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KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

CITE AUTHORITY W.Va. Code 20-5H-6

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 36

TITLE OF RULE BEING AMENDED: "Underground Storage Tank Regulations"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

David C. Callaghan
Director

280

FISCAL NOTE FOR AN PROPOSED RULE

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Rule Title: Title 47, Series 36, "Underground Storage Tank Regulations."

Type of Rule: XX Legislative Interpretive Procedural

Agency: Department of Commerce, Labor and Environmental Resources, Division of Environmental Protection, Section of Waste Management

Address: 1356 Hansford Street, Charleston, West Virginia 25301

1. Effect of Proposed Rule	ANNUAL Increase $	ANNUAL Decrease $	FISCAL YEAR Current $	FISCAL YEAR Next $	FISCAL YEAR Thereafter $
-Personal Services -Current Expense -Repairs and Alterations -Equipment -Other			NO CHANGE		

2. Explanation of Above Estimates: These regulations clarify notification requirements concerning underground storage tanks. No new administrative expenditures are anticipated.

3. Objectives of These Rules: The objective of this rule is to clarify the procedure of notification concerning the purchasing or selling of an underground storage tank.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: No impact.

B. 1. Economic Impact on Political Subdivisions: No impact.

2. Economic Impact on Specific Industries: No impact.

3. Economic Impact on Specific Groups of Citizens: No impact.

C. Economic Impact on Citizens/Public at Large: No impact.

David C. Callaghan
Director

Date: July 14, 1992

PREAMBLE TO A PROPOSED RULE CONCERNING UNDERGROUND STORAGE TANKS

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AGENCY: Department of Commerce, Labor and Environmental Resources, Division of Environmental Protection

REGULATION: Title 47, Series 37, "Underground Storage Tank Assessment Fees"

AUTHORITY: West Virginia Code 20-5H-6

ACTION: Filing of an Agency Approved Rule with the Legislative Rule Making Review Committee

SUMMARY: Today's filing amends the Underground Storage Tank Assessment Fees by imposing late fees upon owners and operators of underground storage tanks which have not paid assessed fees within the allotted times set by regulations. The Division of Environmental Protection views this as a necessary mechanism for the prompt payment of the assessed fees.

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

SERIES 36
UNDERGROUND STORAGE TANK REGULATIONS

§47-36-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes regulations to govern the construction, installation, upgrading, use, maintenance, and closure of underground storage tanks in this State.

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

1.3. Filing Date. --

1.4. Effective Date. --

§47-36-2. Adoption of Federal Regulations.

2.1. The director hereby adopts and incorporates by reference the provisions contained in 40 C.F.R. Part 280 as published in the Code of Federal Regulations on the July 1, 1992~~date in which these regulations were proposed (December 16, 1988)~~, with the following modifications:

2.1.1. The definition of "Implementing Agency" that appears in 40 C.F.R. §280.12 shall be deleted and replaced by "'Implementing Agency' means the West Virginia Division of ~~Natural Resources~~Environmental Protection."

2.1.2. The provisions contained in 40 C.F.R. §280.20(e) shall be deleted and replaced by Section 3 of these regulations.

2.1.3. The provisions contained in 40 C.F.R. §280.22 shall be deleted and replaced by Section 4 of these regulations.

2.1.4. The phrase "section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended" that appears in 40 C.F.R. §280.34 shall be deleted and replaced by the phrase "W. Va. Code §20-5H-13."

2.1.5. The provisions contained in 40 C.F.R. §280.34(a)(1) shall be deleted and replaced by "(1) Notification in accordance with the provisions of Section 4 of these regulations."

2.1.6. The phrase "section 3004(u) of the Resource Conservation and Recovery Act, as amended" that appears in 40

C.F.R. §280.60 shall be deleted and replaced by the phrase "W. Va. Code §20-5H-14."

2.1.7. The provisions contained in Appendices II and III of 40 C.F.R. Part 280 shall be deleted.

2.1.8. A Section 5 is added to these regulations prohibiting carriers from dispensing regulated substances into Underground Storage Tanks of owners or operators not in compliance with these regulations.

§47-36-3. Certification Requirements.

3.1. Certification of Installation. All owners or operators of underground storage tanks must ensure that one or more of the methods of certifying tank installation, as described under Section XI of Appendix I of these regulations (excluding item B), is used to demonstrate compliance with 40 C.F.R. §280.20(d).

§47-36-4. Notification Requirements.

4.1. Except as provided in Section 4.1.1, 4.1.2, or 4.1.3 of these regulations, the owner or operator of an underground storage tank system that was in the ground prior to May 1, 1990 must submit a notice of the existence of such tank system to the director by completing the form prescribed in Appendix I of these regulations.

4.1.1. The owner or operator of an underground storage tank system that was in the ground prior to May 1, 1990 is exempt from the notification requirements of Section 4.1 of these regulations if notice was previously given to the director in accordance with the provisions of the federal Hazardous and Solid Waste Amendments of 1984 on the form published in the Federal Register on November 8, 1985 (50 F.R. 46602), unless such notice was given pursuant to Section 103(c) of CERCLA.

4.1.2. The owner or operator of an underground storage tank system that was removed from the ground on or before May 8, 1986, is exempt from the notification requirements of Section 4.1 of these regulations.

4.1.3. The owner or operator of an underground storage tank that was installed on or before December 22, 1988 need only complete Sections I through X of the form prescribed in Appendix I of these regulations. Tank systems installed after December 22, 1988 must comply with the provisions of Section 4.2 of these regulations.

4.2. All owners and operators of UST systems installed after December 22, 1988 must provide the director, in addition to the provisions of Section 4.1.3 of these regulations, notification of

compliance with the following requirements:

4.2.1. Installation of tanks and piping as certified under Section XI of the form prescribed in Appendix I of these regulations, excluding Item B (Installer certified or licensed by the implementing agency) under Section 1 (Installation) of Part XI (Certification of Compliance).

4.2.2. Cathodic protection of steel tanks and piping in accordance with the provisions of 40 C.F.R. §§ 280.20(a) and 280.20(b).

4.2.3. Spill and overfill prevention equipment in accordance with the provisions of 40 C.F.R §280.20(c).

4.2.4. Financial responsibility in accordance with the provisions of 40 C.F.R. Subpart H.

4.2.5. Release detection in accordance with the provisions of 40 C.F.R. §§280.41 and 280.42.

4.3. All owners and operators of UST systems to be installed on or after the effective date of these regulations, must notify the director in writing at least thirty (30) days prior to beginning the installation. The thirty (30) day time period may be waived when such action is in response to a release from an existing UST system on the site.

~~4.3.~~4.4. All owners and operators of new UST systems to be installed after the effective date of these regulations, must ensure that the installer certifies, in the notification form, that the methods used to install the tanks and piping comply with the requirements of 40 C.F.R. §280.20(d).

~~4.4.~~4.5. An owner or operator who is required to submit notices under Section 4 of these regulations may provide notice for several tanks by using one notification form, but an owner of tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

~~4.5.~~4.6. After June 10, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under Section 4 of these regulations. The following notice may be used to comply with this requirement:

"NOTICE: Owners of certain underground storage tanks in West Virginia are required by law to notify the director of the Division of ~~Natural--Resources~~ Environmental Protection of the existence of their tanks. Notifications for tanks brought into use after May, 8, 1986 must be made within thirty (30) days. Consult the Division's Underground Storage Tank Regulations (47

C.S.R. 36) to determine if you must provide this notification."

4.6.1. Any person who sells an existing tank intended to be used as an underground storage tank must notify the director at least thirty (30) days prior to the transfer of ownership.

~~4.6.~~4.7. Except as provided in Section 4.6.1 of these regulations, the owner or operator must report changes in the status of any underground storage tank system by completing the form prescribed in Appendix I of these regulations and then submitting that form to the director by December 31 of the year in which the change of status occurred.

~~4.6.1.~~4.7.1. A new owner of an underground storage tank must provide notification of the transfer of ownership of that tank by completing the form prescribed in Appendix I of these regulations and then submitting that form to the director within thirty (30) days of the transfer.

§47-36-5. Carriers.

5.1. Carriers (private, common, or for-hire) of regulated substances shall not deliver regulated substances into an underground storage tank unless the division ~~certifies~~ has certified that the underground storage tank owner or operator is in compliance with the requirements of Title 47, Series 37 (Underground Storage Tank Fee Assessments); Title 47, Series 36, Section 4 (Notification Requirements); and Title 47, Series 37A, Section 5 (Capitalization Fees) of the Code of State Regulations and the owner or operator presents proof of the certification to the carrier.

5.2. Any carrrier who violates the provision of Section 5.1 of these regulations shall be subject to enforcement action under Chapter twenty, Article five-h (§20-5H et seq).

DATE: September 18, 1992

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TO: Legislative Rule-Making Review Committee

FROM: Division of Environmental Protection, Office of Waste Management

LEGISLATIVE RULE TITLE: Title 47, Series 36 "Underground Storage Tank Regulations"

1. Authorizing statute(s):
West Virginia Code, Chapter 20, Article 5H, Section 6

2. a. Date filed in State Register with Notice of Comment Period: August 17, 1992.

   b. What other notice was given of the public comment period: None

   c. Date to end comment period: September 18, 1992.

   No comments were received.

   d. Date of Public Hearing: none.

   e. Date the agency-approved rule is filed in the State Register: September 18, 1992.

3. Name and phone number of agency contact person:
Gil Sattler, Assistant Chief (UST) 558-6371

4. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

Not Applicable