

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark in this Box

FILED  
1000 APR 20 PM 12:18  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

West Virginia Department of Commerce, Labor,  
and Environmental Resources, Division of  
AGENCY: Natural Resources TITLE NUMBER: 47

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §20-5H-6

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 NEW RULE BEING PROPOSED: 37A

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

Underground Storage Tank Insurance Trust Fund

DATE OF PUBLIC HEARING: Wednesday, May 23, 1990 TIME: 1:00 pm

LOCATION OF PUBLIC HEARING: Director's Conference Room 674

Building 3, State Capitol Complex

Charleston, West Virginia

COMMENTS LIMITED TO: ORAL \_\_\_ , WRITTEN \_\_\_ , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Division of Natural Resources

Room 712, Building 3

State Capitol Complex

Charleston, WV 25305

The Department requests that persons wishing to make  
comments at the hearing make an effort to submit written  
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
J. Edward Hamrick III  
Director

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Underground Storage Tank Insurance Trust Fund.

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Department of Commerce, Labor and Environmental Resources  
 Division 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					
Current Expense					
Repairs and Alterations			NO CHANGE		
Equipment					
Other					

2. Explanation of Above Estimates:

This rule provides a means for owners or operators of underground storage tanks to comply with the financial assurance requirements. This is a new program, however no new administrative expenditures are anticipated for the Division.

3. Objectives of These Rules:

This rule implements the financial assurance program for owners or operators of underground storage tanks. The rule establishes an insurance trust fund to pay the cost of cleanup and third party damages if a release from a tank should occur.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government:

The implementation of this rule will establish a State-run insurance program for owners or operators of underground storage tanks. The Board of Risk and Insurance Management will operate the program with all monies collected being deposited in the State Treasury. A small increase in administrative expenses may be incurred by the Board, however this will be covered in a large part by the monies collected.

B. Economic Impact on Political Subdivisions: No impact.

Economic Impact on Specific Industries:

Industries or individuals owning or operating underground storage tanks containing a petroleum substance will have a means of financial assurance will require a small expenditure of their funds as compared to the financial catastrophe they would encounter if such a program did not exist.

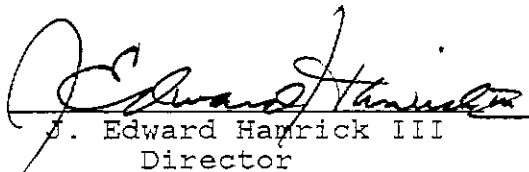
Economic Impact on Specific Groups of Citizens:

See above discussion under Item B.2.

C. Economic Impact on Citizens/Public at Large:

The program will provide the public with a means of collecting on any damages if a release should occur from an underground storage tank. The program will provide for more timely remediation of a release site and lead to the further reduction of the threat to public health from pollutant discharges. This program will prevent heavy financial burden upon the petroleum service community for which the public is so dependent upon.

Date: 4/19/90

  
J. Edward Hamrick III  
Director

PREAMBLE TO A NEW LEGISLATIVE RULE  
THE UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

**STATE AGENCY:** West Virginia Department of Commerce, Labor and Environmental Resources, Division of Natural Resources

**REGULATIONS:** Title 47, Series 37A, "Underground Storage Tank Insurance Trust Fund".

**AUTHORITY:** West Virginia Code {{20-5H-6.

**ACTION:** Proposed Rule.

**DATES:** A public hearing on the proposed rule will be held on Wednesday, May 23, 1990 at 1:00 p.m. in the Director's Conference Room. (674, Building 3, State Capitol Complex, Charleston, West Virginia). Written comments will be received by the division until the close of the public hearing.

**SUMMARY:** On October 26, 1988, the Environmental Protection Agency promulgated rules and regulations to establish a financial assurance requirement for owners or operators of underground storage tanks (USTs) (40 C.F.R. Part 280 Subpart H). This rule became effective on January 24, 1989.

The Division of Natural Resources is proposing a Legislative Rule to implement an underground storage tank insurance trust fund. The fund will establish a means of financial assurance that will enable owners or operators to comply with the federal requirement. The fund will be established from the collection of capitalization fees assessed against all owners or operators of underground storage tanks. An annual premium will be collected from the owners or operators who wish to participate in the program.

Monies from the fund will be used to pay all eligible costs of cleanup and third party damages. The Board of Risk and Insurance Management will process all claims. This rule has also been promulgated on an emergency basis effective March 28, 1990.

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

SERIES 37A  
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

**§47-37A-1. General.**

1.1. Scope and Purpose. -- These regulations establish a Underground Storage Tank Insurance Trust Fund pursuant to W. Va. Code §20-5H-22 and as set forth under the financial responsibility requirements of W. Va. Code §20-5H-10.

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

1.3. Filing Date. --

1.4. Effective Date. --

**§47-37A-2. Applicability.**

2.1. Owners or operators of underground storage tanks are required by statute to establish a means of financial assurance necessary for taking reasonable corrective action and for compensating third parties for bodily injury and property damage caused by sudden or nonsudden accidental releases arising from the operation of USTs. These regulations apply to UST owners and operators who do not show evidence of meeting the financial assurance requirements set forth in W. Va. Code §20-5H-10 and to any UST owner or operator with an established means of financial assurance who desires to participate in the state program.

**§47-37A-3. Definitions.**

3.1. "Accidental Release" means a release arising from extrinsic causes or occurring unexpectedly, by chance, without intent, or through carelessness.

3.2. "Advisory Committee" means a committee composed of seven (7) members, which shall include:

3.2.1. One member of the West Virginia Petroleum Council;

3.2.2. One member of the West Virginia Service Station Dealers Association;

3.2.3. One member of the West Virginia Petroleum Marketers Association;

3.2.4. The director of the Division of Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources;

3.2.5. One member of the West Virginia Manufacturers Association;

3.2.6. The West Virginia Insurance Commissioner; and

3.2.7. A representative from the citizenery-at-large who shall be appointed by the Governor.

3.3. "Board" means the West Virginia Board of Risk and Insurance Management.

3.4. "Damages" means bodily injury or property damage caused by a release or accidental release as defined in these regulations.

3.5. "Director" means the director of the Division of Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources.

3.6. "Deductible" means an amount of money paid by the insured that relieves the insurer of responsibility for an initial specified loss.

3.7. "Division" means the Division of Natural Resources of the West Virginia Department of Commerce, Labor and Environmental Resources.

3.8. "Premium" means the payment made for a contract of insurance.

3.9. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

3.10. "Regulated Substance" means:

3.10.1. 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

3.10.2. 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). The term "petroleum" includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and

finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

3.11. "Underground Storage Tank" or "UST" means means 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 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:

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

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

3.11.3. Septic tanks;

3.11.4. 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;

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

3.11.6. Storm water or wastewater collection systems;

3.11.7. Flow-through process tanks;

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

3.11.9. 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

3.11.10. Any pipes connected to any tank which is described in Sections 3.11.1 through 3.11.9 of these regulations.

#### **§47-37A-4. Applying For Coverage.**

4.1. Application for Coverage. The owner or operator of an underground storage tank shall submit an application for coverage to the Board on forms supplied by the Board.

4.2. The application shall include a sworn statement that all information and records are accurate and in compliance with all applicable federal, state, and local requirements.

**§47-37A-4. Capitalization Fees.**

5.1. A capitalization fee shall be assessed against all owners or operators of underground storage tanks to be used for initial establishment of the Underground Storage Tank Insurance Trust Fund.

5.2. The capitalization fee shall be paid to the Board and shall be deposited into the State treasury into a special fund designated the "Underground Storage Tank Insurance Trust Fund."

5.3. Interest accrued on moneys in the Underground Storage Tank Insurance Trust Fund shall be credited to that fund.

**§47-37A-6. Powers and Duties of the Board.**

6.1. The Board shall have the power, duty, and responsibility to establish and maintain the premium rate for the UST insurance program.

6.2. The annual premium rate, as determined by the Board, shall be paid by the owners or operators requesting coverage and may include administrative expenses.

6.3. The premium shall be paid to the Board and deposited into the Underground Storage Tank Insurance Trust Fund.

6.4. The UST insurance program shall be assessable. The Board may implement assessments once the insurance premium pool reaches a level of two million dollars (\$2,000,000) or less. The assessment shall be subject to approval of the director and the Advisory Committee. The insurance premium pool does not include the capitalization.

**§47-37A-7. Cancellation of Coverage.**

7.1. The division may request a cancellation of coverage for:

7.1.1. An owner or operator who is not in compliance with the provisions of 40 C.F.R. Part 280 or 47 C.S.R. 36;

7.1.2. An owner or operator who fails to install overfill/spill prevention if two (2) incidents are reported within a twelve (12) month period in excess of the insured's deductible; or

7.1.3. An owner or operator who fails to pay the premium.

**§47-37A-8. Emergency Claims.**

8.1. The Division shall notify the Board of a potential claim.

8.2. The owner or operator shall comply with the initial response requirements set forth in 40 C.F.R. §280.61.

8.3. The owner or operator shall immediately submit written itemization of projected contract costs to the Board.

8.4. Upon compliance with the provisions of 40 C.F.R. §280.61, the owner or operator shall secure three (3) bids to perform site activities necessary to comply with the requirements set forth in 40 C.F.R. §280.66.

8.5. The owner or operator is required to accept the lowest bid.

8.6. The Board is responsible for reimbursing the owner or operator at an amount no greater than the lowest bid less the owner or operators deductible.

8.7. The Board will not reimburse the cost of the initial site assessment.

**§47-37A-9. Non-Emergency Claims.**

9.1. The Division shall notify the Board of a potential claim.

9.2. The owner or operator shall secure three (3) bids to perform site activities necessary to comply with the requirements set forth in 40 C.F.R. §280.66.

9.3. The owner or operator is required to accept the lowest bid.

9.4. The Board is responsible for reimbursing the owner or operator for all eligible damages less the owner or operator deductible.

9.5. The Board will not reimburse pay the cost of the initial site assessment.

**§47-37A-10. Tank Certification.**

10.1. Owners or operators of an underground storage tank shall not dispense regulated substances unless:

10.1.1. The underground storage tank is registered with the Division pursuant to W. Va. Code §20-5H-9; and

10.1.2. The owner or operator meets the financial responsibility requirements pursuant to W. Va. Code §20-5H-10.

**§47-37A-11. Powers and Duties of the Advisory Committee.**

11.1. In addition to all other powers, duties, and responsibilities aforementioned in these regulations, the Advisory Committee shall:

11.1.1. Have the authority to review all claims of fifty thousand dollars (\$50,000) or more;

11.1.2. Have the authority to function as an appeals board for resolving the disputes that may arise from the operation of the underground storage tank insurance program established under W. Va. Code §20-5H-22; and

11.3.3. Have the authority to authorize the Board to use funds from the premium pool to pay for corrective action upon application to said committee by owners or operators for hardship status if owners or operators cannot afford the cost of cleanup, refuse to pay, or for any other reason fail to take corrective action.

**§47-37A-12. Severability of Requirements.**

12.1. If any requirement of these regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other requirements or applications of these regulations and to this end the requirements of these regulations are declared to be severable.