

## Regulatory Impact Statement

### Repeal of:

6 NYCRR Part 596, Hazardous Substance Bulk Storage Facility Registration  
6 NYCRR Part 598, Handling and Storage of Hazardous Substances  
6 NYCRR Part 599, Standards for New Hazardous Substance Tank Systems

### Addition of:

6 NYCRR Part 598, Hazardous Substance Bulk Storage (formerly Handling and Storage of Hazardous Substances)

### Amendments to:

6 NYCRR Part 597, Hazardous Substances Identification, Release Prohibition, and Release Reporting

## Chemical 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 hazardous substances is found in two sets of statutory provisions. The first is found in Title 1 of Article 37 of the Environmental Conservation law (ECL), sections 37-0101 through 37-0107, entitled “Substances Hazardous to the Environment” (Article 37). Article 37 was enacted in 1986 and the referenced provisions are focused primarily on the process by which DEC identifies hazardous substances that must be regulated. The second set of statutory provisions is found in Article 40 of the ECL, sections 40-0101 through 40-0121, entitled “Hazardous Substances Bulk Storage Act” (Article 40). Article 40 was also enacted in 1986 and is focused primarily on establishing requirements for the storage and sale of hazardous substances identified pursuant to Article 37. DEC’s regulations promulgated pursuant to these laws are found at 6 NYCRR Parts 596 through 599 and cover the identification and sale of hazardous substances, and the storage and handling of these substances at facilities that use underground tank systems and aboveground tank systems.

With the passage of Articles 37 and 40, the State Legislature closely followed 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), apply, as the title indicates, to every underground storage tank (UST) – a term having essentially the same meaning as “underground tank system” as defined in Part 596.

### 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 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 states, 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 “coordinate 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 “prevent 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 [Department] 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 Identify Hazardous Substances Subject to Regulation

ECL section 37-0103 requires DEC to promulgate regulations that contain lists of substances that are identified as hazardous or acutely hazardous according to criteria provided in the statute.

#### General Authority to Regulate the Storage and Release of Hazardous Substances

Pursuant to ECL section 37-0105, DEC is authorized to promulgate rules pertaining to the storage and release of hazardous substances. These rules may include a requirement that users of hazardous substances furnish to DEC for the public record any information regarding such substances.

### Authority to Regulate CBS Facilities

In Article 40, the Legislature “declare[d] that the lands, water and air of the 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 releases of hazardous substances from Chemical Bulk Storage (CBS) facilities. Hazardous substance releases are a threat to the public health and welfare and Article 40 empowers DEC to prevent releases through the establishment of a regulatory program governing facilities. See ECL section 40-0101. The standards that DEC must establish include establishing a list of hazardous substances including the amounts of each substance that must be reported to DEC if released (known as a “reportable quantity”), and setting requirements governing the design, construction, installation, maintenance, repair, monitoring, and inspections of facilities. Article 40 also specifies that DEC must establish certain registration, leak detection, record keeping, reporting, corrective action, sales, operator training, and variance requirements. See ECL sections 40-0107, 40-0111, 40-0113, and 40-0115.

### 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 releases of hazardous substances to the environment in contravention of DEC’s rules are prohibited. *See* ECL section 37-0107.

Any person who owns, possesses, or controls a hazardous substance, including an employee, agent, or contractor for such person, “shall promptly notify [the Department] as soon as he has knowledge of the release of a reportable quantity of a hazardous substance to the environment.” ECL section 40-0111(3).

Any person who owns, possesses, or controls “more than [1,100] gallons, in bulk, of any liquid . . .

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 “enter 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 40-0109(1), DEC may, at reasonable times, enter any facility that stores a hazardous substance or in which any records are required to be maintained; have access to and copy any required records; inspect any equipment, practice or method that is required pursuant to ECL Article 40 or its implementation regulations; and have access to and inspect any monitoring stations or conduct tests and take samples to identify any actual or suspected release of a hazardous substance. Any person storing a hazardous substance may be required to provide DEC with information regarding the facility and its operations. *See* ECL section 40-0109(2).

#### Federal Authority

The United States 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 human 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 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, ... 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 (UST). EPA’s changes were aimed at complying with the new mandates contained in the Energy Policy Act (EPAAct) and updating the rule in certain other ways.

Although State statutes and regulations concerning the regulation of CBS came after their federal counterparts, the State requirements were not entirely consistent with the federal ones. This appears to be because the State Legislature largely patterned the Article 40 legislation on the provisions of Title 10 of Article 17 of the ECL, entitled “Control of the Bulk Storage of Petroleum,” a statute that was enacted in 1983. Thus, Article 40 was based on a legislative structure that preceded RCRA Subtitle I. Correspondingly, DEC, in drafting regulations with respect to CBS, relied to a large extent on the template provided by the regulations that principally formed DEC’s petroleum bulk storage program, 6 NYCRR Part 613.

Following the passage of the EPAAct amendments to Subtitle I, the New York State Legislature, in 2008 (see Ch 334, L. 2008), amended Articles 37 and 40 to provide DEC with the authority necessary to align DEC’s regulations with the existing federal regulation and the changes foreseen due to the EPAAct provisions. The Article 37 amendment required continuous updating of the hazardous substance lists maintained by DEC. The Article 40 amendments changed the definitions of the terms “facility” and “tank.” The statutory changes enabled 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 deliveries of hazardous substances to certain facilities that are not in compliance with applicable regulations. These specific authorizations empowered DEC to implement the key mandates of the EPAAct that are covered under the newly

revised 40 CFR Part 280. Many of these changes to DEC's regulations were incorporated during the Phase I rulemaking, effective October 11, 2015.

Further changes will be made to consolidate 6 NYCRR Parts 596, 598 and 599 into a single Part 598, add the more stringent requirements contained in the 2015 revisions to 40 CFR Part 280 so new Part 598 is consistent with federal requirements, and to clarify and update language based on experience developed since the promulgation of Parts 596 through 599 in September 2015. Importantly, existing requirements that are more stringent than 40 CFR Part 280 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 hazardous substances, which pose a threat to public health and the environment. The proposed amendments to Parts 596 through 599 will continue to meet these legislative objectives and reflect the statutory changes that were made to Articles 37 and 40 in 2008, which allow for consistency with new federal requirements enacted in the EPAct. Adoption of the proposed amendments to existing Part 597 and addition of new Part 598 will also ensure that the environmental and public health protections afforded by the existing Parts 596 through 599 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 Parts 596 through 599) with the federal requirements (40 CFR Parts 280 and 302) so that State and federal regulatory requirements are more consistent. In addition, DEC is proposing to consolidate the existing State requirements into two Parts: 6 NYCRR Part 597, which will retain its current form with



minimal changes, and 6 NYCRR Part 598, which will incorporate the existing requirements of 6 NYCRR Parts 596, 598, and 599.

The changes aimed at harmonizing the State and federal requirements will primarily affect underground storage tank systems. This includes the addition of the periodic inspection and testing requirements, added in the 2015 amendments to 40 CFR 280 (effective October 13, 2015), for overfill prevention equipment, spill prevention equipment (including transfer station secondary containment), containment sumps used for interstitial monitoring, and leak detection equipment as well as the addition of the periodic walkthrough inspection requirements.

The consolidation of the existing State requirements into two Parts includes a reorganization of the proposed 6 NYCRR Part 598 into Subparts that reflect the layout of existing Petroleum Bulk Storage (PBS), 6 NYCRR Part 613. The consolidation and reorganization aim to clarify requirements and better harmonize the PBS and CBS programs, which share many of the same requirements.

In addition, DEC is proposing to clarify certain existing regulatory requirements. DEC does not intend to establish any new requirements concerning the CBS program that would change the manner in which regulated entities operate under existing industry practices and applicable federal and State laws and regulations. The needs and benefits of specific proposed amendments to Parts 597 and 598 are discussed below.

#### Increased Compliance by Subject Facilities

The existing State CBS and federal UST programs are not completely consistent with respect to the terminology used. Those differences would largely be eliminated with adoption of proposed amendments to Part 597 and new Part 598. Many regulated entities with underground tank systems should find it easier and less

expensive to comply with State regulatory requirements because they would be more consistent with federal regulatory requirements. DEC anticipates that this would result in increased compliance.

Facilities that are owned or operated by entities that have facilities in other states may find it easier to understand and comply with the new Part 598 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 and 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 CBS program are clarified or added in the proposed Part 598 in an effort to harmonize the definitions between CBS, PBS, and federal regulations (40 CFR 280). The terms “existing tank system” and “new tank system” have been replaced with “Category 1” and “Category 2”, respectively. The terms “on-ground piping”, “on-ground tank”, and “underground piping” have been replaced with the term “in contact with the ground” to better clarify when certain provisions, such as cathodic protection and leak detection, are required to be met. The terms “out-of-service”, “piping”, “spill”, “release”, “repair”, “secondary containment”, “tank”, and “tank system” have been changed to reflect 40 CFR

280 and PBS regulations (note that CBS still has different exclusions on what constitutes a tank system compared to PBS regulations).

#### Inclusion of Periodic Testing of Underground Tank System Equipment and Walkthrough Inspections

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 underground tank systems. The inclusion of these provisions in the proposed Part 598 aim to provide the same level of environmental protection while also satisfying the requirements of 40 CFR 281.32(e) and (f) and 281.33(a)(3). In addition to incorporating these requirements, the proposed rule also formalizes DEC's position that failed test/monitoring results, particularly for fill port catch basins and containment sumps, constitute a suspected spill which must be reported to the Spill Hotline.

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, particularly for fill port catch basins and containment sumps, constitute a suspected spill which must be reported to the Spill Hotline.

#### Reporting of Spills, Releases, and Suspected Spills

The spill and release reporting requirements have been internally harmonized between Part 597 and Part 598. The spill and release reporting requirements in existing Part 597.4 have been copied into the proposed Part 598 instead of only being referenced. This includes the supplanting of the existing release reporting exclusion in existing Part 598.14(a)(3) with the existing spill reporting exclusion in Part 597.4(b)(3). These two exclusions were found to be inconsistent and the more stringent, more protective of the environment provision of Part 597.4(b)(3) was chosen to remain.

The usage of the terms “spill” and “release” have been updated to clarify the difference between the two defined terms. The terms now mirror the usage in 40 CFR 280 and PBS regulations. The aim of this change is to better instruct facilities on how to respond to spills (i.e., investigation) versus releases (i.e., corrective action).

The provisions that identify what constitutes a suspected spill and when a suspected spill is required to be reported have been harmonized with 40 CFR 280 and PBS regulations. This includes the proposed change to require a suspected spill be reported to the Spill Hotline within 2 hours of discovery, the same timeframe required for actual spills and releases.

#### Operator Training Provisions for Operators of Certain UST Systems

Pursuant to the EPCRA, a training program for operators of UST systems storing hazardous substances 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 now 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 late by comparison. The number of requests has steadily decreased since October 2015, but a significant portion of the requests made to date were found to have been for out-of-state credentials obtained after October 11, 2015 (effective date of existing Parts 596 through 599) and from states with different chemical bulk storage regulations which have Operator Training programs that are easier to pass. Thus, requesting reciprocity will no longer be an option for authorization and will encourage Operators to take DEC's own Operator Exam.

#### Errata for Listing of Hazardous Substances Tables

A total of 14 hazardous substances listed on the tables of Part 597 have been updated to fix either their reportable quantities or acute designation. These hazardous substances were found to have inconsistent reportable quantities or acute designations between Table 1 entitled "Hazardous Substances – Sorted by Name" and Table 2 entitled "Hazardous Substances – Sorted by CAS Number."

#### 4. COSTS

##### Costs to Regulated Community

There will be continued costs incurred by facilities subject to the Operator Training requirements of proposed section 598-2.5. 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 aboveground tank (AST) systems 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 now 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 598-2. These include testing/inspection/monitoring and repair requirements associated with fill port catch basins, containment sumps, overflow prevention equipment, and leak detection equipment; walkthrough inspection requirements. Note that these new federal requirements, which have been in effect since October 13, 2015, did not have counterparts in previous versions of Parts 596 through 599, 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 attributable to the proposed rule will allow for DEC to approve any alternative code of practice or leak detection method that is at least as stringent as the ones listed in new proposed Part 598.

#### 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 CBS 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 would be imposed on local governments by the proposed rule.

## 6. PAPERWORK

The proposed rule contains no substantive changes to requirements that are imposed on subject facilities under existing statutory and regulatory authorities. 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 the CBS program with State PBS and federal UST program requirements. The existing State and federal CBS programs regulate the same tank systems in somewhat different ways and are not completely consistent with respect to the terminology used. Those differences will be reduced with the promulgation of amendments to Part 597 and the new Part 598, as the new requirements that are in 40 CFR Part 280 (effective October 13, 2015) have been incorporated, as appropriate, into Parts 597 and 598.

## 8. ALTERNATIVES

DEC considered the following two alternatives in the development of the proposed new Part 598 and amendments to Part 597: (1) no action; and (2) new structure for the rules to incorporate regulatory requirements that affect CBS.

DEC declines to take no action for the following reasons. First, the tables in Part 597 that list hazardous substances must be updated to be consistent with the federal lists specified in ECL Article 40; and information concerning hazardous substances listed in Part 597 need to be corrected so they are consistent between its two tables. Second, the CBS regulations should be restructured so they are consistent with 40 CFR Part 280 and the New York State Petroleum Bulk Storage (PBS) regulations. Third, clarifications are necessary based on experience developed since the promulgation of Parts 596 through 599 in September 2015 (effective October 11, 2015). Fourth, under the no-action alternative, DEC would lose crucial federal funding that supports implementation and enforcement of its CBS program. Further explanation of these reasons may be found in the Needs and Benefits section above.

DEC's second alternative will adopt the structure of 40 CFR Part 280 and 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, spill prevention and release detection equipment testing; overflow prevention equipment inspection; containment sump testing for sumps used for piping interstitial monitoring; and walkthrough inspections. The proposed amendments will also be consistent with the PBS regulations that were promulgated in September 2015 (effective October 11, 2015). More specifically, this includes revising suspected spill reporting to be within 2 hours of suspected spill discovery instead of 24 hours; adding "accessible area" and "inaccessible area" to differentiate between an aboveground and underground tank; revising "change-in-service" so it is treated as a form of permanent closure; adding "Category 1" to replace "existing tank system" and "Category 2" to replace "new tank system;" adding "in contact with the ground" to encapsulate tank systems that are on the ground or underground. Lastly, needed clarifications will be made to improve the consistency and clarity of language which directs the administration of the CBS program.

For the reasons stated in the Needs and Benefits section above, DEC chose to restructure the CBS rule to follow the template of 40 CFR Part 280. Although 40 CFR Part 280 covers only a subset of UST systems



regulated pursuant to the ECL, DEC believes that the 40 CFR Part 280 template can be used in forming the regulatory structure for the requirements applicable to AST systems and the UST systems not subject to federal regulation.

#### 9. FEDERAL STANDARDS

The proposed rule 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.