

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

May 28, 1993

Frank Pleurie
Natural Resources
1201 Greenbrier Street
Charleston, WV 25305

HB 100 authorizing, **Title 47, Series 37, Underground Storage Tank Assessment Fees**, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section **64-3-17(d)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

FILED

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

JUN 14 2 44 PM '93

SERIES 37
UNDERGROUND STORAGE TANK FEE ASSESSMENTS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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. -- June 14, 1993

1.4. Effective Date. -- June 14, 1993

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 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 capacity 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. "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.

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. "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 or 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 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 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.

3.3.2. Owners of 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.

§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 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.

4.4.1 Under charges that appear on the assessment invoices issued by the division will be corrected by the issuance of a corrected invoice.

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.

4.5. 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 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 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 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.

SENATE BILL NO. 189

(By **Senator Manchin**)

[Introduced March 1, 1993; referred to the
Committee on Natural Resources; and then to
the Committee on the Judiciary.]

8

9

10 A BILL to amend article three, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section, designated section
13 sixteen, relating to authorizing the division of
14 environmental protection to promulgate legislative rules
15 relating to underground storage tank assessment fees.

16 **Be it enacted by the Legislature of West Virginia:**

17 That article three, chapter sixty-four of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 sixteen, to read as follows:

21 **ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND**
22 **ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

23 **§64-3-16. Division of environmental protection.**

1 The legislative rules filed in the state register on the
2 eighteenth day of September, one thousand nine hundred ninety-
3 two, modified by the division of environmental protection to meet
4 the objections of the legislative rule-making review committee
5 and refiled in the state register on the nineteenth day of
6 February, one thousand nine hundred ninety-three, relating to the
7 division of environmental protection (underground storage tank
8 assessment fees), are authorized.

9

10 NOTE: The purpose of this bill is to authorize the Division
11 of Environmental Protection to promulgate legislative rules
12 relating to underground storage tank assessment fees.

13

14 This section is new; therefore, strike-throughs and
15 underscoring have been omitted.