

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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AUG 22 AM 11:10
DEPT. OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

Department of Commerce, Labor
and Environmental Resources

AGENCY: Division of Natural Resources TITLE NUMBER: 47

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

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

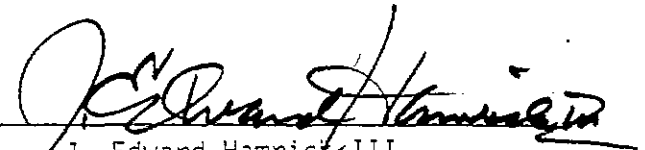
TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: _____

"Underground Storage Tank Insurance Trust Fund"

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


J. Edward Hamrick III
Director

FILED

ISSO AUG 22 AM 11: 39

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

OFFICE OF WEST VIRGINIA
STATE

SERIES 37A
UNDERGROUND STORAGE TANK INSURANCE TRUST FUND

§47-37A-1. General.

1.1. Scope and Purpose. -- These regulations establish an 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 releasing 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 citizenry-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, as amended, 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 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, as amended, or the Hazardous Liquid Pipeline Safety Act of 1979, as amended, 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-5. 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~~ to establish 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 monies 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 reasonable 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--~~ For purposes of assessment calculations, the insurance premium pool shall not include funds collected from the capitalization fee assessment.

§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 owners or operators deductible.

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

§47-37A-10. Tank-Certification: Notification Requirements.

~~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.-Code-§20-5H-9-and
the-owner--or-operator-presents-certification--of-registration-to
the-carrier-before-delivery-is-made-~~

10.1. Owners and operators of underground storage tanks who have not fulfilled the notification requirements pursuant to Title 47, Series 36, Section 4 of the Code of State Regulations (47 C.S.R. 36 §4) shall not be eligible for insurance coverage pursuant to these regulations, until such notification is made and approved by the director.

§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 and W. Va. Code §20-5H-7, 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 these regulations; and

~~11.3.3.~~ 11.1.3. 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- when:~~

11.1.3.a. An owner or operator submits a written request to the Committee claiming he has no available financial means to pay the costs incurred not covered by the Insurance Trust Fund under Sections 8 and 9 of these regulations; or

11.1.3.b. Upon request of the Division.

11.2. The approval or denial of a request shall be determined at the discretion of the Committee based on facts presented with the request. A record shall be retained by the Committee stating the reasons for the decision to approve or deny the request. The

Committee, upon approval of a request, shall direct the Board to pay the appropriate costs.

\$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.



FILED

WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-438, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

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OFFICE OF THE CLERK
LEGISLATIVE COMMITTEE

Senator Lloyd Jackson, Co-Chairman
Delegate Patrick H. Murphy, Co-Chairman

Debra A. Graham, Counsel
Michael McThomas, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

August 21, 1990

TO: Ken Hechler, Secretary of State, State Register

TO: J. Edward Hamrick, III, Director
Division of Natural Resources
Building 3, State Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Underground Storage Tank Insurance Trust Fund

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Mike E. Comer, Reg. Analyst
Off. Env. & Reg. Affairs