



**DNREC-WHS REQUEST FOR LEGAL SERVICES**

**ATTORNEY-CLIENT PRIVILEGED**

**ENFORCEMENT CONFIDENTIAL**

<b>Date:</b> 12/17/2019	<i>Eileen Butler, Planner IV</i> <i>EMB</i>	<b>For Legal Office Only</b>	
<b>Requested by</b>	<i>WHS – Strategic Services</i> <i>Eileen.Butler@delaware.gov</i>	<b>Legal number:</b>	
<b>Director Approval:</b>	<i>Timothy Ratsep,</i> <i>Division Director</i> 		
<b>Site Name &amp; Number:</b>	<i>Final Regulations Takings Review</i>	<b>Date assigned:</b>	
<b>Program Administrator:</b>	<i>Jason W. Sunde</i> 	<b>DAG</b>	

**Check the appropriate box:**

**Program:**

- Federal     
  Boiler Safety     
  UST (Underground Storage Tank)     
  LUST (Leaking UST)     
  AST (Aboveground Storage Tank)
- Heating Fuel     
  Temporary Rebate

**Legal Services:**

- Legislation     
  LIEN     
  Environmental Covenant
- Regulations     
  NOV     
  Cost Recovery
- Litigation     
  NOIT     
  Loan Documents
- Secretary's Order     
  Consent Decree     
  Site Access Agreement
- Legal question     
  FOIA
- Letter     
  Other (explain):

The Division of Waste and Hazardous Substances - Compliance and Permitting Section (WHS-CAPS) is requesting a legal opinion providing judgment as to whether the attached regulations, amending Delaware's *Regulations Governing Underground Storage Tank Systems*, represent a taking of private property without compensation as required by 29 Del. C. § 605.

A public hearing was conducted on August 27, 2019, to receive comments on the proposed amendments labeled *Proposed Revised Regulatory Amendments to 7 De Admin Code 1351*:

*Underground Storage Tank Systems* (Start action Notice # 2016-10) The WHS-CAPS proposed to adopt the amendments in order to maintain its Underground Storage Tank System program and to remain current with EPA's Underground Storage Tank program. No changes to the proposed regulation resulted from the hearing.

Attached for your convenience are the following documents, (1) 2016 Proposed Amendments, (2) Hearing Officers Report dated November 1, 2019, and, (3) Secretary's Order No. 2019-WH-0047 which ordered promulgation and implementation of the proposed amendments.

If you have any questions or need any additional information, please contact Eileen Butler at 395-2520. WHS – CAP requests that DAG Robert Phillips be assigned to this review.