce such rules as they deem necessary to accomplish the purposes of Article 12. NL section 191.

Any person who owns, possesses, or controls “more than [1,100] gallons, in bulk, of any liquid, including petroleum, which, if . . . discharged or spilled would or would be likely to pollute the lands or waters of the state . . . shall, as soon as he has knowledge of the . . . discharge or spill of any part of such liquid . . . immediately notify [the Department].” ECL section 17-1743.

Authority Regarding Access to Facilities’ Premises and Records

DEC is authorized to “[e]nter and inspect any property for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or non-compliance with any law, rule, or regulation . . .” ECL section 3-0301(2)(g).

Pursuant to ECL section 17-0303(6), DEC has “the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution, or the possible pollution of any waters of the state . . .”

ECL section 17-1011 mandates that the owner or operator of a facility must, upon reasonable notice from DEC, permit DEC personnel at all reasonable times to have access to all records relating to the daily measurement and inventory of petroleum stored at a facility. This section also authorizes DEC personnel, at reasonable times and upon reasonable notice, to enter and inspect any facility, provided that such personnel are accompanied by the owner or operator or their designee.

DEC personnel are “authorized to enter and inspect any property or premises for the purpose of

inspecting facilities and investigating either actual or suspected sources of discharges or violation of [Article 12] or any rule or regulation promulgated pursuant to [Article 12].” DEC personnel are “further authorized to enter on property or premises in order to assist in the cleanup or removal of the discharge.” NL section 178.

Authority to Cooperate and Coordinate with Other Government Entities

DEC is empowered to cooperate with the executive, legislative, and planning authorities of the United States in furtherance of the policy set forth in ECL section 1-0101. ECL sections 3-0301(1)(w) and 3-0301.2(d)(3). DEC is to “[a]ct as the official agency of the state in all matters affecting the purposes of DEC under any federal laws. . . .” ECL sections 3-0301(2)(j).

DEC has the duty and responsibility to “[c]ooperate with the appropriate agencies of the United States . . . in respect to pollution control matters” ECL section 17-0303(5)(c).

DEC is authorized to “delegate to municipal health or environmental departments or agencies or other appropriate governmental entities . . . any of which shall meet such qualifications relating to adequate authority, expertise, staff, funding and other matters as may be prescribed, such functions of review, approval of plans, issuance of permits, licenses certificates or approvals required or authorized by this chapter as [DEC] may deem appropriate . . . subject to such conditions as [DEC] may establish.” ECL section 3-0301(2)(p). DEC may withdraw a delegation of power to a municipal entity at any time upon 30 days written notice to the municipal entity. ECL section 3-0301(2)(p).

Every local law or ordinance which is inconsistent with the provisions of Title 10 or DEC’s implementing regulations is preempted. However, an inconsistent local law or ordinance issued by a city with a population of 1,000,000 or more or a county, will not be preempted if the local law or ordinance provides environmental protection equal to or greater than the provisions of Title 10 or DEC’s implementing regulations, and the municipality files with DEC a written declaration of its intent to implement the law or ordinance which

is approved by DEC in written findings which set forth the terms of approval. ECL section 17-1017.

Federal Authority

The U.S. Environmental Protection Agency (EPA) summarized the development of the pertinent federal statutory and regulatory authority in the following passage:

In 1984, Congress responded to the increasing threat to groundwater posed from leaking USTs by adding Subtitle I to the Solid Waste Disposal Act (SWDA)[more commonly known as the Resource Conservation and Recovery Act (RCRA)]. Subtitle I of SWDA required EPA to develop a comprehensive regulatory program for USTs storing petroleum or certain hazardous substances, ensuring that the environment and public health are protected from UST releases. In 1986, Congress amended Subtitle I of SWDA and created the Leaking Underground Storage Tank Trust Fund to implement a cleanup program and pay for cleanups at sites where the owner or operator is unknown, unwilling, or unable to respond, or which require emergency action.

In 1988, EPA promulgated the UST regulation (40 CFR Part 280), which set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, after 1988 owners and operators were required to report and clean up releases from their USTs. The 1988 UST regulation set deadlines for owners and operators to meet those requirements by December 22, 1998. Owners and operators who chose to upgrade or replace had to ensure their UST systems included spill and overflow prevention equipment and were protected from corrosion. In addition, owners and operators were required to monitor their UST systems for releases using release detection (phased in during the 1990s, depending on when their UST systems were installed). Finally, owners and

operators were required to have financial responsibility (phased in through 1998), which ensured they have financial resources to pay for cleaning up releases. EPA has not significantly changed the UST regulation since 1988.

In 1988, EPA also promulgated a regulation for state program approval (40 CFR part 281). Since states are the primary implementers of the UST program, EPA established a process where state programs could operate in lieu of the federal program if states met certain requirements and obtained state program approval from EPA. The state program approval regulation describes minimum requirements states must meet so their programs can be approved and operate in lieu of the federal program.

In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act required states receiving Subtitle I money from EPA meet certain requirements. EPA developed grant guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record, and state compliance reports on government USTs.

80 Fed. Reg. 41566, 41568, 40 CFR Parts 280 and 281, Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training; Final Rule (July 15, 2015)[bracketed text added].

The above passage is drawn from the preamble to EPA's final rule containing revisions to 40 Code of Federal Regulations (CFR) Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks. EPA's changes are aimed at complying with the new mandates contained in the Energy Policy Act of 2005 (EPAAct) and updating the rule in certain other ways.

Because State statutes and regulations concerning the regulation of bulk storage of petroleum preceded their federal counterparts, the State requirements are not entirely consistent with the federal ones. Following the

passage of the EAct amendments to Subtitle I, the State Legislature, in 2008 (see Ch. 334, L. 2008), the State Legislature amended Title 10 to provide DEC with the authority necessary to align DEC's regulations with the existing federal regulation and the changes foreseen due to the EAct provisions. These Title 10 amendments changed the definitions of the terms "facility" and "petroleum" (allowed DEC to regulate the same type of entities and substances covered by the relevant provisions of 40 CFR Part 280) and expressly authorized DEC to establish an operator training program and prohibit petroleum deliveries to certain facilities that are not in compliance with applicable regulations. These specific authorizations empowered DEC to implement the key mandates of the EAct that are covered under the newly revised 40 CFR Part 280. Many of these changes to DEC's regulations were incorporated during the Part 613 Phase I rulemaking, effective October 11, 2015.

Further changes will be made to Part 613 to add the more stringent requirements contained in the 2015 amendments to 40 CFR Parts 280 and 281 so Part 613 is consistent with federal requirements, and to clarify and update language based on experience developed since the promulgation of Part 613 in September 2015. Importantly, existing requirements that are more stringent than 40 CFR Parts 280 and 281 will remain in place.

2. LEGISLATIVE OBJECTIVES

The legislative objectives underlying the above-referenced statutory authority are directed toward establishing requirements for the safe storage and handling of liquids, including petroleum, that pose a threat to public health and the environment. The proposed amendments to Part 613 will continue to meet these legislative objectives and reflect the statutory changes that were made to Title 10 in 2008, which allow for consistency with new federal requirements enacted in the EAct. Adoption of proposed amendments to Part 613 will also ensure that the environmental and public health protections afforded by the existing Part 613 and 40 CFR Part 280 are continued and enhanced.

3. NEEDS AND BENEFITS

This rule making is principally aimed at harmonizing the existing State requirements (currently established at 6 NYCRR Part 613) with the federal requirements (found at 40 CFR Parts 280 and 302) so that State and federal regulatory requirements are more consistent. This includes walkthrough inspection requirements, periodic inspection/testing requirements for various equipment, new UST system requirements for hydrant systems and field-constructed tanks, as well as financial responsibility requirements, which are from the 2015 amendments to 40 CFR Part 280. In addition, DEC is proposing to incorporate (by reference) current technology standards and standards of practice for newly installed tank systems and clarify certain existing regulatory requirements. DEC does not intend to establish any new requirements concerning the bulk storage of petroleum that will change the manner in which the subject facilities operate under existing industry practices and applicable federal and State laws and regulations.

In addition to various clarifications or corrections to, and some reorganization of, the requirements embodied in the existing Part 613, the proposed amendments to Part 613 are intended to increase consistency with overlapping federal requirements. The needs and benefits of specific proposed amendments are discussed below.

Updated Applicability

The applicability section has been updated to better define the responsibilities of the various entities related to the facility (i.e., facility owner, tank owner, operator, carrier, contractor in a contractual relationship with the facility owner/tank system owner/operator, any other party and its contractors retained as part of a business transactions relating to the facility) and resolve any confusion that may arise during enforcement.

Increased Compliance by Subject Facilities

The existing State PBS and federal UST programs are not completely consistent with respect to the terminology used. Those differences will largely be eliminated with the adoption of the proposed Part 613. Many regulated entities with UST systems should find it easier and less expensive to comply with State regulatory requirements because they will be more consistent with federal regulatory requirements. DEC anticipates that this will result in increased compliance.

Facilities that are owned or operated by entities that have facilities in other states will find it easier to understand and comply with the new Part 613 because each (technical) Subpart within the rule largely follows the structure of the updated 40 CFR Part 280. Whereas New York had adopted regulations two days prior to the adoption of the updated federal regulatory program, most other states incorporated the new federal requirements into their tank regulations within three years after the promulgation of the 2015 amendments to 40 CFR Part 280. Also, many states followed, to some extent, the structure of the federal rule. For example, the neighboring states of New Jersey, Pennsylvania, and Connecticut have, to varying extents, reflected the new 40 CFR Part 280 in their respective rules.

Technical design specifications/requirements will be limited to section 1 of each Subpart, while all installation, operation, and periodic maintenance requirements will be in section 2 of each Subpart. This ensures that all active responsibilities towards tank systems are found in the same location.

Revision of Certain Key Regulatory Definitions

Some definitions that are central to the implementation of the PBS program are clarified or added in the proposed rule. The terms “containment sump”, “field-constructed tank”, and “hydrant system” have been defined to address newly integrated federal requirements that apply to these equipment/tank systems. The definitions of “accessible area”, “inaccessible area”, “ancillary equipment”, “piping”, “tank”, “tank system”,

and “repair” have likewise been updated to better reflect their counterparts in 40 CFR Part 280 (and better match their contextual use in such federal regulations). Equipment previously known as spill prevention has been defined as “fill port catch basin” to differentiate it from the term ‘spill prevention’ as used in the regulations as a generic noun. “Primary containment” has also been defined not only to contrast with the previously defined “secondary containment”, but to also better frame the spill reporting/response requirements. The definition of “lining” has also been updated to reflect its purpose (i.e., to address compatibility issues between the tank wall and the stored type of petroleum) and better distinguish it from other layers of the tank wall.

While the definitions of “Category 1”, “Category 2”, and “Category 3” still differentiate between requirements for equipment of different ages based on installation date (relative to effective dates of previous PBS regulations), these have also been expanded to apply to individual tank system equipment (where these definitions previously applied to whole tank systems). The definition of “install” has also been updated to include self-structural tank retrofits (i.e., a new tank installed within an existing tank), which, together with newly listed technical standards, effectively allow the use of such tanks. The definition of “replaced” has been expanded to cover all tank system equipment (as opposed to just tank and piping). “Change-in-service” is a new defined term and a form of permanent closure.

The definitions of “hazardous substance mixture” and “petroleum mixture” have also been updated to be more concise and better differentiate between the two terms.

Tanks in Inaccessible Areas

Tanks that cannot be physically inspected because they are in physically inaccessible areas are categorized as USTs despite the original design specifications for these tanks. However, such tanks (often installed above-grade) could not meet the technical standards listed in the previous regulations for buried tanks

(i.e., traditional USTs). To rectify this, provisions were added that refer to tank standards in Subpart 613-4, allowing such tanks to comply with an AST standard while being a UST in practice.

Wastewater Treatment Tank Systems

Existing Part 613 exempts from regulation any wastewater treatment tank system; however, the 2015 amendments to 40 CFR Part 280 partially regulate wastewater treatment tank systems not subject to Section 307(b) or 402 of the federal Clean Water Act. Thus, the definition of “facility” has been updated in the proposed amendments to exclude wastewater treatment tank systems that are regulated by Section 307(b) and 402 of the Clean Water Act (as well as those that are AST systems). The proposed rule also features limited requirements for the regulated wastewater treatment tank systems to reflect the updated federal regulations.

Tank Systems with Field-Constructed Tanks Greater than 50,000 gallons in Capacity

Tank systems often experience technical and logistical issues as they increase in capacity, and most regulations intended for smaller tank systems (50,000 gallons and below) do not address these issues. Thus, the proposed rule incorporates alternative tanks/piping standards/requirements for tank systems with (field-constructed) tanks greater than 50,000 gallons in design capacity. These alternatives are from the 2015 amendments to 40 CFR Part 280 and are intended to be technically feasible, but still as protective of public health and the environment as existing Part 613.

Additional Standards/Leak Detection Methods Not Listed

Given continuous advances in technologies and practices regarding the bulk storage of petroleum, new technical standards/codes of practice/leak detection methods periodically come out that are not covered in the regulations, even if these are improvements over their counterparts already listed in Part 613. Thus, the

proposed amendments will allow facilities to submit to DEC any code of practice or leak detection method that is at least as stringent/effective as the ones listed in the regulations; DEC will then approve (or deny) its use in place of the listed standards/methods. This provides a process to allow facilities to use the latest acceptable standards/codes of practice/leak detection methods without having to wait for DEC to incorporate them into the regulations in a future rulemaking.

New Equipment Testing/Inspections/Compatibility Requirements

To encourage facilities to be more proactive in verifying the condition of their tank system equipment, the 2015 amendments to 40 CFR Part 280 added new testing/monitoring/inspection (and corresponding repair) requirements for fill port catch basins, containment sumps (used for piping interstitial monitoring), overflow prevention equipment, and leak detection equipment associated with tank systems subject to Subpart 613-2, as well as monthly and annual walkthrough inspections for such tank systems. In addition to incorporating these requirements, the proposed rule also formalizes DEC's position that failed test/monitoring results, most particularly for fill port catch basins and containment sumps, constitute a suspected spill which must be reported to the Spill Hotline.

The proposed rule also includes additional compatibility requirements for biofuel blends, as taken from 40 CFR Part 280 accordingly: compatibility of components of tank systems storing petroleum containing either greater than 10 percent ethanol (E10) or 20 percent biodiesel (B20) must be demonstrated using either a certification/listing of the tank system component by a nationally recognized independent testing laboratory (for use with the stored biofuel blend), or a written statement of compatibility from the component manufacturer. Facilities intending to store such blends must also notify DEC at least 30 days before the blend is stored.

Delivery Requirements

There has been some confusion as to who is responsible for ensuring that no spills/overfills occur during deliveries. This results in delayed responses to such spills which in turn exacerbate the effects of these spills. Thus, the delivery requirements will clarify that operators are responsible for transfer activities when on premises or when in control of the delivery and carriers are responsible for the transfer otherwise. The delivery requirements are also updated to clarify what the person responsible for the transfer must do before, during, and after the delivery to minimize the risk of spills/overfills (which comprise a significant portion of spills reported to the Spill Hotline).

Spill Reporting and Investigation Requirements

To better train the regulated public on their responsibilities when spills occur, the spill reporting/investigation sections of Part 613 have been slightly altered to be clearer and easier to follow. Persons responsible for spill reporting have been enumerated, and some suspected spills will be considered non-reportable based on new criteria incorporated from the federal regulations. The leak investigation subdivision has also been restructured to better connect it with Subpart 7 (*Release Response and Corrective Action*). Releases are explicitly reportable, while non-release spills may be non-reportable if they meet certain criteria. Any leaking tank system must be taken out of service (in accordance with the regulations) if not replaced or permanently closed.

Out-of-Service and Permanent Closure Requirements

The existing Part 613 has a somewhat conflicting view on the concept of 'out of service,' serving as both a status and an action that facilities can take. To resolve this, the amendments to Part 613 describe a tank system to be out of service: (1) when a facility takes the tank system out of service; or (2) when the tank is no

longer receiving or dispensing petroleum. In both cases, the facility owner must update the tank registration with DEC to indicate that the tank system is out of service. In addition, the proposed amendments clarify that tank systems taken out of service in response to a leak cannot be returned to service unless all requisite repairs and subsequent testing requirements have been completed.

The permanent closure requirements also underwent a slight restructuring, specifically to clarify the actions that must be completed based on the method of closure chosen: (1) tank removal; (2) in-place closure, especially in conjunction with a self-structural tank retrofit; and (3) change-in-service. The proposed amendments also explicitly address reusing previously closed tank systems: such tank systems cannot be returned to service unless all components meet pertinent requirements for the latest equipment Category.

Operator Training Provisions for Operators of Certain UST Systems

Pursuant to the EPA Act, a training program for operators of UST systems that are subject to the requirements of Subpart 613-2 is required; however, passing a one-time exam only means that Class A and B Operators' are deemed minimally competent to operate tank systems at that point in time. Their knowledge of the regulations, and what to do to reduce the possibility of spills, may decrease over time unless the exam is taken periodically. Thus, the Operator exam must be passed at least once every five years. Currently authorized Operators must take the exam either within two years of the effective date of the proposed rule or within five years of the date of their last valid Operator certificate. The exam and training materials will continue to be free of charge and available to the public at any given time/date.

In addition, prospective Operators will no longer be able to request reciprocity for out-of-state credentials issued by another state/territory with an acceptable Operator Training program. This was originally offered as a concession/pathway to authorization (within New York) for operators who already received such credentials in neighboring states, as implementation of DEC's program was provided later by comparison. The

number of requests has steadily decreased, but a significant portion of the requests made to date have been for out-of-state credentials obtained after October 11, 2015 (effective date of existing Part 613) and from states with different PBS regulations which have Operator Training programs that are easier to pass. Thus, requesting reciprocity will no longer be an option for authorization and Operators will have to take DEC's own Operator Exam.

Hydrant Systems

Hydrant systems are tank systems that fuel aircraft, watercraft, or rail vehicles, and characteristically operate under high pressure through large diameter piping, often terminating into one or more hydrants (or fill stands). Given the increased risk associated with such massive tank systems, the new Subpart 613-5 (Hydrant Systems) has been created to help hydrant system owners/operators understand the requirements applicable to their tank systems. This Subpart is structured specifically as a regulatory waypoint that directs the reader to pertinent requirements in Subparts 613-2, 613-3 and 613-4, as hydrant systems are often made up of multiple types of tanks (where most tank systems only consist of one type). For example, smaller, USTs used as reserve jet fuel storage (located closer to fill stands) may be manifolded with field-constructed ASTs situated away from the runway at an airport. Thus, Subpart 613-5 will point to Subparts 613-2 or 613-3 for the USTs, and to Subpart 613-4 for the ASTs.

Financial Responsibility

As part of DEC's efforts to make Part 613 consistent with 40 CFR Part 280, Subpart 613-8 has been created to provide the Financial Responsibility requirements. These ensure that tank owners/operators have the necessary financial mechanisms to clean up any spills that occur at their facilities and address any resulting environmental and/or third-party damage caused by the spills.

4. COSTS

Costs to Regulated Community

There will be continued costs incurred by facilities subject to the Operator Training requirements of proposed section 613-2.5. Before being designated, every Class A and B Operator must adequately perform an assessment of knowledge of regulatory requirements applicable to the relevant Operator class, and every Class C Operator must be trained and tested by the Class A or B Operator. Operators of tank systems that are not regulated under 40 CFR Part 280 continue to be exempt from this requirement. Self-study can be conducted at no cost and training courses are optional. DEC has previously developed tests for Class A and B operators, in addition to training materials which are publicly available on the DEC website. As in the past, there will be no charge for the training materials or for an Operator to take the test. Costs for Class A and B Operators are limited to costs associated with the time to prepare and take the test. Retesting or new operator designation is required within 30 days of a DEC determination that the underground tank system is significantly out of compliance. However, periodic retesting for Class A and B Operators will be required every five years so Operators remain trained/informed of their responsibilities and relevant regulations, and the possibility of spills occurring can be significantly reduced.

Costs will be incurred by facilities subject to new federal requirements (2015 amendments to 40 CFR Part 280) pertaining to tank systems subject to Subpart 613-2. These include: partial requirements for certain newly regulated wastewater treatment tank systems; testing/inspection/monitoring and repair requirements associated with fill port catch basins, containment sumps, overflow prevention equipment, and leak detection equipment; walkthrough inspection requirements; compatibility requirements for stored biofuel blends with either greater than ten percent ethanol (E10) or 20 percent biodiesel (B20); and financial responsibility requirements (among others). Note that these new federal requirements, which have been in effect since

October 13, 2018, did not have counterparts in previous versions of Part 613 and the costs associated with these new requirements have already been incurred.

The proposed rule will eliminate or reduce costs that are incurred under the existing rules by certain facilities. These cost reductions are attributable to the following features of the proposed rule: (1) self-structural tank retrofits will be allowed, which negates the need for tank removal and reduces the cost of tank installation; (2) additional standards/codes of practices/leak detection methods will be available for specific types of tank systems (which may be easier/cheaper to comply with than the previously available options), particularly for tanks in inaccessible areas, or tank systems that are either hydrant systems or associated with field-constructed tanks greater than 50,000 gallons in design capacity; and (3) the proposed rule will allow DEC to approve any alternative code of practice or leak detection method that is at least as stringent as the ones listed in Part 613.

Costs to DEC, State, and Local Government

DEC will continue to incur costs for administration of the Operator Training requirements. DEC will also continue to partially cover its personal service and non-personal service costs through PBS registration application fees. This proposed rule will not impose any additional costs on state agencies or local governments that own or operate facilities.

5. LOCAL GOVERNMENT MANDATES

No additional recordkeeping, reporting, or other requirements not already created by statute will be imposed on local governments by the proposed rule.

6. PAPERWORK

The proposed amendments contain no substantive changes to existing reporting and recordkeeping requirements, apart from adding those that are already required by 40 CFR Part 280. Record retention limits are for three years, five years, until the next test/inspection, or for the life of the tank system. Facilities are also required to retain records on Operator Training. In most cases, paperwork may be submitted and maintained in electronic format.

7. DUPLICATION

The proposed rulemaking is not intended to duplicate, overlap, or conflict with any other State or federal requirements. The main goal of this rule making is to reduce duplication. The proposed rule represents a harmonization of existing State PBS and federal UST program requirements. The existing State PBS and federal UST programs regulate the same tank systems in somewhat different ways and are not consistent with respect to the terminology used. Those differences will be reduced with the promulgation of amendments to Part 613. New requirements that are in 40 CFR Part 280 (effective October 13, 2015) have been incorporated, as appropriate, into Part 613.

8. ALTERNATIVES

DEC considered the following two alternatives in the development of the proposed amendments to Part 613: (1) no action; and (2) revision of all regulatory requirements that affect the PBS program.

DEC declines to take no action for the following reasons. First, adopting the more stringent requirements contained in the revisions to 40 CFR Part 280 makes the PBS regulations consistent with the EPA UST regulations. Second, clarifications are necessary based on experience developed since the promulgation of Part 613 in September 2015. Third, under the no-action alternative, DEC would lose crucial federal funding

that supports implementation and enforcement of its PBS program. Further explanation of these reasons may be found in the Needs and Benefits section of this document.

DEC's second alternative will include the more stringent requirements contained in the revisions to 40 CFR Part 280 that were adopted by EPA and effective on October 13, 2015. These include, but are not limited to: testing/monitoring of fill port catch basins and containment sump (used for piping interstitial monitoring); overfill prevention equipment inspections; leak detection equipment inspections; walkthrough inspections; providing (alternative) requirements for field-constructed tanks and airport hydrant systems; and adding requirements pertaining to financial responsibility for tank owners and operators for EPA-regulated USTs. Also, needed clarifications will be made to improve the consistency and clarity of language which directs the administration of the PBS program. These include, but are not limited to: the restructure of the Registration section to mirror all possible registration transactions; the addition of the requirement to evaluate future climate risks; moving all installation, operation, and periodic maintenance requirements to section 2 of each Subpart; expanding the list of acceptable forms of overfill prevention; clarifying that the impermeable barriers are required for on-ground ASTs; a minor reorganization of the delivery requirements and the spill reporting/response section; and updating the out-of-service and permanent closure sections.

9. FEDERAL STANDARDS

The proposed regulations will not exceed any minimum federal standards where applicable or where there is no comparable federal standard.

10. COMPLIANCE SCHEDULE

Currently authorized Operators of certain underground tanks will need to continue to complete operator training and testing requirements by retaking the exam within either two years after effective date of the

proposed regulations or five years after the date of their last valid Operator certificate (whichever is later). Periodic retesting for Class A and B Operators will be required every five years so Operators remain current and the possibility of spills occurring can be significantly reduced.

The regulated community will be required to comply with all other requirements upon the effective date of the rule.

11. INITIAL REVIEW OF RULE

DEC will conduct an initial review of the rule within three years of its adoption as required by SAPA §207.