

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #1

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SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §20-5H-6

AMENDMENT TO AN EXISTING RULE: YES  NO

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

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 36

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

Underground Storage Tank Regulations

DATE OF PUBLIC HEARING: Friday, January 20, 1989 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Director' Conference Room 674

Building 3, State Capitol Complex

Charleston, West Virginia

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Dept. of Natural Resources  
Building 3, State Capitol Complex

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Charleston, WV 25305

Attn: OERA

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



FISCAL NOTE FOR PROPOSED RULES

Rule Title: Underground Storage Tank Regulations

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Natural Resources

Address: Building 3, State Capitol Complex, Charleston, West Virginia

1. Effect of Proposed Rule (Estimated Total Cost)	Increase \$	ANNUAL		FISCAL YEAR	
		Decrease \$	Current \$	Next \$	Thereafter \$
Personal Services	181,257			183,500	367,000
Current Expense	16,635			25,000	60,000
Repairs and Alterations	8,300			12,000	18,000
Equipment	52,275			40,000	60,000
Other	8,200			10,000	15,000

2. Explanation of Above Estimates:

An expenditure of \$266,667 is required to implement these rules in the first year, 75% of which will be federal funds. By its fourth year, given federal grant monies and fee assessments collected from each tank owner in the State, this program will be self-funding.


3. Objectives of These Rules:

These rules adopt federal regulations that establish technical requirements for underground storage tanks containing certain regulated substances, particularly petroleum.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government: See above estimates.
- B. Economic Impact on Political Subdivisions: See attachment.  
Economic Impact on Specific Industries: See attachment.  
Economic Impact on Specific Groups of Citizens: No impact.
- C. Economic Impact on Citizens/Public at Large: See attachment.

Date: December 16, 1988

  
 \_\_\_\_\_  
 Ronald R. Potesta  
 Director

The Legislature has recognized that large quantities of petroleum and hazardous substances are stored in underground storage tanks within the State of West Virginia and that emergency situations involving these substances can and will arise which may present a hazard to human health and safety, decrease property values, and/or contaminate groundwater and the environment. Therefore, they desire to produce revenue for matching federal assistance, to create a program to control the installation, operation, and abandonment of underground storage tanks, and to provide for corrective action to remedy releases of regulated substances from these tanks. No additional taxes will be required from the public at large to produce this revenue as it is supported by annual fees collected from the tank owners and from federal assistance. The industry should not be adversely affected as the fees shall not exceed fifty dollars per tank per year.

PREAMBLE TO A NEW LEGISLATIVE RULE CONCERNING  
THE REGULATION OF UNDERGROUND STORAGE TANKS

**STATE AGENCY:** West Virginia Department of Natural Resources

**REGULATIONS:** Title 47, Series 36, "Underground Storage Tank Regulations"

**AUTHORITY:** W. Va. Code §20-5H-6

**ACTION:** Proposed Rule; Notice of Public Hearing

**DATES:** A public hearing on the proposed rule will be held on Friday, January 20, 1989 at 1:00 p.m. in Room 674, Building 3, State Capitol Complex, Charleston. Written comments will be received by the Department until 4:30 p.m. on that day.

**SUMMARY:** The Department is proposing a new legislative rule to provide technical requirements to govern the construction, installation, upgrading, use, maintenance, and closure of underground storage tanks in West Virginia. Furthermore, the Department is proposing, in large measure, the adoption of federal UST regulations by reference. In this manner the State's regulations will be consistent and equivalent with and no more stringent than federal regulations, thus fulfilling the Department's mandate under the 1988 West Virginia Underground Storage Tank Act. The federal regulations being adopted by reference in today's rule appear in the Federal Register at the following citations: 53 F.R. 37194-37212 (September 23, 1988) and 53 F.R. 43370-43382 (October 26, 1988).

TITLE 47  
LEGISLATIVE RULES  
DEPARTMENT OF NATURAL RESOURCES

SERIES 36  
UNDERGROUND STORAGE TANK REGULATIONS

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**§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 date on 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 Department of Natural Resources."

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 3005(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.

**§47-36-3. Certification Requirements. (Reserved).**

**§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 the effective date of these regulations must submit a notice of the existence of such tank system to the director by completing Sections I through VI of 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 the effective date of these regulations 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 taken out of operation or before January 1, 1974 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 after December 22, 1988 must submit a notice of the existence of that tank to the director by completing Sections I through VII of the form prescribed in Appendix I of these regulations.

4.2. All owners and operators of new UST systems must provide notification to the director in accordance with the provisions of Section 4.1.3 of these regulations. In addition, such owners and operators must certify, in the notification form, compliance with the following requirements:

4.2.1. Installation of tanks and piping in accordance with the provisions of Section 3 of these regulations;

4.2.2. Cathodic protection of steel tanks and piping in accordance with the provisions of Sections 280.20(a) and 280.20(b) of these regulations;

4.2.3. Financial responsibility in accordance with the provisions of Subpart H of these regulations; and

4.2.4. Release detection in accordance with the provisions of Sections 280.41 and 280.42 of these regulations.

4.3. All owners and operators of new UST systems must ensure that the installer certifies, in the notification form, that the methods used to install the tanks and piping comply with the requirements in Section 280.20(d) of these regulations.

4.4. 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. Beginning 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 West Virginia Department of Natural Resources 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 Department's Underground Storage Tank Regulations (47 C.S.R. 36) to determine if you must provide this notification."

4.6. 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 Sections I through VI of 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. A new owner of an underground storage tank must provide notification of the transfer of ownership of that tank by completing Sections I through VI of the form prescribed in Appendix I of these regulations and then

submitting that form to the director within thirty (30) days of the transfer.