

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

**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: _____

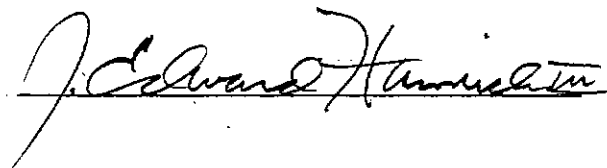
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 37

TITLE OF RULE BEING PROPOSED: _____

"Underground Storage Tank Fee Assessments"

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.



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA
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FISCAL NOTE FOR PROPOSED RULES

Rule Title: Underground Storage Tank 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 Decrease \$	Current \$	FISCAL YEAR	
				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.

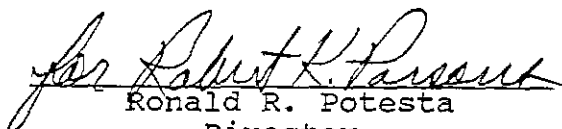
4. Explanation of Overall Economic Impact of Proposed Rule.

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

DATE: February 17, 1989

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Natural Resources

LEGISLATIVE RULE TITLE: Underground Storage Tank Fee Assessments

1. Authorizing statute(s) citation:

West Virginia Code Chapter 20, Article 5H, Section 6

2. a. Date filed in State Register with Notice of Hearing:

September 28, 1988

b. What other notice, including advertising, did you give of the public comment period?

An official Department News Release was sent to all West Virginia newspapers and radio and television stations.

c. Close of public comment period: November 18, 1988

d. Attach list of persons who appeared at the hearing, comments received, amendments to the proposed rule, and the reasons for those amendments.

Attached X No comments received

The comments received and the Department's responses appear in the Response to Comments filed with the agency-approved proposed Legislative Rule.

e. Date you filed in State Register the agency-approved proposed Legislative Rule following public hearing:

February 17, 1989

f. Name and phone number of agency person to contact for additional information:

Mr. Dennis H. Treacy, Administrator
Office of Environmental & Regulatory Affairs
348-2754

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

NOT APPLICABLE

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

- b. Date of hearing: _____

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

- d. Attach findings and determinations and reasons:

**PREAMBLE TO A NEW LEGISLATIVE RULE
CONCERNING UNDERGROUND STORAGE TANK FEES**

STATE AGENCY: West Virginia Department of Natural Resources

REGULATIONS: Title 47, Series 37, "Underground Storage Tank Fee Assessments"

AUTHORITY: W. Va. Code §20-5H-6

ACTION: Agency-Approved Rule

SUMMARY: The Department is approving a new legislative rule concerning the assessment and collection of underground storage tank (UST) 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.

SUPPLEMENTAL INFORMATION: The rule which the Department is approving today was originally proposed on September 28, 1988 as Series 36 under the title "Underground Storage Tank Regulations." The rule being approved today has been redesignated Series 37 and retitled "Underground Storage Tank Fee Assessments."

RESPONSE TO COMMENTS: A public comment period on the proposed rule began on September 28, 1988 and closed on November 18, 1988. The comments received and the Department's responses appear below:

Comment: One commenter asked the Department to adopt all exclusions from regulation available for underground storage tanks that appear in the final federal UST regulations that were promulgated on September 23, 1988 (see 53 F.R. 37194-37195).

Response: The language used in both the West Virginia Underground Storage Tank Act and the Department's regulations was based upon proposed federal UST regulations. Certain categories of underground storage tanks were excluded from regulation by definition (e.g., see Section 2.7 of the Department's proposed regulations). The State Act was passed prior to the issuance of final federal regulations, which expanded the number of exclusions

available. In a similar manner, the Department's regulations were developed and promulgated as an emergency rule prior to the receipt of the final federal regulations from the U.S. Environmental Protection Agency. In order to fulfill its statutory mandate to collect fees prior to the end of the calendar year, the Department conducted its 1988 UST fee assessment using then-current federal exemption guidance. In order to apply the exemptions that now appear in 40 C.F.R. 280.10(b) to future fee assessments, the Department accepts the commenter's request and has added a new Section 1.6 to its agency-approved regulations. The companion emergency rule, which was filed and became effective on September 28, 1988, has likewise been modified.

Comment: One commenter objected to the Department's refusal to recalculate erroneous fee assessments during the calendar year 1988 (i.e., Section 4.4 of the proposed regulations stipulated that the Department will wait until 1989 to rectify any errors; this provision also appeared in the companion emergency rule).

Response: Due to the limited period of time available for the collection of fees for the calendar year 1988 (i.e., three months to assess and collect fees for more than 14,000 tanks statewide), the Department had no choice but to delay any necessary recalculations until 1989.

TITLE 47
LEGISLATIVE RULES
DEPARTMENT OF NATURAL RESOURCES

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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. --

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).

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 with a capacity of one hundred and ten (110) gallons or less;

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

1.6.6. Any emergency spill or overflow containment underground storage tank 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. "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 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.~~

2.5. "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.

~~2.7.~~ 2.6. "Regulated Substance" means:

~~2.7.1.~~ 2.6.1. 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"~~

2.6.2. 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).

~~2-8-~~ 2.7. "Underground Storage Tank" means one tank or a combination of tanks, and the underground pipes connected thereto, ~~which that~~ 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-~~ 2.7.1. 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-~~ 2.7.2. Tanks used for storing heating oil for consumptive use on the premises where stored;

~~2-8-3-~~ 2.7.3. Septic tanks;

~~2-8-4-~~ 2.7.4. 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-~~ 2.7.5. Surface impoundments, pits, ponds, or lagoons;

~~2-8-6-~~ 2.7.6. Storm water or wastewater collection systems;

~~2-8-7-~~ 2.7.7. Flow-through process tanks;

~~2-8-8-~~ 2.7.8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

~~2-8-9-~~ 2.7.9. 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-~~ 2.7.10. Any pipes connected to any tank which is described in ~~Sections--2-8-1--through--2-8-9~~ Sections 2.7.1 through 2.7.9 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 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 17, 1987~~, 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).

3.4. 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. 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).

§47-37-5. 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.