

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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OFFICE OF THE SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

Department of Commerce, Labor  
and Environmental Resources,  
AGENCY: Division of Natural Resources TITLE NUMBER: 47

AMENDMENT TO AN EXISTING RULE: YES\_\_\_, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 37A

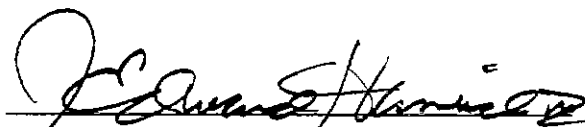
TITLE OF RULE BEING PROPOSED: "Underground Storage Tank Insurance  
Trust Fund"

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 637 (1991)

SECTION \$64-3-8(mm), PASSED ON March 9, 1991

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 22, 1991

  
J. Edward Hamrick III  
Director

2.60

TITLE 47  
LEGISLATIVE RULES  
DIVISION OF NATURAL RESOURCES  
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

SERIES 37A  
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

**§47-37A-1. General.**

1.1. Scope and Purpose. -- These regulations establish an Underground Storage Tank Insurance Trust Fund pursuant to W. Va. Code §20-5H-22 and as set forth under the financial responsibility requirements of W. Va. Code §20-5H-10.

1.2. Authority. -- W. Va. Code §20-5H-6.

1.3. Filing Date. -- April 5, 1991.

1.4. Effective Date. -- April 22, 1991.

**§47-37A-2. Applicability.**

2.1. Owners or operators of underground storage tanks are required by statute to establish a means of financial assurance necessary for taking reasonable corrective action and for compensating third parties for bodily injury and property damage caused by sudden or nonsudden accidental releasing arising from the operation of USTs. These regulations apply to UST owners and operators who do not show evidence of meeting the financial assurance requirements set forth in W. Va. Code §20-5H-10 and to any UST owner or operator with an established means of financial assurance who desires to participate in the state program.

**§47-37A-3. Definitions.**

3.1. "Accidental Release" means a release arising from extrinsic causes or occurring unexpectedly, by chance, without intent, or through carelessness.

3.2. "Advisory Committee" means a committee composed of seven (7) members, which shall include:

3.2.1. One member of the West Virginia Petroleum Council;

3.2.2. One member of the West Virginia Service Station Dealers Association;

3.2.3. One member of the West Virginia Petroleum Marketers Association;

comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

3.11. "Underground Storage Tank" or "UST" means one tank or a combination of tanks, and the underground pipes connected thereto, that is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. The term "underground storage tank" does not include:

3.11.1. Farm or residential tanks with a capacity of eleven hundred (1,100) gallons or less and used for storing motor fuel for noncommercial purposes;

3.11.2. Tanks used for storing heating oil for consumptive use on the premises where stored;

3.11.3. Septic tanks;

3.11.4. A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, as amended, or the Hazardous Liquid Pipeline Safety Act of 1979, as amended, or an intrastate pipeline facility regulated under state laws comparable to the provisions of either of those acts;

3.11.5. Surface impoundments, pits, ponds, or lagoons;

3.11.6. Storm water or wastewater collection systems;

3.11.7. Flow-through process tanks;

3.11.8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

3.11.9. Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if such storage tank is situated upon or above the surface of the floor; and

3.11.10. Any pipes connected to any tank which is described in Sections 3.11.1 through 3.11.9 of these regulations.

#### **§47-37A-4. Applying for Coverage.**

4.1. Application for Coverage. The owner or operator of an underground storage tank shall submit an application for coverage to the Board on forms supplied by the Board.

4.2. The application shall include a sworn statement that all information and records are accurate and in compliance with all applicable federal, state, and local requirements.

**\$47-37A-5. Capitalization Fees.**

5.1. A capitalization fee shall be assessed against all owners or operators of underground storage tanks to be used to establish the Underground Storage Tank Insurance Trust Fund. The fee shall be:

5.1.1. One hundred dollars per tank per year (\$100/tank/year) for a period of not less than one (1) year and not more than three (3) years. Second and third year capital assessments may be levied if there is an inadequate surplus of funds, as determined by the State Board of Risk and Insurance Management, the Division of Natural Resources, and the Underground Storage Tank Advisory Committee pursuant to Section seven, Article five-H, Chapter twenty of the West Virginia Code [W. Va. Code §20-5H-7].

5.2. The capitalization fee shall be paid to the Board and shall be deposited into the State Treasury into a special fund designated the "Underground Storage Tank Insurance Trust Fund."

5.3. Interest accrued on monies in the Underground Storage Tank Insurance Trust Fund shall be credited to that fund.

**\$47-37A-6. Powers and Duties of the Board.**

6.1. The Board shall have the power, duty, and responsibility to establish and maintain the premium rate for the UST insurance program.

6.2. The annual premium rate, as determined by the Board, shall be paid by the owners or operators requesting coverage and may include reasonable administrative expenses.

6.3. The premium shall be paid to the Board and deposited into the Underground Storage Tank Insurance Trust Fund.

6.4. The UST insurance program shall be assessable. The Board may implement assessments once the insurance premium pool reaches a level of Two million dollars (\$2,000,000) or less. The assessment shall be subject to approval of the Director and the Advisory Committee. For purposes of assessment calculations, the insurance premium pool shall not include funds collected from the capitalization fee assessment.

**\$47-37A-7. Cancellation of Coverage.**

7.1. The Division may request a cancellation of coverage for:

7.1.1. An owner or operator who is not in compliance with the provisions of 40 C.F.R. Part 280 or 47 C.S.R. 36;

7.1.2. An owner or operator who fails to install overfill/spill prevention if two (2) incidents are reported within a twelve (12) month period in excess of the insured's deductible; or

7.1.3. An owner or operator who fails to pay the premium.

**\$47-37A-8. Emergency Claims.**

8.1. The Division shall notify the Board of a potential claim.

8.2. The owner or operator shall comply with the initial response requirements set forth in 40 C.F.R. §280.61.

8.3. The owner or operator shall immediately submit written itemization of projected contract costs to the Board.

8.4. Upon compliance with the provisions of 40 C.F.R. §280.61, the owner or operator shall secure three (3) bids to perform site activities necessary to comply with the requirements set forth in 40 C.F.R. §280.66.

8.5. The owner or operator is required to accept the lowest bid.

8.6. The Board is responsible for reimbursing the owner or operator at an amount no greater than the lowest bid less the owners or operators deductible.

8.7. The Board will not pay the cost of the initial site assessment.

**\$47-37A-9. Non-Emergency Claims.**

9.1. The Division shall notify the Board of a potential claim.

9.2. The owner or operator shall secure three (3) bids to perform site activities necessary to comply with the requirements set forth in 40 C.F.R. §280.66.

9.3. The owner or operator is required to accept the lowest bid.

9.4. The Board is responsible for reimbursing the owner or operator for all eligible damages less the owner or operator deductible.

9.5. The Board will not pay the cost of the initial site assessment.

**\$47-37A-10. Notification Requirements.**

10.1. Owners and operators of underground storage tanks who have not fulfilled the notification requirements pursuant to Title 47, Series 36, Section 4 of the Code of State Regulations (47 C.S.R. 36 §4) shall not be eligible for insurance coverage pursuant to these regulations, until such notification is made and approved by the director.

**\$47-37A-11. Powers and Duties of the Advisory Committee.**

11.1. In addition to all other powers, duties, and responsibilities aforementioned in these regulations and W. Va. Code §20-5H-7, the Advisory Committee shall:

11.1.1. Have the authority to review all claims.

11.1.2. Have the authority to function as an appeals board for resolving the disputes that may arise from the operation of the underground storage tank insurance program established under W. Va. Code §20-5H-22 and these regulations; and

11.1.3. Have the authority, to authorize the Board to use funds from the premium pool to pay for corrective action when:

11.1.3.a. An owner or operator submits a written request to the Committee claiming he has no available financial means to pay the costs incurred not covered by the Insurance Trust Fund under Sections 8 and 9 of these regulations; or

11.1.3.b. Upon request of the Division.

11.2. The approval or denial of a request shall be determined at the discretion of the Committee based on facts presented with the request. A record shall be retained by the Committee stating the reasons for the decision to approve or deny the request. The Committee, upon approval of a request, shall direct the Board to pay the appropriate costs.

**\$47-37A-12. Severability of Requirements.**

12.1. If any requirement of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other requirements or applications of these regulations and to this end the requirements of these regulations are declared to be severable.

(mm) The legislative rules filed in the state register on the fifteenth day of June, one thousand nine hundred ninety, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, one thousand nine hundred ninety, relating to the division of natural resources (underground storage tank insurance trust fund) are authorized with the amendments set forth below:

On page four, after subsection 5.1, by inserting a new subdivision 5.1.1 to read as follows: following:

✓ "5.1.1 The fee shall be one hundred dollars per tank per year (\$100/tank/year) for a period of not less than one (1) year and not more than three (3) years. Second and third year capitalization fees may be levied if there is an inadequate surplus of funds, as determined by the Board of Risk and Insurance Management, the Division of Natural Resources and the Underground Storage Tank Advisory Committee pursuant to W. Va. Code, §20-5H-7."

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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DONALD R. WILKES  
Director, Corporations

RECEIVED  
AUG 31 1992

DIV. OF NATURAL RESOURCES  
OFFICE OF ENVIRONMENTAL &  
REGULATORY AFFAIRS

TO: Frank Pleurie

AGENCY: Division of Natural Resources

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 28, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 37A TITLE: 47 Division of Natural Resources

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Frank B. Pleurie

TITLE OF PERSON SIGNING: Administrator Regulatory Affairs

DATE: 9/11/92

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.