

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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1988 SEP 28 PM 3:04
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Department of Natural Resources TITLE NUMBER: 47

CITE AUTHORITY: W. Va. Code §20-5H-6

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED:

TITLE OF RULE BEING AMENDED:

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: ~~30~~ 37

TITLE OF RULE BEING FILED AS AN EMERGENCY:

Underground Storage Tank Regulations
Fee

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

1. Under W. Va. Code §20-5H-20, the director of the Department of Natural Resources must collect underground storage tank registration fees for each calendar year beginning in 1988. Under W. Va. Code §20-5H-6(b)(6), no more than one payment shall be due from any tank owner in any one year. Thus, the emergency rule was promulgated in order to comply with the time limit implicit under W. Va. Code §20-5H-20 whereby underground storage tank fees for the calendar year 1988 must be collected in 1988.

2. A large quantity of petroleum and hazardous substances are stored in underground storage tanks in West Virginia. Emergency situations involving these substances continue to arise which can present a hazard to human health and safety or produce damage to the environment. The emergency rule is necessary in order to establish and provide monies for a special fund under W. Va. Code §20-5H-21 to assure an adequate response to problems arising from leaking underground storage tanks.

Use Additional Sheets If Necessary.

Albert H. Parsons
Deputy Director

EMERGENCY RULE

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

FILED

1988 SEP 28 PM 3:09

SERIES 36 ^A
UNDERGROUND STORAGE TANK REGULATIONS

SECRETARY OF STATE

Fee

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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. -- September 28, 1988.

1.4. Effective Date. -- September 28, 1988.

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 became effective (September 28, 1988).

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§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.

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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;

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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^A-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.

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§47-36^A-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^A-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

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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.

DATE: September 28, 1988

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Natural Resources

EMERGENCY RULE TITLE: Underground Storage Tank Regulations

1. Filing date for emergency rule: September 28, 1988
2. Statutory authority for promulgating the emergency rule:
West Virginia Code, Chapter 20, Article 5H, Section 6
3. Filing date for proposed legislative rule: September 28, 1988
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

The emergency rule adopts new language.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

Not applicable.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Under W. Va. Code §20-5H-20, the director of the Department of Natural Resources must collect underground storage tank registration fees for each calendar year beginning in 1988. Under W. Va. Code §20-5H-6(b)(6), no more than one payment shall be due from any tank owner in any one year. Thus, the emergency rule was promulgated in order to comply with the time limit implicit under W. Va. Code §20-5H-20 whereby underground storage tank fees for the calendar year 1988 must be collected in 1988.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

A large quantity of petroleum and hazardous substances are stored in underground storage tanks in West Virginia. Emergency situations involving these substances continue to arise which can present a hazard to human health and safety or produce damage to the environment. The emergency rule is necessary in order to establish and provide monies for a special fund under W. Va. Code §20-5H-21 to assure an adequate response to problems arising from leaking underground storage tanks.