

Form #1 ☐

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Authorized Signature



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## West Virginia Bureau of Environment

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Cecil H. Underwood  
Governor

Michael C. Castle  
Commissioner

July 14, 2000

Ms. Judy Cooper  
Director, Administrative Law  
Division  
Secretary of State's Office  
Capitol Complex  
Charleston, WV 25305

RE: 33CSR32 - "Underground Storage Tank Insurance Trust Fund"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced Legislative Rule with your Office and the Legislative Rule-Making Review Committee as "Notice of a Public Hearing/ Comment Period on a Proposed Legislative Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle  
Commissioner

MCC:cc

cc: Gil Sattler  
Carrie Chambers

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

Rule Title: Title 33, Series 32 "Underground Storage Tank Insurance Trust Fund"

A. AUTHORITY: *WV Code 22-17-6*

B. SUMMARY OF RULE: *This amendment will allow the transfer of accrued interest from the UST Insurance Trust Fund Capitalization Fund to the UST Administrative Fund.*

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE: *The current rule requires that the accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted and the annual registration fee assessment no longer generates enough revenue to support the UST program. Current funding levels will not allow the Division of Environmental Protection to pay the current personnel to implement the program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited into the UST Administrative Fund there will be insufficient funds to pay personnel and other operating costs. Without this required state match federal funding and the program will be jeopardized. Amending the rule to allow the transfer of this money will alleviate the need to increase annual registration fees and is supported by the industry representatives on the UST Advisory Committee.*

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY: *There is no counterpart regulation.*

E. CONSTITUTIONAL TAKING DETERMINATION:

*In accordance with §22-1A-1 and 3(c), the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.*

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

*This rule was discussed during the DEP Environmental Protection Advisory Council held on July 6, 2000. Minutes of that meeting are attached.*

## MINUTES

### ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

#### ATTENDING:

##### Advisory Council Members:

Mike Castle, Chairman  
Lisa Dooley  
Jacqueline Hallinan  
Bill Raney  
Rick Roberts  
Bill Samples

##### Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

#### 1) Review and Approval of April 6, 2000 Minutes.

The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to

review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO<sub>x</sub> Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO<sub>x</sub> SIP Call. Failure of states to respond to the SIP Call will result in a NO<sub>x</sub> federal implementation plan or federal program to reduce NO<sub>x</sub> emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large

industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

**45CSR1** establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPs. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO<sub>x</sub> budget-trading program.

John informed the Council that **45CSR15** adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to **45CSR16**, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

**45CSR6** prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13.

**45CSR23** - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

**45CSR25** - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being

shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

**45CSR26** (copy not provided for Council at this time) specifically addresses NO<sub>x</sub> reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO<sub>x</sub> limits, which is roughly an 85% reduction in NO<sub>x</sub> emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO<sub>x</sub> limits, or 65% reduction from their 1999 emissions.

**45CSR30** establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

**45CSR34** - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also

proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% +) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.



Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

□ 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

□ 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to

ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- 35CSR4 - "Oil and Gas Wells and Other Wells"
- 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the

paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

**35CSR7** - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

*After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.*

The following Office of Waste Management rules were discussed:

- **33CSR3** - "Yard Waste Management Rule"
- **33CSR5** - "Waste Tire Management Rule"
- **33CSR20** - "Hazardous Waste Management Rule"
- **33CSR32** - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on **33CSR3**. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under **33CSR5**. The

proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed **33CSR20**. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, **33CSR30**, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

**33CSR32**, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

*Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.*

The following Office of Mining and Reclamation rules were discussed:

- 38CSR2 - "WV Surface Mining Reclamation Rule"
- 38CSR3 - "Rules for Quarrying and Reclamation"

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to 38CSR2, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

*In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.*

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000

feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

### 3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.



## APPENDIX B

### FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 33 Series 32 "Underground Storage Tank Insurance Trust Fund"

Type of Rule:   X   Legislative            Interpretive            Procedural

Agency: Bureau of Environment

Address: Division of Environmental Protection  
Office of Waste Management  
1356 Hansford Street  
Charleston, WV 25301-1401

#### 1. Effect of Proposed Rule

Estimated Total Cost	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

#### 2. Explanation of above estimates:

There will be no costs.

#### 3. Objectives of these rules:

To provide operating funds for the Underground Storage Tank (UST) program.

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

The funds will provide salaries for the UST personnel who implement the UST program. The funds expended are matching funds for the federal E.P.A. grant.

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

It will save the UST owners from having additional fees imposed on them to support the program.

**C. Economic Impact on Citizens/Public at Large.**

None, except that the UST program can continue to be implemented by the state and not require a takeover by the federal E.P.A.

Date:

July 14, 2000

Signature of Agency Head or Authorized Representative

Barri J. Chamber

FILED

JUL 14 4 09 PM '00

TITLE 33  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF WASTE MANAGEMENT

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 32  
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

**§33-32-1. General.**

1.1. Scope and Purpose. -- This rule establishes an Underground Storage Tank Insurance Trust Fund pursuant to W. Va. Code §22-17-22 and as set forth under the financial responsibility requirements of W. Va. Code §22-17-10.

1.2. Authority. -- W. Va. Code §22-17-6.

1.3. Filing Date. -- April 22, 1999

1.4. Effective Date. -- July 1, 1999

**§33-32-2. Applicability.**

2.1. Financial Assurance. Owners or operators of petroleum underground storage tanks are required by statute and rule 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. This rule applies to petroleum UST owners and operators who do not show evidence of meeting the financial assurance requirements set forth in W. Va. Code §22-17-10 and to any petroleum UST owner or operator with an established means of financial assurance who desires to participate in the state program.

**§33-32-3. Definitions.**

3.1. "Accidental Release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily

injury or property damage neither expected nor intended by the tank owner or operator.

3.2. "Administrator" means private or state individuals, organizations, other state agencies, companies, corporations, or other persons designated by the director through agreements, including reimbursement for services rendered, contracts, and cooperative arrangements under such terms and conditions as he or she deems appropriate to administer the Underground Storage Tank Insurance Trust Fund in accordance with W. Va. Code §22-17-5(c).

3.3. "Advisory Committee" means the underground storage tank advisory committee as prescribed in W. Va. Code §22-17-7.

3.4. "Damages" means bodily injury or property damage caused by a release or accidental release as defined in this rule.

3.5. "Director" means the director of the division of environmental protection of the bureau of environment or other such person to whom the director has delegated authority and duties pursuant to W. Va. Code §§22-1-6 or 8.

3.6. "Deductible" means an amount of money paid by the insured that relieves the insurer of responsibility for an initial specified loss.

3.7. "Division" means the division of environmental protection of the bureau of environment.

3.8. "Premium" means the payment made for a contract of insurance.

3.9. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

3.10. "Regulated Substance" means:

3.10.a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; and

3.10.b. Petroleum, including crude oil or any fraction thereof which is liquid at a temperature of sixty (60) degrees fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute (14.7 psia). The term "regulated substance" includes, but is not limited to, petroleum and petroleum-based substances 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.a. Farm or residential tanks with a capacity of eleven hundred (1,100) gallons or less used for storing motor fuel for noncommercial purposes;

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

3.11.c. Septic tanks;

3.11.d. 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.e. Surface impoundments, pits, ponds, or lagoons;

3.11.f. Storm water or wastewater collection systems;

3.11.g. Flow-through process tanks;

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

3.11.i. 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.j. Any pipes connected to any tank which is described in subdivisions 3.11.a. through 3.11.i. of this rule.

#### **§33-32-4. 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 director or the administrator on forms supplied by the director or the administrator.

4.2. Sworn Statement. -- 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.

#### **§33-32-5. Capitalization Fees.**

5.1. Capitalization Fee. 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.a. 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 administrator, the director, and the underground storage tank advisory committee pursuant to W. Va. Code §22-17-7.

5.2. Capitalization Fee Payment. -- The capitalization fee shall be paid to the director or the administrator and shall be deposited into the state treasury into a special fund designated the "Underground Storage Tank Insurance Trust Fund Capitalization Fees".

5.3. Interest Accrued. -- Interest accrued on monies in the Underground Storage Tank Insurance Trust Fund Capitalization Fees Fund ~~or shall be credited to the Underground Storage Tank Administrative Fund.~~ Interest accrued on monies in the Underground Storage Tank Insurance Trust Fund Premium Fund shall be credited to that fund: the Underground Storage Tank Insurance Trust Fund Premium Fund.

#### §33-32-6. Powers and Duties of the Director.

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

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

6.3. Premium Payment and Deposit. -- The premium shall be paid to the director or the administrator and deposited into the Underground Storage Tank Insurance Trust Fund Premium Fund.

6.4. UST Insurance Program Shall Be Assessable. -- The UST insurance program shall be

assessable. The director may implement assessments once the insurance premium fund reaches a level of not more than two million dollars (\$2,000,000). 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.

#### §33-32-7. Cancellation of Coverage.

7.1. Cancellation of Coverage. -- Coverage will be canceled for an insured who:

7.1.a. Is not in compliance with the provisions of 40 C.F.R. Part 280 or 33 C.S.R. 30;

7.1.b. 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;

7.1.c. Fails to pay the premium when due;

7.1.d. Fails to reimburse the UST Insurance Trust Fund for deductible expenses promptly; or

7.1.e. Fails to reimburse the UST Insurance Trust Fund for any payment made by the fund on account of any claim involving a breach of the terms of the policy or violation of federal or state rules.

#### §33-32-8. Emergency Claims.

8.1. Notification of Claim. -- The insured must notify the director and the administrator of an accidental release, real or alleged, within twenty-four (24) hours of discovery of the release. The insured must notify, or verify that notice has been provided to, the director and the administrator of any occurrence which may result in a claim.

8.2. Initial Response Requirements. -- The insured must comply with applicable initial response requirements set forth in 40 C.F.R. §280.61.

8.3. Written Itemization. -- The insured must submit written itemization of projected contract costs to the director or the administrator prior to the acceptance of written bids in accordance with subsections 8.4 and 8.5 of this rule.

8.4. Bids Secured. -- The insured must secure a minimum of three (3) written bids to perform site activities necessary to comply with the requirements set forth in 40 C.F.R. §§280.62, 280.63, 280.64, 280.65, and 280.66 when these activities are required by the division.

8.5. Acceptance of Bid. -- The insured is required to accept the lowest bid.

8.6. Reimbursement. -- The director or the administrator is responsible for reimbursing the insured for all eligible expenses at an amount no greater than the lowest bid less the insured's deductible.

#### **§33-32-9. Non-Emergency Claims.**

9.1. Notification of Claim. -- The insured must notify the director and the administrator of an accidental release, real or alleged, within twenty-four (24) hours of the discovery of the release. The insured must notify, or verify that notice has been provided to, the director and the administrator of any occurrence which may result in a claim.

9.2. Bids Secured. -- The insured must secure a minimum of three (3) written bids to perform site activities necessary to comply with the requirements set forth in 40 C.F.R. §§280.62, 280.63, 280.64, 280.65, and 280.66 when these activities are required by the division.

9.3. Acceptance of Bid. -- The insured is required to accept the lowest bid.

9.4. Reimbursement. -- The director or the administrator is responsible for reimbursing the insured for all eligible expenses as enumerated in the West Virginia petroleum underground storage tank insurance policy at an amount no greater than the lowest bid less the insured's deductible.

#### **§33-32-10. Notification Requirements.**

10.1. Notification Requirements. -- Owners and operators of underground storage tanks who have not fulfilled the notification requirements pursuant to W. Va. Code §33-30-4 shall not be eligible for insurance coverage pursuant to this rule, until such notification is made and approved by the director.

#### **§33-32-11. Powers and Duties of the Advisory Committee.**

11.1. Advisory Committee Powers, Duties, and Responsibilities. -- In addition to all other powers, duties, and responsibilities aforementioned in this rule and W. Va. Code §22-17-7, the advisory committee shall:

11.1.a. Have the authority to review and make recommendations to the director regarding all claims;

11.1.b. Have the authority to hear and make recommendations to the director regarding disputes that may arise from the operation of the underground storage tank insurance program established under W. Va. Code §22-17-22 and this rule and

11.1.c. Have the authority to hear and make recommendations to the director regarding entering into an intergovernmental agreement with the revolving low-interest small business environmental loan program and commit up to \$500,000 of the Underground Storage Tank Insurance Trust Fund Premium Fund to make loans to small businesses for underground storage tank qualifying loans as defined by the revolving low-interest small business environmental loan program established by W. Va. Code §22-24, as amended.