

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

Form #3

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY W. Va. Code §20-5H-6

AMENDMENT TO AN EXISTING RULE: YES  NO

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

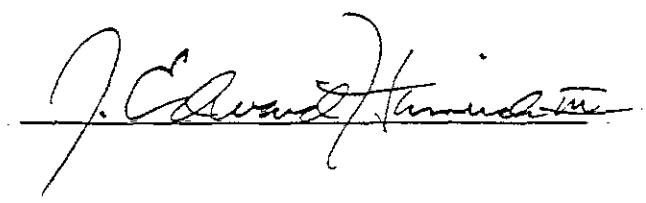
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

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

"Underground Storage Tank Regulations"

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.



TITLE 47  
 LEGISLATIVE RULES  
 DEPARTMENT OF NATURAL RESOURCES

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 0-5H-6.

1.3. Filing Date. -- March 29, 1990.

1.4. Effective Date. -- May 1, 1990.

**§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 January 24, 1989, 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 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 on 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 contained in 40 C.F.R. §§280.20(a) and 280.20(b);

4.2.3. Financial responsibility in accordance with the provisions contained in Subpart H of 40 C.F.R. Part 280; and

4.2.4. Release detection in accordance with the provisions contained in 40 C.F.R. 280.41 and 280.42.

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 contained in 40 C.F.R. §280.20(d).

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 on the effective date of these regulations, 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 4.7 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 within thirty (30) days of the change of status.

4.6.1. As used in Section 4.6 of these regulations, "change of status" means causing an underground storage tank to be no longer in use or a change in the reported uses, contents, or ownership of an underground storage tank.

4.7. 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.