

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

Form #2

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1988 SEP 28 PM 3:04  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD 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: ~~35A~~ 37

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

Underground Storage Tank Regulations  
Fee

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 18, 1988 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Department of Natural Resources  
Room 842 (OERA)  
Building 3, State Capitol Complex  
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Robert K. Parsons  
Deputy Director

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Underground Storage Tank <sup>Fee</sup> 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	4,800	0	0	4,800	4,800
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	250	0	0	250	250
Other (Postage)	2,000	0	0	2,000	2,000

2. Explanation of Above Estimates:

Costs of personnel, computer time, envelopes, mailing equipment, and postage for mailing the 1988 fee assessment plus personnel and computer costs for processing payments received.

3. Objectives of These Rules:

To assess and collect 1988 underground storage tank registration and emergency response fees in order to establish special funds pursuant to W. Va. Code §§20-5H-20 and 20-5H-21.

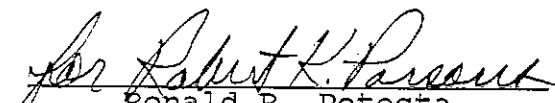
4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government: See above.

B. Economic Impact on Political Subdivisions: N/A  
 Economic Impact on Specific Industries: \$50 per tank maximum  
 Economic Impact on Specific Groups of Citizens: N/A

C. Economic Impact on Citizens/Public at Large: N/A

Date: September 27, 1988

  
 Ronald R. Potesta  
 Director

PREAMBLE TO A PROPOSED LEGISLATIVE RULE  
CONCERNING UNDERGROUND STORAGE TANKS

STATE AGENCY: Department of Natural Resources

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

AUTHORITY: W. Va. Code §20-5H-6

ACTION: Proposed Rule; Notice of Public Comment Period

SUMMARY: The Department is proposing a new legislative rule concerning the assessment and collection of underground storage tank fees pursuant to W. Va. Code §§20-5H-20 and 20-5H-21. Under these two sections of the recently-enacted West Virginia Underground Storage Tank Act, tank owners will be assessed two separate fees:

1. An annual registration fee of not more than \$25 per tank, which will be placed in a special fund to be used to defray the costs of administering the new Act.

2. An annual response fee of not more than \$25 per tank, which will be placed in a special fund to be used to assure an adequate response to problems arising from leaking underground storage tanks.

Written comments on the proposed rule will be received by the Department until 4:30 p.m. on November 18, 1988.

The proposed rule has also been promulgated on an emergency basis effective September 28, 1988.

TITLE 47  
LEGISLATIVE RULES  
DEPARTMENT OF NATURAL RESOURCES

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SERIES ~~37~~ 37  
UNDERGROUND STORAGE TANK REGULATIONS

SECRETARY OF STATE

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§47-36-1. 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 are incorporated by reference into these regulations, the reference is to the statute in effect on the date on which these regulations were proposed (September 28, 1988).

§47-36-2. Definitions.

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

2.2. "Division" means the Division of Waste Management of the West Virginia Department of Natural Resources.

2.3. "Owner" means:

2.3.1. In the case of an underground storage tank 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.

2.3.2. In the case of an underground storage tank 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.

2.4. "Person" means any individual, trust, firm, joint stock company, 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.

2.5. "Petroleum" means petroleum, including crude oil or any 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).

2.6. "Presently In Use" means an underground storage tank which is being used or could be used for the storage, use, or dispensing of a regulated substance at any time during the calendar year 1988.

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.

2.8. "Underground Storage Tank" means one tank or a combination of tanks, and the underground pipes connected thereto, which is used to contain an accumulation of regulated substances and the volume of which, including the volume of the 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. Farm or residential tanks with a capacity of eleven hundred (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 a 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 Sections 2.8.1 through 2.8.9 of these regulations.

### **§47-36-3. 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 in this State. This registration fee will not exceed twenty-five dollars (\$25) per tank per year.

3.1.2. The total of the registration fees assessed for the calendar year 1988 shall be sufficient to assure an initial balance in The Underground Storage Tank Administrative Fund of fifty thousand dollars (\$50,000) at the beginning of the next calendar 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 in this State. This response fee will not exceed twenty-five dollars (\$25) per tank per year.

3.2.2. The total of the response fees assessed for the calendar year 1988 shall be sufficient to assure an initial balance in The Leaking Underground Storage Tank Response Fund of two hundred and fifty thousand dollars (\$250,000) at the beginning of the next calendar 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, the use of which commenced on or after January 1, 1988, 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).

#### **3.4. 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.

**§47-36-4. 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. 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. Overcharges or undercharges that appear on the assessment invoices issued by the Division will be corrected on the assessment invoices issued for the next calendar year. No recalculations or refunds will be made in the calendar year 1988.

4.5. A tank owner who does not make a full, timely payment of the fees assessed 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-16(c).

**§47-36-5. Fee Deposit.**

5.1. Fees collected by the Department 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 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 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.



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25305

ARCH A. MOORE, JR.  
Governor

December 16, 1988

RONALD R. POTESTA  
Director

ROBERT K. PARSONS  
Deputy Director

The Honorable Ken Hechler  
Secretary of State  
Building 1, State Capitol Complex  
Charleston, West Virginia 25305

Re: Request for a Change in the Series  
Number and Title of a Proposed Rule

Dear Mr. Hechler:

The Department of Natural Resources requests that the series number and title of a rule originally proposed on September 28, 1988 be changed. This new legislative rule -- proposed as Series 36 under the title "Underground Storage Tank Regulations" -- concerns 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. Subsequent to the preparation of this rule, the U.S. Environmental Protection Agency issued final technical requirements for underground storage tanks. In order to parallel the format of existing Department rules, we intend to propose adoption of the final federal rules as a new Series 36 entitled "Underground Storage Tank Regulations." Since the Department's September 28th rule concerns fee assessments rather than technical requirements, we wish to have that rule redesignated Series 37 and retitled "Underground Storage Tank Fee Assessments."

If you have any questions regarding this filing, please contact Mr. Jeffrey E. Herrold at (304) 348-2761.

Sincerely,

Ronald R. Potesta  
Director

RRP/jeh

1988 DEC 16 PM 12:35  
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