Department of Licensing & Regulatory Affairs
Bureau of Fire Services

Fire Marshal Bulletin – 16

Storage Tank Rules Pertaining to Retroactivity

The Bureau of Fire Services (BFS), Storage Tank Division (STD) adopted rules for the Storage and Handling of Flammable and Combustible Liquids, Storage and Handling of Liquefied Petroleum Gases (LPG), and Compressed Natural Gas (CNG) Vehicular Fuel Systems that went into effect on October 13, 2014. When these new rules went into effect, all previous editions of these rules were replaced**.**

When new rules are adopted, they are typically are more restrictive, than the previous rules. However, the newly adopted rules are less restrictive, in many instances, than the prior rules. Due to the new rules being less restrictive, the Bureau of Fire Services (BFS) requested the opinion of the Michigan Department of Attorney General's office (AG) on rule retroactivity. The AG's office reviewed the National Fire Protection Association (NFPA) codes that were adopted in the STD rules that went into effect on October 13, 2014 (as noted above) and provided their opinion on retroactivity.

The AG's office reviewed the NFPA pamphlet and determined that retroactivity of new rules to existing installations is allowed by the code when the authority having jurisdiction (AHJ) determines it is warranted.

It was further affirmed by the AG's office that when an old rule is replaced with a new rule, the new rule applies, unless there are specific "grandfathering" provisions (as noted in the NFPA code's retroactivity provisions). However, the retroactivity provisions contained in the NFPA code appear to be intended to only address the interpretation in circumstances where the new rule is stricter than the old rule.

Therefore, unless a rule specifically states otherwise, the new rules apply to equipment installed under the former rules and an owner would need to comply with the current rules only (for example: when it is necessary to address failed equipment no longer required under the new rules).

Based on this opinion, the STD will apply the new rules to existing sites where applicable. If the tank system is in compliance with the rules that were in effect at the time of their installation and there are no changes, they would still be considered in compliance. If a tank system is out of compliance with the rules that were in effect at the time of their installation but are in compliance with the rules that are currently in effect, they will also be considered in compliance.

Questions may be directed to the Storage Tank Division at 517-241-8847. For more information on NFPA codes may be obtained at: www.nfpa.org. For more information on aboveground or underground storage tanks can be found at: www.michigan.gov/bfs.