



Saint Regis Mohawk Tribe

Community Building
Hogansburg, New York 13655
Tel 518-358-2272
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Tribal Chiefs
L. David Jacobs
Lincoln C. White
Norman J. Tarbell

Tribal Clerk
Carol Herne
Tribal Administrator
Angus N. McDonald

ST. REGIS MOHAWK TRIBE
RESOLUTION 91-50

WHEREAS: the St. Regis Mohawk Tribal Council is the duly constituted governing body of the St. Regis Indian Reservation, and

WHEREAS: under the Tribal governmental structure, the elected Tribal Council is charged with the duty of protecting the health, security and general welfare of the St. Regis Mohawk Tribe, and

WHEREAS: by virtue of its status as a federal Indian Tribe, the St. Regis Mohawk Tribe is authorized by federal law to regulate the possession, sale, storage, transportation and use of gasoline and other petroleum products on the St. Regis Indian Reservation, and

WHEREAS: the St. Regis Mohawk Tribal Council deems it essential to the health, safety and general welfare of the St. Regis Mohawk Tribe to enact a comprehensive Petroleum Ordinance regulating the sale and distribution of petroleum products and levying a tribal administrative charge upon their distribution on the St. Regis Indian Reservation,

THEREFORE BE IT RESOLVED THAT: the St. Regis Mohawk Tribal Council does hereby promulgate and enact the following Petroleum Fuel Ordinance.

Dated: JUNE 28, 1991

Handwritten signature of L. David Jacobs.

L. David Jacobs, Head Chief

Dated: 7/16/91

Handwritten signature of Lincoln C. White.

Lincoln C. White

Dated: 6/28/91

Handwritten signature of Norman J. Tarbell.

Norman J. Tarbell

CERTIFICATION: This is to certify that the above resolution was duly passed by the St. Regis Mohawk Tribal Council pursuant to the authority vested in the Tribal Council

Dated: July 16, 1991

Handwritten signature of Carol T. Herne.

Carol T. Herne, Tribal Clerk

SAINT REGIS MOHAWK INDIAN TRIBAL PETROLEUM FUEL ORDINANCE

Article I TITLE

This ordinance shall be known as the St. Regis Mohawk Petroleum Fuel Regulatory Ordinance.

Article II PURPOSE

The purpose of this ordinance is to regulate the possession, sale, display, storage, transportation, and use of gasoline and other petroleum fuel products in, on, and from Tribal Lands.

Article III DEFINITIONS

"St. Regis Mohawk Tribe of Indians" means a federally recognized tribe of Indians located in the State of New York.

"Gasoline and other Petroleum Products" mean leaded gasoline fuel, unleaded gasoline fuel and diesel fuel.

"Tribal Fuel Permit" means an exclusive gasoline fuel permit to possess, transport, store, and sell (wholesale and/or retail) to the general public approved by the Tribal Council of Chiefs.

"Subject Permises" means any trust or restricted lands held in trust by the United States Government, owned by the St. Regis Mohawk Tribe of Indians or its members, designated for such Permit.

"Permit Fee" means any consideration paid in advance to the Tribe for the maintenance of a legal Tribal Fuel Permit.

Article IV
GENERAL PROVISIONS

SECTION 1. Tribal Regulartory Power

The provisions of this ordinance shall be deemed an exercise of the power and authority delegated to the St. Regis Mohawk Tribal Council by the St. Regis Mohawk Indian General Council of New York State to regulate business within the boundaries of the St. Regis Mohawk Indian Reservation of New York State.

SECTION 2. Tribal Fuel Permit Requirement

On or after the effective date of this ordinance, no person shall engage in the sale or distribution of gasoline fuel or other petroleum fuel products on trust or restricted lands within the boundaries of the St. Regis Mohawk Indian Reservation without first having obtained and being the holder of a valid and sustaining Tribal Fuel Permit, visibly displayed in the place of business on the subject's premises.

Those already engaged in the sale or distribution of gasoline fuel and other petroleum products on trust or restricted lands within the boundaries of the St. Regis Mohawk Indian Reservation, will also be required to adhere to this ordinance.

SECTION 3. Penalties

Any person who shall violate any of the provisions of this ordinance shall be deemed guilty of a violation of the laws of the St. Regis Mohawk Indian Tribe of New York and shall be subject to legal action in a court of competent jurisdiction and be subject to a fine of not more tha One Thousand Dollars (\$1,000.00) and/or both legal action and fine on each occassion of violation.

SECTION 4. Tribal Fuel Permit Application

The application for a Tribal Fuel Permit under this ordinance shall be made to the St. Regis Mohawk Tribal Council through the Tribal Administrator's office and shall contain the following information:

- (a) Name, age, date of birth, enrollment number, and Tribal affiliation.
- (b) The residence of the applicant at present and for the past five (5) years.
- (c) The proposed place of business and the description of the premises of said property.
- (d) The applicant's financial statement.
- (e) The applicant's employment history for the past five (5) Years.
- (f) A statement as to whether the applicant owns trust or restricted lands within the St. Regis Mohawk Indian Reservation and if so, a description of said property.

SECTION 5. Tribal Permit Fees

A Tribal Fuel Permit Fee in the sum of Five Hundred Dollars (\$500.00) shall be paid by the Applicant upon approval of the application for a permit by the St. Regis Mohawk Tribal Council, Chiefs and shall be paid annually at the time of permit renewal as provided in Section 7 hereinbelow.

SECTION 6. Tribal Permit Approval Process

In determining whether a permit shall be issued, the St. Regis Mohawk Tribal Council shall take into consideration ownership of the property, location of the place of business, any applicable environmental and safety consideration, and the financial stability and experience of the applicant. The applicant shall be both the owner and the operator of the business. The St. Regis Mohawk Tribal Council shall limit the number of Tribal Permits and locations in the manner to adequately service the area and their determination as to whether or not a Tribal Permit shall be issued is final.

SECTION 7. Tribal Permit Reporting

A Tribal Permit to sell or distribute gasoline fuel and other petroleum products shall be applied annually, on or before the 30th day of June. Applicants shall provide at the time of application a notarized statement setting forth the number of gallons and the amount of other petroleum products sold during the previous year, along with the gross income derived from such sales; and further, applicants shall provide the names of all employees and amount of income earned by each. The records provided pursuant to this section are confidential and shall not be available to any person other than the Tribal Council and Tribal Administrator.

SECTION 8. Books and Records

The St. Regis Mohawk Tribal Council shall have the right and authority to examine the books and records of the permittees at any reasonable time to verify the sales and salaries paid to employees. Said books and records shall be maintained by the permittee on the subject's premises at all times.

SECTION 9. Tribal Permit Authorization

The granting of a Tribal Permit pursuant to this ordinance shall authorize the permittee to sell gasoline and other petroleum products to any person within the boundaries of the St. Regis Mohawk Indian Reservation and who is the consumer of the petroleum products so purchased.

SECTION 10. Tribal Fuel Administrative Fees

In addition to the Tribal Permit Fees described hereinabove, permittees shall pay a tribal administrative fee in the amount of two cents (\$.02) per gallon of gasoline sold or distributed. Said fees shall be paid monthly in arrears to the St. Regis Mohawk Indian Tribe of New York State no later than the 10th day of the following month of operation.

SECTION 11. Proceeds of Fuel Administrative Fees

The fuel revenues received by the St. Regis Mohawk Indian Tribe as a result of the permit fees and administrative fees described hereinabove shall be deposited in the Tribal General Fund. Said funds shall be used exclusively for the administration of the ordinance and service to and benefit the members of the St. Regis Mohawk Indian Tribe.

SECTION 12. Compliance with Applicable Laws

Any permittee who shall fail to comply with the terms of this ordinance shall have his permit cancelled or suspended. Written notification of the grounds for said cancellation shall be given at least five days prior to a hearing held before the Tribal Council or their designated committee as provided for in Section 17 below to determine if this ordinance has been violated. Cancellation or suspension by said committee may be appealed to the Tribal Council.

SECTION 13. Severability

In any clause, part or section of this Ordinance shall be adjudged invalid, such judgement shall not affect or invalidate the remainder of the ordinance but shall be confined in its operation to the clause, part or section directly involved in controversy in which such judgement was rendered.

SECTION 14. Disclaimer

Nothing in this ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians by the St. Regis Mohawk Tribe of New York State except to the extent allowed by an applicable present or future Act of Congress or any applicable law.

SECTION 15. Regulations

The Tribal Council shall have the authority to adopt and enforce rules and regulations to implement this ordinance and to further the purposes thereof.

SECTION 16. Effective Date

This ordinance shall be effective upon its passage and approval. Any and all prior ordinances, resolutions, regulations or other form of control of the St. Regis Mohawk Tribe of the State of New York whether written or unwritten, which authorize, prohibit, or deal with the transport, handling, storage or sale of gasoline and other petroleum products are hereby repealed and have no further force or effect. No Tribal ordinance or regulation shall be applied in a manner inconsistent with the provisions of this ordinance.

SECTION 17. Enforcement

This ordinance shall be enforced by the Tribal Council, or any other Agency or Committee vested with such enforcement authority by resolution of the tribal Council.

SECTION 18. Sovereign Immunity

Nothing in this ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the St. Regis Mohawk Tribe of the State of New York. No officer, manager or employee of an enterprise of the Tribe shall be authorized nor shall attempt to waive the sovereign immunity of the Tribe.

SECTION 19. Environmental Protection Requirements

It shall be the responsibility of the Permittee to satisfy all federal and Tribal environmental protection and safety requirements with respect to the safe storage, either above ground or underground, handling, and transportation of gasoline and other petroleum products. Any non-compliance with this provision is subject to the terms and conditions of this ordinance.

SECTION 20. Indemnification

Any person licensed under this ordinance to sell or distribute gasoline or other petroleum products on the St. Regis Mohawk Indian Reservation lands shall indemnify and hold harmless the Tribe against loss, cost, or damage due to any injury to persons or property occurring as a result of the sale of such products.

SECTION 21. Amendment

This ordinance may be amended by a majority vote of the Tribal Council.

State Programs

¶ 962 New York

State Contract(s):

Dept. of Environmental Conservation
50 Wolf Road, Room 326
Albany, New York 12233-3520
(518) 457-4351

Program Description:

N.Y. adopted a petroleum, bulk storage law in 1983. Regulations under the law were effective Dec. 27, 1985. These regulations, along with hazardous substances regulations, which become effective July 15, 1988, from NYS program. The primary differences between state and federal requirements will be in the petroleum area. Proposed regulations for petroleum tanks call for double containment walls. Existing tanks must be in proper working condition and owners must implement a tank testing program, NFPA 30 is adopted by reference.

Program Requirements:

Scope: State petroleum and hazardous substance regulations cover above-ground tanks in addition to underground tanks.

Notification: Obtain EPA notification from the Dept. of Environmental Conservation at the above address. Send to address on notification form. A state form from the same address also must be sent to the regional office.

Fees: A \$50 fee for facilities storing between 1,100 to 5,000 gallons is required. Higher fees for larger facilities are required.

Release Reports: Report releases to the state's hotline: (800) 457-7362

Document Submission: The following documents are required: state registration forms, tank test form for old bare steel tanks, and a tightness test form. Send them to the regional offices for the Dept. of Environmental Conservation.

Cleanup Funds: A state cleanup is used when liability is unknown, for investigative purposes and for immediate action on contamination accidents.

Tank Testing: Existing tanks must be tested for leaks and the tester must be certified by the manufacturer.

Owners must send a tank test form and tightness form to the regional office.

Tab 900

Other Related Provisions:

Aboveground tanks are provided for under petroleum bulk and hazardous substances regulations. N.Y. also has groundwater provisions

Local Programs:

Nassau, Suffolk, Rockland and Cortland have individual programs through the fire commissions or Dept of Health. NYC's program is incomplete. Local regulations are generally more stringent than state programs.

Available State Documents:

The following documents are available from the address listed above:

- Petroleum Bulk Storage 6NYCRR Part 612-614, Dec. 27, 1985
- Chemical Bulk Storage Regulations, 6 NYCRR Parts 595-597
- Notification form (EPA)
- Petroleum Bulk Storage Application
- Ambient Water Quality Standards and Guidance Values
- Procedural Guidelines for Response, cleanup, and mitigation of spills

(The next page is Tab 900, Page 265)

Appendix 1B

Appendix 1B - Federal Statute: Regulation of Underground Storage Tanks.

42 U.S.C. §5991 (Subtitle I of the Resource Conservation and Recovery Act, passed as part of the Hazardous and Solid Waste Amendment of 1984, Public Law 98-616, enacted November 8, 1984, amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, enacted October 17, 1988)

Editor's note: The following statute is reprinted from the United States Code (U.S.C.) with the addition of explanatory sidenotes. U.S.C. codification is used; however, references to the original sections of the Resource Conservation and Recovery Act (Subtitle I, sections 9001 to 9010) are included in sidenotes.

§6991. Definitions and Exemptions

RCRA Subtitle I, §9001

For the purposes of this subchapter--

(1) The term "underground storage tank" means any one of combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any--

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes

(B) tanks used for storing heating oil for consumptive use on the premises where stored

(C) septic tanks

(D) pipeline facility (including gathering lines) regulated under--

(ii) the Natural Gas Pipeline Safety Act of 1968, (49 U.S.C. App. 2001, et seq.), or

(iii) which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clauses (i) or

(ii) of this subparagraph

(E) surface impoundment, pit, pond, or lagoon

(F) storm water or waste water collection system

(G) flow-through process tank

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mine working drift shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

Some state provisions include heating oil tanks. See Tab 900

- (2) The term "regulated substance" means--
(A) any substance defined in section 9601 (14) of this title (but not including any substance regulated as a hazardous waste under subchapter III of this chapter, and
(B) petroleum
- (3) The term "owner" means
(A) in the case of an underground storage tank in use on Nov. 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances, and
(B) in the case of any underground storage tank in use before Nov. 8, 1984, but no longer in use on Nov. 8, 1984, any person who owns such tank immediately before the discontinuation of its use.
- (4) The term "operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.
- (5) The term "release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.
- (6) The term "person" has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.
- (7) The term "nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substance will not be dispensed after Nov. 8, 1984.
- (8) The term "petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).
- (Pub. L. 89-272, title II, §9001, as added Nov. 8, 1984, Pub. L. 98-616, title VI, §601 (a), 98 Stat. 3277, and amended Oct. 17, 1986, Pub. L. 99-499, Title II, §205 (a), 100 Stat. 1696)

Added by SARA Title II,
§205

§6991a. Notification
(a) Underground Storage Tanks--

RCRA Subtitle I, §9002

- (1) Within 18 months after Nov. 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b) (1) of this existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) for each underground storage tank taken out of operation after Jan. 1, 1974, the owner of such tank shall, within 18 months after Nov. 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of this existence of such tanks (unless the owner knows the tank subsequently was removed from the ground) The owner of a tank taken out of operation on or before Jan. 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify to the extent known to the owner--

- (i) the date the tank was taken out of operation,
- (ii) the age of the tank on the date taken out of operation,
- (iii) the size, type and location of the tank, and
- (iv) the type and quantity of substances left stored in such tank on the date taken out of operation

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department with 30 days of the existence of such tank, specifying the age, size, type, location and uses of such tank.



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Angus N. McDonald

MEMORANDUM

TO: Saint Regis Mohawk Fuel and Cigarette Dealers

FROM: Angus McDonald
Tribal Administrator
Saint Regis Mohawk Tribe

DATE: May 5, 1993

I am writing on behalf of the Saint Regis Mohawk Tribe to inform you of certain new procedures which are applicable to wholesalers and others ("distributors") who sell tobacco products and/or fuel products to Mohawk merchants.

As you know, the Tribe requires Mohawk merchants who sell tobacco products and/or fuel products to obtain licenses to conduct business within its territory, and it imposes license fees on these merchants of \$.25 per carton of cigarettes sold and \$.01 per gallon of fuel sold.

The Saint Regis Mohawk Tribal Council recently adopted a resolution requiring wholesalers and others who engage in sales of tobacco products and/or fuel products to Mohawk merchants to obtain licenses from the Tribe.

In order to improve administration of the license fee regime, the Council also implemented a precollection system pursuant to which license fees will be remitted by the distributors.

In particular:

- Effective May 1, 1993, each distributor must provide to the Council (to the attention of Lee Cook) a copy of an invoice or similar document evidencing each sale of tobacco products and/or fuel products to Mohawk merchants. Each such invoice or similar document must set forth the name and address of the purchaser, the type and quantity of products delivered, and the date of delivery, and must be provided not later than one business day following the day on which the products are delivered.

Memorandum to Saint Regis Mohawk Fuel and Cigarette Dealers
Re: License Fees
May 5, 1993
Page 2

- Effective May 1, 1993, each distributor must remit, by check or money order payable to the Saint Regis Mohawk Tribe, \$.25 for each carton of cigarettes and \$.01 for each gallon of fuel sold to Mohawk merchants. Each such remittance must be made not later than one business day following the day on which the products are delivered.

Late remittances will bear interest, compounded daily, at the rate of eighteen percent (18%) per annum.

- Not later than May 15, 1993, each distributor must provide to the Council (to the attention of Lee Cook) copies of invoices or other documents evidencing all sales of tobacco products and/or fuel products to Mohawk merchants from January 1, 1993, through April 30, 1993. We will use the invoices to determine which Mohawk merchants are delinquent with respect to license fee payments, and we will issue bills to these merchants.

We appreciate your cooperation with respect to the changes described above. Please contact us if you have any questions.

cc: Head Chief Norman J. Tarbell
Chief L. David Jacobs
Chief John S. Loran
Mr. Lee Cook