

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In this Box

FILED

FEB 19 9 42 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

Department of Commerce, Labor
and Environmental Resources

AGENCY: Division of Environmental Protection TITLE NUMBER: 47

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

AMENDMENT TO AN EXISTING RULE: YES NO

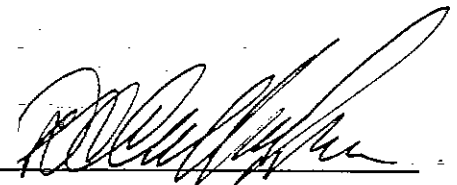
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 37

TITLE OF RULE BEING AMENDED: "Underground Storage Tank
Assessment Fees"

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.



David C. Callaghan
Director

FILED

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

FEB 19 9 43 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 37
UNDERGROUND STORAGE TANK FEE ASSESSMENTS

§47-37-1. General.

1.1. Scope and Purpose. -- This legislative rule establishes procedures for the assessment and collection of fees for the Underground Storage Tank Administrative Fund and the Leaking Underground Storage Tank Response Fund pursuant to W. Va. Code §§20-5H-20 and 20-5H-21.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Incorporation by Reference. -- Whenever federal statutes or regulations are incorporated by reference into these regulations, the reference is to the statute or regulation in effect on the date on which these regulations were proposed (~~September 28, 1988~~). July 1, 1992.

1.6. Tanks Excluded From Fee Assessments. -- The following categories of underground storage tanks are excluded from the fee assessment provisions of Section 3 of these regulations.

1.6.1. Any underground storage tank holding hazardous wastes listed or identified under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, or a mixture of such hazardous waste and other regulated substances;

1.6.2. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the federal Clean Water Act;

1.6.3. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

1.6.4. Any underground storage tank system whose ~~with~~ a capacity ~~of~~ is one hundred and ten (110) gallons or less;

1.6.5. Any underground storage tank system that contains a de minimis concentration of regulated substances; and

1.6.6. Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

§47-37-2. Definitions.

2.1. "Act" means the West Virginia Underground Storage Tank Act (W. Va. Code §20-5H et seq.).

~~2.2. "Department" means the West Virginia Department of Natural Resources.~~

2.2. "Change-In-Service" means when an underground storage tank system has undergone a "change-in-service" pursuant to 40 C.F.R. §§280.71 and 280.72.

~~2.3. "Division" means the Division of Environmental Protection, Waste Management of the West Virginia Department of Natural Resources.~~

2.4. "Owner" means:

2.4.1. In the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, a person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance.

2.4.2. In the case of an underground storage tank system, in use before November 8, 1984, but no longer in use on that date, a person who owned such a tank immediately before the discontinuation of its use.

2.5. "Person" means any individual, trust, firm, joint stock company, federal agency, corporation (including government corporations), partnership, association, state, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity, or the United States government.

~~2.6. "Presently in Use" means an underground storage tank that is being used or could be used for the storage, use, or dispensing of a regulated substance at any time during the current calendar year.~~

2.6. "Permanent Closure" means the closure of an underground storage tank in the manner specified under 40 C.F.R. §§ 280.71 and 280.72.

2.7. "Regulated Substance" means:

2.7.1. Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 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; or

2.7.2. Petroleum, including crude oil or an 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).

2.8. "Underground Storage Tank" means any 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 underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. The term underground Storage tank does not include:

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

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

2.8.3. Septic tanks;

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

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

2.8.6. Storm water or wastewater collection systems;

2.8.7. Flow-through process tanks;

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

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

2.8.10. Any pipes connected to any tank which is described in Section 2.8.1 through 2.8.9 of these regulations.

§47-37-3. Fee Assessment.

3.1. Registration Fees.

3.1.1. The Division will collect an annual registration fee from each owner of an underground storage tank ~~presently in use~~ which has not undergone permanent closure or change-in-service in this State. The registration fee will not exceed twenty-five dollars (\$25) per tank per year.

3.2. Response Fees.

3.2.1. The division will collect an annual response fee from each owner of an underground petroleum storage tank ~~presently in use~~ which has not undergone permanent closure or change-in-service in this State. The response fee will not exceed twenty-five dollars (\$25) per tank per year.

3.3. Fee Calculation.

3.3.1. The division will calculate the fees assessed pursuant to these regulations based upon the maximum assessment allowable under the Act ~~divided by the number of tanks known to exist in West Virginia.~~

3.3.2. Owners of ~~new tanks~~ USTs, the use of which commenced on or after January 1 of the current calendar year must pay the full annual fees assessed under Sections 3.1 and 3.2 of these regulations (i.e., fees assessed will not be prorated).

3.3.3. Owners of USTs that have completed permanent closure or a change-in-service during the calendar year must pay the full annual fees assessed under Sections 3.1 and 3.2 of these regulations.

3.4. Fee Consolidation.

3.4.1. The fees assessed pursuant to these regulations will be consolidated ~~so that no more than one payment shall be due from any tank owner in any one calendar year.~~

§47-37-4. Fee Collection.

4.1. An invoice for the fees assessed pursuant to these regulations will be provided by the division to each tank owner upon whom a fee is assessed. Such invoice will include an itemized list of fees assessed and the date upon which such fees are due and payable. The invoice will be provided in the form and manner prescribed by the division.

4.2. Fees assessed pursuant to these regulations must be paid by check, money order, or bank draft payable to the West Virginia Department of Natural Resources ~~Division of Environmental Protection~~. Payment of the entire amount of the fees assessed, as calculated on the assessment invoice, must be made in a single payment.

4.3. Fee payments must be sent to the address on the assessment invoice provided by the division by the date specified on the invoice. If such fee payment is mailed, then the payment must be postmarked by the date specified on the invoice.

4.4. Correcting Fee Assessment Errors.

~~4.4.4.4.1. Undercharges that appear on the assessment invoices issued by the division will be corrected on the assessment invoices issued for the next calendar year by the issuance of a corrected invoice.~~

~~4.5-4.4.2. Overcharges that appear on the assessment invoices issued by the division will be corrected on the assessment invoices issued for the next calendar year unless the tank owner submits a written request for a refund to the division. Said request, along with documentation supporting the claim of erroneous assessment, must accompany the payment of the assessed fee. The division shall investigate the tank owner's claim and issue a refund for the amount in excess of the proper assessment if the tank owner's claim proves to be valid.~~

4.4.3. Any errors made in the calculation of assessment fees, whether by the division or as a result of inaccurate information submitted by the owner or operator pursuant to the notification requirements under Section 4 of The Underground Storage Tank Regulations (47 C.S.R. 36 §4) and Section 8 of The Underground Storage Tank Act (W. Va. Code §20-5H-8), must be corrected within one (1) year of the due date posted on the invoice except for the following:

4.4.3.a. Within one (1) year after the effective date of these regulations, the division or the owner or operator may correct assessment fee errors for all invoices

with due dates specified within the previous two (2) years of the effective date under Section 1.4 of these regulations.

4.4.4. All fee assessments shall be as originally assessed if no errors are identified within the one (1) year period.

~~4.6.1.5.~~ A tank owner who does not make a full, timely payment of the fees pursuant to these regulations, or who otherwise fails to comply with the provisions of these regulations, is subject to the penalties provided under W. Va. Code §§20-5H-15 and 20-5H-16.

4.6. Penalties shall be assessed on fee payments not received by the specified due date on the invoice. Late fees shall be a cumulative sum based on the following penalty assessment:

4.6.1. Fifty percent (50%) of the balance assessed for delinquent fees in excess of thirty (30) days after the due date specified on the invoice.

§47-37-5. Fee Deposit.

5.1. Fees collected by the ~~Department~~ division pursuant to these regulations will be deposited into the State treasury in accordance with W. Va. Code §§20-5H-20 and 20-5H-21.

5.1.1. The deposit of a fee payment into the State treasury is not an admission by the ~~Department~~ division of an assessment for the correct number of tanks. Each tank owner is obligated to notify the division if the number of tanks assessed is incorrect. Corrections will be made in accordance with Section 4.4 of these regulations.

5.1.2. Deposits into the Underground Storage Tank Administrative Fund will include:

5.1.2.a. All registration fees collected pursuant to Section 3.1 of these regulations;

5.1.2.b. The net proceeds of all fines, penalties, and forfeitures collected under the Act; and

5.1.2.c. All interest accruing on investments and deposits of this Fund.

5.1.3. Deposits into the Leaking Underground Storage Tank Response Fund will include;

5.1.3.a. All response fees collected pursuant to Section 3.2 of these regulations;

5.1.3.b. Any registration fee monies received by the ~~Department~~ division that exceed the maximum annual balance for the Underground Storage Tank Administrative Fund as prescribed under W. Va. Code §20-5H-20(a).

5.1.3.c. All interest accruing on investments and deposits of this Fund.



WEST VIRGINIA LEGISLATURE
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 Room M-152, State Capitol
 Charleston, West Virginia 25305
 (304) 340-3286

FILED

FEB 17 12 52 PM '93

OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

Senator Joe Manchin III, Co-Chair
 Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
 Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

February 8, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: David C. Callaghan, Director
 Department of Environmental Protection
 #10 McJunkin Road
 Nitro, WV 25143-2506

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Underground Storage Tank Assessment Fees, Series 37

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Gil Sattler