

DEC EXPLAINS NEW ENFORCEMENT INITIATIVE TO THE NEW YORK OIL AND GAS INDUSTRY

Oil & Gas Alert
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On September 30, 2015, the New York State Department of Environmental Conservation (DEC) held a public information session regarding DEC enforcement of regulations relating to Petroleum Bulk Storage (PBS), petroleum spills management, and produced water (brine) handling by the oil and gas industry. The DEC's stated intent was to provide clarity for, and answer questions from, the industry regarding the DEC's enforcement initiative on these issues, which has a compliance deadline of October 6, 2015.

Hodgson Russ attorney Seth D. Pullen attended the session. He reports that unfortunately the DEC representatives could not provide definitive answers to several industry questions. In some instances, the DEC representatives indicated that issues will be dealt with case by case and will be determined on an individual basis. However, Seth reports that the DEC representatives did provide the following guidance and clarifications regarding enforcement of the regulations.

- All produced water from oil or gas wells ("brine") is considered industrial waste and must be handled in accordance with Article 17 of the New York Environmental Conservation Law to prevent any discharge to the ground or surface waters. There are several potential methods of disposal, but the only one currently available to most New York operators is hauling out of state by a permitted transporter.
- On a case-by-case basis, operators may be allowed to reinject brine on a given lease as part of a permitted waterflood operation, but only if specifically authorized by the conditions of the permit.
- On-site bioremediation of small amounts of oil-contaminated soil is now permitted by the DEC in accordance with standards promulgated by the EPA. This is not a substitute for the existing regulatory requirements for spill reporting and clean-up procedures.
- Any liquid containing one percent or more of petroleum or petroleum products must be stored and handled in accordance with the PBS regulations.
- Any property (or adjacent properties) containing stationary petroleum tanks with a combined capacity of more than 1,100 gallons must be registered as a PBS facility under Title 6 of the New York Codes, Rules and Regulations (6 NYCRR Part 612).

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- The property owner of a PBS facility is responsible for complying with the registration requirement, but the tank owner or well operator is authorized to register the facility if the tanks are on the property under a valid lease or mineral deed, or if the landowner signs an authorization form.
- The PBS regulations require either continuous monitoring of a level gauge or an automatic shut off switch while the tank is filling, even if it is filling from an oil well at a very slow rate.
- There are remote notification alarms currently available on the market, which some operators have purchased or installed on their oil collections tanks; these may be approved on a case-by-case basis by communicating with DEC staff.
- Aboveground PBS tanks must be constructed of steel and be coated with paint or another suitable protective coating. Also, aboveground PBS tanks must have a double bottom, cathodic protection or be raised above the ground to allow for detection of any leaks.
- PBS tanks with a capacity in excess of 10,000 gallons or that have the potential to discharge any leaked liquids into the waters of the state must be surrounded by an impermeable secondary containment system and/or dike large enough to contain a spill exceeding the capacity of all of the tanks within it.
- Underground pipes between PBS tanks must be cathodically protected and regularly tested, but this does not include pipes from an oil well directly into the PBS tank.
- All aboveground PBS tanks must be inspected by the operator monthly, and records of the inspections must be kept for 10 years.