

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

Form #3

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Department of Commerce, Labor, and  
Environmental Resources-Division of  
Natural Resources

AGENCY: \_\_\_\_\_ TITLE NUMBER: 47

CITE AUTHORITY West Virginia Code §20-5H-6

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

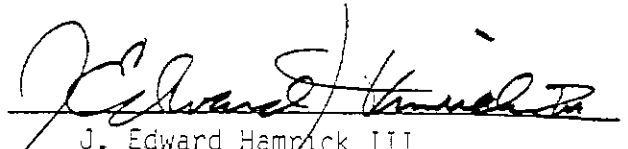
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

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

Underground Storage Tank Insurance Trust Fund

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.

  
J. Edward Hamrick III  
Director

MEMORANDUM OF CONSENT

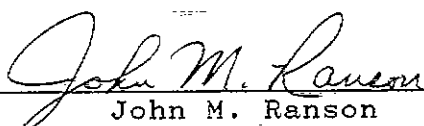
TO: J. Edward Hamrick III, Director  
Division of Natural Resources

FROM: John M. Ranson, Secretary  
Department of Commerce, Labor,  
and Environmental Resources

SUBJECT: Approval of Regulatory Proposal

RE: "Underground Storage Tank Insurance Trust Fund"

I have reviewed the proposed rule and authorize its filing for public comment in accordance with the provisions of the West Virginia Administrative Procedures Act.

  
\_\_\_\_\_  
John M. Ranson  
Secretary

6/13/90  
Date

DATE: June 15, 1990  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: Department of Commerce, Labor, and Environmental  
Resources

LEGISLATIVE RULE TITLE: Underground Storage Tank Insurance Trust  
Fund.

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:

April 20, 1990

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

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

c. Date(s) of hearing(s): May 23, 1990

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 Division'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:

June 15, 1990

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

Mr. Mike E. Comer, Regulatory Analyst  
Office of Environmental & Regulatory Affairs  
348-2761

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:

- 1.) DAVE HAWES WUPMA
- 2.) HAROLD WILKES American Accessories Inc
- 3.) JOHN MUELLER Mattheus Bros. Wholesale
- 4.) HARRY SKIP MORRIS Board of Risk
- 5.) MARVIN Z. GRAY WVA. GASOLINE DEALERS ASSN
- 6.) HARRY PRICE DNR
- 7.) SCOTT LANNAN Robinson + McElwee
- 8.)
- 9.)
- 10.)
- 11.)
- 12.)
- 13.)
- 14.)



# West Virginia Petroleum Marketers Association

SUITE 712 ATLAS BUILDING  
CHARLESTON, WEST VIRGINIA 25301  
AREA CODE 304 343-5885



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May 23, 1990

## PUBLIC HEARING

Legislative Rules  
Underground Storage Tank Insurance Trust Fund  
W.Va. Code §20-5H-6

The West Virginia Petroleum Marketers Association support the proposed rules covering the petroleum underground storage tank insurance trust fund.

However, we respectfully request that the following be inserted in §47-37A-10, Tank Certification.

A new line:

10.1.3 Private Carriers, Common Carriers and For Hire Carriers of regulated substances shall not under §20-5H-6 of the West Virginia Code deliver regulated substances into an underground storage tank not registered with the W.Va. Department of Natural Resources as required under §20-5H-9. Certification of registration shall be visible to driver of carrier making the delivery.

David W. Haines  
Executive Director

**PREAMBLE TO A NEW LEGISLATIVE  
RULE CONCERNING 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:** Agency - Approved Rule.

**SUMMARY:** The Division is approving a new 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 federal and State regulations which require owners or operators to obtain financial assurance. 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 was also promulgated on an emergency on March 28, 1990.

**RESPONSE TO COMMENTS:** A public hearing on the proposed rule was held on Wednesday, May 23, 1990 in Charleston; written comments were received by the Division until the close of the public hearing. Seven interested individuals attended the public hearing, one of whom submitted a written comment for the record. The comment received and the Division's response appears below:

**SECTION 10**

**COMMENT:** The commenter expressed concern about the receipt of regulated substances by owners or operators of uncertified underground storage tanks. He suggested that no carrier of regulated substances shall deliver their load to an underground storage tank unless the owner or operator of that tank can show proof of certification.

**RESPONSE:** The Division has considered the commenters statement and agrees with the suggestion of presenting proof of certification before delivery can be made. The Division views the commenters suggestion as a necessary mechanism to prevent a release to the environment. The Division feels that if owners or operator's are allowed to receive regulated substances without a certification, that would defeat the goal of release prevention. Simply prohibiting owners and operators from dispensing the

regulated substance is stored in a faulty underground tank. Therefore the Division finds it necessary to make proof of certification a requirement in these regulations. A new Section 10.2 has been added to the agency-approved rule as follows:

10.2 Carriers (private, common, or for-hire) of regulated substances shall not deliver regulated substances into an underground storage tank unless the underground storage tank is registered with the Division pursuant to W.Va. Code §20-5H-9 and the owner or operator presents certification of registration to the carrier before delivery is made.

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.

10.2. Carriers (private, common, or for-hire) of regulated substances shall not deliver regulated substances into an underground storage tank unless the underground storage tank is registered with the Division pursuant to W. Va. §20-5H-9 and the owner or operator presents certification of registration to the carrier before delivery is made.

**§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.